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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ALICIA DELGADO and RICHARD SILVA, individually and on behalf of all others similarly situated,

Plaintiff,

vs.

AKUA BEHAVIORAL HEALTH, INC., a corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No.: 22STCV13591

Assigned for all purposes to the Honorable Elaine Lu, Dept. 9

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

Date: January 15, 2025
Time: 10:00 a.m.
Dept.: 9
Motion Filed: October 9, 2024

Complaint Filed: April 22, 2022
FAC Filed: August 30, 2022
SAC Filed: October 31, 2022
TAC Filed: September 18, 2024
Trial Date: Not Set

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

PLEASE TAKE NOTICE that on January 15, 2025, at 10:00 a.m. or as soon thereafter as may be heard in Department 9 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, Plaintiffs Alicia Delgado and Richard Silva ("Plaintiffs") will, and hereby do, move the Court for entry of an order granting preliminary approval of the proposed Class Action and PAGA Settlement Agreement entered between Plaintiffs and Defendant Akua Behavioral Health, Inc. ("Defendant"). Specifically, Plaintiffs request that the Court enter an order:

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

2. Approving the proposed Notice of Proposed Class Action Settlement ("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 Plaintiffs as the Class Representatives for the Class for settlement purposes;

6. Appointing Parker & Minne, LLP, Lawyers for Justice, PC, and Law Office of Donald Potter as Class Counsel for settlement purposes;

7. Appointing Apex Class Action LLC as the Settlement Administrator;

8. Directing Defendant to furnish the full names, last known home address, last known telephone number, social security numbers, start and end dates of active employment as a non-exempt employee of Defendant in the State of California, total Workweeks during the Class Period, and total workweeks during the PAGA Period for all Class Members to the Administrator no later than fourteen (14) calendar days after the Court grants preliminary approval of the Settlement, as well as any other

information the Settlement 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 October 9, 2024. *See* Minne Decl. ¶ 76, Exh. 10.

Per the terms of the Settlement, Defendant has agreed not to oppose this motion. As the motion is unopposed, Plaintiffs respectfully request that the Court extend the page limit for the supporting memorandum of points and authorities pursuant to Rule 3.1113(e) of the California Rules of Court so that Plaintiffs can provide the Court with adequate information to determine whether to grant preliminary approval of the Settlement and preliminarily certify a class for settlement purposes.

The motion is based upon this notice, the attached memorandum of points and authorities; the Declarations of S. Emi Minne, Elizabeth Parker-Fawley, Donald Potter, Alicia Delgado, Richard Silva, and Sean Hartranft, and any exhibits thereto; 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: October 9, 2024

PARKER & MINNE, LLP

By: _____

S. Emi Minne
Attorneys for Plaintiff
RICHARD SILVA

Dated: October 9, 2024

LAW OFFICE OF DONALD POTTER

By: /s/ Donald Potter (as authorized on 10/9/2024)
Donald Potter
Attorneys for Plaintiff
ALICIA DELGADO

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is a putative class and representative wage and hour action brought by Plaintiffs Alicia Delgado and Richard Silva ("Plaintiffs") against Defendant Akua Behavioral Health, Inc. ("Defendant") on behalf of Defendant's current and former non-exempt employees. By way of this Motion, Plaintiffs seek 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 541 individuals.
- Gross Settlement Amount: $900,000.00, exclusive of employer payroll taxes.
- Settlement Administration Costs: estimated not to exceed $15,000.00.
- Requested Class Representative Service Payments: $2,500.00 to Plaintiff Alicia Delgado and $5,000.00 to Plaintiff Richard Silva.
- Requested Attorney's Fees and Costs: $315,000.00, 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: $482,500.00.
- Average Estimated Individual Class Payment: $891.87.
- Average Estimated Individual PAGA Payment: $23.11.

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. Plaintiffs therefore respectfully request that the Court enter an order granting preliminary approval of the proposed Settlement.

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[1] The fully executed Class Action and PAGA Settlement Agreement is attached as Exhibit 1 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 proposed Class Notice are based of the Los Angeles County Superior Court's model Class Action and PAGA Settlement Agreement. Redlined version of the Agreement and Class Notice showing all modifications made to the Court's model agreement and notice are Exhibits 2 and 3 to the Minne Decl.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Description of the Parties

Defendant is a provider of substance use and mental health disorder treatment. (Minne Decl., ¶ 4.) Plaintiff Richard Silva ("Mr. Silva") was employed by Defendant as a non-exempt, hourly-paid Clinical Technician from approximately July 2020 to October 2021. (Minne Decl., ¶ 5; Declaration of Richard Silva ["Silva Decl."], ¶ 3.) Plaintiff Alicia Delgado ("Ms. Delgado) was employed by Defendant as a non-exempt Case Manager from approximately June 2021 to February 2022. (Minne Decl., ¶ 6; Declaration of Donald Potter ["Potter Decl."], ¶ 3; Declaration of Alicia Delgado ["Delgado Decl."], ¶ 2.)

B. Summary of the *Delgado* Action

On April 25, 2022, Ms. Delgado filed a putative class action complaint against Defendant entitled *Alicia Delgado v. Akua Behavioral Health, Inc.* (Los Angeles County Superior Court Case No. 22STCV13591, hereinafter "*Delgado* Action"), which alleged the following causes of action: (1) Failure to Pay All Wages Due in Violation of Cal. Labor Code §§ 204, 510, 1194 & 1198; (2) Meal Period Violations (Cal. Lab. Code §§ 512, 226.7); (3) Rest Period Violations (Cal. Lab. Code § 226.7); (4) Failure to Reimburse for Business Expenses (Cal. Labor Code § 2802); (5) Failure to Provide Accurate Itemized Statements in Violation of Cal. Labor Code §§ 226(a)-(g); (6) Waiting Time Penalties (Cal. Lab. Code §§ 201-203); and (7) Unfair Competition. (Minne Decl., ¶ 7; Potter Decl., ¶ 4.)[2]

On July 15, 2022, Ms. Delgado provided written notice to Defendant and the California Labor & Workforce Development Agency ("LWDA") of her intent to seek civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004, Cal. Labor Code sections 2698, et seq. ("PAGA"). The LWDA did not respond to Ms. Delgado's PAGA Notice. (Minne Decl., ¶ 8, Exh. 4; Potter Decl., ¶ 5.) Accordingly, on October 31, 2022, Ms. Delgado filed a Second Amended Complaint in the

[2] Ms. Delgado's original class complaint also alleged individual causes of action for disability discrimination, failure to provide reasonable accommodation, failure to engage in the interactive process, retaliation, race discrimination, national original discrimination, failure to prevent discrimination and retaliation, and wrongful termination. These individual claims were subsequently dismissed from Ms. Delgado's class action complaint and brought in a separate civil action entitled *Alicia Delgado v. Akua Behavioral Health, Inc.* (Los Angeles County Superior Court Case No. 23STCV02166, filed February 1, 2023). (Minne Decl., ¶ 7; Potter Decl., ¶ 4.)

Delgado Action adding an additional cause of action under PAGA. (Minne Decl., ¶ 9; Potter Decl., P 6.)

On December 21, 2022, Defendant filed a motion to compel arbitration of Ms. Delgado's individual PAGA claims and dismiss the representative PAGA claim and potential class claims. On April 6, 2023, 2023, the Honorable Yvette M. Palazuelos entered an order compelling Ms. Delgado's individual PAGA claims to arbitration, and stayed the representative PAGA claim and potential class claims pending the completion of arbitration. (Minne Decl., ¶ 10; Potter Decl., ¶ 7.)

On May 3, 2023, Ms. Delgado initiated arbitration of her individual Labor Code and PAGA claims with JAMs. The Honorable Kirk H. Nakamura (Ret.) was designated as the arbitrator. (Minne Decl., ¶ 11; Potter Decl., ¶ 8.)

C. Summary of the *Silva* Action

On April 22, 2022, Mr. Silva provided written notice to Defendant and the LWDA of his intent to seek civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004, Cal. Labor Code sections 2698, et seq. ("PAGA"). The LWDA did not respond to Mr. Silva's PAGA Notice. (Minne Decl., ¶ 12, Exh. 5.)

On July 27, 2022, after fully exhausting PAGA's 65-day notice period, Mr. Silva filed a civil complaint against Defendant entitled *Richard Silva v. Akua Behavioral Health, Inc* (Orange County Superior Court Case 30-2022-01272105, hereinafter "*Silva* Action"), which alleged a single cause of action under the PAGA predicated on the following Labor Code violations: (1) Failure to Pay Overtime (Cal. Labor Code §§ 510 and 1198); (2) Failure to Provide Meal Periods (Cal. Labor Code §§ 226.7 and 512(a)); (3) Failure to Provide Rest Periods (Cal. Labor Code § 226.7); (4) Failure to Pay Minimum Wages (Cal. Labor Code § 1194, 1197, and 1197.1); (5) Failure to Timely Pay Wages Upon Termination (Cal. Labor Code §§ 201 and 202); (6) Failure to Timely Pay Wages During Employment (Cal. Labor Code § 204); (7) Failure to Provide Complete and Accurate Wage Statements (Cal. Labor Code § 226(a)); (8) Failure to Keep Complete and Accurate Payroll Records (Cal. Labor Code § 1174); and (9) Failure to Reimburse Necessary Business-Related Expenses (Cal. Labor Code §§ 2800 and 2802). (*Id.,* ¶ 13.)

On September 16, 2022, Defendant filed a motion to compel arbitration of Mr. Silva's individual PAGA claims and dismiss the representative PAGA claims. (*Id.,* ¶ 14.) On January 23, 2023, the Honorable Lon Hurwitz entered an order compelling Mr. Silva's individual PAGA claims to arbitration, and stayed Mr. Silva's representative PAGA claim pending completion of arbitration. (*Id.*, ¶ 15.)

On March 31, 2023, Mr. Silva initiated arbitration of his individual Labor Code and PAGA claims with JAMS. The Honorable Linda Miller (Ret.) was designated as the arbitrator. (*Id.,* ¶ 16.)

D. Informal Discovery, Mediation, and Settlement

Following the California Supreme Court's decision in *Adolph v. Uber Technologies, Inc.,* 14 Cal.5th 1104 (2023), Plaintiffs' counsel met and conferred with Defendant's counsel and counsel for Ms. Delgado regarding the potential for global resolution. Pursuant to these discussions, the Parties reached an agreement to stay arbitration proceedings, exchange informal discovery, and engage in global private mediation of the *Delgado* Action and the *Silva* Action. (*Id.*, ¶ 17.)

Per the Parties' agreement, Defendant provided Plaintiffs' Counsel[3] with extensive informal discovery prior to mediation, which included a 25% sampling of Class Members' time and payroll records. (*Id*., ¶ 18.) The sampling was randomly selected and included employees across the Class Period. (*Id.*) Defendant also provided Plaintiffs' 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. (*Id*.) Finally, Defendant provided Plaintiffs' 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 total number pay periods worked by Class Members, and the average rates of pay for the Class. (*Id*.)

Prior to mediation, Plaintiffs' Counsel thoroughly reviewed the informal discovery produced by Defendant, which included consulting with an expert to analyze Class Members' time and payroll records. (*Id*., ¶ 19.) Plaintiffs' Counsel also engaged in further independent investigation, and conducted further legal research regarding the merits of Plaintiffs' claims and Defendant's potential

[3] "Plaintiffs' Counsel" collective refers to Parker & Minne, LLP, Lawyers for Justice, PC, and Law Office of Donald Potter.

defenses thereto. (*Id*.) Based on this investigation and informal discovery, Plaintiffs' Counsel prepared a detailed and informed assessment of Defendant's potential liability in advance of mediation. (*Id*.) Plaintiffs' Counsel also prepared a detailed brief addressing Plaintiffs' 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 Plaintiffs' claims, on April 16, 2024, the Parties attended a formal mediation with Lynn Frank, Esq., a neutral and respected mediator with extensive experience in complex wage and hour matters. (*Id*., ¶ 20.) The Parties engaged in a full day of settlement discussions, during which they 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*.) Plaintiffs and Plaintiffs' Counsel went into mediation willing to explore the potential for a settlement of the Action, but were also prepared to litigate Plaintiffs' claims through class certification, trial, and appeal if a settlement was not reached. (*Id*.) Arriving at a settlement that was acceptable to the Parties was not easy, and the Parties vigorously advanced their respective positions throughout the settlement negotiations. (*Id*.) After a full day of negotiations, the mediation culminated in the issuance of a mediator's proposal that was accepted by the Parties. (*Id*.) A memorandum of understanding was subsequently executed by the Parties on or about January 17, 2024. (*Id*.)

On or about August 30, 2024, after further negotiations, the Parties fully executed a long form Class Action and PAGA Settlement Agreement. (*Id*., ¶ 21.)

In order to facilitate global resolution of the *Delgado* and *Silva* Actions, on September 5, 2024, the Parties filed a stipulation to allow for the filing of a Third Amended Complaint ("TAC") in the *Delgado* Action adding Mr. Silva as an additional named plaintiff and to add allegations regarding misclassification and alleged violations of Labor Code §§ 1197, 1197.2, and 2800. On September 11, 2024, the Court entered an order approving the Parties' stipulation. The TAC was subsequently filed on September 18, 2024. (*Id*, ¶ 23.)

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III. SUMMARY OF THE SETTLEMENT TERMS

E. Definition of the Proposed Class and Aggrieved Employees.

For purposes of Settlement only, the Parties have agreed to certify the following class: "[A]ll current and former hourly-paid, non-exempt employees of Defendant employed by Defendant in the State of California at any time during the Class Period." (*Id*., ¶ 24; Agreement, ¶ 1.5.) The Class Period commences on April 22, 2021, and ends on June 15, 2024. (Minne Decl., ¶ 24; Agreement, ¶ 1.12.) There are approximately 541 Class Members. (Minne Decl., ¶ 26.)

The Settlement also includes a subgroup of "Aggrieved Employees" which consists of all current and former non-exempt employees of Defendant who were employed by Defendant in the state of California at any time during the PAGA Period. (Minne Decl., ¶ 25; Agreement, ¶ 1.4.) The PAGA Period runs from April 22, 2021, to June 15, 2024. (Minne Decl., ¶ 25; Agreement, ¶ 1.29.) There are approximately 541 Aggrieved Employees. (Minne Decl., ¶ 26.)

F. Gross Settlement Amount

The Parties have agreed to settle the Class and PAGA claims at issue for the Gross Settlement Amount of $900,000.00. (Minne Decl., ¶ 27; Agreement, ¶¶ 1.21, 4.1.) The Gross Settlement Amount is non-reversionary, and does not include employer-side payroll taxes, which shall be separately paid by Defendant. (*Id.*) The Gross Settlement Amount shall be allocated as follows:

- Attorneys' Fees to Plaintiffs' Counsel in the amount of 35% of the Gross Settlement Amount (i.e., $315,000.00). (Minne Decl., ¶ 28(a); Agreement, ¶¶ 1.7, 4.2.2.)
- Reimbursement of Plaintiffs' Counsel's actual litigation costs and expenses, not to exceed $30,000.00. (Minne Decl., ¶ 28(b); Agreement, ¶¶ 1.7, 4.2.2.)
- Class Representative Service Payments of $5,000.00 to Mr. Silva and $2,500.00 to Ms. Delgado. (Minne Decl., ¶ 28(c); Agreement, ¶¶ 1.13, 4.2.1.)
- Settlement Administration Costs not to exceed $15,000.00. (Minne Decl., ¶ 28(d); Agreement, ¶¶ 1.3, 4.2.3.)
- 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., ¶ 28(e); Agreement, ¶¶ 1.32, 4.2.5.)

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., ¶ 29; Agreement, ¶¶ 1.22, 1.27, 4.2.4.) Individual Class Payments shall be allocated as 20% wages subject to all applicable tax withholdings, and 80% interest and penalties not subject to tax withholdings. (Minne Decl., ¶ 32; Agreement, ¶ 59.) The Net Settlement Amount is currently estimated to be approximately $482,500.00. (Minne Decl., ¶ 29,) It is further estimated that Class Members will receive an average Individual Class Payment of $891.87. (Minne Decl., ¶ 31.)

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., ¶ 33; Agreement, ¶ 1.23, 1.32, 4.2.5.1.) Individual PAGA Payments will be distributed on a pro-rata basis based on the number of workweeks worked by Aggrieved Employees during the PAGA Period. (*Id*.) The estimated average Individual PAGA Payment to Aggrieved Employees is $23.11. (Minne Decl., ¶ 33.)

The Gross Settlement Amount and all applicable employer side payroll taxes shall be deposited by Defendants into a Qualified Settlement Fund ("QSF") over the course of twenty-four (24) installment payments, as follows:

- Defendant shall make eight (8) monthly installment payments of $20,000.00 ("2024 Installments") into the QSF commencing no later than May 31, 2024 (or, if the Settlement Administrator requires additional time to establish the QSF, within three (3) business days following establishment of the QSF). All remaining 2024 Installments shall be deposited by Defendant into the QSF by no later than the last business day of each subsequent month, with the final 2024 Installment deposited by no later than December 31, 2024. Regardless of when payment commences, Defendant shall deposit a total of $160,000.00 into the QSF by no later than December 31, 2024. (Minne Decl., ¶ 34; Agreement, ¶ 5.3.1.)
- Commencing in 2025, Defendant shall make sixteen (16) monthly installment payments of $46,250.00 ("2025-2026 Installments") into the QSF. The first 2025-2026 Installment shall be deposited by Defendant into the QSF by no later than January 31, 2025. All remaining

2025-2026 Installments shall be deposited by Defendant into the QSF by no later than the last business day of each subsequent month, with the final 2025-2026 Installment, plus any amounts owed by Defendant for employer-side payroll taxes, deposited by Defendant into the QSF by no later than June 30, 2026. (Minne Decl., ¶ 34; Agreement, ¶ 5.3.2.)

Any interest earned on the installment payments prior to disbursement of the Gross Settlement Amount (less any applicable fees and charges associated with the establishment and maintenance of the QSF) shall be used to pay Defendant's share of employer-side payroll taxes. (Minne Decl., ¶ 35; Agreement, ¶ 5.3.3.) If any additional interest remains following payment of employer-side payroll taxes, such amounts shall be credited towards the Gross Settlement Amount. (*Id.*) In the event Defendant defaults on any installment payment owed under the Agreement and fails to cure such default within seven (7) business days of being provided notice of its default, the entire outstanding balance of the Gross Settlement Amount shall be immediately due and payable to the Administrator. Plaintiffs may also move for entry of a stipulated judgment against Defendant in the amount of the outstanding balance of the Gross Settlement Amount, plus pre-judgment and post-judgment interest and attorneys' fees and costs incurred in the enforcement and collection of the Judgment. (Minne Decl., ¶ 35, Exh. 6; Agreement, ¶ 5.4., Exh. B.)

Consistent the with the terms of the Agreement, a QSF was established by the Settlement Administrator on or about June 21, 2024. (Minne Decl., ¶ 38; Declaration of Sean Hartranft ["Hartranft Decl."], ¶ 8.) As of the filing of this motion, Defendant has deposited 4 installment payments into the QSF totaling $80,000.00. (Minne Decl., ¶ 38; Hartranft Decl., ¶ 9.)

All payments owed under the Settlement shall be disbursed within fourteen (14) calendar days of the full funding of the Gross Settlement Amount. (Minne Decl., ¶ 36; Agreement ¶ 5.5.) If any 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 PAGA Member. (Minne Decl., ¶ 36, Agreement ¶¶ 5.5.1, 5.5.3.) As such, no "unpaid residue" under California Code of Civil Procedure §384 will result from the Settlement. (Minne Decl., ¶ 36.)

G. Release of Class and PAGA Claims.

Upon the funding of the Gross Settlement Amount and all employer payroll taxes, Plaintiffs and Participating Class Members shall be deemed to have released their respective Released Claims against the Released Parties. (Agreement ¶ 6.2.) The scope of the release is narrowly tailored to release claims based on facts alleged in the operative complaint in the Actions, depending on whether Class Members elect to opt-out of the Settlement. (*Id.*) Additionally, Plaintiffs, Aggrieved Employees, and the LWDA will release claim under PAGA arising out of the violations alleged in the operative complaint in the Actions and/or Plaintiffs' PAGA notices to the LWDA. (*Id.*, ¶ 6.3.)

In addition to the release of claims made by all Participating Class Members and Aggrieved Employees, Plaintiffs, in their individual capacity, agree to a general release of all claims against Defendant. (*Id.,* ¶ 6.1.)[4]

After conducting diligent investigation and research, the Parties' counsel are unaware of any other class, representative, or collective actions pending in any other court that assert claims that are similar to those asserted in this Action. (Minne Decl., ¶ 74; Declaration of Elizabeth Parker-Fawley ["Parker-Fawley Decl."], ¶ 16; Potter Decl., ¶ 32; Declaration of Avi M. Attal ["Attal Decl."], ¶ 3; Declaration of Kenny Dewan ["Dewan Decl."], ¶ 3.)

H. The Settlement Administrator

The Parties have selected Apex Class Action LLC to administer the Settlement. (Minne Decl., ¶ 37; Agreement ¶ 1.2.)[5] Apex Class Action LLC 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 for errors and omissions. (Hartranft Decl., ¶ 5.) The Parties and their counsel do not have any financial interest in Apex Class Action, LLC that would create a conflict of interest. (Minne Decl., ¶ 72; Potter Decl., ¶ 30; Parker-Fawley Decl., ¶ 14; Silva Decl., ¶ 13; Delgado Decl., ¶

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[4] The general release expressly excludes any and all individuals brought by Ms. Delgado against Defendant in the civil action entitled *Alicia Delgado v. Akua Behavioral Health, Inc.*, Los Angeles County Superior Court Case No. 23STCV02166.

[5] Plaintiffs' counsel also obtained administration estimates from Phoenix Settlement Administrators and ILYM Group. Apex Class Action LLC was ultimately selected as the Settlement Administrator because it provided the lowest estimate and, consequently, would result in the highest net recovery by Participating Class Members. (Minne Decl., ¶ 37, Exh. 7-9.)

11; Attal Decl., ¶ 2; Dewan Decl., ¶ 2; Hartranft Decl., ¶ 3.)

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.[6]

[6] 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 Lynn Frank, Esq., a highly respected mediator with extensive experience in complex wage and hour litigation. (Minne Decl., ¶ 20.) 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. (*Id*.) Arriving at a settlement that was acceptable to the Parties was not easy, and the Parties vigorously advanced their respective positions throughout the settlement negotiations. (*Id.*) After a full day of negotiations, the Parties reached an agreement to settle this action pursuant to a mediator's proposal. (*Id.*) A memorandum of understanding reflecting the terms of the mediator's proposal was executed on or about June 17, 2024. (*Id.,* ¶ 21.)

The proposed Settlement was reached at the end of a process that was neither fraudulent nor collusive. (Minne Decl., ¶¶ 20, 22.) To the contrary, counsel for the Parties advanced their respective positions throughout the settlement negotiations. (*Id*.)

2. Plaintiffs and Their Counsel Conducted Sufficient Investigation and Discovery to Allow the Court and the Parties to 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, Plaintiffs' counsel obtained extensive informal discovery prior to mediation, which included: a representative 25% sampling of Class Members' time and payroll documents; the employee handbooks and other documents evidencing Defendant's relevant wage and hour policies and procedures; and key data points regarding the size, composition, number of pay periods, and average rate of pay of the putative class. (Minne Decl., ¶ 18.) Plaintiffs' Counsel thoroughly reviewed this informal discovery prior to mediation, which included consulting with an expert to fully analyze Class Members' time and payroll records for potential wage and hour violations. (*Id.*, ¶ 19.) Plaintiffs' Counsel also conducted further independent investigation, and researched Plaintiffs' claims and Defendant's defenses thereto. (*Id.*) Based on this investigation,

Plaintiffs' Counsel prepared a detailed assessment of Defendant's potential liability, and extensively briefed the strengths and weaknesses of Plaintiffs' claims and Defendant's anticipated defenses prior to mediation. Thus, Plaintiffs' Counsel was able to act intelligently and effectively in negotiating the proposed Settlement. (*Id*.)

3. Plaintiffs' Counsel are Experienced in Class Action Litigation.

The settlement negotiations were conducted by highly capable and experienced counsel. Plaintiffs' 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. (Minne Decl., ¶¶ 65-71; Parker-Fawley Decl., ¶¶ 2-6; Potter Decl., ¶¶ 18-29.) Although Plaintiffs and their 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. (Minne Decl., ¶ 61; Parker-Fawley Decl., ¶ 13; Potter Decl., ¶ 14; Silva Decl., ¶ 8; Delgado Decl., ¶ 9.)

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).

Plaintiffs' Counsel have carefully considered Plaintiffs' claims and analyzed class-wide violation rates. Based on information gathered by Plaintiffs' Counsel, including calculations of Defendant's maximum potential liability and the risks associated with continued litigation, Plaintiffs' counsel have determined that the proposed Settlement is fair, adequate, and reasonable. (Minne Decl., ¶¶ 39-62.)

a. Defendant's Maximum Potential Exposure.

Based on information gathered through informal discovery, Plaintiffs' Counsel estimated that if all class claims were adjudicated in favor of the Class, Defendant's maximum potential liability for the Class claims is $5,245,257.00 which can be broken down by claim as follows: $604,600.00 in unpaid minimum wages and overtime compensation; $735,878.00 in unpaid meal period premiums; $886,600.00 in unpaid rest period premiums; $200,000.00 in unreimbursed business expenses; $1,911,429.00 in waiting time penalties under Labor Code § 203; and $906,750.00 in statutory wage statement penalties under Labor Code § 226(e). (*Id*., ¶¶ 39-45.)[7]

In addition to the damages for the Class claims, Plaintiffs' Counsel also separately calculated Defendant's potential liability for civil penalties under PAGA to $5,115,054.40, which can be broken down by violation as follows: $466,900.00 for unpaid overtime; $933,800.00 for unpaid minimum wages; $642,454.40 for meal period violations; $933,800.00 for rest period violations; $933,800.00 for failure to timely pay wages during employment under Labor Code section 204; $270,500.00 for failure to maintain required payroll records under Labor Code section 1174; and $933,800.00 for failure to reimburse business expenses. (*Id.,* ¶ 46.)[8]

b. Strengths and Weaknesses of Plaintiffs' Claims and Risks of Continued Litigation.

While Defendant's maximum potential liability is substantial, such calculations assume that Plaintiffs fully prevail on all causes of action at every stage of litigation, from class certification through trial and appeals. Defendant vociferously denied liability and proffered several defenses to both class certification and the merits of Plaintiffs' claims. While Plaintiffs and Plaintiffs' counsel believed that Plaintiffs' claims are fundamentally meritorious, they recognized that there is significant risk and uncertainty associated with protracted litigation of this Action. Consideration of the specific risks associated with each of Plaintiffs' primary claims factored into the decision to enter into the Settlement at this point of litigation. (Minne Decl., ¶¶ 47-60.)

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[7] Penalties associated with violations of Labor Code §§ 204 and 1174, were not considered as part of the Class analysis, but were instead included in Plaintiffs' counsel's separate calculations regarding Defendant's potential exposure for civil penalties under PAGA. (Minne Decl., ¶ 39.)

[8] These calculations did not include duplicative penalties that would likely be considered duplicative of statutory penalties recoverable as part of the Plaintiffs' Class claims, such as waiting time penalties under Labor Code § 203 and wage statement penalties under Labor Code § 226. (Minne Decl., ¶ 46.)

As a preliminary matter, as set forth above, Defendant successfully moved to compel arbitration of Plaintiffs' individual claims. Defendant maintained that the other Class Members had also entered into enforceable arbitration agreements. Plaintiffs' Counsel recognized that the existence of these agreements posed a significant hurdle to obtaining recovery for any direct Labor Code claims via contested class certification proceedings, whether in court or in arbitration. See *Lamps Plus, Inc. v. Varela*, 587 U.S. 176 (2018). The risk created by the existence of these purported arbitration agreements affected every class claim alleged by Plaintiffs. (Minne Decl., ¶ 48.)

In addition to the significant challenges presented by the existence of the arbitration agreements, Plaintiffs also faced challenges specific to each of their primary class claims. For example, Plaintiffs' minimum wage and overtime claims were based in large part on Plaintiffs' allegations that Defendant implemented policies and practices that placed substantial pressure on Class Members to work off-the-clock without compensation. Plaintiffs also contend that Defendant misclassified case managers as exempt employees. Defendant denied that employees were required to do any work off-the-clock, and that if employees performed such work it was done without Defendant's knowledge. 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. While Plaintiffs' counsel strongly disagreed with Defendant's contentions, Plaintiffs' counsel also recognized that prosecution of off-the-clock claims is a particularly uncertain proposition due to the potential for individualized issues and the lack of records. Plaintiffs' counsel also recognized that misclassification issues were limited in time and scope. (Minne Decl., ¶ 49.)

Plaintiffs also face significant risks with their meal period claims. Plaintiffs contend that Class Members were often required to skip meal periods, to delay meal periods after their fifth hour of work, and to cut their meal periods short, and were not paid meal period premiums for such violations. At mediation, Defendant asserted that its written meal period policies substantially complied with California law. Defendant also maintained that Class Members were provided ample opportunity 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 argued 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. Defendant also asserted that Class Members worked in a variety of different job positions with different job duties, and that this variation between employees raised highly individualized questions of fact. While Plaintiffs' counsel strongly disagreed with Defendant's arguments and contentions, they recognized there was a risk that the Court could ultimately deny class certification based on concerns regarding manageability and/or individualized issues. Plaintiffs' counsel also recognized that even if class certification is granted, Plaintiffs will be required to oppose attempts to decertify the class, as well as a potential motion for summary judgment. Defendants will also undoubtedly present numerous defenses at trial, including but not limited to arguments that employees voluntarily chose to skip, shorten, or delay meal periods. (Minne Decl., ¶ 50)

Plaintiffs' counsel were also cognizant of the challenges associated with maintaining Plaintiffs' rest period claims on a class-wide basis. Plaintiffs contend that Class Members were often required to skip or shorten their rest periods, and were not paid rest period premiums for such violations. As with meal periods, Defendant asserted that its written policies substantially complied with California law, that Class Members were allowed to take rest periods, and that Class Members who worked through their rest periods did so voluntarily. 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 Plaintiffs' 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. Further, just as with meal periods, even if this claim is certified, Plaintiffs will be required to defend against an anticipated motion to decertify and motion for summary judgment, and will ultimately bear the burden of establishing liability with at trial. (Minne Decl., ¶ 51.)

Plaintiffs further contend that Defendant failed to reimburse Class Members for necessary business expenses, such as use of their personal cell phones. Defendant asserted that Class Members were not required to use their personal cell phones for work. Defendant further asserted that

individualized inquiries regarding why a Class Member failed to receive reimbursement for certain expenses would predominate. (Minne Decl., ¶ 52.)

There are also substantial risks attached to Plaintiffs' claims for waiting time penalties and wage statement penalties, which constitute over 53% of Defendant's potential exposure. Such claims are entirely derivative of Plaintiffs' 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 Plaintiffs prevail on the underlying claims, Plaintiffs 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"); *Naranjo v. Spectrum Security Services, Inc.*, 15 Cal.5th 1056 (2024) (holding that Cal. Lab. Code § 226 allows for a defense based on good faith belief in compliance). Accordingly, these claims presented significant risk and uncertainty. (Minne Decl., ¶ 53.)

Taking into account the specific strengths and weaknesses of each claim, and the unique risks associated therewith, Plaintiffs' counsel estimated that Defendant faced a risk-adjusted liability of $583,155.03 for Plaintiffs' Class claims. (Minne Decl., ¶ 54.)

Plaintiffs' counsel also separately contemplated the numerous risks of proceeding with a PAGA claim. First, the same defenses and merits-based risks associated with Plaintiffs' 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.") (Minne Decl., ¶ 55.) Defendant would also likely attempt to challenge Plaintiffs' fundamental standing as aggrieved employees. (*Id.*)

Further, although the California Supreme Court has recently held that PAGA claims may not be stricken based on "manageability" concerns, it left often the possibility that an employer may still attempt to strike PAGA claims if it can be shown that "a trial court's use of case management techniques so abridged the defendant's right to present a defense that its right to due process was violated." *Estrada v. Royalty Carpet Mills, Inc.*, 15 Cal.5th 582, 620 (2024). Thus, the possibility

remains that Defendant could attempt to challenge Plaintiffs' PAGA claims as violating its/their due process rights. Moreover, after the proposed Settlement was reached, PAGA was amended to explicitly grant trial courts discretion to limit the scope of PAGA claims and evidence presented at trial so that claims can be effectively tried. See Cal. Lab. Code § 2699(p). Although the amendment does not retroactively apply to this matter, it still serves to underscore the potential challenges associated with bringing Plaintiffs' PAGA claims to trial. (Minne Decl., ¶ 56.)

Moreover, even if Plaintiffs established liability, Plaintiffs' counsel anticipated there would be significant disputes over the calculation of penalties assessed against Defendant. For instance, Defendant would likely contend that multiple Labor Code violations do not give rise to cumulative penalties, and that instead a single penalty should apply once per pay period, if at all, rather than cumulative penalties for each separate Labor Code provision that was violated during a pay period. If this methodology were applied, it would significantly reduce Defendant's exposure for civil penalties. (*Id.*, ¶ 57.) The Court could also exercise its discretion to find that the imposition of heightened civil penalties was inappropriate, particularly if Plaintiffs prevailed on their class claims. Cal. Lab. Code § 2699(2); *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1122 (2012).[9] (*Id.,* ¶ 58.) Plaintiffs' counsel was also cognizant that PAGA is 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. S*ee* Cal. Labor Code § 2699(i); *Arias v. Sup. Ct.*, 46 Cal. 4th 980; *Williams v. Sup. Ct.,* 3 Cal.5th 531, 546 (2017). (Minne Decl., ¶ 59.)

Finally, Plaintiffs' counsel recognized the significant risk and expense generally associated with continued litigation, arbitration, trial, and possible appeals, all of which would substantially delay and reduce any recovery by the Class Members. Even if Plaintiffs overcame challenges associated with the arbitration agreements and 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, Plaintiffs' counsel will need to request and analyze thousands

[9] *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).

of pages of documents, 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. Moreover, even if Plaintiffs successfully certifies the class on a contested motion and prevails on all claims at 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., ¶ 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; Potter Decl., ¶ 14, Parker-Fawley Decl., ¶ 13.) Moreover, the Gross Settlement Amount of $900,000.00 – representing 17.1% of Defendant's maximum potential liability of Plaintiffs' class claims and 154.3% of Defendant's risk-adjusted liability - falls within an acceptable range of recovery for this type of litigation given the strengths and weaknesses of the case and the inherent costs and risks associated with class certification, representative adjudication, trial, and/or appeals. (Minne Decl., ¶ 61.)[10]

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

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[10] *See, e.g., Cavazos v. Salas Concrete, Inc.*, 2022 U.S. Dist. LEXIS 132056 (E.D. Cal. 2022)(granting preliminary approval of settlement representing approximately 5.8% of maximum damages); *Ayala v. UPS Supply Chain Solutions, Inc.*, 2021 U.S. Dist. LEXIS 194362 (C.D. Cal. 2021)(granting preliminary approval of settlement representing approximately 7.8% of 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); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671 (N.D. Cal. 2015) (granting final approval of settlement amount representing approximately 10% of the maximum); *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).

Cal.5th at 546; *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 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., ¶ 55.)

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, ¶ 2.10.)

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 current and former hourly-paid, non-exempt employees of Defendant who were employed by Defendant at any time from April 22, 2021 to June 15, 2024. (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 541individuals plainly favors class certification. (Minne Decl., ¶ 26.)

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 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 exists 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, Plaintiffs' claims present sufficient common issues of law and fact that predominate and warrant class certification. Plaintiffs allege that Defendant prohibited employees from taking compliant meal and rest periods, required Class Members to perform work off-the-clock, misclassified Class Members, and required Class Members to pay for work-related expenses out of pocket. These policies and practices meant that Defendant failed to pay required meal period premiums, minimum wages, and overtime wages, failed to reimburse necessary business expenses, and other related claims. Plaintiffs allege that Defendant's policies and practices were uniform as to all Class Members. Thus, class treatment is appropriate.

2. Plaintiffs' Claims are Typical of the Class.

To satisfy the typicality requirement, California law does not require that Plaintiffs 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, Plaintiffs allege that their claims are based on the same legal theories, arise out of the same unlawful policies and practices, and seek the same relief. Because Plaintiffs' 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. Plaintiffs and Their 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. Plaintiffs' 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., ¶¶ 65-71; Parker-Fawley Decl., ¶ 2-6; Potter Decl., ¶¶ 30-32.) Furthermore, because Plaintiffs' 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 Plaintiffs and the Class. Plaintiffs are also fully aware of their duties as class representatives, and will vigorously and adequately represent the interests of the Class. (Silva Decl., ¶¶ 4-10; Delgado Decl., ¶¶ 6-9.) 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 an award of attorney's fees based on 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 $315,000.00 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. The Motion for Final Approval will elaborate on the nature of the legal services provided and will also support Plaintiffs' Counsel's request for the reimbursement of litigation costs not to exceed $30,000.00. (Minne Decl., ¶ 64.)

VII. THE PROPOSED SERVICE PAYMENTS ARE 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).

Plaintiffs initiated this litigation on behalf of their former co-workers who can now collect monetary payment from the Settlement. Plaintiffs invested substantial time and effort into litigation including their own research, reviewing documents, and extensive discussions with Plaintiffs'

Counsel. (Silva Decl., ¶¶ 4-8; Delgado Decl., ¶¶ 5-10.) Further, the requested Service Payments are extremely reasonable given the benefit gained by other Class Members. The requested Service Payments of $5,000.00 to Mr. Silva and $2,500.00 to Ms. Delgado are also disclosed to Class Members in the Class Notice. (Agreement, Exh. A.) For these reasons, Plaintiffs request that Service Payments of $5,000.00 to Mr. Silva and $2,500.00 to Ms. Delgado be preliminarily approved by the Court. (Minne Decl., ¶ 63; Parker-Fawley Decl., ¶ 12; Potter Decl., ¶ 16; Silva Decl., ¶ 11; Delgado Decl., ¶ 10.)

VIII. THE PROPOSED CLASS NOTICE, AND OPT-OUT AND OBJECTION 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 jointly drafted a Notice of Class Action Settlement ("Class Notice") which will be sent to Class Members in both in both English and Spanish. (Agreement, ¶ 1.11, 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, Class Members' estimated Individual Settlement Payment and Individual PAGA Payment, Class Members' total workweeks during the Class Period, and PAGA Member's total workweeks during the PAGA Period. (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 the contact information for Plaintiffs' Counsel, a URL to a website maintained by the Administrator

containing the key documents related to the Settlement, and a URL to the Court's public online portal), and informs Class Members of their right to attend the final approval hearing. (*Id.*).

No later than fourteen (14) calendar days after the Court grants Preliminary Approval of the Settlement, Defendant shall provide the Administrator with the Class Data containing all Class Members' names, last-known mailing addresses, Social Security numbers, start and end dates of active employment with Defendant, total Workweeks during the Class Period, and total Workweeks during the PAGA Period. (*Id.,* ¶¶ 1.8, 5.2) No later than fourteen (14) days after receiving the Class List from Defendant, the Administrator shall mail copies of the Class Notice to all Class Members via regular First Class U.S. Mail. (*Id.,* ¶ 8.4.2.) 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.*)

If any Class Notice is returned as undeliverable, the Administrator shall re-mail such returned Class Notices to the forwarding address provided by the USPS within three (3) business days. (*Id.*) 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.*) Class Members whose notices are remailed shall have an additional fourteen (14) calendar days beyond the 60 day response deadline to submit request for exclusions, objections, or workweek disputes. (*Id.,* ¶ 8.4.4, 8.5.1., 8.6, 8.7.2.) Requests for exclusion, objections and workweek disputes may be submitted via mail, email, or facsimile. (*Id.*, ¶¶ 8.5.1, 8.6, 8.7.2.)

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; and (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, Plaintiffs respectfully request that the Court appoint Apex Class Action LLC 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 set forth in the Agreement.

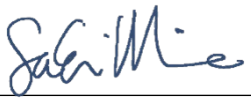
IX. CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request 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: October 9, 2024

PARKER & MINNE, LLP

By: 

S. Emi Minne
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RICHARD SILVA

Dated: October 9, 2024

LAW OFFICE OF DONALD POTTER

By: /s/ Donald Potter (as authorized on 10/9/2024)
Donald Potter
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ALICIA DELGADO