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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ARTURO GONZALEZ, individually, and on behalf of other members of the general public similarly situated,

Plaintiff,

vs.

HUNT ENTERPRISES, INC., a California corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No.: 22STCV15057

Assigned for all purposes to the Honorable Lawrence P. Riff, Dept. 7

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

Date: June 12, 2023
Time: 10:00 a.m.
Dept.: 7

Complaint Filed: May 5, 2022
Trial Date: Not Set

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

PLEASE TAKE NOTICE that on June 12, 2023 at 10:00 a.m. or as soon thereafter as may be heard in Department 7 of the above-entitled court, located at 312 North Spring Street, Los Angeles, California 90012, pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769, Plaintiff Arturo Gonzalez ("Plaintiff") will, and hereby does, move the Court for entry of an order granting preliminary approval of the proposed Class Action and PAGA Settlement Agreement entered between Plaintiff and Defendant Hunt Enterprises, Inc. ("Defendant"). Specifically, Plaintiff requests that the Court enter an order:

1. Granting preliminary approval of the Class Action and PAGA Settlement Agreement and Joint Stipulation to Amend Class Action and PAGA Settlement Agreement attached as Exhibit 1 and Exhibit 2 to the Declaration of S. Emi Minne in support of Motion for Preliminary Approval (collectively, "Agreement" or "Settlement");

2. Approving the proposed Notice of Class Action Settlement and Hearing Date for Final Court Approval ("Class Notice") attached as Exhibit A to the Agreement, and the proposed deadlines for the settlement administration process;

3. Approving the opt-out and objection procedures set forth in the Agreement and Class Notice;

4. Provisionally certifying the proposed Class for settlement purposes;

5. Appointing Plaintiff as the Class Representative for the Class for settlement purposes;

6. Appointing S. Emi Minne and Jill J. Parker of Parker & Minne, LLP and Edwin Aiwazian, Arby Aiwazian, Joanna Ghosh, and Elizabeth Parker-Fawley of Lawyers for Justice, PC as Class Counsel for settlement purposes;

7. Appointing Phoenix Settlement Administrators as the Settlement Administrator;

8. Directing Defendant to furnish the names, last known mailing address, social security numbers, and number of Class Period Workweeks and PAGA Pay Periods for all Class Members, to the to the Administrator no later than 30 days after the Court grants preliminary approval of the Settlement, as well as any other information the Administrator may reasonably require to administer

the Settlement;

9. Scheduling a final approval hearing.

Good cause exists for the granting of this motion as the proposed Settlement is fair, adequate, and reasonable. Additionally, the proposed notice process complies with California Rules of Court, Rules 3.766 and 3.769, and mailing the proposed Class Notice to the Class Members' last known addresses is an appropriate form of giving notice.

Pursuant to California Labor Code § 2699(l)(2), a copy of the proposed Settlement, as well as information regarding the preliminary approval hearing on this matter, were submitted to the California Labor Workforce Development Agency via online filing at https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html on May 16, 2023. *See* Minne Decl. ¶ 75, Exh. 6.

The motion is based upon this notice, the attached memorandum of points and authorities; the Declaration of S. Emi Minne and exhibits thereto; the Declaration of Joanna Ghosh; the Declaration of Arturo Gonzalez; the Declaration of Ralph Moore on behalf of Defendant Hunt Enterprises; the Declaration of Nancy Rader Whitehead; the Declaration of Jodey Lawrence on behalf of Phoenix Settlement Administrators; the pleadings and other records on file with the Court in this matter; and any other further evidence or argument that the Court may properly receive at or before the hearing.

Respectfully submitted,

Dated: May 16, 2023

PARKER & MINNE, LLP

By: _____

S. Emi Minne
Attorneys for Plaintiff
ARTURO GONZALEZ

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is a putative wage and hour class action brought by Plaintiff Arturo Gonzalez ("Plaintiff") against Defendant Hunt Enterprises, Inc. ("Defendant") on behalf of Defendant's current and former non-exempt employees. By way of this Motion, Plaintiff seeks preliminary approval of a non-reversionary Class Action and PAGA Settlement Agreement ("Settlement" or "Agreement")[1], which will resolve the Action in its entirety. The key terms of the Agreement are as follows:

- Size of the Class: approximately 255 individuals.
- Gross Settlement Amount: $775,564.00, exclusive of employer payroll taxes.
- Settlement Administration Costs: $8,500.00.
- Requested Class Representative Service Payment: $7,500.00.
- Requested Attorney's Fees and Costs: $271,517.40, plus costs not to exceed $30,000.00.
- PAGA Penalties: $50,000.00, 75% of which will be paid to the LWDA, with the remaining 25% paid to Aggrieved Employees.
- Estimated Net Settlement Amount: $408,046.00.
- Average Estimated Individual Class Payment: $1,600.18.
- Average Estimated Individual PAGA Payment: $62.50.

As set forth herein, the Agreement is the product of informed discovery, arms-length negotiations by experienced counsel, and provides a fair, adequate, and reasonable recovery for the Class. Plaintiff therefore respectfully requests that the Court enter an order granting preliminary approval of the proposed Settlement.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant is a real estate investment company that manages residential, industrial, and commercial properties throughout Southern California. (Declaration of S. Emi Minne ["Minne

[1] The Class Action and PAGA Settlement Agreement and Joint Stipulation to Amend Class Action and PAGA Settlement Agreement are attached as Exhibits 1-2 to the Declaration of S. Emi Minne in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Minne Decl."). The Agreement and Class Notice are based on this Court's model Class Action and PAGA Settlement Agreement. A redlined version showing all modifications made to the model agreement is also being submitted for the Court's review. *See* Minne Decl., Exh. 3.

Decl."], ¶ 3.) Plaintiff is a former non-exempt employee of Defendant who worked as a plumber from approximately March 3, 2003, to January 28, 2020. (Minne Decl., ¶ 4; Declaration of Arturo Gonzalez ["Gonzalez Decl."], ¶ 3.)

On May 5, 2022, Plaintiff filed a putative class action complaint against Defendant entitled *Arturo Gonzalez v. Hunt Enterprises, Inc.* (Los Angeles County Superior Court Case No. 22STCV15057, hereinafter "Action"). The original Complaint alleged the following causes of action: (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime Wages); (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment); (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements); (8) Violation of California Labor Code § 1174(d) (Failure to Keep Requisite Payroll Records); (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses); and (10) Violation of California Business and Professions Code §§ 17200, et seq. (Minne Decl., ¶ 5.)

On August 29, 2022, the Court held an initial status conference, at which time the Court lifted the discovery stay as to issues related to class certification. (*Id*., ¶ 6.) On August 30, 2022, Plaintiff served his first set of formal written discovery requests on Defendant, which consisted of Special Interrogatories, Form Interrogatories, and Requests for Production of Documents. (*Id*., ¶ 7.) Plaintiff also noticed the deposition of Defendant's person most knowledgeable. (*Id*.)

Shortly after Plaintiff served his first set of written discovery requests, Plaintiff's counsel met and conferred with Defendant's counsel regarding the potential for early resolution of the Action. (*Id.,* ¶ 8.) Pursuant to these discussions, the Parties agreed to stay formal discovery, exchange informal discovery, and engage in private mediation. (*Id.*) As a further pre-condition for early mediation, Defendant further formally stipulated that: (1) the Parties would finalize the substantive format of a *Belaire-West* notice prior to mediation, which would be promptly sent if mediation was unsuccessful; and (2) that it would not engage in a mass release campaign prior to mediation. (*Id.*)

Pursuant to the Parties' agreement, Defendant provided Plaintiff's counsel with extensive informal discovery prior to mediation, which included a 20% sampling of Class Members' time and payroll records. The sampling was randomly selected and included employees across the Class Period. (*Id.,* ¶ 9.) Defendant also provided Plaintiff's counsel with all versions of Defendant's employee handbooks in use during the Class Period and other documents evidencing its relevant wage and hour policies and procedures, as well as exemplars of arbitration agreements signed by Class Members. (*Id.*) Finally, Defendant provided Plaintiff's counsel with key data points regarding the size and composition of the Class, such as the number of Class Members and Aggrieved Employees (including the number of current versus former employees), the number of Class Members who had signed arbitration agreements, the total number of workweek and pay periods worked by Class Members, the number of pay periods worked by Aggrieved Employees, and the average rates of pay for the Class. (*Id*.)

Prior to mediation, Plaintiff's Counsel thoroughly reviewed the informal discovery produced by Defendant, which included consulting with an expert to analyze Class Members' time and payroll records. (*Id.,* ¶ 10.) Plaintiff's counsel also engaged in further independent investigation and research regarding the merits of Plaintiff's claims and Defendant's potential defenses thereto. (*Id.*) Based on this investigation and informal discovery, Plaintiff's counsel prepared a detailed and informed assessment of Defendant's potential liability in advance of mediation. (*Id.*) Plaintiff's counsel also extensively briefed the strengths and weaknesses of Plaintiff's claims and Defendant's anticipated defenses, and provided their analysis to the mediator for her consideration. (*Id.*)

After completing a thorough investigation and analysis of Plaintiff's claims, on March 6, 2023, the Parties attended a formal mediation with Phyllis Cheng, Esq., a neutral and respected mediator with extensive experience in complex wage and hour matters. (*Id.*, ¶ 11.) The Parties engaged in a full day of settlement discussions, during which the Parties debated their respective positions and exchanged views regarding the strengths and weaknesses of their claims and defenses. (*Id.*) The settlement discussions were at all times at arm's length and, although conducted with appropriate professional decorum, were adversarial. (*Id.*) Plaintiff and his counsel went into mediation willing to explore the potential for a settlement of the Action, but were also prepared to litigate Plaintiff's claims

through class certification, trial, and appeal if a settlement was not reached. (*Id.*) Following a full day of negotiations, the mediation culminated in the issuance of a mediator's proposal, which was accepted by the Parties. (*Id.,*¶ 12.) A memorandum of understanding memorializing the key terms of the agreement was executed on March 7, 2023. (*Id.*)

On March 13, 2023, Plaintiff provided written notice to the LWDA and Defendant of his intent to seek civil penalties under Labor Code section 2698, et seq. ("PAGA"). (*Id.*, ¶ 13.) The Parties also entered into a Joint Stipulation to allow Plaintiff to file a First Amended Complaint ("FAC") adding a PAGA claim, which is concurrently filed herewith.

On or about May 2, 2023, after extensive further negotiations, the Parties fully executed a long form Class Action and PAGA Settlement Agreement. (*Id.,* ¶ 14, Exh. 1.) On or about May 9, 2023, the Parties executed a Stipulation to Amend the Class Action and PAGA Agreement to address a minor typographical error regarding the tax treatment of Individual Class Payments. (*Id.,* ¶ 15 Exh. 2.) The Class Action and PAGA Settlement Agreement and amendment thereto are collectively referred to herein as the "Agreement" or "Settlement". The Agreement was based off the Los Angeles County Superior Court's model Class Action and PAGA Settlement Agreement. (*Id*., ¶ 16, Exh. 3.)

III. SUMMARY OF THE SETTLEMENT TERMS

A. Definition of the Proposed Settlement Class and Aggrieved Employees.

For purposes of Settlement only, the Parties have agreed to certify the following class: "All persons employed by Defendant Hunt Enterprises, Inc. in California and classified as a hourly-paid and/or non-exempt employee who worked for Defendant Hunt Enterprises, Inc. during the Class Period." (Minne Decl., ¶ 18; Agreement, ¶ 1.5.) The Class Period runs from May 5, 2018 to May 5, 2023. (Minne Decl., ¶ 18; Agreement, ¶ 1.12.) There are approximately 255 Class Members. (Minne Decl., ¶ 19; Agreement, ¶ 4.1.).

The Settlement also includes a subgroup of "Aggrieved Employees" which consist of those individuals who worked for Defendant as hourly-paid and/or non-exempt employees during the PAGA Period. (Minne Decl., ¶ 20; Agreement, ¶ 1.4.). The PAGA Period runs from May 5, 2021 to May 5, 2023. (Minne Decl., ¶ 20; Agreement, ¶ 1.31.) There are approximately 200 Aggrieved Employees. (Minne Decl., ¶ 21; Agreement, ¶ 4.1.)

B. Gross Settlement Amount

The Parties have agreed to settle the Class and PAGA claims at issue in the Proposed FAC for Gross Settlement Amount of $775,564.00. (Minne Decl., ¶ 22; Agreement, ¶¶ 1.22, 3.1.) The Gross Settlement Amount is non-reversionary, and does not include employer-side payroll taxes, which shall be separately paid by Defendant. (Minne Decl., ¶ 22; Agreement, ¶ 3.1.) The Gross Settlement Amount shall be allocated as follows:

- Class Representative Service Payment of $7,500.00 to Plaintiff. (Minne Decl., ¶ 23; Agreement, ¶¶ 1.14, 3.2.1.)
- Attorneys' Fees to Class Counsel in the amount of 35% of the Gross Settlement Amount (i.e., $271,517.40). (Minne Decl., ¶ 23; Agreement, ¶¶ 1.7, 3.2.2.)
- Reimbursement of Class Counsel's actual litigation costs and expenses, not to exceed $30,000.00. (Minne Decl., ¶ 23; Agreement, ¶¶ 1.7, 3.2.2.)
- Settlement Administration Expenses not to exceed $8,500.00. (Minne Decl., ¶ 23; Agreement, ¶¶ 1.3, 3.2.3.)
- PAGA Penalties in the amount of $50,000.00, 75% of which shall be allocated to the LWDA, and 25% of which shall be distributed to Aggrieved Employees. (Minne Decl., ¶ 23; Agreement, ¶¶ 1.24, 1.27, 1.34, 3.2.5.)

The Gross Settlement Amount, less the payments listed above, shall be the "Net Settlement Amount", which shall be distributed to Participating Class Members as Individual Class Payments on a pro rata basis according to the number of workweeks worked during the Class Period. (Minne Decl., ¶¶ 24-25; Agreement, ¶¶ 1.23, 1.28, 3.2.4.) Individual Class Payments shall be allocated as 15% as wages subject to all applicable tax withholdings, and 85% as non-wage payments not subject to tax withholdings. (Minne Decl., ¶ 27; Agreement, ¶ 3.2.4.1; Amendment to Agreement, ¶ 1.) The Net Settlement Amount is currently estimated to be approximately $408,046.60. (Minne Decl., ¶ 24.) It is currently estimated that Class Members will receive an average Individual Class Payment of $1,600.18. (Minne Decl., ¶ 25.)

In addition to the Individual Class Payments from the Net Settlement Amount, Aggrieved Employees shall receive a pro-rata share of the 25% portion of PAGA Penalties allocated for distribution to Aggrieved Employees. (Minne Decl., ¶ 28; Agreement, ¶ 3.2.5.) Individual PAGA Payments will be distributed on a pro-rata basis based on the number of pay periods worked by

Aggrieved Employees during the PAGA Period. (Minne Decl., ¶ 28; Agreement, ¶ 3.2.5.1.) The estimated average Individual PAGA Payment to Aggrieved Employees is $62.50. (Minne Decl., ¶ 28.)

The Settlement Administrator shall determine the eligibility for, and the amounts of, each Individual Settlement Award under the terms of the Settlement Agreement. (*Id.,* ¶¶ 4.4, 7.4-7.8.) All payments owed under the Settlement shall be disbursed within 44 days of the Effective Date. (Minne Decl., ¶ 29; Agreement, ¶¶ 4.3, 4.4.) If an Individual Class Payment check or Individual PAGA Payment check remains uncashed after one hundred eighty (180) days from the initial mailing, the Settlement Administrator shall transfer the value of the uncashed checks to the California Controller's Unclaimed Property Fund in the name of the Participating Class Member or Aggrieved Employee. (Minne Decl., ¶ 29, Agreement ¶¶ 4.4.1, 4.4.3.) As such, no "unpaid residue" under California Code of Civil Procedure § 384 will result from the Settlement. (Minne Decl., ¶ 29.)

C. Release of Class and PAGA Claims.

Upon the funding of the Gross Settlement Amount and all employer payroll taxes, Plaintiff, Participating Class Members, and Aggrieved Employees shall be deemed to have released their respective Released Claims against the Released Parties. (Agreement ¶¶ 5, 5.2-5.4.) The scope of the release is narrowly tailored to release claims based on facts alleged in the FAC, depending on whether Class Members elect to opt-out of the settlement and whether such individuals qualify as Aggrieved Employees. (*Id.*) All Class Members who are Aggrieved Employees will release PAGA claims even if they request exclusion from the Class. (*Id.,* ¶¶ 5.3, 5.4, 7.5.4.) In addition to the release of claims made by all Participating Class Members and Aggrieved Employees, as set forth above, Plaintiff, in his individual capacity, agrees to a general release of all claims against Defendant. (*Id.,* ¶ 5.1.)

The Parties and their counsel are unaware of any other pending matters or actions that assert claims that will be extinguished to adversely affected by the Settlement. (*Id.*, ¶ 74; Declaration of Joanna Ghosh ["Ghosh Decl."], ¶ 16; Declaration of Ralph Moore ["Moore Decl."], ¶ 3; Declaration of Nancy Rader Whitehead ("Whitehead Decl."), ¶ 3.)

D. Confidentiality Prior to Preliminary Approval

The Settlement provides that the terms of the Settlement are to remain confidential until preliminary approval is granted. (*Id.*, ¶ 12.2.) However, the confidentiality provisions do not restrict

Plaintiff's counsel's communications with Class Members in accordance with their ethical obligations to the Class. (*Id.*)

IV. THE COURT SHOULD GRANT PRELIMINARY APPROVAL.

A. Standard of Review for Preliminary Approval

The review and approval of a proposed class action settlement involves a two-step process. *See* Cal. Rules of Court, Rule 3.769(c). First, counsel submit the proposed terms of settlement and the Court makes a preliminary assessment of whether the settlement appears to be sufficiently within the range of a fair settlement to justify providing notice of the proposed settlement to class members. Second, after notice is provided to the class, the Court must conduct a second inquiry into whether the proposed settlement is fair, reasonable and adequate. *Id.*

The initial evaluation of a settlement at preliminary approval "is not a fairness hearing." *Armstrong v. Bd. of Sch. Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980), overruled on other grounds by *Felzen v. Andreas,* 134 F.3d 873, 875 (7th Cir. 1998). Rather, the limited purpose of this initial inquiry is to determine, at a threshold level, whether the proposed settlement is within the range of possible approval and, as a result, "whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing." *Id.* As set forth below, the Settlement is within the range of possible approval. Accordingly, preliminary approval should be granted.

B. The Settlement is Entitled to a Presumption of Fairness.

California Courts recognize that a presumption of fairness exists where: (1) the settlement is reached through arm's length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 723 (2006); *7-Eleven Owners for Fair Franchising v. Southland Corp*., 85 Cal.App.4th 1135, 1146 (2000). Because the proposed Settlement was reached through arm's-length negotiations based on sufficient investigation and discovery by qualified counsel, it is entitled to a presumption of fairness.[2]

[2] At preliminary approval, the fourth factor – the percentage of objectors – is not applicable, as notice has not yet been provided to the Class and Class Members have not yet had an opportunity to object to the Settlement.

1. The Proposed Settlement Was Reached Through Arm's Length Bargaining.

The Settlement was reached following a full day of mediation with Phyllis Cheng, Esq., a highly respected mediator. (Minne Decl., ¶ 11.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.*) The Parties went into settlement discussions willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate its position through class certification, trial, and appeal if a settlement was not reached. (Minne Decl., ¶ 11.) The Settlement was ultimately reached pursuant to a mediator's proposal which was accepted by the Parties. (*Id.*, ¶ 12.) The proposed Settlement was reached at the end of a process that was neither fraudulent nor collusive. (*Id.*, ¶ 17.) To the contrary, counsel for the Parties advanced their respective positions throughout the settlement negotiations. (*Id.*; see also Ghosh Decl, ¶ 13.)

2. Plaintiff and His Counsel Conducted Sufficient Investigation and Discovery to Allow the Court and the Parties Act Intelligently.

Courts typically assess the status of discovery in determining whether a proposed class action settlement is fair, reasonable, and adequate. *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996). As detailed above, prior to reaching the Settlement, Plaintiff and his counsel propounded formal discovery, and obtained extensive informal discovery which included: a representative 20% sampling of Class Members' time and payroll documents; all versions of Defendant's employee handbooks in use during the Class Period and other documents reflecting Defendant's applicable wage and hour policies; exemplars of arbitration agreements purportedly signed by Class Members; and data points regarding the size and composition of the putative class, total workweeks and pay periods worked by Class Members and Aggrieved Employees, and the average rate of pay for the Class. (Minne Decl., ¶¶ 9-10.) Plaintiff's counsel thoroughly reviewed this informal discovery prior to mediation, which included consulting with an expert to fully analyze Class Members' time and payroll records. (*Id.*, ¶ 10.) Plaintiff's counsel also conducted further independent investigation and research regarding Plaintiff's claims. (*Id.*) Based on this investigation, Plaintiff's counsel prepared a detailed assessment of Defendant's potential liability, and extensively briefed the strengths and weaknesses of Plaintiff's claims and Defendant's anticipated defenses prior to mediation. Thus, Plaintiff's counsel

were able to act intelligently and effectively in negotiating the proposed Settlement. (*Id*.; see also Ghosh Decl., ¶ 10-12)

3. Plaintiff's Counsel is Experienced in Class Action Litigation.

The settlement negotiations were conducted by highly capable and experienced counsel. Plaintiff's counsel are respected members of the bar with strong records of effective advocacy for their clients, and are experienced in handling complex wage-and-hour class action litigation. (*Id.,* ¶¶ 66-71; Ghosh Decl., ¶¶ 2-7.) Although Plaintiff and his counsel were prepared to litigate the claims in this action, they support the proposed Settlement as being in the best interests of the Class Members. (*Id.*, ¶¶ 61-62; Ghosh Decl., ¶ 17; Gonzalez Decl., ¶ 8.)

C. The Settlement is Fair, Adequate, and Reasonable in Light of the Parties' Respective Positions and Risks of Continued Litigation

A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to obtain 100% of the damages sought to be fair and reasonable. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 246, 250 (2001). In evaluating the reasonableness of a settlement, a trial court must consider "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008).

Plaintiff's counsel has carefully considered Plaintiff's claims and analyzed class-wide violation rates. Based on information gathered by Plaintiff's counsel, including calculations of Defendant's maximum potential liability exposure and the risks associated with continued litigation, Plaintiff's counsel has determined that the proposed Settlement is fair, adequate, and reasonable. (Minne Decl., ¶¶ 31-62.)

a. Defendant's Maximum Potential Exposure.

Based on information gathered through discovery, Plaintiff's counsel estimated that if all class claims were adjudicated in favor of the Class, Defendant's maximum potential liability for the Class

claims is $4,204,888.66. (*Id*., ¶ 31.) This estimate can be broken down by claim as follows: $727,391.17 in unpaid overtime and minimum wages; $1,137,071.25 in unpaid meal period premiums; $1,045,102.25 in unpaid rest period premiums; $127,500.00 in unreimbursed business expenses; $367,824.00 in waiting time penalties under Labor Code § 203; and $800,000.00 in wage statement penalties under Labor Code § 226. (*Id*., ¶¶ 32-37.)

In addition to the damages for the Class claims, Plaintiff's counsel also separately calculated Defendant's potential liability for civil penalties under PAGA to be $4,216,317.00, which can be broken down by violation as follows: $367,275.00 for overtime violations; $734,550.00 for minimum wage violations; $639,058.50 for meal period violations; $639,058.50 for rest period violations; $734,550.0 for failure to timely pay wages during employment; $734,550.00 in for failure to maintain required payroll records; and $367,275.00 for failure to reimburse business expenses. (*Id.,* ¶ 38.) These calculations did not include duplicative penalties that Plaintiff's counsel anticipated would be recovered as part of the Class claims, such as waiting time penalties under Labor Code § 203 and wage statement penalties under Labor Code § 226. (*Id.*)

b. Strengths and Weaknesses of Plaintiff's Claims and the Risks of Continued Litigation.

Despite Defendant's significant potential exposure, Plaintiff's counsel recognized that there are significant risks associated with proceeding with this case through class certification, trial, and likely appeals. As with all class actions, this is a complex case that raises difficult management and proof issues. Accordingly, there is a significant risk that the Court may deny class certification. While Plaintiff and Plaintiff's counsel were confident that Plaintiff's claims are fundamentally meritorious and suitable for class-wide resolution, consideration of these risks factored into their decision to enter into the Settlement at this point in the litigation. (Minne Decl., ¶¶ 39-62.)

As a preliminary matter, prior to mediation, Defendant disclosed that 237 of the 255 Class Members had entered into arbitration agreements and asserted that these individuals should be excluded from any potential class. Although Plaintiff's counsel strongly contested the enforceability of these agreements, they also recognized that the existence of these agreements created a significant risk that a significant number of Class Members could ultimately be precluded from participating in

the litigation. *See Hendershot v. Ready to Roll Transportation*, 228 Cal.App.4th 1213 (2014). The risk presented by the existence of these purported arbitration agreements affected each claim alleged by Plaintiff. (Minne Decl, ¶ 41.)

Plaintiff's counsel also considered the specific risks associated with each of Plaintiff's primary claims. For example, a significant portion of Defendant's estimated liability is based on Plaintiff's meal period claim. Plaintiff contends that Class Members were often required to skip, delay, andr shorten their meal periods. Plaintiff also contends that Defendant unlawfully automatically deducted 30-minutes of time for meal periods, even where such meal periods were not recorded in Class Members' time records. Defendant argued that that Plaintiff would be unable to certify a class because its formal, written policies were facially compliant with California law. Defendant also maintained that as a matter of practice it provided ample opportunity for Class Members to take meal periods, and that if Class Members did not take compliant meal breaks, it is because they voluntarily chose not to do so. Defendant also asserted that its practice of automatically deducting time for meal periods was largely limited to the years preceding the filing of this lawsuit (i.e., 2018 -2021) Defendant further asserted that questions of whether employees had received compliant meal periods, why such meal periods were not taken, and whether such meal periods were voluntarily waived were individualized issues that would bar certification. While Plaintiff's counsel strongly disagreed with Defendant's arguments and factual contentions, they recognized that meal period claims have become increasingly difficult to certify since *Brinker Restaurants Corp. v. Sup. Ct.*, 53 Cal.4th 1004 (2012), particularly in cases where an employer's formal policies are facially compliant. (Minne Decl., ¶¶ 42-43.)

Plaintiff's counsel were also cognizant of the challenges associated with maintaining Plaintiff's rest period claims on a class-wide basis. Plaintiff contends that Class Members were required to skip their rest periods, and also had their rest periods interrupted by their supervisors. Plaintiff further contends that Defendant required Class Members to stay on-site during their rest periods in a manner that violated California law as set forth in *Augustus v. ABM Securities*, 2 Cal.5th 257, 270 (2016). As with meal period claims, Defendant asserted that its formal written rest period policies were facially compliant, that it provided employees with a rest period for every four hours worked or major fraction thereof, and that as matter of practice Class Members were free to leave jobsites during their breaks.

Defendant likewise argued that whether Class Members had received a compliant rest period and the reasons why Class Members failed to receive compliant rest periods raised individualized issues that could not be certified. While Plaintiff's counsel disagreed with Defendant's positions, they also recognized that rest period claims are inherently difficult to certify and prove, given that an employer has no obligation to maintain records of rest periods. (Minne Decl., ¶¶ 44-45.)

Plaintiff also faced challenges related to certifying and proving liability for his minimum wage and off-the-clock claims. Such claims were primarily based on Plaintiff's allegations that Defendant engaged in rounding practices that were not neutral and resulted in the systematic underpayment of wages to Class Members. Defendant contended that its rounding practices were facially neutral, and therefore lawful under *See's Candy Shops, Inc. v. Superior Court*, 210 Cal.App.4th 889, 895 (2012). Defendant also argued that stopped rounding employees' time records in 2022. (*Id.*) While Plaintiff's counsel believes *Donohue v. AMN Services, LLC*, 11 Cal. 5th 58, 76 (2021) indicates that the California Supreme Court will eventually find any form of rounding to be unlawful, they recognized that *See's Candy Shops, Inc.* remains good law for the time being. In addition to rounding, Plaintiff also alleges that Defendant failed to pay Class Members all minimum wages and overtime compensation owed due to its practice of pressuring Class Members to work off-the-clock. Defendant asserted that its formal written policies regarding payment of wages were facially compliant, and that Class Members were instructed to record all hours worked. Defendant also argued that individual liability issues predominate, including: (1) whether each employee worked off-the-clock; and (2) whether Defendant knew or should have known about each employee's off-the-clock work. (*Id.*) Moreover, given that these claims were based on off-the-clock work not reflected in Defendant's time records, Defendant argued that proving damages at trial would not be manageable. (Minne Decl., ¶¶ 46-48.)

In addition to meal period, rest period, overtime, and minimum wage claims, Plaintiff also contends that Defendant failed to reimburse Class Members for necessary business expenses, such as use of their personal cell phones, vehicles, and tools. Defendant asserted that it reimbursed Class Members for all such expenses, and that individualized inquiries as to why a Class Member failed to receive reimbursement for certain expenses would predominate. (Minne Decl., ¶ 49.)

There are also substantial risks attached to Plaintiff's claims for waiting time penalties and wage statement penalties. Such claims are derivative of Plaintiff's primary claims for meal period, rest period, minimum wage and overtime violations. Thus, if certification is denied on the primary claims, these derivative claims would also likely fail. Moreover, even if Plaintiff prevails on the underlying claims, Plaintiff would still be required to show that Defendant's conduct was willful in order to obtain Labor Code § 203 penalties, a difficult prospect. *See, e.g.*, *Choate v. Celite Corp*., 215 Cal App. 4th 1460, 1468 (2013) (holding that "an employer's reasonable, good faith belief that wages are not owed may negate a finding of willfulness"). Wage statement claims have also seen varying treatment at the appellate level because such claims have an element of discretion attached to them. *Cf., Jaimez v. DAIOHS USA, Inc*., 181 Cal.App.4th 1286 (2010) *with Price v. Starbucks Corp*., 192 Cal.App.4th 1136 (2011). Accordingly, these derivative claims were extremely uncertain. (Minne Decl., ¶¶ 50-51.)

Plaintiff's counsel also separately contemplated the numerous risks of proceeding with a PAGA claim. First, the same defenses and merits-based risks associated with Plaintiff's direct Labor Code claims are also applicable to a PAGA claim. *See Green v. Lawrence Service Co.,* 2013 U.S. Dist. LEXIS 109270, at *5, fn. 5 (C.D. Cal. 2013) ("whether each PAGA claims succeeds or fails is determined by the merits of the substantive claims on which each is based.") Second, informal discovery indicates that Defendant had already rectified some of its most egregious practices before the one-year limitations period applicable to PAGA. Third, although California law is clear that PAGA actions need not satisfy class action requirements, there is currently a split in authority over whether PAGA claims may nevertheless be stricken based on manageability concerns. *Cf. Wesson v. Staples The Office Superstore*, 68 Cal.App.5th 746 (2021) with *Estrada v. Royalty Carpet Mills, Inc.*, 76 Cal.App.5th 685 (2022). Even if Plaintiff defeated any challenges to manageability, the Court could ultimately exercise its discretion to find that the imposition of heightened civil penalties was inappropriate, particularly if Plaintiff prevailed on his class claims. Cal. Lab. Code § 2699(2); *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1122 (2012).[3] The purported

[3] *See also, Cotter v. Lyft, Inc.,* 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016) (reducing penalties by 97.5%); *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590, *8-9 (C.D. Cal. 2011) (reducing potential PAGA penalties by over 80 percent); *Magadia v. Wal-Mart Assocs. et al.*, 384 F. Supp. 3d 1058, 1069 (N.D. Cal. 2019)(applying 67% and 80% reductions to PAGA Penalties).

arbitration agreements also created significant uncertainty in light of the recent Supreme Court decision in *Viking River Cruises, Inc. v. Moriana*, 142 S.Ct. 1906 (2022). (Minne Decl., ¶¶ 52-57.)

Finally, Plaintiff's counsel recognized the significant risk and expense generally associated with continued litigation, trial, and possible appeals, all of which would substantially delay and reduce any recovery by the Class Members. Even if Plaintiff prevailed at class certification, proving the amount of wages due to each Class Member would be an expensive, time-consuming, and extremely uncertain proposition. In order to prove liability and damages, Plaintiff's counsel will need to request and analyze thousands of pages of documents, obtain the Class Members' contact information, contact them and obtain numerous declarations at great expense. Obtaining the cooperation of current employees would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a current employer. On the other hand, Defendant would likely be able to obtain the cooperation of its current employees. This puts Plaintiff at a particular disadvantage in this case because 63% of the Class (161 of the 255 Class Members) are current employees of Defendant. Moreover, even if Plaintiff prevails at class certification and trial, possible appeals would substantially delay any recovery by the Class. These risks are all obviated by the Settlement, which if approved by the Court will ensure that class members receive timely relief without the risk of an unfavorable judgment. (Minne Decl., ¶ 59.)

Taking into account the specific strengths and weaknesses of each claim, and the unique risks associated therewith, the general risks and significant costs associated with litigation this Action through class certification, trial, and appeals, Plaintiff's counsel estimated that Defendant faced a risk-adjusted liability of $720,450.83 for Plaintiff's Class claims, and $147,571.10 for Plaintiff's PAGA claims. (Minne Decl., ¶¶ 43, 45, 48-51, 58, 60.)

Therefore, after considering the strengths and weaknesses of each claim, and the unique risks associated therewith, the general risks of continue litigation, and the significant costs, expenses, and delay that would result from continued litigation, it is clear that the Settlement is fair, reasonable, and adequate, and is in the best interest of the Class. (Minne Decl., ¶ 61.) Moreover, the Gross Settlement Amount of $775,564.00 – which represents 16.4% of the maximum value of the direct Class claims at issue - falls within an acceptable range of recovery for this type of litigation given the strengths and weaknesses of the case and the inhere costs and risks associated with class certification, representative

adjudication, trial, and/or appeals. *See, e.g., Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (approving settlement amount representing approximately 10% of the estimated actual damages to the class); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 256 (N.D. Cal. 2015) (approving settlement representing approximately 8.5% of the maximum damages); *Avila v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS 130878 (E.D. Cal 2017) (approving settlement where gross recovery was 11% of the maximum damages). (Minne Decl., ¶ 61.)

D. The PAGA Allocation is Reasonable.

The $50,000.00 allocated for penalties under PAGA is fair and reasonable. PAGA is fundamentally not intended to be compensatory in nature, but is instead intended to facilitate enforcement of California's labor laws by financing state activities and educating and deterring non-compliance. *See* Cal. Labor Code § 2699(i); *Arias v. Sup. Ct.*, 46 Cal. 4th 980; *Williams v. Sup. Ct.,* 3 Cal.5th 531, 546 (2017); *Iskanian v. CLS Transp. Los Angeles, LLC,* 59 Cal.4th 348, 379 (2014). Where, as here, the parties reach a substantial class-wide settlement providing employees with monetary compensation for underlying Labor Code violations, many of PAGA's underlying policy objectives are satisfied. Indeed, the $50,000.00 PAGA Payment (6.4% of the Gross Settlement Amount) is well-within the range approved by California courts. *See Nordstrom Comm. Cases,* 186 Cal.App.4th 576, 589 (2010)(finding no abuse of trial court's discretion in approval of release that included PAGA claims but allocated $0 to PAGA penalties); *Alcala v. Meyer Logistics, Inc.,* 2019 WL 4452961, *9 (C.D. Cal. June 17, 2019) (settlement of claims for PAGA penalties representing 1.25% of gross settlement amount was reasonable, as it "falls within the zero to two percent range for PAGA claims approved by courts."); *In re M.L. Stern Overtime Litig*., 2009 WL 995864, *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2%); *Hopson v. Hanesbrands, Inc.,* 2008 WL 3385452, *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 0.3%). (Minne Decl., ¶ 62.)

V. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED.

Code of Civil Procedure § 382 provides that three basic requirements must be met in order to sustain any class action: (1) there must be an ascertainable class; (2) there must be a well-defined community of interest in the question of law or fact affecting the parties to be represented; and (3) certification will provide substantial benefits to litigants and the courts, i.e., proceeding as a class is

superior to other methods. *Fireside Bank v. Superior Court,* 40 Cal.4th 1069, 1089 (2007); *see also Sav-On Drug Stores, Inc. v. Superior Court,* 34 Cal.4th 319, 326 (2004). Courts utilize a less stringent standard for class certification during settlement. *Global Minerals & Metals Corp. v. Superior Court*, 113 Cal.App.4th 836, 859 (2003). The reason: "no trial is anticipated in a settlement class case, so the case management issues inherent in the ascertainable class determination need not be confronted." *Id.*

As demonstrated below, all three requirements for certification of the Class as defined by the Settlement are satisfied. Furthermore, Defendant has stipulated to certification of the proposed Class for settlement purposes only. (Agreement, ¶ 12.1.)

A. There is an Ascertainable Class.

Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of the class, and (3) the means of identifying the class members. *See Miller v. Woods*, 148 Cal.App.3d 862, 873 (1983). In this case, all three considerations strongly favor class certification. Here, the Class is defined as all persons employed by Defendant in California and classified as hourly-paid and/or non-exempt who worked for Defendant at any time from May 5, 2018, to May 5, 2023. (Agreement, ¶¶ 1.5, 1.12.) This provides a clear and definite scope for the proposed class.

Next, the class is sufficiently numerous. There is no magic number that satisfies the numerosity requirement. Under the Federal Rules, the minimum number of a class is 100 individuals. Under California law, that number is significantly less. *See e.g., Rose v. City of Haywood*, 126 Cal.App.3d 926, 934 (1981) (holding 42 class members sufficient to satisfy numerosity); *Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous). Here, the estimated Class size of 255 individuals plainly favors class certification. (Agreement, ¶¶ 4.1, 8.)

Finally, the question whether class members are easily identifiable turns on whether a plaintiff can establish "the existence of an ascertainable class." *Daar v. Yellow Cab Co.*, 67 Cal. 2d 695, 706 (1967). The existence of an ascertainable class in this case can be established through Defendant's payroll records, and the class definition is sufficiently specific to enable the parties, potential Class Members and the Court to determine the parameters of the Class.

B. The Class Shares a Well-Defined Community of Interest.

The community of interest requirement embodies three factors: (1) predominant questions of law and fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class. *Dunk*, 48 Cal.App.4th at 1806. This case easily satisfies all three requirements.

1. Common Issues of Law and Fact Predominate.

The commonality criterion requires the existence of common question of law or fact and is generally established with the issues of predominance and typicality. *See Daar*, 67 Cal.2d 695, 706. What is required is that a common question of fact or law exist which predominates over issues unique to individual plaintiffs. The existence of individual issues or facts—generally present in any case arising from employment—is not a bar to class certification as long as they do not render class litigation unmanageable or predominate over the common issues. *See B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1354 (1987).

Here, Plaintiff's claims present sufficient common issues of law and fact that predominate and warrant class certification. Plaintiff alleges that Defendant prohibited employees from taking compliant meal and rest periods, improperly rounded Class Members' time records, and required Class Members to perform work off-the-clock. These policies and practices meant that Defendant failed to pay required meal period premiums, minimum wages, and overtime wages, and other related claims. Plaintiff alleges that Defendant's policies and practices were uniform as to all Class Members. Thus, class treatment is appropriate.

2. Plaintiff's Claims are Typical of the Class.

To satisfy the typicality requirement, California law does not require that Plaintiff have claims identical to the other class members. Rather, the test of typicality for a class representative is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiff, and whether other class members have been injured by the same course of conduct. *See Seastrom v. Neways, Inc.*, 149 Cal.App.4th 1496, 1502 (2007). The typicality requirement for a class representative refers to the nature of the claim or defense of the representative, and not to the specific facts from which it arose or the relief sought. *See Id*.

Here, Plaintiff alleges that his claims are based on the same legal theories, arise out of the same unlawful policies and practices, and seek the same relief. Because Plaintiff's claims are based on the same alleged conduct and business practices as the claims of the other Class Members, the typicality requirement is satisfied.

3. Plaintiff and his Counsel Will Fairly and Adequately Represent the Class.

The question of adequacy of representation "depends on whether the plaintiff's attorney qualifies to conduct the proposed litigation in the plaintiff's interest or not antagonistic to the interests of the class." *McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976). Here, these considerations are satisfied. Class Counsel are well-regarded and accomplished lawyers who are qualified and experienced in employment-related, class-action litigation, and who do not have any conflicts of interest which would impede their representation of the Class. (Minne Decl., ¶¶ 66-71; Ghosh Decl., ¶¶ 2-7.) Furthermore, because Plaintiff's claims are typical of those of other Class Members, and are not based on unique circumstances that might jeopardize the claims of the class, there is no antagonism of interests between Plaintiff and the Class. Plaintiff is also fully aware of his duties as the class representative, and will vigorously and adequately represent the interests of the Class. (Gonzalez Decl., ¶¶ 5-13.) Therefore, the adequacy requirement is satisfied.

C. A Class Action is Superior to a Multiplicity of Litigation.

Under the circumstances, proceeding as a class action is a superior means of resolving this dispute, as the Class Members and the court will derive substantial benefits. Class certification would serve as the only means to deter and redress the alleged violations. *See Linder v. Thrifty Oil Co.*, 23 Cal.4th 429, 434 (2000) (relevant considerations include the probability that each class member will come forward to prove her or her separate claim and whether the class approach would actually serve to deter and redress the alleged wrongdoing). Further, individual actions arising out of the same operative facts would unduly burden the courts and could result in inconsistent results. Therefore, class action proceedings are superior to individual litigation.

VI. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE.

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal, Inc.*,

82 Cal.App.4th 19, 41 (2000). California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Id*. at 47. In cases where class members present claims against a common fund and the defendant agrees a percentage of the fund as part of the settlement, use of the percentage method is appropriate. *Id.* at 32.

Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. *Newberg on Class Actions,* § 14.03 (4th Ed.); *see also In re Ampicillin Antitrust Litig.,* 526 F.Supp. 494 (D.D.C. 1981) (awarding attorneys' fees in the amount of 45% of the $7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys' fees). California courts routinely approve class action attorneys' fee awards averaging around one-third of the recovery. *In re Consumer Privacy Cases*, 175 Cal.App.4th 545, 558 at n.13 (2009); *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions.)

Here, the requested attorneys' fees of $271,517.40, which is 35% of the common fund, is disclosed to Class Members in the proposed Notice of Class Action Settlement. (Agreement, Exh. A.) The requested fee was freely negotiated, is common in the legal marketplace, and is not opposed by Defendant. Furthermore, the fee sharing agreement between Plaintiff's counsel was fully disclosed to Plaintiff, who provided written consent to the arrangement. (Minne Decl., ¶ 65; Gonzalez Decl., ¶ 14.) The Motion for Final Approval will elaborate on the nature of the legal services provided and will also support Class Counsel's request for the reimbursement of litigation costs not to exceed $30,000.00. (Minne Decl., ¶ 64.)

VII. THE PROPOSED SERVICE AWARD IS REASONABLE.

Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as compensation "for the expense or risk they have incurred in conferring a benefit on other members of the class." *Munoz v. BCI Coca-Cola Bottling Co.*,186 Cal.App.4th 399, 412 (2010). Courts routinely grant approval of class action settlement agreements containing enhancements for the class representative, which are necessary to provide incentive to represent the class and are appropriate given the benefit the class representatives help to bring about for the class. S*ee Van Vranken v. Atlantic*

Richfield Co., 901 F.Supp. 294, 299 (N.D. Cal. 1995) (approving $50,000.00 enhancement); *In re Online DVD Rental*, 779 F.3d 934, 947-948 (9th Cir. 2014) (approving incentive award 417 times larger than individual payments where incentive award made up a mere .17% of the settlement); *Gaudin v. Saxon Mortgage Servs., Inc.*, 2015 WL 7454183, at *10 (N.D. Cal. Nov. 23, 2015) (finding service award of $15,000 to be "fair and reasonable"); *Miller v. CEVA Logistics USA, Inc.,* 2015 WL 4730176, at * 9 (E.D. Cal. Aug. 10, 2015)(approving service award of $15,000 to each plaintiff); *Glass v. UBS Financial Services, Inc.*, 2007 WL 221862 at *16 (N.D. Cal. 2007) (approving payments of $25,000 to each named plaintiff); *In re Heritage Bond Litigation*, 2005 WL 1594403 at *18 (C.D. Cal. 2005) (awarding incentive payments between $5,000 and $18,000).

Plaintiff initiated this litigation on behalf of his former co-workers who can now collect monetary payment from the Settlement. Plaintiff invested substantial time and effort into litigation including his own research, reviewing documents, and extensive discussions with Class Counsel. (Gonzalez Decl. ¶¶ 4-10.) Further, the requested Service Award is extremely reasonable given the benefit gained by other Class Members. The requested Service Award of $7,500.00 to Plaintiff is disclosed to Class Members in the Class Notice. (Agreement, Exh. A.) For these reasons, Plaintiff requests that a Service Payment of $7,500.00 be preliminarily approved by the Court. (Minne Decl., ¶ 63; Ghosh Decl., ¶ 14; Gonzalez Decl., ¶ 11.)

VIII. THE PROPOSED CLASS NOTICE, AND OPT-OUT AND OBJECITON PROCEDURES SATISFY DUE PROCESS REQUIREMENTS

"The principal purpose of notice to the class is the protection of the integrity of the class action process." *Cartt v. Superior Court* , 50 Cal.App.3d 960, 970 (1975). The notice "'must fairly apprise the class members of the terms of the proposed compromise and of the options open to the dissenting class members.'" *Wershba v. Apple Computer, Inc.,* 91 Cal.App.4th 224, 251 (2001). Additionally, the notice given should have a reasonable chance of reaching a substantial percentage of the class members. *Cartt*, 50 Cal.App.3d at 974.

The Parties have selected Phoenix Settlement Administrators to administer the Settlement. (Minne Decl., ¶ 30; Agreement ¶ 1.2.) Prior to finalizing the Settlement, Class Counsel also obtained a administration bids from CPT Group, Inc., however Phoenix Settlement Administrators was

ultimately selected as the Administrator because its bid was lower and, consequently, would result in a greater recovery by Participating Class Members. (*Id.,* ¶ 29, Exh. 3-4; Declaration of Jodey Lawrence ["Lawrence Decl."] Exh. B.) Phoenix Settlement Administrators has extensive experience in administering class action and PAGA settlements, and has procedures in place to protect the security of class data as well as adequate insurance in the event of a data breach or defalcation of settlement funds. (Lawrence Decl., ¶¶ 5-11, Exh. A.) The Parties and their counsel do not have any financial interest in Phoenix Settlement Administrators that would create a conflict of interest. (Minne Decl., ¶ 73; Ghosh Decl., ¶ 15; Lawrence Decl., ¶ 4; Moore Decl., ¶ 2; Whitehead Decl., ¶ 2.)

The Parties have jointly drafted a Notice of Class Action Settlement ("Class Notice"), based on this Court's model, which will be sent to Class Members in both in both English and Spanish. (Agreement, ¶¶ 1.11 7.4.2, Exh. A). The Class Notice describes the nature of the lawsuit, the key terms of the Settlement, the scope of the Released Class Claims and Released PAGA Claims the scope of the claims released, Class Members' estimated Individual Settlement Payment and Individual PAGA Payment, Class Members' total Workweeks during the Class Period, and Aggrieved Employees' total pay PAGA Pay Periods. (Agreement, Exh. A.) The Class Notice also informs Class Members how to opt-out of the Settlement, object to the Settlement, and challenge their reported workweeks. (*Id.*) The Class Notice will indicate that the Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate and reasonable, and a final determination of such issues will be made at the final hearing. (*Id.*) The Class Notice also include instructions on how to obtain all relevant Settlement documents, including posting of the Final Judgment, and informs Class Members of their right to attend the final approval hearing. (*Id.*). The Class Notice also advises Class Members that they should monitor the Court's website, the Administrator's website, or contact Class Counsel to verify the time and date for the Final Approval hearing. (*Id.*)

No later than 30 days after the Court grants Preliminary Approval of the Settlement, Defendant shall provide the Administrator with the Class Data, comprised of Class Members' names, last-known mailing addresses, Social Security numbers, and number of Class Period Workweeks and PAGA Pay Periods. (*Id.,* ¶¶ 1.8, 4.2.) No later than 14 calendar days after receiving the Class Data from Defendant, the Administrator shall mail copies of the Class Notice to all Class Members via regular

First Class U.S. Mail. (*Id.,* ¶ 7.4.2.) Before mailing the Class Notice to Class Members, the Administrator shall perform a search based on the National Change of Address Database to update and correct any known or identifiable address changes. (*Id.*)

No later than 3 business days after receipt of any Class Notice as undeliverable, the Administer shall re-mail such returned Class Notices to the forwarding address provided by the USPS. (*Id.,* ¶ 7.4.3.) If no forwarding address is provided, the Administrator shall search for a current address using all readily available resources, such as skip tracing, and re-mail the Class Notice to the most current address obtained. (*Id.*) The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time. (*Id.*)

Class Members shall have 60 days after the mailing of the Class Notice to submit request for exclusions, objection, or workweek dispute by fax, email, or mail. (*Id.,* ¶¶ 1.43, 7.5.1., 7.6, 7.7.2.) Further, the Response Deadline shall be extended by 14 days for all Class Members whose Class Notices are re-mailed. (*Id.,* ¶¶ 1.43, 7.4.4.)

Direct mail notice to Class Members' last known addresses is the best possible notice under the circumstances. *See Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306, 319 (1950); *Eisen v. Carlisle & Jacquelin,* 417 U.S. 156, 173-176 (1974). Furthermore, the Class Notice comports with the requirements of California Rules of Court, Rules 3.769 and 3.766. Pursuant to Rule 3.769(f), the class notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and arranging to appear at the hearing and state objections to the proposed settlement. Cal. R. Ct. 3.769(f). Rule 3.766 further requires that the class notice include (1) a brief explanation of the case, including the basic contentions and denials of the parties; (2) a procedure for the class member to follow in requesting exclusion, and a statement that the Court will exclude the class member from the class if he or she so requests by the specified deadline; (3) a statement that the judgment, whether favorable or not, will bind all class members who do not request exclusion; (4) a statement that any class member who does not request exclusion may, if the class member so desires, object and enter an appearance through counsel. The proposed Class Notice satisfies each of these requirements. *See* Agreement, Exh. A.

Accordingly, Plaintiff respectfully requests that the Court appoint Phoenix Settlement Administrators as the Settlement Administrator and direct the mailing of the Class Notice to the Class Members in the manner outlined and based on the proposed deadlines as described herein and set forth in the Agreement.

IX. CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests that the Court: (1) grant Preliminary Approval of the Settlement; (2) approve the Class Notice and plan for distribution of the Class Notice; (3) provisionally certify the Class for settlement purposes only; and (4) schedule a hearing on Final Approval of the Settlement.

Respectfully submitted,

Dated: May 16, 2023

PARKER & MINNE, LLP

By: _____

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