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on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

DAVID RAYMOND TINCUP JR., on
behalf of himself and all others similarly
situated,

Plaintiff,

v.

PCA CENTRAL CALIFORNIA
CORRUGATED, LLC d/b/a
PACKAGING CORPORATION OF
AMERICA, a Delaware corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 34-2022-00318214
Assigned for All Purposes To:
Hon. Lauri A. Damrell
Dept. 22

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT**

[Declarations of Anthony Draper, David
Raymond Tincup Jr. [Proposed] Order,
concurrently filed herewith]

Date: December 19, 2025
Time: 9:00 a.m.
Dept. 22

Reservation #: A-318214-003

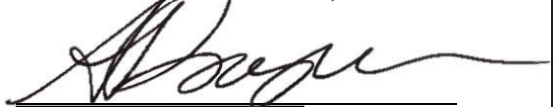
1 **PLEASE TAKE NOTICE** that on December 19, 2025, in Department 22 of the above-
2 entitled court located at, 720 9th Street, Sacramento, CA 95814, Plaintiff David Raymond
3 Tincup Jr. ("Plaintiff") will and hereby does move the Court for an Order: (1) provisionally
4 certifying the Class for Settlement purposes only; (2) provisionally approving James R. Hawkins,
5 Isandra Fernandez, and Anthony Draper of James Hawkins APLC; counsel for Plaintiff as Class
6 Counsel in this matter, (3) provisionally approving Plaintiff as the Class Representative; (4)
7 approving Apex Class Action. LLC as the Administrator; (5) preliminarily approving the Class
8 Action and PAGA Settlement Agreement and Class Notice; (6) approving and directing
9 distribution of the Notice of Class Action Settlement and Hearing Date for Final Court Approval;
10 and (7) scheduling a Hearing Date for Final Approval.

11 This Motion is made pursuant to Rule 3.769 of the California *Rules of Court*, which
12 provides for court approval of the settlement of a purported class action and allows the Court to
13 preliminarily certify a class for settlement purposes. The basis for this Motion is that the
14 proposed Settlement is fair, adequate, and reasonable and the procedures proposed by the Parties
15 are adequate to ensure the opportunity of Class Members to participate in, opt out of, or object to
16 the Settlement.

17 This Motion will be based on the Memorandum of Points and Authorities included
18 herein, the Declaration of Anthony Draper, the Settlement Agreement attached to the Declaration
19 of Anthony Draper as Exhibit 1, the Declaration of David Raymond Tincup Jr in Support of the
20 Motion for Preliminary Approval of Settlement and upon the oral arguments of counsel (should
21 there be any) and upon the complete records and file herein.

22 Dated: November 25, 2025

JAMES R. HAWKINS, APLC



Isandra Y. Fernandez
Anthony Draper
Attorneys for Plaintiff
David Raymond Tincup Jr.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff David Raymond Tincup Jr. (“Plaintiff”) respectfully seeks preliminary approval
4 of the class and PAGA action settlement reached with Defendant PCA Central California
5 Corrugated, LLC. (“Defendant” and/or PCA”) (Plaintiff and Defendant hereinafter collectively
6 referred to as “Parties”).

7 Subject to Court approval, the Parties have reached a settlement of the claims asserted on
8 behalf of the Class and Aggrieved Employees in the present action for a total of One Million One
9 Hundred Thousand Dollars (\$1,100,000) inclusive of all settlement payments to Participating
10 Class Members and Aggrieved Employees, Class Counsel’s Court-approved attorneys’ fees and
11 reasonable litigation expenses, the Court-approved Class Representative Service Award to the
12 Class Representative, Settlement Administration Expenses, interest and the LWDA’s share of
13 PAGA penalties. The total settlement amount excludes the employer’s share of the payroll taxes.

14 **This is a cash settlement.** Every Class Member who does not opt out of the Settlement will
15 automatically be mailed an individual settlement payment. However, every Class Member who is
16 also an Aggrieved Employee will be mailed their respective Individual PAGA Payment
17 associated with the PAGA penalty portion of the settlement amount regardless of opt-out status.
18 Class Members do not have to file a claim to be mailed a payment.

19 As discussed more thoroughly below, the proposed Settlement satisfies all of the criteria for
20 preliminary settlement approval under California law and falls well within the range of proper
21 approval. As such, Plaintiff moves this Court to: (i) provisionally certify the proposed Class; (ii)
22 provisionally approve James R. Hawkins, Isandra Fernandez, and Anthony Draper of James
23 Hawkins APLC as class counsel for Plaintiff and the Class in this matter; (iii) provisionally
24 approve named Plaintiff David Raymond Tincup Jr. as the Class Representative; (iv) appoint
25 Apex Class Action, LLC (“Apex”) as the Administrator; (v) preliminarily grant approval of the
26 Class Action and PAGA Settlement Agreement and Class Notice (hereinafter “Settlement
27 Agreement”); (vi) direct distribution of the Notice of Class Action Settlement and Hearing Date
28 for Final Court Approval (“Class Notice”) and; (vii) schedule a Final Approval Hearing on the

terms and conditions set forth in the Settlement Agreement.

II. FACTUAL BACKGROUND

On April 13, 2022, Plaintiff David Raymond Tincup, Jr. commenced the Action by filing a PAGA Complaint in Sacramento County Superior Court. On June 16, 2022, Plaintiff filed a First Amended Complaint Pursuant to PAGA in Sacramento County Superior Court. (Declaration of Anthony Draper “Draper Decl.”, ¶ 2.) On September 8, 2022, Plaintiff gave written timely notice to the LWDA and Defendants by submitting a PAGA Notice (Draper Decl., ¶ 3; Ex. 1.) On September 9, 2022, Plaintiff filed a Class Action Complaint alleging causes of action against Defendant for (1) failure to pay lawful wages; (2) failure to provide lawful meal periods or compensation in lieu thereof; (3) failure to provide lawful rest periods of compensation in lieu thereof; (4) failure to reimburse employee expenses; (5) failure to timely pay wages during employment; (6) failure to timely pay wages at termination; (7) knowing and intentional failure to comply with itemized employee wage statement provisions; and (8) violation of the unfair competition law in Fresno County Superior Court. (Draper Decl., ¶ 4.) On November 15, 2022, Plaintiff filed a PAGA in Fresno County Superior Court. (Draper Decl., ¶ 5.)

On October 4, 2023, Plaintiff filed a Second Amended Complaint in the Action in Sacramento County Superior Court, consolidating all of his pending cases against Defendant. The Second Amended Complaint is the operative complaint in the Action (the “Operative Complaint”). (Draper Decl., ¶ 6.)¹

Throughout this litigation, Defendant has denied Plaintiff’s allegations and raised defenses to his claims, both individually and on a representative basis. (Draper Decl., ¶ 7.) Defendant maintains that its employment policies and practices meet the requirements of the Labor Code and applicable Wage Orders (*Id.*) To date, no class has been certified and the Court has not made any findings that Defendant engaged in any wrongdoing or in violation of any state law, rule or regulation, with respect to the issues presented in the litigation (Draper Decl., ¶ 8.)

¹ On January 4, 2024, the Fresno County Superior Court dismissed Case No. 22CECG02824, without prejudice. On January 8, 2024, the Fresno County Superior Court dismissed Case No. 22CECG03661, without prejudice. (Draper Decl. ¶ 6.)

1 Through formal and informal discovery, Plaintiff and Defendant have exchanged
2 extensive documents and information related to the claims asserted (Draper Decl., ¶ 9.) Plaintiff
3 obtained hundreds of pages of information, including timecard records and wage reports of
4 putative Class Members. Defendant provided Plaintiff with class data and random samples of
5 time records, wage statements, and information regarding the number of non-exempt employees
6 during the relevant time-period. (*Id.*)

7 On October 16, 2024, the Parties participated in a mediation with Kristen Rizzo, Esq. an
8 experienced class action mediator. (Draper Decl., ¶ 10.) Although the Parties were unable to
9 reach a settlement at the conclusion of the mediation, they continued in good faith attempts to
10 resolve the Actions through the assistance of the mediator. (*Id.*) The mediator continued to assist
11 the Parties throughout the ongoing settlement negotiations which ultimately led to a settlement in
12 principle and a Memorandum of Understanding executed by the Parties on or about June 4, 2025
13 (Draper Decl., ¶ 11.) Thereafter, the Parties exchanged multiple drafts of the proposed
14 settlement agreement and class notice documents and engaged in numerous communications
15 regarding the settlement terms (Draper Decl., ¶ 12.) The final terms and provisions of the
16 settlement agreement were approved and executed by all the parties on or about October 8, 2025
17 (Draper Decl., ¶ 13.; Exhibit 2.- Settlement Agreement.)

18 Based on their own respective independent investigations and evaluations and after
19 taking into account the sharply disputed factual and legal issues involved in this matter, the risks
20 attending further prosecution in light of certification issues faced due to the *Brinker Rest. Corp.*
21 *v. Super. Ct.*, (2012) 53 Cal. 4th 1004 (“*Brinker*”) decision, the discovery and investigation
22 conducted to date, Plaintiff and his counsel are of the opinion that settlement for the
23 consideration and on the terms set forth in the Settlement Agreement is fair, reasonable and
24 adequate and is in the best interests of the named Plaintiff and Class Members. (Draper Decl., ¶
25 14.)

26 **III. SUMMARY OF SETTLEMENT TERMS**

27 **A. Settlement Class**

28 “Class Member” and/or “Settlement Class Member” means all non-exempt employees

who worked for Defendant’s Kingsburg and McClellan facilities from January 1, 2020 through April 30, 2025 (“Class Period”) (Settlement Agreement, ¶¶1.5,1.12.)

B. Aggrieved Employees

“Aggrieved Employees” means non-exempt employees who worked for Defendant’s Kingsburg and McClellan facilities from September 8, 2021 through April 30, 2025. (“PAGA Period”) (Settlement Agreement, ¶¶ 1.4,1.30.)

C. Allocation of the Gross Settlement Amount

1. The Gross Settlement Amount (“GSA”) is One Million One Hundred Thousand Dollars (\$1,100,000). This Settlement Amount is in addition to the employer’s share of the payroll taxes, inclusive of all settlement payments to Participating Class Members and PAGA Employees, Class Counsel’s Court-approved attorneys’ fees and reasonable litigation expenses, the Court-approved Service Award to the Class Representative, Settlement Administration Expenses, interest and the LWDA’s share of PAGA penalties. (Settlement Agreement, ¶ 1.22.)

2. Subject to Court approval, Class Counsel may seek approval from the Court of a maximum of Three Hundred Eighty- Five Thousand Dollars (\$385,000) in attorneys’ fees (35% the GSA), and a maximum of Thirty Thousand Dollars (\$30,000) in actual litigation costs, for serving as Class Counsel. (Settlement Agreement, ¶ 3.2.2.)

3. Subject to Court approval, the Class Representative may seek approval from the Court of a Service Award payment not to exceed Ten Thousand Dollars (\$10,000) for a general release of his claims and for serving as a Class Representative. (Settlement Agreement, ¶¶ 1.13, 3.2.1.)

4. Subject to Court approval, reasonable Administration Expenses Payment to be taken from the GSA which is estimated not to exceed Fourteen Thousand Dollars (\$14,000). (Settlement Agreement, ¶ 3.2.3.)

5. Subject to Court approval, Fifty- Five Thousand Dollars (\$55,000) shall be allocated to PAGA penalties, from which Forty One Thousand Two Hundred Fifty Dollars \$41,250 (75%) shall be payable to the LWDA, representing the LWDA’s share of PAGA penalties (“PAGA Allocation”) and Thirteen Thousand Seven Hundred Fifty Dollars (\$13,750)

(25%) to the PAGA Employees. (Settlement Agreement, ¶ 3.2.5.)

6. The portion of the GSA remaining after subtracting the Administration Expenses, Court-approved attorneys' fees and litigation costs, Court-approved Service Enhancement, PAGA penalties, shall be designated the "Net Settlement Amount" or "NSA" (Settlement Agreement, ¶ 1.28.)

7. "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period. (Settlement Agreement, ¶ 1.23.) Said amount shall be allocated as follows: 50% of each Individual Class Payments to settle wage claims, subject to withholding and reported on an IRS W-2 form, and 50% to settlement of interest and penalties which shall be reported on an IRS 1099 without withholdings. (Settlement Agreement, ¶ 3.2.4.1.)

8. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods worked during the PAGA Period. (Settlement Agreement, ¶ 1.24.)

9. Defendant shall be responsible for paying the employer's share of payroll taxes, separately and in addition to the maximum settlement amount. (Settlement Agreement, ¶ 1.22.)

Here, there are estimated to be 752 Class Members. The Net Settlement Amount ("NSA"), subject to Court approval, is Five Hundred Seventy-Three Thousand Dollars (\$619,750). Thus, the estimated average net recovery of Class Members will be approximately Eight Hundred Twenty-Four Dollars (\$824). This average net recovery amount is more than other wage and hour class action settlements approved by California state and federal courts. *See, e.g., Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal.) (average net recovery of approximately \$65); *Sorenson v. Defendants, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.) (average net recovery of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately \$35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20); and *Jones v.*

1 *Bath & Body Works, Inc.*, No. 2:13-cv-05206-FMO-AJW (C.D. Cal.) (average net recovery of
2 approximately \$50).

3 **D. RELEASES**

4
5 1) Participating Class Member Released Claims

6 All Participating Class Members shall be deemed to have released all Settled Claims, as
7 defined below, for the duration of the Class Period. “Settled Claims” means any and all claims
8 for relief, whether suspected or unsuspected, which Plaintiff and any Participating Class Member
9 has had, now has, or may discover in the future against the Released Parties, as defined in
10 Paragraph 1.41 of this Agreement, or any of them for any or all claims alleged in the Complaint
11 (as used herein Complaint refers to the Operative Complaint, as well as all prior complaints, filed
12 in the Lawsuit) or which could have been alleged in the Complaint based on the allegations,
13 facts, matters, transactions, or occurrences alleged in the Complaint or that could have been
14 alleged in the Complaint, including claims premised on any duties or rights under Labor Code
15 sections 200, 201, 202, 203, 204, 210, 221, 225, 226, 226.7, 246, 510, 512, 1174, 1194, 1197,
16 1197.5, 1198, 1199, 2699, 2802, California Code of Regulations, Title 8, section 11090 et seq.
17 and any other applicable IWC Wage Orders, and Business and Professions Code sections 17200-
18 17208. The release of the foregoing claims extends to all theories of relief and direct or
19 derivative claims that can be brought, regardless of whether the claim is, was, or could have been
20 alleged as separate claims, causes of action, lawsuits, or based on other theories of relief,
21 whether under federal law, state law, or common law (including, without limitation, as violations
22 of the California Labor Code, the Wage Orders, applicable regulations, California’s Business and
23 Professions Code section 17200, or under California’s Private Attorney General Act). “Settled
24 Claims” includes all types of relief available for the above-referenced claims, including, without
25 limitation, any claims for damages, restitution, losses, penalties, fines, liens, attorneys’ fees,
26 costs, expenses, debts, interest, injunctive relief, declaratory relief, or liquidated
27 damages. (Settlement Agreement, ¶ 6.2.)

28 2) PAGA-Released Claims

All Aggrieved Employees, whether or not they are Participating Class Members, on

1 behalf of themselves and their respective former and present representatives, agents, attorneys,
2 heirs, administrators, successors, and assigns release the Released Parties from all claims to
3 recover civil penalties pursuant to PAGA for violations of the Labor Code during the PAGA
4 Period that were alleged, or could have been alleged, in the LWDA Notice letter that Plaintiff
5 submitted to the LWDA prior to filing this Lawsuit or the Complaint in this Lawsuit, including
6 PAGA penalties premised on violations of Labor Code sections 201, 202, 203, 204, 206, 210,
7 212, 221, 225, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1,
8 1198, 1199, 2699, and 2802, which are resolved by this Settlement (Settlement Agreement, ¶
9 6.3.)

10 3) Plaintiff's Released Claims

11 Plaintiff and his respective former and present spouses, representatives, agents, attorneys,
12 heirs, administrators, successors, and assigns generally, release and discharge the Released
13 Parties from all claims, transactions, or occurrences arising out of or relating to his employment
14 with Defendant, including, but not limited to: (a) all claims that were, or reasonably could have
15 been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims
16 that were, or reasonably could have been, alleged based on facts contained in the Operative
17 Complaint, Plaintiff's PAGA Notice, or ascertained during the Action including all unknown
18 claims covered by California Civil Code § 1542. (Settlement Agreement, ¶¶ 6.1.6.1.1.)

19 **E. Notice Procedure**

20 No later than fourteen (14) calendar days after the Court grants Preliminary Approval of
21 the settlement, Defendant will provide the name, last known address, social security number, and
22 the total Class Period Workweeks worked by each Class Member and PAGA Pay Periods
23 worked by the Aggrieved Employees to the Settlement Administrator ("Class Data").
24 (Settlement Agreement, ¶¶ 1.11, 4.1.)

25 Within fourteen (14) calendar days from the date the Settlement Administrator receives
26 the Class Data, the Settlement Administrator shall mail the Class Notice to the Class Members
27 by First Class Mail. (Settlement Agreement, ¶ 8.4.2.) With respect to any returned envelopes, the
28 Settlement Administrator shall take all reasonable steps to locate any Class Member whose Class

1 Notice is returned as undeliverable, such as a skip trace procedure or other independent research,
2 to obtain a current address and, if an updated address is located, then re-mail the envelope to
3 such address within three (3) business days of receipt of the returned Class Notice. (Settlement
4 Agreement, ¶ 8.4.3.)

5 Class Members shall have forty-five (45) days from the date of mailing of the Settlement
6 Documents to return a valid Request for Exclusion from the Settlement to the Settlement
7 Administrator (the “Opt-Out Period”). (Settlement Agreement, ¶ 8.5.1.) Class Members shall
8 have until the end of the Opt-Out Period, or an additional fourteen (14) calendar days if Class
9 Notice is re-mailed. (*Id.*) Class Members submitting untimely or invalid Requests for Exclusions
10 shall be deemed to be a Participating Class Member and will be bound by the terms and
11 conditions of the Settlement (Settlement Agreement, ¶ 8.5.3.)

12 The Class Notice will include a procedure by which a Class Member may dispute the
13 number of Class Workweeks and PAGA Pay Periods, if any, allocated to the Class Member by
14 communicating with the Settlement Administrator via fax, email or mail. (Settlement Agreement,
15 ¶ 8.6.)

16 **IV. PRELIMINARY APPROVAL OF SETTLEMENT IS APPROPRIATE**

17 The law favors settlement, particularly in class actions and other complex cases in which
18 substantial resources can be conserved by avoiding the time, cost and rigors of formal litigation.
19 (*City of Seattle* 955 F.2d at p. 1276; *Potter v Pacific Coast Lumber Company*, (1951) 37 Cal. 2d.
20 592, 602-603; 4 NEWBERG § 11.41.) To grant preliminary approval of this class action
21 settlement, the Court need find only that the settlement falls within the “range of
22 reasonableness.” (*North County Contractor’s Ass. Inc. v. Touchstone Ins. Svcs.*, (1994) 27 Cal.
23 App. 4th 1085, 1089-1090.) In determining whether a class settlement is fair, adequate and
24 reasonable, courts must consider the following relevant factors: the strength of the plaintiff’s
25 case, the risk, expense, complexity and likely duration of further litigation, the risk of
26 maintaining class action status through trial, the amount of offered settlement, the extent of
27 discovery completed and the range of the proceedings, and the experience and views of counsel.
28 (*Dunk v. Ford Motor Co.*, (1996) 48 Cal. App. 4th 1794, 1801; *Clark v American Residential*

1 *Services, LLC*, (2009) 175 Cal. App. 4th. 785, 799.) The list of factors is not exclusive, and the
2 court is free to engage in a balancing and weighing of the factors depending on the circumstances
3 of each case. (*Clark, supra*, at p. 799; *Wershba*, 91 Cal. App. 4th at p. 245.)

4 Furthermore, courts must give “proper deference to the private consensual decision of the
5 parties,” since “the court’s intrusion upon what is otherwise a private consensual agreement
6 negotiated between the Parties to a lawsuit must be limited to the extent necessary to reach a
7 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
8 between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and
9 adequate to all concerned.” (*Hanlon v Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027.)

10 A. The Terms of the Proposed Settlement are Fair

11 A preliminary review of the terms of the Settlement Agreement provides no reason to
12 doubt its fairness. A presumption of fairness exists where: 1) the settlement is reached through
13 arms-length negotiations; 2) investigation and discovery are sufficient to allow counsel and the
14 court to act intelligently; 3) counsel is experienced in similar litigation; and 4) the percentage of
15 objectors is small (*Dunk v. Ford Motor Co., supra*, at 1802.) The first three of these factors apply
16 at the preliminary approval stage; the percentage of objectors is determinable only at the final
17 approval stage.

18 1) The Settlement was Reached Through Extensive Arm’s Length Bargaining and
19 Based on the Recommendation Proposed by the Mediator

20 As already discussed herein, the Parties have conducted themselves in informed, good
21 faith arm's-length negotiations after exchanging extensive information about the claims and
22 defenses of this lawsuit and engaging in pre-mediation and post mediation discussions aimed at
23 settling their dispute. In attempts to settle this lawsuit, the Parties participated in a full day
24 mediation with Kristen Rizzo and thereafter continued to engage in settlement discussions with
25 the assistance of the mediator. (Draper Decl., ¶¶ 10-11.) In sum, armed with all of the relevant
26 information and with the help of an experienced mediator, counsel for the parties participated in
27 lengthy, serious and informed negotiations which have resulted in the proposed Settlement
28 Agreement that is now placed before this Court.

2. Investigation and Discovery Were Sufficient for the Parties to Evaluate the Risks
Intelligently

Plaintiff conducted significant investigation of the facts and law both before and after the Action was filed. Plaintiff's counsel reviewed voluminous supporting documents provided by Defendant through formal and informal discovery and in exchanges of information in preparation for mediation (Draper Decl., ¶ 9.) Plaintiff also undertook an extensive expert analysis of timekeeping and payroll data for the class. (*Id.*)

3. Plaintiff's Counsel is Experienced in Similar Litigation

Moreover, counsel for Plaintiff has represented, mediated and settled hundreds of other employee class actions in wage and hour litigation and have knowledge of the strengths and weaknesses of the claims against Defendant and the benefits of the proposed Settlement under the circumstances of the case. (Draper Decl., ¶¶ 21-24.)

B. The Settlement Provides For Reasonable Compensation To Class Members

In seeking approval, a settling party must provide sufficient information to "enable the court to make an independent assessment of the adequacy of the settlement terms." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 131-32.) However, "[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair." (*See Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco* (9th Cir. 1982). 688 F.2d 615, 628.) "The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." (*Id.* at 625.) "Estimates of a fair settlement figure are tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often measured in years)." (*In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit Transactions Act (FACTA) Litig.* (C.D. Cal. 2014)295 F.R.D. 438, 453.) In other words, in valuing the claims within a realistic range of outcomes, the settling Plaintiff should discount the value of the settled claims for risks such as changes in the law, the probability of success, and other factors.

Settling parties are not, however, required to partake in a hypothetical accounting

exercise: “Kullar does not ... require any such explicit statement of [maximum] value; it requires a record which allows ‘an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.’” (*Munoz v. BCI Coca-Cola Bottling Co.*, (2010), 186 Cal. App. 4th 399, 409-10 (citing *Kullar*, 168 Cal. App. 4th at 120 (emphasis added)). Overall, “the most important factor” in determining “whether a settlement is fair and reasonable” is the “strength of the case for Plaintiff on the merits, balanced against the amount offered in the settlement.” (*Id.* at 409 n.6 (quoting *Kullar*, 168 Cal. App. 4th at 130)). As discussed further below, the recovery of \$1,100,000 for the Class and PAGA Employees is well within the range of reasonableness and undeniably fair, adequate and reasonable considering the risks and hurdles of continued litigation.

Plaintiff’s counsel analyzed the potential liability in this matter based on documents and information produced by Defendant in formal discovery and in preparation for mediation, expert analysis of timekeeping records and payroll data, and took into account the nature of the claims and Defendant’s defenses thereto. (Draper Decl., ¶ 15.)

The damages model used in calculating potential liability was largely based on the number of class members, the number of pay periods, the average rate of pay and a random sample of time records, wage statements and documents produced by Defendant in preparation for mediation. Based on the information provided by Defendant, the estimated number of work weeks and work shifts during the Class Period are 90,067 and 431,864, respectively. There are an estimated 53,780 pay periods during the PAGA Period. The average hourly rate of pay is approximately \$24. (Draper Decl. ¶ 16.) The estimated maximum potential violations were calculated as follows: (Draper Decl., ¶ 17.)

1. Failure to Pay Lawful Wages for All Hours Worked

Plaintiff’s claim for failure to pay all lawful wages owed is premised on allegations that, during the Class Period, Plaintiff and Class Members were not paid for the time spent “off the clock” during their scheduled work shifts. Specifically, Plaintiff alleges that he and Class Members would regularly clock in and begin work approximately five (5) minutes before the scheduled start time. However, time clock records were manually adjusted to reflect the

1 scheduled start time rather than the actual start time, resulting in underpayment of Plaintiff's and
2 Class Members' wages. Plaintiff and Class Members were not compensated for this time.

3 Defendant adamantly disputes Plaintiff's allegations that he and Class Members were not
4 properly compensated for all hours worked and claim that Plaintiff lacked evidence in support of
5 the same. Further, Defendant asserts that this claim would be difficult to certify given the
6 predominance of the individualized inquiry as to whether, and to what extent, each Class
7 Member performed any work "off the clock."

8 As per the analysis conducted on the sample provided by Defendant, the maximum off-
9 the-clock work claim was calculated based on estimated 1 hour of unpaid overtime per week for
10 an estimated 90,067 work weeks with 90% attributed to overtime. Thus, the maximum potential
11 liability for this claim was calculated at \$3,134,332.. However, taking into consideration the
12 nature of the claim and Defendant's defenses thereto including the inability to establish the
13 violation with respect to all of the Class Members, for purposes of settlement, this claim was
14 valued between an estimated maximum of \$626,866.4 (20%) and \$313,433.2. (10%). (Draper
15 Decl., ¶ 17(a).)

16 2. Meal Period Claim

17 Plaintiff alleges that, during the class period, Defendant did not provide Plaintiff and
18 Class Members with compliant meal breaks nor paid them one hour of their wages in lieu
19 thereof. As stated above, Plaintiff contends that due to the work pressures, work load
20 requirements, understaffing and time constraints, Plaintiff and Class Members's meal periods
21 were at times interrupted and thus required to work "off the clock" during their meal periods.

22 Defendant denies Plaintiff's meal break allegations and maintains that Plaintiff and Class
23 Members were provided with the opportunity to take full and timely meal periods as per their
24 compliant policies and the law. Defendant also asserts the meal break premiums were paid when
25 Class Members were unable to take complaint meal breaks. Defendant disputes the propriety of
26 certification on this claim as well, under the holding in *Brinker* and other state and federal
27 decisions.

28 Assuming a 100% violation rate during every meal break eligible shift the estimated

1 maximum potential liability was calculated at \$10,033,080 (\$24 x 418,045 meal break eligible
2 shifts). Taking into consideration the nature of the claim, Defendant's defenses and issues faced
3 due to *Brinker*, for purposes of settlement, the meal break claim was valued between an
4 estimated maximum of \$1,504,962 (15%) and \$501,654 (5 %) (Draper Decl., ¶ 17(b).)

5 3. Rest Break Claim

6 As with the meal breaks, Plaintiff alleges that he and Class Members were regularly
7 unable to take a minimum ten (10) minute rest breaks for every four hours worked or major
8 fraction thereof. Plaintiff also allege he and Class Members were not compensated one (1) hour
9 of pay at their regular rate of compensation for each workday that a lawful rest period was not
10 provided, in violation of California labor laws, regulations, and IWC Wage Orders (IWC Wage
11 Order 5-2001(12); Cal. Lab. Code § 226.7.

12 Defendant disputes Plaintiff's allegations regarding rest break violations and contends
13 that Class Members were allowed to take compliant ten (10) minute rest periods under their
14 policies and practices and regularly took such breaks. Defendant also argues that this claim
15 would be difficult to certify given the predominance of the individualized inquiry as to whether,
16 and to what extent, each Class Member was unable to take compliant rest breaks during their
17 shifts.

18 Assuming a 100% violation rate during every shift the estimated maximum potential
19 liability was calculated at \$10,364,736 (\$24 x 431,864 rest break eligible shifts). Taking into
20 consideration the nature of the claim, Defendant's defenses and issues faced due to *Brinker*, for
21 purposes of settlement, the meal break claim was valued between an estimated maximum of
22 \$518,237 (5%) and 103,647.36 (1%) (Draper Decl., ¶ 17(c).)

23 4. Expense Reimbursement Claim

24 The failure to reimburse expense claim under Labor Code § 2802 is premised on
25 allegations that Plaintiff and the Class Members were required to incur necessary expenses in the
26 discharge of their duties for which they did not receive reimbursement. These necessary
27 expenses included but were not limited to their use of personal gear for work-related matters.
28 While Plaintiff and Class Members in certain positions could seek reimbursement for proper

1 footwear, Plaintiff, for instance, was required to purchase items such as ear plugs, measuring
2 tapes, and box cutters which were essential for completing his duties and responsibilities.

3 Defendant disputes this allegation and asserts that all employees were provided with the
4 tools and items necessary for the performance of their job duties. Defendant also contends that
5 this claim would be difficult to certify given the predominance of the individualized inquiry and
6 the defenses raised. As such, for purposes of settlement, this claim had minimal value, due to the
7 individualized nature of each and every claim and the difficulty of obtaining class wide evidence
8 for damage calculations. For purposes of settlement, this claim was valued at \$0. (Draper Decl., ¶
9 17(d).)

10 5. Failure to Timely Pay Wages During Employment

11 This claim is based on allegations that Plaintiff and Class Members did not receive
12 payment of all wages owed, including overtime and minimum wages and meal and rest period
13 premiums, within the requisite time under Labor Code section 204. That statute requires that all
14 wages are due and payable twice in each calendar month. For any initial violation under this
15 statute, one hundred dollars (\$100) is due for each failure to pay each employee. For each
16 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) is due
17 for each failure to pay each employee, plus twenty-five (25) percent of the amount unlawfully
18 withheld. As discussed herein, Defendant disputes that it failed to pay any lawful wages owed
19 and is therefore not liable for any penalties under this statute. Defendant also contends that
20 liability only applies when employers fail to pay wages on a timely basis; not whether the correct
21 amount of wages were paid. (*See's Candy Shops, Inc. v. Superior Ct.* (2012) 210 Cal. App. 4th
22 889, 904-905.)

23 Here, employees can recover penalties either Labor Code section 210 or PAGA but not
24 both. For purposes of settlement, Plaintiff is pursuing this claim under PAGA, which is discussed
25 below. (Draper Decl., ¶ 17(e).)

26 6. Failure to Timely Pay Wages at Separation

27 Pursuant to Labor Code sections 201, 202 and 203, each employee in the relevant
28 statutory period (i.e., three years before the filing of the initial Complaint) is entitled to thirty

(30) days' worth of wages as a waiting time penalty for not being paid all wages upon the separation of employment. Plaintiff alleges that penalties are owed under Labor Code section 203 due to, at a minimum, Defendant's failure to pay wages for all hours worked and failure to pay premium wages. With respect to Lab. Code § 203 claim, there were an estimated 403 Class Members to whom this claim applied. The estimated maximum potential liability was determined to be \$2,321,280 using the formula: (403 former employees) x (30 x \$24 x 8 hours per day).

Defendant once again asserts that no unpaid wages are owed as Defendant did not fail to pay the correct wages owed, including overtime or minimum wages, nor did they fail to pay premium wages. Defendant further contends that its actions were not willful as required for penalties to issue and that, thus, waiting time penalties cannot be awarded. Because of the costs and risks of proceeding, and the defenses faced, for purposes of settlement negotiations, said claim was valued between an estimated maximum of \$696,384 (30%) and \$232,128 (10%). (Draper Decl., ¶ 17(f).)

7. Failure to Provide Accurate Itemized Wage Statements

Under Lab. Code § 226(e), an employee suffering "injury as a result of a knowing and intentional failure by an employer" to provide accurate wage statements is entitled to \$50 for the initial violation and \$100 for each subsequent violation up to \$4,000. This claim is derivative of the unpaid wages claims asserted. The estimated maximum potential liability for this claim was calculated at \$2,356,000 based on an estimated 589 employees x \$4,000.

Defendant contends that the wage statements issued to the employees fully complied with Labor Code section 226. Defendant states that because it believes no wages are unpaid, there can be no derivative penalties. Further, Defendant argues that, if any wage statements were in fact inaccurate, it did not "knowingly and intentionally" fail to provide accurate statements and that Plaintiff and the Class did not suffer any "injury" from such inaccurate wage statements. For purposes of settlement negotiations, said claim was valued between an estimated maximum of \$235,600 (10%) and \$117,800 (5%). (Draper Decl., ¶ 17 (g).)

8. Bus. & Prof. Code § 17200 et seq. ("UCL") Claim

1 The only remedies available under the unfair competition law (“UCL”) Business and
2 Professions Code Section 17200 *et seq.* are restitution and injunction, as opposed to damages
3 (*Clark v. Superior Court* (2010) 50 Cal. 4th 605, 610.) The UCL provides that “[t]he court may
4 make such orders or judgments ... as may be necessary to restore to any person in interest any
5 money or property, real or personal, which may have been acquired by means of such unfair
6 competition.” (Bus. & Prof. Code, § 17203.) Restitution under the UCL includes “earned
7 wages.” (*Cortez v. Purolator Air Filtration Prods. Co.* (2000) 23 Cal. 4th 163, 177-78.)
8 Restitution under the UCL is not available for all violations of the Labor Code. (*See Pineda v.*
9 *Bank of Am., N.A.* (2010) 50 Cal. 4th 1389, 1401-02.)

10 Here, Plaintiffs’ UCL claim is solely premised on the failure to pay lawful wages and
11 premium wages claims discussed above. Plaintiffs’ Counsel assigned a zero-dollar value to the
12 UCL claim because it does not provide any additional value in this Action other than to increase
13 the statute of limitations to four years for the underlying claims. Those claims are valued and
14 analyzed above based on the four-year statute of limitations provided by the UCL. However, the
15 UCL claim in and of itself does not provide any additional damages. Therefore, there is no
16 additional or separate monetary value that this statute provides based on the facts of this Action
17 (Draper Decl., ¶ 17(h).)

18 9. Lab. Code § 2699 (PAGA Claim) – Plaintiff’s claims under PAGA are predicated
19 on or derivative of the claims discussed above and as set forth in the Operative Complaint. The
20 estimated maximum PAGA penalty was calculated as \$5,378,000. This figure attributes a \$100
21 penalty to each of the estimated 53,780 pay periods in scope during the PAGA Period. This
22 figure is based on an assumption that there is a 100% violation rate during the PAGA Period,
23 such that every single pay period in question involved at least one Labor Code violation, despite
24 disputes regarding Defendant’s liability. However, PAGA claims under the facts and
25 circumstances of this case may result in no award or at best a very minimal award by the trial
26 court. See specifically § 2699(e)(2) which states in its pertinent part: “... a court may award a
27 lesser amount than the maximum civil penalty amount specified by this part if, based on the facts
28 and circumstances of the particular case, to do otherwise would result in an award that is unjust,

1 arbitrary and oppressive, or confiscatory.”

2 For instance, in *Fleming v. Covidien* (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 154590, a
3 federal court reduced PAGA penalties from \$2,800,000 to \$500,000, a reduction of 82.2%. The
4 court found maximum penalties “unjust” because the employees had suffered no injuries. Some
5 trial courts have actually awarded no civil penalties, even when Labor Code violations are
6 established. *In re Taco Bell Wage & Hour Actions* (E.D. Cal. Apr. 6, 2016) 2016 U.S. Dist.
7 LEXIS 48557, *40-43 (PAGA penalties denied after trial).

8 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each
9 of the underlying Labor Code violations. (*See Cardenas v. McLane Foodservice, Inc.* (C.D. Cal.
10 2011) 2011 U.S. Dist. LEXIS 13126, *10 [“Given the statutory language [of PAGA], a plaintiff
11 cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of
12 the Labor Code by the defendant.”].) Here, Plaintiff would need to prove that each Aggrieved
13 Employee suffered all violations for each pay period the employee worked. As discussed herein,
14 the nature of the PAGA based claims (i.e. rest break, meal period, wage statements, failure to
15 pay all wages owed and to timely pay wages) and Defendant’s asserted defenses thereto present
16 a strong risk that some or all of the PAGA penalties sought may not be awarded.

17 Defendant denies that a violation for each pay period can be established. Defendant states
18 that because the PAGA Action heavily relies on the same allegations made in the Class Action,
19 they are subject to the same defenses, and, thus, for the same reason Defendant believes there
20 will be no damages collectible in the class action, no PAGA penalties would be awarded, either.
21 Defendant also asserts that individualized issues predominate the PAGA claims, making the
22 claims unmanageable for trial.

23 Given the nature of these claims, as analyzed above, Plaintiff’s Counsel believes it to be
24 likely that if there were any award, it could be a minimal amount. Therefore, the amount of
25 \$55,000 (which has been reserved for the PAGA claim) is both fair and reasonable. (Draper
26 Decl., ¶ 17 (i).)

27 Through his counsel, Plaintiff took into consideration the significant risks that class
28 certification could be denied on the central claim, or that a merits decision on the central claim

1 would not favor the Class. Plaintiff has considered the expense and length of continued
2 proceedings necessary to continue the Action against Defendant through trial and any possible
3 appeals. Plaintiff is also aware of the burdens of proof necessary to establish liability for the
4 claims asserted in the Action, Defendant's defenses thereto, and the difficulties in establishing
5 Plaintiff's damages. (Draper Decl., ¶ 18.)

6 The proposed Settlement requires Defendant to pay each Class Member who does not opt
7 out a portion of the Net Settlement Amount as specifically set forth in the Settlement Agreement.
8 (Draper Decl., ¶ 19.) The amount to be paid to the Class is undoubtedly fair, adequate and
9 reasonable especially in light of the significant risk to Plaintiff and Class Members in continuing
10 with the litigation and not prevailing on class certification or at trial, and thus leaving employees
11 with no recovery. (*Id.*)

12 For all the foregoing reasons, the proposed Settlement Agreement is fair, adequate and
13 reasonable, and is in the best interests of the Class Members.

14
15 **C. The Class Representative Service Payments and Class Counsel Fees Are**
16 **Reasonable and Should be Awarded.**

17 The Settlement Agreement provides for an award to be paid to the Class Representative.
18 The primary purpose is to provide Plaintiff an enhancement award, taking into consideration the
19 risks, time, effort and expenses incurred by him in coming forward to provide invaluable
20 information and litigate this matter on behalf of all Class Members and Aggrieved Employees.
21 (Draper Decl., ¶ 20; Tincup Decl., ¶¶ 3-7.) Plaintiff has actively participated in this litigation by
22 providing significant supporting documents and information and assisting counsel in developing
23 information necessary to litigate and settle this case which has resulted in a favorable settlement
24 for the putative Class Members and Aggrieved Employees. (*Id.*) Thus, the payment of \$10,000
25 to him represents a small portion of the aggregate settlement amount and should be awarded.

26 Further, as will be discussed in more detail in Plaintiff's motion for final approval of the
27 Settlement, Class Counsel's Attorneys' Fees in the amount of \$385,000 (35% of the GSA) is
28 reasonable within California's standard benchmark and within the range customarily approved
by California courts in comparable class actions.

1 **V. PROVISIONAL CLASS CERTIFICATION IS APPROPRIATE.**

2 In addition to such terms as class definition, settlement amounts and payment procedures,
3 the Settlement Agreement reached between the Parties contains a provision to which the parties
4 stipulate to the Court’s provisional certification of the Class but do so for the purposes of this
5 settlement only. Plaintiff now requests this Court to provisionally certify the Class.

6 It is well established that trial courts should use a lower standard for determining the
7 propriety of certifying a settlement class, as opposed to a litigation class. (*Dunk*, 48 Cal.App.4th
8 at 1794, 1807, fn. 19.) Under California law, a class action is appropriate when the Class is
9 ascertainable and there is a “well defined community of interest in the questions of law and fact
10 affecting the parties to be represented.” (Code Civ. Proc., §382; *Dunk*, 48 Cal. App. 4th at 1806.)
11 State law requirements under California Code of Civil Procedure section 382 for class
12 certification largely mirror Federal Rules of Civil Procedure Rule 23 – namely, numerosity and
13 typicality of the class representative’s claims, adequacy of representation, predominance of
14 common issues and superiority. As discussed below, although Defendant adamantly disputed
15 and continues to dispute Plaintiff’s ability to certify a litigation class, all of the requirements of
16 certification for settlement purposes are met for the proposed Settlement Class.

17 **A. The Proposed Settlement Class is Ascertainable.**

18 Here, the proposed class is ascertainable because all of the Class Members are/were
19 employees of PCA and received their compensation directly from Defendant. The Class
20 Members have been identified through Defendant’s employee and personnel files. (*See Rose v.*
21 *City of Hayward* (1981) 126 Cal. App. 3d 926, 932 [“Class Members are ‘ascertainable’ where
22 they may be readily identified without unreasonable expense or time by reference to official
23 records.”].)

24 **B. Numerosity of the Proposed Settlement Class is Satisfied.**

25 If the class is sufficiently large that joinder of all members is impractical or that
26 individual joinder is impractical, the numerosity requirement is met. (*Hebberd v. Colgrove*
27 (1972) 28 Cal. App. 3d 1017, 1030). Here, the proposed class consists of 752 putative Class
28 Members. Therefore, joinder of individual claims would be impractical and the numerosity

1 requirement is met.

2 **C. There are Common Questions of Law and Fact that Apply to the Proposed**
3 **Settlement Class.**

4 Commonality is met if there are common questions of fact and law to the class. (*Hanlon*,
5 *supra*, 150 F.3d at 1019 [“The existence of shared legal issues with divergent legal factual
6 predicates is sufficient, as is a common core of salient facts coupled with disparate legal
7 remedies within the class”].) Here, Plaintiff alleges that the proposed Class Members’ claims all
8 stem from the same alleged conduct. Specifically, Plaintiff alleges that Defendant violated
9 California wage and hour law because it: (1) failed to pay all lawful wages owed including
10 overtime compensation; (2) failed to provide statutorily compliant rest and meal periods and/or
11 to pay one (1) hour of pay at the employees regular rate of compensation for each workday that
12 a compliant meal period and/or rest period was not properly provided; (3) failed to timely pay
13 all wages owed during and at the termination of the Class Members’ employment and (4) failed
14 to provide accurate itemized wage statements and (5) failed to reimburse expenses. Plaintiff
15 seeks recovery of alleged wages, premium wages, penalties and interest pursuant to the
16 California Labor Code, the IWC Wage Orders, Business and Professions Code § 17200 and
17 PAGA. Although Defendant disagrees with Plaintiff’s contentions for purposes of certifying a
18 litigation class, for purposes of a settlement class, these circumstances create questions of law
19 and fact common to all proposed Class Members.

20 **D. The Typicality Requirement is Met as to the Proposed Settlement Class.**

21 The typicality requirement is met if the claims of the Plaintiff are typical of those of the
22 class, though “they need not be substantially identical.” (*Hanlon, supra*, 150 F.3d at 1020.)
23 Factual differences may exist between the Class and the Class Representative(s) so long as the
24 claims arise from the same events or course of conduct and are based on the same legal theories.
25 (*Id.*) Here, as set forth in the Operative Complaint, the claims of the Class Representative are
26 typical of the other Class Members he represents because they arise from the same factual basis
27 and are based on the same legal theories as those applicable to all Class Members. (*Wherner v.*
28 *Syntex* (N.D. Cal. 1987) 117 F.R.D. 641, 644.) Thus, for purposes of a settlement class, the

typicality requirement is met.

E. The Adequacy Requirement is Met as to the Proposed Settlement Class.

If the named representatives and their counsel have no interests adverse to the interest of the putative Class Members and are committed to vigorously prosecuting the case on behalf of the class, then the adequacy requirement is met. (*McGhee v. Bank of America* (1976) 60 Cal. App.3d 442, 450.) Here, under the proposed Settlement, the Class Representative will receive a reasonable award for his time and effort assisting counsel with factual issues surrounding the case and risk incurred in bringing this action on behalf of the Class Members. Other than this specific payment, all Class Members who do not opt out of the Settlement will receive a percentage of the NSA based on the number of weeks each Class Member worked during the class period. Therefore, no “settlement allocation” questions are raised. (*Hanlon*, 150 F.3d at 1020.)

Finally, Class Members who wish to exclude themselves from the Settlement may do so. As a result, there is no conflict of interest between the Plaintiff and the Class Members. Additionally, Plaintiff and his counsel have prosecuted this action vigorously on behalf of the Class, and they have no interest contrary to the Class either.

F. Common Issues Predominate and a Class-Wide Settlement of the Proposed Settlement Class is Superior to Other Available Methods of Resolution.

Class certification is authorized where common questions of law and fact predominate over individual questions and where class-wide treatment of a dispute is superior to individual litigation. (*Richmond v. Dart Industries, Inc.*, (1981) 29 Cal.3d 462, 469.) The test is whether the proposed class is sufficiently cohesive to warrant adjudication by representation. (*Hanlon*, 150 F.3d at 1022.) Plaintiff contends that the proposed Class in this case is sufficiently cohesive, since all Class Members share a “common nucleus of facts and potential legal remedies.” Specifically, Plaintiff asserts that because all of the Class Members seek compensation for alleged wage and hour violations discussed herein, common questions about compensation or lack thereof for work performed by Class Members predominate over individual questions, and the Class Members’ potential legal remedies are identical. Although Defendant disagrees

1 with Plaintiff's contentions, it has agreed the Class may be certified for settlement purposes only.

2 Additionally, particularly in the settlement context, class resolution is superior to other
3 methods for the fair and efficient adjudication of the controversy. (*Hanlon*, 150 F. 3d at 1023;
4 *Dunk*, 45 Cal. App. 4th at 1087.) The superiority requirement involves a "comparative
5 evaluation of alternative mechanisms of dispute resolution." (*Hanlon, supra*, at 1023.) Here, the
6 alternative methods of resolution are a plethora of individual claims from potentially 752 Class
7 Members. The class action device can thus conserve judicial resources by avoiding the waste
8 and delay of repetitive proceedings and prevent inconsistent adjudication of similar issues and
9 claims. (*Sav-On Drug Stores, Inc. v. Superior Court*, (2004) 34 Cal. 4th 319, 340; *Bell v.*
10 *Farmers Ins. Exchange*, (2004) 115 Cal.App.4th 715, 741.) Therefore, settlement on a class-wide
11 basis is superior.

12 **VI. THE PROPOSED CLASS NOTICE IS APPROPRIATE.**

13 The proposed Class Notice is attached as Exhibit A to the Settlement Agreement. Should
14 a Class Member wish to exclude himself/herself from the Settlement, he/she can send a request
15 for exclusion to the Administrator as detailed in the Class Notice. Should a Class Member wish
16 to object to the Settlement, he/she can object as described in the Class Notice. If a Class
17 Member does nothing in response to the Class Notice, the Class Member will be mailed an
18 individual settlement payment.

19 **A. The Proposed Class Notice Satisfies Due Process.**

20 California statutory and case law vests the Court with broad authority to fashion an
21 appropriate notice process. (Cal. Rules of Court, Rule 3.760, *et seq.*) A proposed method of
22 notice of a proposed settlement is fair, adequate, and reasonable if it has "a reasonable chance of
23 reaching a substantial percentage of the class members." (*Cartt v. Superior Court*, (1975) 50
24 Cal.App.3d 960, 974.) The procedure for notice to Class Members described herein entails
25 mailing the Class Notice to all known and reasonably ascertainable Class Members based on
26 Defendant's payroll records and provides for a reasonable chance of reaching a significant
27 percentage of Class Members. Further, such individual notice by first class mail is routinely
28 approved as consistent with due process. (*See, e.g., Federal Judicial Center, Manual For*

1 *Complex Litigation* (3rd ed. 1995) (hereinafter “*Manual*”) §30.41.; Wright & Miller, Fed.
2 Practice & Procedure, §1797.6 [“Of course, notice by mail to all of the identified class members .
3 . . will suffice”] (citing cases).) Notice by mail is consistent with the class certification notices
4 approved by numerous state and federal courts and is the best notice practicable under
5 circumstances of this case. Other potential alternatives, such as publication of notice in a
6 newspaper, or electronic dissemination of notice through email, are unlikely to be as effective as
7 mail notice. Given the geographic range of Class Members, notice by publication is not feasible
8 or reasonably likely to satisfy due process.

9 **B. The Proposed Class Notice Is Accurate and Informative.**

10 Not only is the manner of the proposed Class Notice proper, so too is the content of the
11 said notice. The proposed Class Notice provides information on the meaning and the nature of
12 the proposed Settlement, the terms and provisions of the Settlement (and where it may be found),
13 the relief the Settlement will provide the Class Members, the application of Plaintiff’s counsel
14 for reimbursement of costs and attorneys’ fees from the Settlement amount, the date, time and
15 place of the final fairness and approval hearing, and the procedure and deadlines for opting out
16 of the Settlement and for submitting objections. Counsel for Plaintiff and Defendant have spent
17 considerable time attempting to draft a Class Notice that is likely to be readily understood by
18 members of the Class.

19 The Class Notice also fulfills the requirement of neutrality. It summarizes the
20 proceedings to date and the terms and conditions of the Settlement in an informative and
21 coherent manner. The Class Notice clearly states the Settlement does not constitute an
22 admission of liability by Defendant and recognizes the Court has not ruled on the merits. It also
23 states that the final settlement approval decision has yet to be made, and that any final
24 determination of that issue will be made at the final approval hearing. Accordingly, the Class
25 Notice complies with the standards of fairness, completeness and neutrality required of a class
26 notice disseminated under the authority of the Court.

27 Moreover, the Class Notice complies with CA Rules of Court, Rule 3.766(d) because it
28 provides for an opt-out procedure for the class members and includes the following: (1) a brief

1 explanation of the case, including the basic contentions or denials of the parties; (2) a statement
2 that the court will exclude the member from the class if the member so requests by a specified
3 date; (3) a procedure for the member to follow in requesting exclusion from the class; (4) a
4 statement that the judgment, whether favorable or not, will bind all members who do not request
5 exclusion; and (5) a statement that any member who does not request exclusion may, if the
6 member so desires, enter an appearance through counsel.

7 The Class Notice contains the information required under Rule 3.766 (d). (See Exhibit A
8 attached to Settlement Agreement.)

9 **VII. CONCLUSION**

10 Based on the foregoing, Plaintiff respectfully requests that the Court enter the Proposed
11 Order Granting Preliminary Approval submitted concurrently herewith, and thus: (1) grant
12 preliminary approval of the Settlement Agreement, and certify the Settlement Class for the
13 purposes of settlement only; (2) confirm Plaintiff David Raymond Tincup Jr as Class
14 Representative; (3) confirm James R. Hawkins, Isandra Fernandez, and Anthony Draper of
15 James Hawkins APLC preliminarily as Class Counsel; (4) approve and appoint Apex Class
16 Action, LLC. As the Administrator; (5) enter an Order preliminarily approving the proposed
17 Settlement and approving of the Class Notice; and (6) schedule the Final Fairness Hearing Date
18 on , _____ 2026 (to be determined by the Court at the hearing for preliminary approval of
19 settlement).

20 Respectfully submitted,

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22 Dated: November 25, 2025

JAMES HAWKINS, APLC

23
24
25 By: 

Isandra Y. Fernandez
Anthony Draper
Attorneys for Plaintiff
David Raymond Tincup Jr.