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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

ANTONIO URRUTIA, an individual, on behalf of himself, others similarly situated,

PLAINTIFF,

v.

BLVD RESIDENTIAL INC., a Delaware Corporation, DEBRA O'TOOLE, an individual, and DOES 2 thru 50, inclusive,

DEFENDANTS.

CASE NO: 24-CIV-00086

[Assigned For All Purposes to the Hon. Nicole S. Healy, Dept. 28]

NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES

Date: December 17, 2025
Time: 2:00 pm
Dept: 28

Date Filed: January 1, 2024
FAC Filed: March 12, 2024
Trial Date: None Set

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 17, 2025 at 2:00 p.m. in Department 28 of the above-entitled court, located at 800 North Humboldt St., San Mateo, CA 94401, Plaintiff Antonio Urrutia will move the Court for Preliminary Approval of the Proposed Settlement. The Motion will be made on the grounds that the proposed Settlement is fair, adequate, reasonable, and in the best interest of the Class and the Parties. The Court typically posts tentative rulings or list of issues by 1:30 pm at least one court day before the scheduled hearing. If any Party intends to the contest the tentative ruling at the hearing, that party must notify the other parties and Department 28 by email at both dept28@sanmateocourt.org and complexcivil@sanmateocourt.org by 4:00 pm at least one court day before the scheduled hearing otherwise the tentative ruling will become the order of the Court. Tentative Rulings are available at https://sanmateo.courts.ca.gov/online-services/tentative-rulings/civil-law-motion-tentative-rulings.

The Motion will be based on this Notice of Motion, the attached Memorandum of Points and Authorities, the Declaration of David S. Winston, the Declaration of Antonio Urrutia, the Declaration of Robert C. Talbott, the Declaration of Debra O'Toole, the Joint Stipulation of Class Action and PAGA Settlement Agreement attached to the Declaration of David S. Winston, and the Notice to Class Members attached to the Declaration of David S. Winston, all other papers and records on file in this action, and on such oral and documentary evidence as may be presented at the hearing on this Motion.

Dated: September 10, 2025

WINSTON LAW GROUP, P.C.

By: _____
DAVID S. WINSTON
Attorney for Plaintiff Antonio Urrutia, the Proposed Class, and the aggrieved employees

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Antonio Urrutia ("Plaintiff") submits this Memorandum of Points and Authorities in support of his Motion for Preliminary Approval of the Class Settlement reached between Plaintiff and Defendants BLVD Residential Inc. ("BLVD" or "BLVD Residential") and Debra O'Toole (collectively "Defendants"). Defendants and Plaintiff are collectively referred to herein as the "Parties". By this Motion, Plaintiff requests that the Court:

(1) Grant preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement Agreement ("Settlement Agreement" or "Settlement").[1] A true and correct copy of the Joint Stipulation of Settlement and Release of Class Action and PAGA Claims is attached to the Declaration of David S. Winston ¶ 18, Exh. 2 (hereafter the "Winston Decl.");

(2) Approve the proposed Notice to Class Members ("Class Notice"), a copy of which is attached as Exhibit 4 to the Winston Decl. and direct that the Class Notice be sent to Class Members in the manner set forth in the Settlement Agreement; and

(3) Schedule a hearing on final approval of the settlement ("Settlement") and Plaintiff's Counsel's application for an award of attorneys' fees and litigation costs at which time Class Members may be heard ("Final Approval and Fairness Hearing").

Class Counsel has achieved a good result in this litigation given the unique facts of this case including BLVD Residential's financial challenges. The proposed Settlement provides substantial benefits to the Class and is the product of diligent litigation by Class Counsel to obtain the best possible result for the Class Members. The settlement of this Action is fair, reasonable, adequate, and in the best interests of the Class. Accordingly, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement and certify the proposed Class for settlement purposes.

I. LITIGATION OVERVIEW AND PROCEDURAL HISTORY

On January 4, 2024, Plaintiff filed a PAGA Notice with the California Labor and Workforce Development Agency. Winston Decl., ¶ 8, Exh. 1. That same day, Plaintiff filed a Class Action Complaint in San Mateo County Superior Court. *Id*. at ¶ 9. Plaintiff alleged on behalf of the Class that BLVD

[1] Unless specifically defined herein, all capitalized terms are used consistently with how they are defined in the Settlement Agreement.

Residential: 1) failed to pay minimum wages for all hours worked; 2) failed to pay overtime wages and/or at the proper rate; 3) failed to provide meal periods and/or pay meal period premiums at the correct rate; 4) failed to provide rest periods and/or pay rest period premiums at the correct rate; 5) failed to provide accurate itemized wage statements; 6) failed to timely pay all wages owed upon separation including both derivative and non-derivative claims as well as based upon the alleged failure to calculate sick pay at the correct rate; and 7) engaged in unfair competition in violation of Bus. & Prof. Code § 17200; and also sought PAGA penalties for BLVD Residential's alleged violations of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.2, 226.3, 510, 558, 1174, 1174.5, 1194, 1197, 1197.1, and 1198 as well as IWC Wage Order No. 5-2001 and/or other applicable wage orders. *Id*. at ¶ 10. Among other claims, Plaintiff alleged that Defendants failed to include housing allowances provided to Plaintiff and the other employees when calculating and paying meal/rest period premiums, calculating and paying sick pay, failed to relieve employees of all duties during meal/rest periods including refusing to allow them to smoke during their breaks, failed to timely pay all wages during and after employment, and failed to provide accurate itemized wage statements. *Id*. After exhausting his administrative remedies under PAGA, Plaintiff filed the First Amended Complaint on March 12, 2024 adding the PAGA claims. *Id*. at ¶ 11.

The Parties mediated the matter with third-party mediator Mark Peters on October 21, 2024. Winston Decl., ¶ 12. The Parties were unable to reach a settlement at the Mediation and proceeded with the litigation. *Id*. at ¶ 13. After negotiations following the first Mediation concluded without a resolution, Plaintiff propounded formal written discovery on November 19, 2024 including Special Interrogatories, Requests for Production, Requests for Admission, and General Form Interrogatories. *Id*. at ¶ 14. Following the receipt of BLVD Residential's initial discovery responses, Plaintiff added individual Defendant Debra O'Toole to this Action via a Doe Amendment on January 2, 2025. *Id*. at ¶ 15. Unfortunately, BLVD Residential's financial challenges caused it to have to restructure its payment plan in a prior class action called *Tavera vs. BLVD Residential Inc*., Sacramento County Superior Court Case No. 34-2022-00327501, and rendered it difficult to conduct meaningful settlement discussions. *Id*. at ¶ 16. Eventually BLVD Residential and the Parties in the prior *Tavera* case, whose class and PAGA period predate this Settlement, agreed to a restructured payment plan allowing the Parties in this Action to engage more meaningfully in settlement discussions. *Id*. at ¶ 17.

Following resolution of the *Tavera* payment plan issues, the Parties continued to discuss the possibility of settlement and agreed to attend a second mediation and were ultimately able to resolve this matter through direct negotiations in advance of the scheduled second mediation. Winston Decl., ¶ 18. BLVD Residential provided informal discovery in advance of the first mediation, responded to some of Plaintiff's formal discovery requests, and supplemented the information it provided to Plaintiff in preparation for the second mediation. *Id*. at ¶ 19. This discovery and investigation among other things included information about: the number of Class Members/PAGA Members (419),[2] the total number of pay periods through March 22, 2025 (9,941) and the total number of workweeks through March 22, 2025 (19,262). *Id*. at ¶ 18, Exh. 2 at § II(B). Class Counsel also considered the number of Class Members/PAGA Members who worked overtime (403), the number of Class Members PAGA Members who worked overtime and received a housing allowance (123), the number of pay periods where Class Members/PAGA Members worked overtime and received a housing allowance (3,751 pay periods), the number of Class Members/PAGA Members who received a meal/rest period premium in the same pay period that they also received a housing allowance (103), the number of pay periods where Class Members/PAGA Members received a meal/rest period premium in the same pay period that they also received a housing allowance (897), the number of Class Members/PAGA Members who received sick pay (348), the number of Class Members/PAGA Members who received sick pay during the same pay period that they also received a housing allowance (110), the number of pay periods where Class Members/PAGA Members received sick pay during the same pay period that they also received a housing allowance (673), the number of Class Members/PAGA Members whose employment ended and who received sick pay, a meal period premium or worked overtime during the same pay period that they received a housing allowance (35), and the number of Class Members/PAGA Members whose employment ended (185). *Id*. at ¶ 18, Exh. 2 at § II(B).

As part of both the formal and informal discovery process, BLVD Residential also provided time and pay data for all of the Class Members/PAGA Members. Winston Decl., ¶ 18, Exh. 2 at § II(B). Plaintiff hired a damages expert to analyze the time and pay records produced by Defendants in advance

[2] Since the Class and PAGA periods are the same in this Action due to the prior *Tavera* Action, the terms Class Members and PAGA Members are largely coextensive except that Class Members have the right to opt out of the Settlement.

of the first Mediation in order to ascertain the violation rates and the value of the claims. *Id*. at ¶ 20. Since the proposed release period extends beyond the date of the first mediation, Plaintiff reengaged the third-party expert to perform a supplemental analysis in advance of preliminary approval. *Id*. at ¶ 21.

At all times, the Parties' settlement negotiations have been non-collusive, adversarial, and at arm's length. Class Counsel believes that the proposed Settlement is fair and reasonable and in the best interest of the Parties and the Class. Winston Decl., ¶ 7.

II. THE SETTLEMENT

A. The Settlement Class and Release

This Action concerns, and the Proposed Settlement Class is defined as "all non-exempt, hourly employees who were employed by BLVD Residential in California at any point from August 11, 2023 to March 22, 2025." Winston Decl., ¶ 18, Exh. 2 at § I(E). Under the terms of the Parties' Settlement Agreement, the Class Period is defined as the period "from August 11, 2023 to March 22, 2025" *Id*. at § I(I). There are approximately 419 Class Members who worked 19,262 workweeks during the Class Period. *Id*. at §§ I(E), and II(B).

Under the terms of the Proposed Settlement, the participating Class Members will release "BLVD Residential Inc. and each of its officers, directors, members, partners, owners, shareholders, managing agents, human resource employees, attorneys, assigns, predecessors, successors, and any and all other persons, firms and corporations in which BLVD Residential Inc. may have an interest" from "all claims, complaints, causes of action, damages and liabilities that arise during the Class Period that each Settlement Class Member had, now has, or may hereafter claim to have against the Released Parties and that were asserted in or that reasonably could have been could have been alleged based upon the facts alleged in the in the Complaint (filed on January 4, 2024) and/or the First Amended Complaint ("FAC") (filed on March 12, 2024) (hereafter collectively the "Complaints") based on any of the facts or allegations in the Complaints. The Class Released Claims specifically include claims for (1) failure to pay minimum wages in violation of Labor Code §§ 1194 and 1194.2; (2) failure to pay overtime wages in violation of Labor Code § 510; (3) failure to provide lawful meal periods and/or pay meal period premiums in violation of Labor Code §§ 226.7 and 512 as well as IWC Wage Order No. 5-2001; (4)

failure to provide lawful rest periods and/or pay rest period premiums in violation of Labor Code § 226.7 and IWC Wage Order No. 5-2001; (5) failure to provide accurate itemized wage statements in violation of Labor Code § 226; (6) failure to timely pay wages upon separation in violation of Labor Code §§ 201-203; and (7) unfair competition in violation of Bus. & Prof. Code § 17200." Winston Decl., ¶ 18, Exh. 2 at §§ I(J), I(OO), and X(A). "The Class Released Claims do not include any claims for workers compensation, unemployment, or disability benefits of any nature, nor does it release any claims, actions, or causes of action which may be possessed by Settlement Class Members under state or federal discrimination statutes, or any other law aside from those specifically identified above." *Id*. at ¶ 18, Exh. 2 at §§ I(J) and X(A).

In addition to the Class claims, the LWDA and the PAGA Members will also release the Released Parties from "any claim for PAGA penalties under Labor Code section 2699 that were alleged or reasonably could have been alleged based on the facts stated in the January 4, 2024 PAGA Notice including claims for violations of Labor Code sections 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246-248, 256, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199 as well as applicable Industrial Welfare Commission Wage Orders (including but not limited IWC Wage Order No. 5-2001). This includes claims for failure to pay all minimum wages, overtime wages due, failure to provide lawful meal periods and associated premiums, failure to provide lawful rest periods and associated premiums, failure to pay all wages timely during employment and/or at the time of termination, failure to maintain accurate time records, and failure to provide complete, accurate, or properly formatted wage statements." Winston Decl., ¶ 18, Exh. 2 at §§ I(GG), I(DD), and X(B).

B. The Proposed Payment Plan and Protections for the Class in the Event that Defendants Stops Making Payments or Declares Bankruptcy

As the Court is aware, BLVD Residential was not able to make all of its payments under the prior class action in *Tavera vs. BLVD Residential Inc*., Sacramento County Superior Court Case No. 34-2022-00327501 and ultimately restructured its payments. Winston Decl., ¶¶ 18 and 22, Exhs. 2 at §§ II(A) and 3. The Parties structured the payment plan in this Action in an effort to minimize the risk of a default, avoid complications from *Tavera*—whose payment plan concludes before the commencement of the payment plan in this Action—to provide the Class with additional financial security beyond that typically available in a class action settlement, and afford the Class some protections in the unlikely event of a

bankruptcy. *Id*. at ¶ 23. In order to mitigate the risk to the Class, the Settlement requires BLVD to make an initial deposit of $75,000.00 to the Qualified Settlement Fund maintained by the Settlement Administrator the earlier of 30 days from the Preliminary Approval Order or December 10, 2025. BLVD Residential shall also deposit $18,750.00 on the 10th of each month following the initial deposit until it has fully funded the $300,000.00 Gross Settlement Amount. *Id*. at ¶ 18, Exh. 2 at § V(B). Under the terms of the payment plan articulated above, BLVD shall finish funding the entirety of the Gross Settlement Amount within 12 months of the $75,000.00 initial deposit. *Id*.

In addition, the release of Defendant Debra O'Toole and Defendant's owners, officers, directors, managing agents, and shareholders including Robert Talbott, and Scott Mencaccy are not effective unless and until the entirety of the Gross Settlement Amount is deposited with the Settlement Administrator. Winston Decl., ¶ 18, Exh. 2 at § I(NN). The release of BLVD Residential is effective upon the Effective Date, which assuming there are no objections accompanied by a motion to intervene and/or motion to vacate judgment, is the first business day after the Court enters the judgment. *Id*. at Exh. 2 at §§ I(R) and I(NN). The reason for the difference in the effective dates is that in the currently unlikely event that BLVD Residential experiences a bankruptcy, then the amount of the claims would be liquidated due to the existence of the Settlement Agreement and backed by consideration in the form of the release against BLVD. This would make it more likely that the Class could prevent the already deposited funds and/or at least a portion of such funds from being clawed back in the unlikely event of a bankruptcy. It also still permits the Class to proceed against Debra O'Toole and any other individuals that Plaintiff believes might have some personal liability under Labor Code § 558.1. Lab. Code § 558.1 ("Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation."). This provides the Class some measure of protection beyond that typically afforded in most class actions.

While Plaintiff and Class Counsel considered BLVD Residential's financial conditions when assessing potential settlements and settlement structures, the Parties do not presently believe that this Settlement will cause BLVD Residential significant financial stress or make a bankruptcy more probable.

The financial documents that Plaintiff considered include BLVD Residential's 2023 tax return, BLVD Residential's 2023 Profit & Loss Statement, BLVD Residential's 2023 Balance Sheet, BLVD Residential's 2024 Profit & Loss Statement, and BLVD Residential's 2024 Balance Sheet. Winston Decl., ¶ 24. Further, BLVD Residential and Debra O'Toole have both provided declarations regarding their finances as part of the approval process and affirming the necessity of the payment plan. Declaration of Robert C. Talbott Decl., ¶¶ 2-4 (the "Talbott Decl."); Declaration of Debra O'Toole, ¶ 2.

C. Settlement Payments

As detailed fully in the Settlement Agreement, the Settlement provides for BLVD Residential to pay a Gross Settlement Amount of $300,000.00. Winston Decl., ¶ 18, Exh. 2 at §§ I(X) and VII(A). Pursuant to the Settlement Agreement, Class Counsel proposes the following allocation of the Settlement to determine the Net Settlement Amount:

Gross Settlement Amount:	$300,000.00
Attorneys' Fees (1/3):	up to $100,000.00
Estimated Litigation Costs:	up to $22,000.00
Estimated Service Award:	up to $5,000.00
Estimated Cost of Administration:	up to $12,000.00
PAGA Payment To the LWDA ($30,000 total in PAGA Penalties):	$22,500.00
Estimated Net Settlement Amount Including Employees' $7,500 Share of PAGA Penalties	**$138,500.00**

The Estimated Net Settlement Amount ($138,500.00) is the amount distributable to Participating Class Members and PAGA Members and consists of the Gross Settlement Amount minus Court Approved Class Counsel's attorneys' fees and litigation costs, Settlement Administrator Costs, the LWDA's portion of the PAGA penalties as well as a Service Award for the Class Representative. Winston Decl. ¶ 18, Exh. 2 at §§ I(AA) and VII(A).[3] The Settlement is non-reversionary, and Defendants will pay 100 percent of the Gross Settlement Amount. Winston Decl. at ¶ 18, Exh. 2, at p. 2 and §§ I(X) and IV(A). This is a checks-mailed settlement meaning that Class Members do not need to submit a

[3] The proposed settlement was submitted to the LWDA. Winston Decl., ¶ 32, Exh. 5.

claim form and will receive a check as long as the Settlement is approved. Winston Decl. ¶ 18, Exh. 2, at § VII(B)(1).

Each participating Class Member will share pro rata in the settlement fund based upon the number of workweeks worked during the Class Period. Winston Decl., ¶ 18, Exh. 2, at §§ IV(C) and VII(B).[4] The estimated average net settlement award each Class Member is expected to receive when including the aggrieved employee's $7,500 share of PAGA penalties is approximately $330.55 ($138,500.00/419 Class Members), the maximum estimated net settlement award is estimated to be approximately $603.99 ((84 workweeks[5] during the class period/19,262 total workweeks) x $138,500.00), and the minimum estimated settlement award is estimated to be approximately $7.19 ((1 workweek worked during the class period/19,262 total workweeks) x $138,500.00). *Id.* at ¶ 26. The average estimated net settlement amount when excluding the employee's share of PAGA penalties is estimated to be approximately $312.65 ($131,000.00/419 Class Members). *Id*. The proposed method of allocation, which is based upon the length of time each Class Member and aggrieved employee worked during the Class and PAGA periods, is fair and reasonable. *Id.* at ¶ 27.

D. Process for Administering Settlement after Preliminary Approval

The Class Notice procedure established by the Settlement Agreement will efficiently and accurately ensure that the Class Notice is provided to the Class Members. The Parties have agreed to use the reputable third-party claims administrator ILYM Group, Inc. ("ILYM") to administer the Settlement. Winston Decl., ¶ 18, Exh. 2 at § I(RR).

BLVD Residential must provide ILYM with the Class List and Notice data within fourteen (14) calendar days of the Preliminary Approval Order and ILYM will distribute the Class Notice within fourteen (14) days of the receipt of the Class Data. Winston Decl., ¶ 18, Exh. 2 at at § VI(B). Before distributing the Class Notice, ILYM will perform a national change of address search for each Class Member, update the addresses per the results of the search, populate the data for the estimated Net Settlement Award for each Class Member, and mail the Class Notice to all Class Members via first-class, United States Mail. *Id*. at § VI(B). The Class Notice will be substantially in the form attached as

[4] Defendants paid employees on a bi-weekly basis such that a pay period generally encompasses two workweeks.
[5] There are approximately 84 workweeks between Friday, August 11, 2023 and Saturday, March 22, 2025.

Exhibit 4 to the Winston Decl. and also includes objection and opt-out forms. Winston Decl., ¶ 30, Exh. 4.

With respect to those Class Members whose Notice of Settlement is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall resend the class notice to any available forwarding address and run a skip-trace in an effort to attempt to ascertain the current address of the Class Member. Winston Decl., ¶ 18, Exh. 2 at § VI(B)(v).

In addition to formal notice, the Class will also receive notice informally through the establishment of a case specific website that shall contain copies of the Settlement Agreement, the Motion for Preliminary Approval and related papers, and the Order granting preliminary approval, and any other documents directed to be posted by the Court. Winston Decl., ¶ 18, Exh. 2 at § VI(B)(iv). The proposed settlement was also submitted to the LWDA. Winston Decl., ¶ 32, Exh. 5.

E. Process for Class Members to Respond to Class Notice

Class Members will have an opportunity to request exclusion from the Settlement Class (*i.e.*, opt out), object to the settlement, or dispute the number of workweeks attributed to them to the Settlement during the Class Notice period and/or at the Final Approval and Fairness Hearing. Winston Decl., ¶¶ 18 and 30, Exh. 2 at §§ VI(B), (C), (D), and (E) and Exh. 4. Class Members will have sixty (60) calendar days from the date of mailing the Notices of Settlement within which to opt-out, file an objection to the Settlement, or dispute the number of workweeks attributed to them. *Id*. at ¶ 18, Exh. 2 at §§ I(MM) and VI(B-E). In addition, the Class Notice will be distributed in English and Spanish. *Id.* at ¶ 18, Exh. 2 at § VI(B)(iii).

Class Members wishing to exclude themselves from the Settlement can use either the individualized opt-out form included within the Class Notice package or submit a letter to the Settlement Administrator by the Response Deadline. Each opt out request must contain: (1) the name and address of the Class Member for identification purposes; (2) be signed by the Class Member; (3) contain a clear written statement indicating that the Class Member wishes to be excluded from the Class Settlement (an example of such a statement is "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN URRUTIA VS. BLVD RESIDENTIAL"); and, (4) be postmarked on or before the Response Deadline and returned to the Settlement Administrator at the specified address. With respect to (3)

above, a request for exclusion or Opt Out shall not be deemed invalid if it does not include the exact phrase "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN URRUTIA VS. BLVD RESIDENTIAL" as long as the Class Member's intent to exclude themselves is evident from the submission. Winston Decl., ¶ 18, Exh. 2 at §§ I(CC) and VI(C). In addition, the Settlement Agreement permits the Court to accept a late request for exclusion for good cause. *Id.*

Class Members will also be provided an opportunity to object. Winston Decl., ¶ 18, Exh. 2 at §§ I(BB) and VI(D). To object, a Class Member can either appear and orally object at the Final Approval and Fairness Hearing or submit a written objection using the objection form included in the Class Notice package or by submitting a letter to the Settlement Administrator by the Response Deadline. Winston Decl., ¶ 18, Exh. 2 at §§ I(BB) and VI(D). Each written objection should contain: (1) the name and address of the Settlement Class Member objecting for identity verification and correspondence purposes; (2) be signed by the Settlement Class Member; (3) should contain a written statement of the grounds for the Objection accompanied by any legal support for such Objection they wish to be considered; and (4) be postmarked on or before the Response Deadline (as defined below) and returned to the Settlement Administrator at the specified address. *Id*. Class Members wishing to object need not file anything with the Court and may instead appear at the Final Approval and Fairness Hearing regardless of whether or not they submitted a written objection. Class Members who do not submit a timely written objection may still appear at the Final Approval and Fairness Hearing and speak to the Court about any potential projection at the hearing to the extent permitted by the Court. *Id.* Class Members need not include legal arguments for their written objections to be considered.

In addition, Class Members may dispute Defendant's records of the number of workweeks worked during the Class Period by notifying the Settlement Administrator that they dispute the amount of workweeks listed in their Class Notice by the Response Deadline. Winston Decl., ¶ 18, Exh. 2 at § VI(E). Moreover, Defendants will not retaliate against employees for participating in the settlement and will not encourage or advise Class Members to opt out or object to the Settlement. *Id*. at Exh. 2 at § XII(G).

Class Members do not have to serve Counsel nor file anything with the Court to opt-out, object, or dispute their number of workweeks. Instead, Class Members who wish to opt-out or submit an optional

written objection will mail any such documents to the Settlement Administrator. Winston Decl., ¶ 18, Exh. 2 at § VI(C)-(E).

III. THE PROPOSED SETTLEMENT IS ENTITLED TO A PRESUMPTION OF FAIRNESS

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; and (3) counsel is experienced in similar litigation, *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996). To prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action requires court approval. *Malibu Outrigger Bd. of Governors v. Sup. Ct.*, 103 Cal. App. 3d 573, 578-79 (1980). The purpose of the requirement is the protection of those class members, including the named plaintiff, whose rights may not have been given due regard by the negotiating parties. *Officers for Justice v. Civil Serv. Comm'n.*, 688 F.2d 615, 624 (9th Cir. 1982), *cert. denied* 459 U.S. 1217 (1983). The trial court has broad powers to determine whether a proposed class action settlement is fair. *Mallick v. Sup. Ct*, 89 Cal. App. 3d 434 (1979). The Settlement Agreement was the product of thorough, arms-length negotiations conducted by experienced and informed counsel and represents a favorable resolution of the Class claims. Winston Decl., ¶ 33.

IV. THE PROPOSED SETTLEMENT IS FAIR AND SHOULD BE APPROVED

Pursuant to California Rule of Civil Procedure § 1781(f), "a class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the Class in such manner as the court directs..." C.C.P. § 1781 (f). In deciding whether to grant approval to a proposed class action settlement under C.C.P. § 382, the court's overriding concern is whether the proposed settlement is "fair, adequate, and reasonable." *Dunk*, 48 Cal. App. 4th at 1801 (*quoting Officers for Justice*, 688 F.2d at 625). Here, the proposed settlement offers meaningful relief for Class Members. Winston Decl., ¶ 34.

The case of *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008), sets forth several factors that the Court should analyze in determining whether to approve a class action settlement. These factors include: (1) the strength of the plaintiff's case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage of the proceedings; (6) the

experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement.

A. The Strength and Risks Associated with Plaintiff's Case

1. The Strength and Risks Associated with the Minimum Wage Claims

Under California law, an employer must compensate an employee for each and every minute worked. *Troester v. Starbucks Corp.*, 5 Cal. 5th 829 (2018) (finding that there is no *de minimis* doctrine under California law and that California law does "not allow employers to require employees to routinely work for minutes off the clock without compensation."). Plaintiff alleged that Defendants required and/or suffered and permitted or expected Plaintiff and the Class to perform off-the-clock work and interrupted Plaintiff and the other employees' meal periods. Winston Decl., ¶ 35. In addition, Plaintiff alleged that residents of the buildings managed by BLVD Residential would frequently disturb Plaintiff and the Class while they were off-the-clock (including during meal periods) and Defendants both required and/or suffered and permitted Plaintiff and the other employees to perform off-the-clock work. *Id*. Plaintiff also alleged that Defendants regularly and consistently failed to pay Plaintiff and the Class for all hours worked, including, but not limited to, due to its policy and practice of not paying the employees for required and/or expected pre-shift activities, not paying employees for required and/or expected post-shift activities, impermissibly rounding employees' time entries (including start times, time entries associated with meal periods, and stop times), failing to pay minimum wages in accordance with the local municipal wage ordinances in effect for their job assignments, automatically deducting the time associated with meal periods regardless of whether or not the employee received a meal period, for the time associated with filling up gas and/or replacing gas consumed in the discharge of the employee's job duties, picking up supplies, and the time associated with off-the-clock due to Defendants' communications (whether by phone call, email, text message, or other method). *Id*.

Significant risk existed that the Court might find that the claims were not certifiable or that a common method of proof did not exist as even the plaintiff's failed to certify the claims in *Troester* on remand. Winston Decl., ¶¶ 36-37, Exh. 6 ("Order Granting Defendant's Motion for Partial Summary Judgment and Denying Plaintiff's Motion for Class Certification").

Plaintiff's data and damages expert determined the maximum value of this claim to be $178,957.00 when including interest. Winston Decl., ¶ 38. Plaintiff determined the reasonable risk adjusted settlement value of this claim to be $7,158.28 calculated as follows: $178,957.00 x .5 (50% chance that Plaintiff would certify this class) x .5 (50% chance that Plaintiff would prevail on the merits) x .4 (60% chance that Defendants would decertify the claims if they were certified given the off-the-clock nature of the claims) x .4 (60% chance that the continued litigation could deplete Defendants' financial resources potentially leading to no recovery). Winston Decl., ¶ 39.

2. The Strength and Risks Associated with the Overtime Wage Claims

Plaintiff alleged that Defendants violated California's overtime laws for the same reasons as with their minimum wage claims and also that Defendant sometimes failed to include the housing allowances when calculating and paying overtime wages. Winston Decl., ¶ 40. As with the minimum wage claims, considerable risk existed that the Court might find that this claim was not certifiable or that a common method of proof did not exist as even the plaintiff's failed to certify the claims in *Troester* on remand. *Id*. at ¶¶ 37 and 41, Exh. 6 ("Order Granting Defendant's Motion for Partial Summary Judgment and Denying Plaintiff's Motion for Class Certification"). However, less risk existed with respect to the issues related to the alleged occasional failure to include housing allowances when calculating and paying overtime wages. *Id*. at ¶ 42. Plaintiff's data expert calculated the non-risk adjusted value of the overtime claim to be $140,571.00. Winston Decl., ¶ 43.

In total, Plaintiff determined the reasonable risk adjusted settlement value of the overtime claims to be $22,491.36 calculated as follows: $140,571.00 x .5 (50% chance that Plaintiff would certify this class) x .8 (80% chance that Plaintiff would prevail on the merits) x .4 (60% chance that the continued litigation could deplete Defendants' financial resources potentially leading to no recovery). Winston Decl., ¶ 44.

3. The Strength of and Risks Associated With the Meal Period Claims

Labor Code § 512 requires employers to provide employees with a thirty (30) minute uninterrupted and duty-free meal period within the first five (5) hours of work. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period. Similarly, IWC Wage Order No. 5-2001 or other applicable

wage orders prohibit an employer from "employ[ing] any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes." Labor Code § 226.7 and IWC Wage Order No. 5-2001 further obligate employers to "pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided." Plaintiff alleged that BLVD Residential failed to authorize and permit Plaintiff and the Class to receive lawful meal periods and failed to include the housing allowances when calculating and paying meal period premiums. Winston Decl., ¶ 45. BLVD Residential maintained two meal period policies, neither of which advised the Class of their right to take a meal period within the first five hours of their shift or that they were entitled to a second meal period if they worked a shift in excess of ten (10) hours. *Id*.

Defendant BLVD vehemently disputed that its meal period policy violated California law; however, BLVD Residential stated in its formal discovery responses that it failed to correctly calculate the amount of meal period premiums and overtime wages, but alleged that the issue was limited to a combined 1,103 pay periods when also taking into account the alleged sick pay underpayments and that there was at least some payment made at the employee's lower hourly base rate such that the damages were minimal. Winston Decl., ¶ 46.

Plaintiff's data expert determined that there were approximately 12,354 first meal periods that started after the 5th hour and that there were 1,524 shifts where employees worked a shift of more than 10 hours without receiving a second meal period. Winston Decl., ¶ 47. In Plaintiff's view, based upon the data expert's analysis, the formal and informal discovery showed that Defendant BLVD made some efforts to comply with California's meal period laws including by paying approximately $272,787.31 in meal period premiums. *Id*. at ¶ 48. Plaintiff's data expert determined the maximum value of the meal period claim when including offsets for the meal period premiums already paid to the Class Members and excluding facially short meal periods that were likely not viable on a class basis due to the recent decision in *Allison v. Dignity Health*, 112 Cal. App. 5th 192 (2025) to be $155,052.00. *Id*. Plaintiff determined the reasonable risk adjusted settlement value of this claim to be $35,723.98 calculated as follows: $155,052.00 x .8 (80% chance that Plaintiff would certify this class) x .8 (80% chance that Plaintiff would prevail on the merits) x .9 (10% chance that Defendants would decertify the claims if

they were certified) x .4 (60% chance that the continued litigation could deplete Defendants financial resources potentially leading to no recovery). Winston Decl., ¶ 49.

4. The Strength of and Risks Associated With the Rest Period Claims

Labor Code § 226.7 provides "an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission." Under IWC Wage Order No. 5-2001, an employer must authorize and permit all employees to take ten (10) minute duty free rest periods for every major fraction of four hours worked. Plaintiff alleged that BLVD Residential failed to provide Plaintiff and the Class with rest periods of not less than ten (10) minutes for every major fraction of four (4) hours worked. Winston Decl., ¶ 50. Instead, Plaintiff alleged that BLVD Residential regularly and consistently required them to forgo rest periods and/or required them to remain on the premises and failed to relieve them of all duties. *Id*. This includes, but is not limited to, failing to advise Plaintiff and the other Class Members of their right to take a second rest period when they worked shifts in excess of six (6) hours, but less than eight (8) hours and of their right to a third rest period when they worked more than ten (10) hours. *Id*. Plaintiff further alleged that BLVD Residential failed to relieve Plaintiff and the other Class Members of all of their duties because it prohibited them from smoking anywhere on the premises including during their breaks and while off-the-clock. *Id*. Plaintiff even received a write-up for not smoking near the street area. *Id*.

However, during the pendency of this Action, the California Supreme Court issued its decision in *Huerta v. CSI Electrical Contractors*, 15 Cal. 5th 908, 915 (2024) addressing when an employee's time spent on an employer's premises may be considered compensable time. The Court specifically addressed similar restrictions on smoking on the employer's premises while off-the-clock and determined that such restrictions were not sufficient to establish sufficient control to deem the time compensable. *Huerta*, 15 Cal. 5th at 928-929 ("warehouse employee who drives onto the employer's grounds may be subject to speed limits, parking rules, and restrictions on noise, smoking, littering, paths of travel, or other conduct…"). As such, a reasonable chance existed following the decision in *Huerta* that Defendants would prevail on at least some of the rest period-related claims. Winston Decl., ¶ 51. While Plaintiff still believed that he might potentially be able to certify the

fractional rest period claims where employees worked shifts in excess of six hours, but less than eight hours, and the third rest period claim for shifts worked in excess of ten hours, considerable risk existed that such claims would not be certifiable due to the absence of records showing whether or not employees received rest periods. *Id*.

It is also possible that the Court could find that individualized issues existed or that no common method of proof existed as an appellate court did in *Cacho v. Eurostar, Inc.*, 43 Cal.App.5th 885 (2019). Winston Decl., ¶ 52. While the California Supreme Court depublished *Cacho*, it did not grant review of the decision meaning that at least a modest degree of risk existed that another court might reach the same factual conclusions as the *Cacho* trial court even if *Cacho* itself is not good law. *Id.* And, as discussed below, at least to some extent a similar risk was recently realized in *Allison*, 112 Cal. App. 5th at 206. Moreover, it is not uncommon for defendants in rest period cases to obtain numerous or even hundreds of declarations from employees showing differences in rest period practices. *See e.g. Ordonez v. Radio Shack, Inc.,* 2013 WL 210223, 2013 U.S. Dist. LEXIS 7868, *35-41 (C.D. Cal. Jan. 17, 2013).[6] In addition, some courts have found that rest period violations are not suitable for class adjudication because they raised too many individualized issues. *See e.g. Campbell v. Best Buy Store, L.P.*, U.S. Dist. LEXIS 137792 (2013) (denying certification of proposed rest break class due to a lack of a uniform policy); *Ordonez,* 2013 WL 210223, U.S. Dist. LEXIS 7868 at *35-41 (2013) (denying certification even though the plaintiff submitted evidence of a facially unlawful policy regarding rest breaks because the predominance and superiority elements were not met based upon the employer's presentation of anecdotal evidence of lawful compliance notwithstanding the unlawful policy.). Accordingly, Plaintiff and Class Counsel understood that significant risk existed when it came to certifying and prevailing on this claim. Winston Decl., ¶ 53. And, a similar risk was recently realized during the pendency of this litigation in the California Court of Appeal's decision *Allison*, 112 Cal. App. 5th at 206. In *Allison*, the California Court of Appeal decertified a meal period and rest period class after evaluating Plaintiff's post-certification statistical analysis and the deposition testimony of 44 Class Members. *Id*.

[6] The specific page citations are from the Lexis citation, but the Westlaw citation has also been provided. This is true for any instances in this Motion where both the Lexis and Westlaw citation have been provided.

Plaintiff's third-party data expert calculated the non-risk adjusted value of the rest period claim to be $2,381,662.00. Winston Decl., ¶ 54. And, Plaintiff determined the reasonable risk adjusted settlement value of the rest period claims to be $30,485.28 calculated as follows: $2,381,662.00 x .4 (40% chance that Plaintiff would certify this class) x .2 (80% chance that the Court might decertify the rest period claims based upon *Allison*) x .4 (40% chance that Plaintiff would prevail on the merits after *Huerta*) x .4 (60% chance that the continued litigation could deplete Defendants' financial resources potentially leading to no recovery). Winston Decl., ¶ 55.

5. The Strength of and Risks Associated With the Claim for Labor Code § 226(e) Penalties

Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing: (1) gross wages earned; (2) total hours worked by the employee…; (5) net wages earned…; (6) the inclusive dates of the period for which the employee is paid…; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee…"A claim for damages under Section 226(e) requires a showing of three elements: (1) a violation of Section 226(a); (2) that is "knowing and intentional"; and (3) a resulting injury." *Garnett v. ADT LLC*, 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015).

Plaintiff alleged both derivative and non-derivative wage statement claims. Winston Decl., ¶ 56. The non-derivative wage statement claims stem from Defendants' alleged practice of including categories of pay that require information about the hours and rate for which there is none. For example, for the pay period of October 22, 2023 to November 4, 2023, Plaintiff alleges that he received a wage statement that listed his MealPen Prem at $1.00, but included no rate, hours, or amounts. *Id*.

With respect to the derivative wage statements claims, if Plaintiff prevailed on his minimum wage or overtime claims, Plaintiff was confident that the Class would certify and prevail on the derivative wage statement claims. Winston Decl., ¶ 56. Further risk existed and was actually realized during the pendency of this Action when the California Court of Appeal recognized a good faith defense to a claim for failure to comply with accurate itemized wage statements in violation of Labor Code § 226 in *Naranjo v. Spectrum Sec. Servs., Inc*., 15 Cal. 5th 1056, 1064 (2024). In *Naranjo* the California Supreme Court found for the first time "that if an employer reasonably and in good faith believed it was

providing a complete and accurate wage statement in compliance with the requirements of section 226, then it has not knowingly and intentionally failed to comply with the wage statement law." *Id*. at 1065. At the time of the initiation of this Action, there was a split in authority between the California Court of Appeal decision in *Naranjo v. Spectrum Security Services, Inc.*, 88 Cal.App.5th 937, 942 (2023) recognizing the good faith defense to Labor Code § 226(e) and three prior appellate decisions that rejected the good faith defense. *See Furry v. East Bay Publishing, LLC*, 30 Cal. App. 5th 1072, 1085 (2018); *Kao v. Holiday*, 12 Cal. App. 5th 947, 961–962 (2017); *Gola v. Univ. of San Francisco*, 90 Cal. App. 5th 548, 567, (2023), as modified (May 9, 2023), reh'g denied (May 15, 2023), review filed (May 23, 2023). During the pendency of this Action, the California Supreme Court sided with the *Naranjo* appellate court even though it was the less prevalent view at the time. Although Plaintiff believed less risk existed that the Court might find that Defendants acted in good faith since Defendant BLVD faced the same claims in the prior *Tavera* action, some risk still existed that the Court might find that Defendants acted in good faith. Winston Decl., ¶ 57.

Plaintiff's data expert determined the non-risk adjusted value of this claim was $942,750.00. Winston Decl., ¶ 58. Plaintiff determined the reasonable risk adjusted settlement value of this claim as of the time of settlement to be $179,122.50 calculated as follows: $942,750.00 x .95 (95% chance that Plaintiff would certify at least one of the other Classes and/or this class on the non-derivative wage statement claim) x .5 (50% chance that Plaintiff would prevail on the merits) x .4 (60% chance that the continued litigation could deplete Defendants' financial resources potentially leading to no recovery). Winston Decl., ¶ 59.

6. The Strength of and Risks Associated With the Claim for Labor Code § 203 Penalties

Plaintiff also alleged that Defendants violated Labor Code §§ 201-202 as to those Class Members whose employment ended because they left their employment without receiving all minimum wages, overtime wages, meal period premiums, rest period premiums, and sick pay wages owed. Winston Decl., ¶ 60. Since these claims were derivative in nature, Defendants possessed the same defenses to these claims as with the underlying claims. *Id*. Further, while there is no private right of action for the failure to pay sick pay at the correct rate as such claims must be brought before the Labor Commissioner or through PAGA, an employee can bring a claim for the failure to timely pay all wages owed, including

sick pay, upon separation under Labor Code § 203. *See Powell v. Walmart Inc*., No. 3:20-cv-2412-BEN-LL, 2021 WL 369550, 2021 U.S. Dist. LEXIS 20777, at *6 (S.D. Cal. Feb. 2, 2021) (denying a motion to dismiss claims under Labor Code section 203 based upon the employer's alleged failure to include incentive pay when calculating and paying sick pay); *accord Flores v. Dart Container Corp*., No. 2:19-cv-00083 WBS EFB, 2020 WL 2770073, 2020 U.S. Dist. LEXIS 93524, at *4-5 and 7 (E.D. Cal. May 27, 2020) ("Plaintiff, however, 'is not seeking redress for denied sick leave, she is seeking redress for the underpayment of redeemed and vested sick pay.'… Because plaintiff does not argue that the allegations constitute a violation of any other Article 1 provision, plaintiff does not have a private cause of action for her HWHFA claim." but that the employee could still pursue a claim for waiting time penalties based upon the alleged failure to pay owed sick wages upon separation).

Plaintiff's data expert determined without taking into account the risks associated with the claim that the maximum value of this claim was $1,173,146.00. Winston Decl., ¶ 61. Plaintiff determined the reasonable risk adjusted settlement value of this claim to be $211,752.86 calculated as follows: $1,173,146.00 x .95 (95% chance that Plaintiff would certify this class based upon at least one of the alleged violations) x .95 (95% chance that Plaintiff would prevail on the merits of at least one of the underlying claims giving rise to this derivative claim) x .5 (50% chance that merely offering a defense will be found to be good faith consistent with *Naranjo*) x .4 (60% chance that the continued litigation could deplete Defendants' financial resources potentially leading to no recovery). Winston Decl., ¶ 62.

7. The Strength of and Risks Associated with the Unfair Competition Interest, And Injunctive Relief

Plaintiff also wishes to address his claims for unfair competition under Bus. & Prof. Code § 17200, interest, and claims for injunctive relief. Claims under Bus. & Prof. Code § 17200 are historically brought to allow the Class to go back an additional year beyond the three years directly permitted by Labor Code §§ 226.7, 510, and 1194. Winston Decl., ¶ 63. However, due to the prior judgment in *Tavera*, the Class cannot go back beyond the three year statutory period such that this claim has negligible monetary value, but did afford the Class the opportunity to obtain injunctive relief that has largely already been functionally achieved. *Id*. In addition to the monetary relief sought, Plaintiff also sought to catalyze Defendant BLVD Residential to modify its meal/rest period and sick pay payment policies, which Plaintiff understands occurred during the pendency of this case. BLVD

Residential has represented that the alleged issues regarding the failure to include the housing allowances when calculating and paying overtime wages, meal period premiums, and sick pay have all been corrected. *Id*. As such, Plaintiff already effectively obtained the injunctive relief sought in this Action. For those claims where interest is recoverable—the minimum wage, overtime, meal period, and rest period claims—the maximum values above include the interest that Plaintiff's damage and data expert calculated for each claim.

8. The Strength of and Risks Associated with the PAGA Claim

The PAGA claims in this Action predate the July 1, 2024 PAGA Reform and therefore falls under the prior PAGA statutory scheme. Under that statutory scheme pursuant to Labor Code § 2699(l)(2), the superior court is required to "review and approve any settlement of any civil action filed pursuant to [PAGA]."[7] Now Labor Code § 2699(v)(2) provides "[t]he amendments made to this section by the act adding this subdivision shall not apply to a civil action with respect to which the notice required by subparagraph (A) of paragraph (1) of subdivision (a), paragraph (1) of subdivision (b), or subparagraph (A) of paragraph (1) of subdivision (c) of Section 2699.3 was filed before June 19, 2024." Lab. Code § 2699. Since the PAGA notice in this Action was filed on January 4, 2024, this Action falls within the pre-amendment PAGA statutory scheme including the prior 75%/25% split of PAGA penalties.

In addition to the derivative minimum wage, overtime, meal period, rest period, wage statement, and waiting time penalty claims discussed above, Plaintiff also alleged derivative PAGA claims contending that Defendants failed to timely pay wages during employment, failed to maintain accurate time records, and failed to pay all sick pay wages owed. Winston Decl., ¶ 64. The same defenses existed with respect to these derivative claims as with the underlying claims. *Id*. As with any PAGA case, significant risk also exists with respect to the amount of PAGA penalties that a Court may award given their discretionary nature. *Id*. at ¶ 65. Under Labor Code § 2699.3(e)(2), "a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Plaintiff believed that it was unlikely that the Court would award a

[7] Under the new PAGA statutory scheme, the Superior Court is still required to review and approve all PAGA settlements; however, the subdivision is now listed at Labor Code § 2699(s)(2).

significant amount of PAGA penalties. Winston Decl., ¶ 66. Courts can still exercise their discretion to reduce the amount of penalties awarded. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 529 (2018) (the trial court declined to stack PAGA penalties and the Court of Appeal affirmed the reduction of the PAGA penalties to $5.00 per pay period). As such, it was likely that the Court would exercise at least some discretion when awarding PAGA penalties. *In re Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 589 (2010) (affirming an award of $0 in PAGA penalties in a wage and hour class action).[8]

Plaintiff's data expert determined that the maximum value of the PAGA claims, assuming that Plaintiff achieved a complete and total victory and the Court declined to exercise any discretion when awarding PAGA penalties is $6,173,600.00. Winston Decl., ¶ 67. It is also important to note that although theoretically this is the maximum potential recovery in this action if Plaintiff achieved complete and total victory based purely upon PAGA's mathematical formulas, Plaintiff and PAGA Counsel did not believe that this constituted a remotely plausible approximation of the actual expected recovery given BLVD Residential's significant defenses to several of the claims, the significantly lower actual violation rates, the Court's ability to decline to award stacked PAGA penalties and/or exercise its discretion to reduce the amount of PAGA penalties awarded, and Defendants' financial condition. *Id*. Even if Plaintiff prevailed, the pre-PAGA reform version of PAGA that applies to this Action states that "a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Lab. Code § 2699(e)(2). Given Defendants' financial limitations, Plaintiff believed that the Court would likely exercise a significant amount of discretion when awarding PAGA penalties.

Ultimately, this settlement seeks to maximize the amount of money recovered by the employees who experienced the alleged Labor Code violations while also still providing for a meaningful PAGA penalty of $30,000, which represents 10% of the Gross Value of the Settlement—under the circumstances. This is consistent with the guidance provided by the Department of Industrial Relations

[8] *See also Jack v. Hartford Fire Ins. Co*., No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving $3,000 PAGA allocation in $1,200,000 settlement); *Singer v. Becton Dickinson & Co*., No. 08cv821 IEG (BLM), 2010 WL 2196104, at *2 (S.D. Cal. June 1, 2010) (approving $3,000 PAGA allocation in $1,000,000 settlement); *Hopson v. Hanesbrands Inc*., No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009) (approving $1,500 PAGA allocation in $1,026,000 settlement).

("DIR") in *Price v. Uber Technologies*, *Inc.*, Case No. BC554512 (Los Angeles County Superior Court). Winston Decl., ¶ 68, Exh. 7. As the DIR explained in *Price v. Uber Technologies*, *Inc.*, Case No. BC554512, "the Labor Commissioner believes that courts evaluating PAGA settlement should utilize the standard employed in qui tam and other representative actions: is the settlement fair, adequate, and reasonable under all of the circumstances in light of the public policies underlying California's Labor Standards." *Id.* at 3:1-11. The DIR on behalf of the Labor Commissioner further explained that the state's primary interest is not necessarily collecting penalties, but also in affirmative actions and the correction of allegedly unlawful practices and that multiple forms of relief could be considered:

> [T]he Court may consider multiple forms of relief…nothing precludes an aggrieved employee from seeking…injunctive relief to end ongoing violations….Consequently, where a settlement solely provides for the recovery of monetary penalties, and does not otherwise effectuate the State's interests through affirmative actions, a court should weigh the full monetary value of relevant penalties and determine if the proposed penalties effectively minimize the economic advantages employers gain by non-compliance.

Winston Decl., ¶ 68, Exh. 7 at p. 3. And, the recent PAGA amendments also now allow employees to seek injunctive relief directly through PAGA which as previously explained Plaintiff already largely achieved by catalyzing BLVD Residential to make modifications to its pay policies and practices during the pendency of this lawsuit.

B. <u>The Risk, Expense, Complexity, and Likely Duration of Further Litigation</u>

There are also always risks attendant to wage and hour cases given the evolving nature of such claims. Winston Decl., ¶ 69. Given the ever-evolving landscape of wage and hour law, there are always risks that a new case will come out that will clarify and/or potentially limit employees' claims. *Id*. at ¶ 70. For example, although generally it was well-established that employees could recover both wage statement and waiting time penalties based upon an employer's failure to provide lawful meal/rest periods, the California Court of Appeal decided in 2019 that held that such penalties are not recoverable before it was later overturned by the California Supreme Court and then led to another additional decision within the same case clarifying its ruling before the California Supreme Court. Similarly, in another decision the California Court of Appeal held that employers could pay employees meal/rest period premiums at the employee's hourly base rate instead of at their regular rate before that decision was also overturned by the California Supreme Court. *Ferra v. Loews Hollywood Hotel, LLC*, 40 Cal. App. 5th 1239 (2019) rev'd, 11 Cal. 5th 858 (2021). While Plaintiff was confident that he would prevail

on his claims based upon present law, the plaintiffs in *Ferra* and *Naranjo* likely believed they would have as well prior to the California Court of Appeal's rulings and before each matter was eventually reversed by the California Supreme Court. Winston Decl., ¶ 70. As the California Court of Appeal explained in the now overturned *Naranjo* decision, "[a]lthough wage and hour lawsuits are ubiquitous in state courts, most settle before trial. Consequently, our appellate courts have not had much opportunity to publish decisions addressing the derivative wage claim issue[s]." *Naranjo*, 40 Cal. App. 5th at 468.

While Plaintiff acknowledges that the California Supreme Court reversed in both cases, each nevertheless are emblematic of the inherent risk associated with litigating wage and hour cases and the fact that a new appellate decision can dramatically alter the strength of the employees' claims at any time. Indeed, *Naranjo* was appealed a second time to the California Supreme Court during the pendency of this Action where the Court ruled in the employer's favor. *Naranjo v. Spectrum Sec. Servs., Inc*., 15 Cal. 5th 1056, 1064 (2024). PAGA itself was also amended during the pendency of this Action. Winston Decl., ¶ 70. And, the California Supreme Court also issued its decision in *Huerta v. CSI Electrical Contractors*, 15 Cal. 5th 908, 915 (2024) during the pendency of this Action, which directly impacted the strength of some of the rest period claims at issue. Winston Decl., ¶ 70. Further as the Court knows, considerable risk also existed due to Defendants' financial condition that led to the restricting of the prior *Tavera* settlement. *Id*. As such, significant risk existed—some of which was actually realized during the pendency of this Action.

C. <u>The Risk of Maintaining Class Action Status Through Trial</u>

This case has not been certified to be tried as a class action. Winston Decl., ¶ 71. While there is strong evidence to support certification, certification is always hard fought and subject to judicial discretion. *Id.* Moreover, in class actions, decertification is always a possibility. *Id.*; *In re Autozone, Inc.*, No. 3:10-md-02159-CRB, 2016 WL 4208200 (N.D.Cal. Aug. 10, 2016) (decertifying a rest period class due to the absence of a lack of a uniform policy or common measure of damages). In attempting to certify a class, the Parties would need to conduct deposition of the named Plaintiff and of the person most knowledgeable regarding Defendants' policies and practices related to the claims and expert surveys. Winston Decl., ¶ 72. There is a risk for both sides as to what these depositions will reveal and whether they will support class certification. *Id.*

D. The Amount Offered in Settlement

A trial court should not evaluate a proposed settlement "against a hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial." *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 409 (2010). "The test is not the maximum amount plaintiffs might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances." *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 250 (2001) (disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* 4 Cal. 5th 260, 269 (2018)). Nor does a *Kullar* showing require parties to submit the outer reaches of maximum possible recovery without taking into account various risks. *Munoz*, 186 Cal. App. 4th at 409; *Altamirano v. Shaw Industries, Inc.*, 2015 WL 4512372, at *9 (N.D. Cal. 2015) (preliminarily approving wage and hour class action settlement, stating, "[a]lthough 15% represents a modest fraction of the hypothetical maximum recovery estimated by Plaintiff, that figure is sufficient for the Court to grant preliminary approval.").

Nevertheless, to allow the Court to analyze the reasonableness of the Parties' Proposed Settlement, Plaintiff analyzed the maximum possible value of the claims at issue in this action if Plaintiff certified and prevailed on all of the claims and the Court declined to exercise any discretion when awarding PAGA penalties. Plaintiff, based upon the work performed by his third-party data expert, determined the maximum exposure on the claims to be $11,145,738.00. Winston Decl., ¶ 73. However, Plaintiff and his Counsel did not believe that this presented a remotely realistic outcome given Defendants' significant defenses and the Court's discretion with respect to the PAGA penalties. *Id*. Further, while the reasonable risk adjusted settlement value of the claims at first glance is higher on a purely mathematical approach than the proposed settlement ($300,000.00 Gross Settlement Amount/ $486,734.26 risk adjusted value), this does not take into account the additional risks that exist independent of the value of the claims due to Defendants' financial condition. *Id*. While Plaintiff analyzed the value of each claim independently based upon the strengths and risks of those claims and the risk that further litigation could exhaust Defendant BLVD Residential's resources, significant additional risk existed that Defendants could not afford to fund a judgment and/or settlement anywhere close to the aggregate risk adjusted value of the claims. Talbott Decl., ¶¶ 2-4; O'Toole Decl., ¶ 2. Thus, considerable additional risk existed with respect to Defendants' financial condition that rendered the amount offered reasonable under the unique circumstances of this case.

Further, in evaluating the reasonableness of the settlement offers, Class Counsel considered both his own experience with wage and hour litigation as well as similar settlements obtained by other firms and the unique issues applicable to this case. Winston Decl., ¶ 74. In the instant action, Plaintiff negotiated a monetary gross settlement of approximately $715.99 per employee ($300,000.00/419 Class Members) and an estimated average net settlement amount of approximately $330.55 per employee ($138,500.00/419 Class Members). *Id*.

Despite Defendants' significant defenses, the amount recovered in this class action is consistent with and compares favorably to the amounts awarded in other wage and hour class actions. *See e.g. Williams v. Centerplate, Inc*., 2013 WL 4525428, at *8 (S.D. Cal. Aug. 26, 2013) (finally approving a wage and hour class action settlement for non-compliant meal periods, non-compliant rest periods, unpaid overtime, unreimbursed business expenses, waiting time penalties, inaccurate itemized wage statements for 9,394 class members in the gross amount of $650,000.00 with a reversion to the Defendants of $128,136.86, a net settlement fund of $239,363.14 and an average award of $108.22 to the 2,212 class members who submitted claims and $25.48 when including the Class Members who did not submit claims and therefore received nothing in exchange for the release); *Schiller v. David's Bridal, Inc.*, 2012 WL 2117001, at *24 (E.D. Cal. June 11, 2012) (approving a proposed wage and hour class action settlement for unpaid overtime wages, non-compliant meal periods, unreimbursed business expenses, inaccurate itemized wage statements of a reversionary settlement with a maximum settlement amount of $518,245.00 and a potential 45% reversion on a claims-made settlement for 3,327 Class Members); *Altamirano v. Shaw Industries, Inc.*, 2015 WL 4512372, at *9 (N.D. Cal. 2015) (preliminarily approving wage and hour class action settlement, stating, "[a]lthough 15% represents a modest fraction of the hypothetical maximum recovery estimated by Plaintiff, that figure is sufficient for the Court to grant preliminary approval.").

After weighing the other benefits and risks associated with each of the claims in light of the factual challenges as well as Defendants' potential defenses and Defendants' financial condition, Class Counsel determined that the amount offered in settlement was fair and reasonable considering the risks and the likelihood of success on the merits. Winston Decl., ¶ 75.

E. The Experience and Views of Counsel

Class Counsel is experienced in wage-and-hour class actions and has served as Class and/or PAGA Counsel in numerous wage and hour class actions. Winston Decl., ¶¶ 5 and 76. Plaintiff's Counsel weighed the strengths and risks of the claims, and believes that this is a fair and reasonable settlement in light of the nature of the claims, the realistic risk adjusted value of damages, the complexities of the case, the state of the law, and the uncertainties of class certification and litigation. *Id*. at ¶ 77. After factoring in the risks explained herein, Class Counsel believes that the proposed Settlement is fair and reasonable. *Id*. at ¶ 78.

F. The Proposed Plan of Allocation Is Fair and Reasonable

Plans of allocation are subject to the same standard of review as class action settlements; they must be "fair, adequate and reasonable." *See e.g*., *Officers for Justice v. Civil Service Comm'n of City & County of San Francisco*, 688 F.2d 615, 624–625, 629–630 (9th Cir. 1982). Here, the Net Settlement Amount shall be allocated among Settlement Class members on a pro rata basis based upon the number of workweeks worked during the Class Period. Winston Decl., ¶ 18, Exh. 2 at § IV(C) and (D). The proposed method of allocation is fair and reasonable and reflects the strength and value of the claims at issue in this Action as well as the length of time each Class Member worked during the Class Period and suffered the alleged Labor Code violations. Winston Decl., ¶ 80.

Under the terms of the proposed Settlement, BLVD Residential shall pay the employer's share of payroll taxes separate from, and in addition to, the Gross Settlement Fund. Winston Decl., ¶ 18, Exh. 2 at §§ I(T) and IV(E). The tax treatment of the Settlement was a matter of negotiation between the Parties. Winston Decl., ¶ 81. The tax allocation within the Settlement Agreement reflects a compromise of the Parties' differing views as to the values of each claim and the strength of the claims as opposed to merely Plaintiff or Class Counsel's opinion. *Id*. Pursuant to the Settlement Agreement, the Individual Class Payments will be allocated 20% as wages and 80% as penalties. Winston Decl., ¶ 18, Exh. 2 at § IV(E). The Parties' compromise on the tax issues constitutes a fair resolution of their differing views on the issues and a fair allocation of the settlement.

The proposed PAGA allocation reflects the meaningful monetary relief recovered through the Proposed Settlement. Winston Decl., ¶ 82. Even though the Parties allocated $30,000.00 to PAGA, which represents 10% of the Gross Settlement Amount, the California Court of Appeal has previously

found that a wage and hour class action settlement that ascribes zero value to the PAGA claims was valid. *See Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 589 (2010) (affirming an award of $0 in PAGA penalties in a wage and hour class action). And courts routinely approve similar or even significantly less PAGA valuations where there is a significant recovery for the Class even where the aggrieved employees do not necessarily obtain any non-monetary relief. *See Jack v. Hartford Fire Ins. Co*., No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving $3,000 PAGA allocation in $1,200,000 settlement); *Singer v. Becton Dickinson & Co*., No. 08cv821 IEG (BLM), 2010 WL 2196104, at *2 (S.D. Cal. June 1, 2010) (approving $3,000 PAGA allocation in $1,000,000 settlement); *Hopson v. Hanesbrands Inc*., No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009) (approving $1,500 PAGA allocation in $1,026,000 settlement).

G. The Proposed Notice Fairly Apprises the Class Members of the Terms of the Settlement and of the Class Members' Rights under the Settlement

Plaintiff requests that the Court approve the proposed plan and form of Class Notice. The standard for determining the adequacy of notice is whether the notice has "a reasonable chance of reaching a substantial percentage of the class members." *Cartt v. Sup. Ct.*, 50 Cal. App. 3d 960, 974 (1975). With respect to the contents of the Class Notice, the "notice given to the class must fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members." *Trotsky v. L.A. Fed. Sav. & Loan Ass'n*, 48 Cal. App. 3d 134, 151–52 (1975). As discussed in detail in Section III(D) and III(E) of this Motion, Class Members will receive a detailed notice that provides class members with sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the Settlement. Winston Decl., ¶¶18, Exh. 2 at §§ VI(B), (C), (D), and (E). In addition, the class notice will be distributed in English and Spanish. *Id.* at ¶ 18, Exh. 2 at § VI(B)(iii). In short, the Court should approve the proposed Class Notice because it describes the proposed Settlement with enough specificity to allow Class Members to make an informed choice regarding whether to participate. Winston Decl., ¶ 86.

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H. The Proposed Settlement Class Should Be Certified For Settlement Purposes[9]

1. Ascertainability

Putative class members are deemed "ascertainable" when they may be "readily identified without unreasonable expense or time by reference to official records." *Rose v. City of Hayward*, 126 Cal. App. 3d 926, 933 (1981) (disapproved of on other grounds by *Noel v. Thrifty Payless, Inc*., 7 Cal. 5th 955, 981 (2019)). In determining whether a class is ascertainable, a court scrutinizes the class definition, the size of the class and the means of identifying class members. *Miller v. Woods*, 148 Cal. App. 3d 862, 873 (1983) (disapproved of on other grounds by *Noel*, 7 Cal. 5th at 986 n.15).

Here, Plaintiff seeks to represent a clear and distinct class of Defendants' employees defined as "all non-exempt, hourly employees who were employed by BLVD Residential in California at any point from August 11, 2023 to March 22, 2025." Winston Decl., ¶ 18, Exh. 2 at § I(E). Under the terms of the Parties' Settlement Agreement, the Class Period is defined as the period "from August 11, 2023 to March 22, 2025" *Id*. at § I(I). There are approximately 419 Class Members who have already been identified using Defendants' records. *Id*. at §§ I(E), and II(B). Thus, the Class Members can be readily identified by Defendant BLVD Residential's own records and have been.

2. Numerosity

There is no set number that is required as a matter of law to maintain a class action. *Rose*, 126 Cal. App. 3d at 934. Where a question is of common interest to "many" persons, an action may be maintained as a class action even where the parties are numerous and it is in fact practicable to join them all. *Id*. In the case at hand, the Class consisted of approximately 419 Class Members. Winston Decl., ¶ 18, Exh. 2 at §§ I(E), and II(B). This is more than enough for class certification.

3. There Is a Well-Defined Community of Interest

Plaintiff contends that that the proposed Class Members suffered the same injuries in the same manner. In addition, during formal discovery, Defendant represented that every proposed class member received a common document titled "Employment Agreement" that contained Defendants' minimum wage, overtime, meal period, and rest period policies. Winston Decl., ¶ 87. Accordingly, Plaintiff and the other class members were subjected to the same common policies and practices.

[9] Defendants contends that class certification is appropriate only for purposes of settlement.

a. There Are Predominant Questions of Law and Fact

In deciding whether questions of common or general interest predominate, a court must determine whether "the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants." *Collins v. Rocha*, 7 Cal.3d 232, 238 (1972); *accord Sav–On Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 326 (2004). As a general matter, if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages." *Hicks v. Kaufman & Broad Home Corp.*, 89 Cal. App. 4th 908, 916 (2001); *accord*, *Knapp v. AT & T Wireless Services, Inc.* 195 Cal. App. 4th 932, 941 (2011).

In the case at hand, Plaintiff contends that there are clear and common questions of law and fact that can be decided with one stroke:

a. Whether Defendants failed to pay minimum wages for all hours worked;

b. Whether Defendants failed to pay wages and/or overtime compensation and at the correct rate as required by Labor Code § 510;

c. Whether Defendants violated Labor Code §§ 226.7 and 512 as well as IWC Wage Order No. 5-2001, by failing to authorize and permit the Class to take lawful meal periods and/or to pay meal period premiums (including at the correct rate);

d. Whether Defendants violated Labor Code § 226.7 and IWC No. 5-2001 by failing to authorize and permit the Class to take lawful rest periods and/or to pay rest period premiums (including at the correct rate);

e. Whether Defendants violated Labor Code § 226(a) and (e) by failing to provide accurate itemized wage statements that accurately indicate the gross wages earned, total hours worked, the net wages earned, as well as all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee;

f. Whether Defendants violated §§ 201-203 of the Labor Code by failing to pay compensation due and owing at the time that Class Members' employment with Defendants concluded;

g. Whether Defendants violated § 17200 et seq. of the Business & Professions Code by engaging in the acts previously alleged against the Class;

Winston Decl., ¶ 88.

Moreover, a class of similarly situated employees may be certified based on common questions of fact or law, even if each employee has to establish the amount of his or her damages. *See Bell v. Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 741 (2004); *Sav-On Drug Stores, Inc.*, 34 Cal.4th at 340. Here, Plaintiff contends that the proposed Class Members suffered the same injuries, in the same manner: they were not paid minimum wages for all hours worked, they were not paid all overtime wages owed, they were not provided with lawful meal periods or lawful rest periods or paid meal/rest period premiums at the correct rate, were not provided with accurate itemized wage statements, and were not paid all wages owed at the end of their employment. Winston Decl., ¶ 89. Because the proposed Class Members worked in the same capacity for the same employer and were subject to the same employment policies and practices, Plaintiff contends that the questions of fact and claims are the same for each member of the class. Winston Decl., ¶ 90. Here, Plaintiff contends that he will be able to establish that common questions of law and fact predominate including through the common policies found in the "Employment Agreements." *Id.*

b. The Class Representative Has Claims Typical of the Proposed Class

A putative class representative's claim must be "typical," but not necessarily identical to the claims of other class members. The test of typicality "is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Seastrom v. Neways, Inc*., 149 Cal. App. 4th 1496, 1502 (2007). Thus, it is sufficient that the representative is similarly situated so that he or she will have the motive to litigate on behalf of all class members. *See, e.g.*, *Classen v. Weller* 145 Cal. App. 3d 27, 45 (1983). It is not necessary that the class representative have personally incurred all of the damages suffered by each of the other class members. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 238 (2001).

Plaintiff Antonio Urrutia worked as a non-exempt, hourly employee for Defendant BLVD from in or around July 7, 2023 to in or around November 20, 2023. Declaration of Antonio Urrutia Decl., ¶ 2 (hereafter the "Urrutia Decl."). Plaintiff alleges that he was not paid minimum wages for all hours worked, did not receive overtime pay and/or at the correct rate including due to Defendants' alleged

failure to include his housing allowance sometimes when calculating and paying his overtime wages, did not receive lawful meal periods and/or meal period premiums (including at the correct rate), did not receive lawful rest periods and/or rest period premiums (including at the correct rate), did not receive accurate itemized wage statements, was not timely paid all wages owed during and after his employment ended. Urrutia Decl., ¶ 3. As such, Plaintiff contends that he is typical of the Class Members.

c. The Class Representative Will Adequately Represent the Proposed Classes

A putative class representative must show that she can adequately represent the class. *Lockheed Martin Corp. v. Sup. Ct.*, 29 Cal. 4th 1096, 1104 (2003).

Plaintiff Antonio Urrutia is capable of and has fairly represented and adequately protected the interests of the proposed Class Members. Plaintiff's interest in this litigation is coextensive with the interests of the proposed Class. Plaintiff assisted in gathering facts and information about the case and assisted in the factual development of the case. Urrutia Decl., ¶¶ 8-9. The proposed Class Members all worked for Defendants during the relevant time period and incurred the same type of alleged damages with regard to Defendants' alleged violations. Moreover, Plaintiff has agreed to serve as Class Representative and has retained Counsel who regularly litigates employment cases. Plaintiff also participated in a mediation via phone and participated in the direct negotiations that followed the first mediation and the settlement discussions that occurred after BLVD Residential restructured its payment plan in a prior class action called *Tavera*. Urrutia Decl., ¶ 9. This demonstrates his commitment to bringing about the best possible results for the benefit of the proposed Class. Therefore, Plaintiff has and will adequately represent the proposed Settlement Class Members.

4. **The Class Action Vehicle Is Superior to the Alternatives**

"The ultimate question in every case of this type is whether . . . the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants." *Lockheed Martin Corp.*, 29 Cal. 4th at 1104–1105. Class certification is appropriate where, as here, substantial duplication of legal and judicial resources will result if the class is not certified. All of the issues of law and fact will be identical for each proposed Class Member. In the event that each person is required to bring an individual action against Defendants, the common factual and legal issues would

have to be litigated and tried repeatedly. In this case, the methods of proof to be used will be similar across the Class.

I. The Proposed Attorneys' Fees and Expense Reimbursement Sought Are Reasonable

Although the Court need not and should not make any actual determinations regarding the amount of attorneys' fees to award until that Motion is pending before the Court, Class Counsel intends to seek an award of attorneys' fees in the amount of 1/3 of the common fund. In *Laffitte v. Robert Half Internat., Inc.*, 1 Cal. 5th 480, 503 (2016) the California Supreme Court "recognized [the] advantages of the percentage method – including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging litigation – convince us the percentage method is a valuable tool that should not be denied by our trial courts." *Id.* Class Counsel's intended request for attorneys' fees in the amount of 1/3 of the common fund falls within the range of attorneys' fees regularly awarded by courts in similar matters. *McCrary v. Elations Co., LLC*, 2016 WL 769703, at *2 (C.D. Cal. Feb. 25, 2016) (finding that most fee awards based on either a percentage calculation or lodestar percentage are 33%.).[10] At this juncture, the Court need only find that it falls within the range of reasonableness and need not actually decide what amount to award. Plaintiff understands that the Court's typical practice is to consider a reasonable attorney fee award after consideration of the services performed, hours billed, experience level of each timekeeper, the hourly rate in comparison to other counsel performing similar work with similar levels of experience in San Mateo County, and the performance of a lodestar crosscheck. Plaintiff is prepared to provide all of this information as part of the Final Approval process. All Plaintiff is requesting at this time is the opportunity to seek an award of attorneys' fees of up to 1/3 of the common fund.

With respect to costs, the Settlement allows Class Counsel to request cost reimbursement in the amount of up to $22,000.00. Winston Decl., ¶ 18, Exh. 2 at §§ IV(G) and VII(A). At this juncture, the

[10] *See also Romero v. Producers Dairy Foods, Inc.*, 2007 U.S. Dist. LEXIS 86270, 2007 WL 3492841, at *4 (E.D. Cal. Nov. 14, 2007) (awarding 33% of the settlement fund in a wage-and-hour case involving allegations of unpaid wages after explaining that "fee awards in class actions average around one-third of the recovery."); *Stuart v. RadioShack Corp*., 2010 WL 3155645 (N.D. Cal. Aug. 9, 2010) (noting that a fee award of 1/3 of the settlement was "well within the range of percentages which courts have upheld as reasonable in other class action lawsuits.").

Court need only find that the requested costs fall within the range of reasonableness and need not actually decide what amount to award.

J. Plaintiff's Requested Service Award Is Reasonable

Plaintiff is requesting a service award in an amount of $5,000.00 in recognition of his time and efforts on behalf of the Class, the fact that his name could become known, and the possibility that his involvement in the matter could make it more difficult for him to obtain employment in the future. Winston Decl., ¶ 97; Urrutia Decl., ¶ 12.

The requested service award falls well within the range of incentive payments typically awarded to Class Representatives in similar class actions. Winston Decl., ¶ 98; *Bond v. Ferguson Enterprises, Inc*., No. 1:09–cv–1662 OWW MJS, 2011 WL 2648879 (E.D. Cal. June 30, 2011) (approving $11,250 service award to each of the two class representatives wage and hour class action); *Vasquez v. Coast Valley Roofing, Inc*., 266 F.R.D. 482, 493 (E.D. Cal. 2010) (approving service awards in the amount of $10,000 each from a $300,000 settlement fund in a wage/hour class action). At this juncture, the Court need only find that it falls within the range of reasonableness and need not actually decide what amount to award.

K. Meet and Confer Conference

Prior to filing this Motion, Plaintiff and Defendants met and conferred as confirmed via email. Winston Decl., ¶ 99. While Defendants deny each and all of the allegations, claims, and contentions alleged by Plaintiff in the Action and that for any purpose other than settling this Action, these claims are appropriate for class or representative treatment, Defendants do not oppose this Motion and have agreed not to oppose this Motion. *Id*. at ¶ 99, Exh. 8.

L. Compliance with Code of Civ. Proc. § 384

Code of Civ. Proc. § 384 requires that any funds associated with uncashed voided checks issued as part of this settlement be paid "nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent." In accordance with Code of Civ. Proc. § 384, the Parties propose to designate CASA of San Mateo County as the proposed *cy pres* beneficiary. Winston Decl., ¶

18, Exh. 2 at § VII(H). Neither Plaintiff, Defendants, nor their Counsel have any interest and/or involvement with the governance of CASA of San Mateo County. Winston Decl., ¶¶ 18 and 100, Exh. 2 at VII(H); Urrutia Decl., ¶ 13; Talbott Decl., ¶ 5; O'Toole Decl., ¶ 3.

M. Final Approval Hearing Timing

In order to ensure an orderly administration, Plaintiff and Defendants respectfully request a final approval hearing on May 12 or 13, 2026 at 2:00 pm.

V. CONCLUSION

Plaintiff respectfully submits that the Proposed Settlement is fair, adequate, reasonable, and in the best interest of the Class. Therefore, Plaintiff respectfully requests that the Court (1) grant preliminary approval of the Settlement and all of its terms; (2) approve the proposed form of Notice of Settlement, and direct that the Notice be sent to Class Members in the manner set forth in the Settlement; and (3) schedule hearings on Final Approval of the Settlement and Class Counsel's Motion for an award of attorney's fees and litigation costs.

Dated: September 10, 2025 WINSTON LAW GROUP, P.C.

DAVID S. WINSTON
Attorney for Plaintiff Antonio Urrutia, the Proposed Class, and the aggrieved employees