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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF YOLO

BRANDY L. SKUTLEY and TIMOTHY MILLER, on behalf of themselves and all others similarly situated, Plaintiffs, v. WALGREEN CO., an Illinois Corporation, WALGREENS BOOTS ALLIANCE, INC., an Illinois Corporation, and DOES 1-50, inclusive, Defendants.	Case No. CV2023-0740 Assigned for All Purposes to: Hon. Timothy L. Fall **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF STIPULATION OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT AND RELEASE OF CLAIMS** Date: March 12, 2025 Time: 9:00 a.m. Dept.: 11 Complaint Filed: April 10, 2023 FAC Filed: October 10, 2024 Trial Date: None Set

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I. INTRODUCTION

Plaintiffs Brandy L. Skutley and Timothy Miller ("Plaintiffs") seek preliminary approval of a wage and hour class action and Private Attorneys General Act ("PAGA") settlement on behalf of all current and former hourly-paid, non-exempt employees who worked for Defendant Walgreen Co. at one of its California distribution centers during the Class Period (the "Class" or "Class Members") and all current and former hourly-paid, non-exempt employees who worked for Defendant Walgreen Co. at one of its California distribution centers during the PAGA Period (the "PAGA Employees").

After engaging in substantial discovery and a full-day mediation before experienced class action mediator Gig Kyriacou, Plaintiffs and Defendants Walgreen Co. and Walgreen Boots Alliance, Inc. (collectively, "Defendants") agreed to a non-reversionary gross settlement amount of $3,400,000, exclusive of employer-side payroll taxes. The settlement is strongly supported by experienced counsel, who carefully considered the strength of the claims and Defendants' potential defenses, as well as the expense, complexity, risks, and likely duration of continued litigation.

Subject to Court-approval, and after deductions for the Settlement Administration Costs, Class Representative Enhancement Payments, Class Counsel's attorneys' fees and costs, and PAGA payment, the remaining amount will be distributed to Participating Class Members is estimated to be as follows:

Gross Settlement Amount	**$3,400,000**
PAGA Settlement	$170,000
Settlement Administration Costs	$22,000
Class Representative Enhancement Payments	$20,000
Attorneys' Fees	$1,190,000
Attorneys' Costs	$30,000
Net Settlement Amount	**Estimated $1,968,000**

Through this motion, Plaintiffs respectfully request that the Court enter an order: (1) provisionally certifying the Class under Code of Civil Procedure Section 382 and California Rule of Court 3.769(c) for settlement purposes; (2) preliminarily approving the Settlement; (3) approving as to form the Notice of Class and Representative Action Settlement ("Class Notice") and ordering that the Class Notice be distributed to all Class Members; (4) appointing Plaintiffs Brandy Skutley and Timothy Miller as the Class Representatives; (5) appointing CPT Group, Inc. as the Settlement Administrator; (6) appointing James R. Hawkins, Christina M. Lucio, and Mitchell J. Murray of James Hawkins APLC and Matthew J. Mattern and Mikael H. Stahle of Matern Law Group, PC as Class Counsel; and (7) setting this matter for a hearing on the issues of final approval of the proposed Settlement, approval of the Class Representative Enhancement Payments, approval of Class Counsel's attorneys' fees and costs, and approval of the Settlement Administrator's administration fees and costs.

II. SUMMARY OF THE LITIGATION

On March 13, 2023, Plaintiff Skutley notified the Labor & Workforce Development Agency ("LWDA") of the allegations in the putative wage-and-hour class action complaint, as detailed below, as well as claims for failure to keep accurate records, failure to pay sick leave at the proper rate, failure to pay COVID-19 supplemental sick leave, and unlawful background and credit checks. (Declaration of James R. Hawkins ("Hawkins Dec." ¶ 4).

On April 10, 2023, Plaintiff Skutley filed a putative wage-and-hour class action in the Superior Court for the State of California, County of Los Angeles, Case No. 23STCV01589, alleging that, during the Class Period, Defendant (1) failed to pay minimum wages; (2) failed to pay overtime owed; (3) failed to provide lawful meal periods; (4) failed to authorize and permit rest periods; (5) failed to timely pay wages during employment; (6) failed to timely pay wages owed upon separation from employment; (7) knowingly and intentionally failed to comply with itemized wage statement provisions; and (8) violations of the unfair competition law (the "Skutley Class Action"). (Id. ¶ 5).

On May 18, 2023, Plaintiffs filed a First Amended Complaint adding a cause of action for civil penalties under PAGA. (Id. ¶ 6).

On June 5, 2023, Plaintiff Miller filed his class action and PAGA complaint in Los Angeles County Superior Court, Case No. 23STCV12846, alleging Defendant: (1) failed to provide required meal periods; (2) failed to provide required rest periods; (3) failed to pay overtime wages; (4) failed to pay minimum wages; (5) failed to timely pay all wages due to discharged and quitting employees; (6) failed to furnish accurate itemized wage statements; (7) failed to maintain required records; (8) failed to indemnify employees for necessary expenditures incurred in discharge of duties; and (9) committed unfair and unlawful business practices. The complaint also sought penalties under the Labor Code Private Attorneys General Act (the "Miller Class Action"). (Hawkins Dec., ¶ 8)

On June 21, 2023, Defendants removed the Skutley Class Action to the District Court for the Eastern District of California. (Hawkins Dec. ¶ 7).

On July 27, 2023 Defendants removed the Miller Class Action to the District Court for the Central District of California. (Hawkins Dec. ¶ 10).

On October 10, 2024, Plaintiffs filed the First Amended Class and Representative Action Complaint, which: (1) added Walgreens Boot Alliance, Inc. as a Defendant; (2) added Timothy Miller as a named Plaintiff; and (3) added a cause of action for failure to reimburse for business expenses. (Id. ¶ 11).

III. INVESTIGATION AND MEDIATION

The Parties agreed to informal discovery and information exchange, and early mediation of the claims in this action. Plaintiffs were provided with a sampling of time records and wage statements for the Class Members during the Class Period. Plaintiffs were also provided with data including the number of employees during the Class Period and PAGA Period, the number of terminated employees during the Class Period and PAGA Period, the number of workweeks during the Class Period and the number of pay periods during the PAGA Period, as well as the average hourly rate and shift length, and the number of shifts over 3.5 hours, 5 hours, 6 hours, 8 hours, 10 hours, and 12 hours. (Hawkins Dec. ¶ 13).

Additionally, Plaintiffs were provided with various policy documents including Defendant's meal period waiver agreements, California Meal and Rest Period Policy, rest break and meal schedules by distribution center, timekeeping policies, pay policies including overtime and bonus pay calculation, as well as information regarding Defendants' engineered labor standards and warehouse labor management system. (Id.).

The Parties also conducted significant investigation of the facts and law, including, numerous conferences between counsel for the Parties, substantial document production, and review of data necessary to calculate damages. Counsel for the Parties investigated the law as applied to the facts regarding Plaintiffs' claims and potential defenses thereto, and the damages and penalties claimed. From the documentation provided, the Parties conducted their own evaluations of the potential recoveries based on the alleged claims. (Id. ¶16).

On January 31, 2024, the Parties attended mediation with Gig Kyriacou, a well-regarded mediator experienced in complex labor and employment matters, which resulted in the present settlement. (Id. ¶ 17). The full terms of the Parties' agreement were thereafter negotiated in the following months. (Id.).

Class Counsel has concluded that the terms of the Settlement are fair, reasonable, adequate, and in the best interests of the Class Members, considering the sharply contested issues involved, the expense and time necessary to litigate the Action through trial and any appeals, the risk of an adverse outcome, the uncertainty of complex litigation, and the substantial benefits to be received by Class Members. (Id. ¶¶ 19-20.)

Because of the substantial expense of defending against the Action, the length of time necessary to resolve the issues presented herein, the inconvenience involved, and the concomitant disruption to its business operations, Defendants have concluded that it is in its best interest to accept the terms of the Settlement. Defendants deny each of the allegations and claims asserted against it in the Action. However, Defendants nevertheless desire to settle the Action for the purpose of avoiding the burden, expense and uncertainty of continuing litigation and for the purpose of putting to rest the controversies of the Action. (Id., ¶¶ 20-21.)

IV. SUMMARY OF THE PROPOSED SETTLEMENT

A. Class Definition

The Class is defined as "all current and former hourly-paid, non-exempt employees who worked for Defendant Walgreen Co. at one of its California distribution centers during the Class Period." (Settlement, § I.C). The Class Period is defined as the period from June 3, 2020, through April 1, 2024. (Id., § I.E.).

Additionally, the PAGA Employees are defined as "all current and former hourly-paid, non-exempt employees who worked for Defendant Walgreen Co. at one of its California distribution centers during the PAGA Period." (Settlement, § I.S). The PAGA Period is defined as the period from April 10, 2022, through April 1, 2024. (Id., § I.U.).

B. Gross Settlement Amount and Net Settlement Amount

Defendants agree to pay a Gross Settlement Amount ("GSA") of $3,400,000 to settle the Action. (*Id.* § I.M). The Net Settlement Amount ("NSA") is the amount remaining after subtracting: (1) Class Representative Enhancement Payment of $10,000 to each Plaintiff ($20,000 total) (*Id.* § III.O.4); (2) Settlement Administration Costs of $22,000 (*Id.* § III.O.7); (3) and Class Counsel Fees of $1,190,000 and litigation costs up to $30,000. (*Id.* § III.O.5S).

The GSA was negotiated based on the understanding that there were approximately 196,250 workweeks worked by the Class Members between June 3, 2020 and January 31, 2024. If the actual number of workweeks worked by the Class Members between June 3, 2020 and January 31, 2024 is more than ten percent (10%) greater than this figure (i.e., there are more than 215,875 workweeks), then Defendants agree to increase the Gross Settlement Amount on a pro-rata basis for any workweek added above the 10% (e.g., if there was an eleven percent (11%) increase in the number of workweeks worked by Class Members, Defendants would agree to increase the Gross Settlement Amount by one percent (1%)). Defendants may, at their sole option, cap the number of workweeks in the release at 196,250 by shortening the Class Period so that it ends on the date when 196,250 workweeks have been worked. (*Id.* § III.B).

C. Individual Settlement Payments

Defendants will pay the full NSA to Participating Class Members. (*Id.* § III.O). Each Participating Class Member will receive a pro rata share of the NSA as an Individual Settlement Payment based on the total workweeks worked during the Class Period. (*Id.*). Individual Settlement Payments shall be allocated as 20% wages (to be reported on an IRS Form W2); and 80% interest and penalties (to be reported on an IRS Form 1099). (*Id*. § III.O). All employer-side taxes shall be paid by Defendants separately from the GSA. (*Id.* § III.H).

D. Notice Procedures

The proposed Notice of Class and Representative Action Settlement provides information regarding the nature of the Action, a summary of the Settlement's terms, the Class and Class Period definitions, the Class Member's credited workweeks during the Class Period, the estimated Individual Settlement Payment and formula for calculating the Individual Settlement Payments, instructions to submit Requests for Exclusion or Objections and the deadlines, and released claims. (Settlement, Ex. 1). Defendants will provide the Class Data to the Administrator within 10 business days after Preliminary Approval. (*Id.*). Before mailing, the Administrator will search the National Change of Address Database for updated contact information. (*Id.*).

After receiving the Class List, the Administrator will mail a Notice Packet to all Class Members via First-Class USPS. (*Id.* § III.L.3.). Any Notice Packets returned as non-deliverable on or before the Response Deadline will be sent via First-Class USPS to the forwarding address, and the Administrator will indicate the date of re-mailing on the Notice. (*Id.* § III.L.4). If no address is provided, the Administrator will attempt to determine the correct address using a skip-trace, or other search, and will perform a single re-mailing (*Id.*). The "Response Deadline" is forty-five (45) calendar days from the initial mailing. (*Id.* § I.GG). Class Members to whom Notice Packets are re-mailed shall have fifteen (15) additional calendar days beyond the Response Deadline to submit a Request for Exclusion, an Objection, or a dispute. (*Id.*§ III.L.4).

Any Class Member who disputes the accuracy of the number of Pay Periods set forth in the Notice must provide written notice by the Response Deadline and submit all evidence relating to the dispute to the Administrator. (*Id.* § III.L.5).

Class Members who wish to opt-out from the Settlement must mail a written request for exclusion to the Administrator by the Response Deadline. (*Id.* § III.L.7). If more than five percent (5%) of the Class Members opt out, Defendant may, at its election, rescind the Settlement. (*Id.* § III.R).

To object to the Settlement, a Class Member must not submit a Request for Exclusion and must instead mail a written objection containing all the required information to the Administrator before the Response Deadline. (*Id.* § III.M).

E. Processing of Payments

Within 14 calendar days of Defendants depositing the GSA as set forth above, the Administrator will issue payments as provided for in the Settlement. (*Id.* § III.O.2). Any amount attributable to settlement checks will remain uncashed for more than one hundred eighty (180) calendar days after issuance shall tendered to the *cy pres* recipient, Legal Aid at Work (*Id*. § III.O.3).

F. Releases of Claims

Effective upon entry of the Final Approval Order and Judgment, and contingent upon payment by Defendants, all Participating Class Member shall be deemed to have fully released the "Released Parties" of and from all the following claims during the Class Period:

> [A]ny and all claims, debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorney's fees, damages, action or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, that are alleged, or that reasonably could have been alleged based on the same facts, theories of liability, and claims alleged in the Action, including, but not limited to: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay wages during employment; (6) failure to timely pay wages owed upon separation from employment; (7) knowing and intentional failure to comply with itemized wage statement provisions; (8) violation of the Unfair Competition Law; and (9) failure to reimburse for business expenses. This release shall include, without limitation, claims that were raised, or that reasonably could have been raised based on the same facts, theories of liability, and claims alleged in the Action under the applicable Wage Orders and California Labor Code provisions, including Labor Code §§ 201-204, 210, 218.5, 218.6, 221-224, 226, 226.3, 226.7, 245-249, 510, 512, 516, 558, 1174, 1194, 1194.2, 1195, 1197, 1198 and/or 2802, based on alleged violations of these Labor Code provision.

(*Id.* § I.F).

Additionally, all Aggrieved Employee shall be deemed to have released the "Released Parties" of and from all the following claims during the PAGA Period:

> [A]ll claims for civil penalties under the PAGA that are alleged or that reasonably could have been alleged based on the same facts and theories of liability alleged in the Action, including, but not limited to claims for penalties pursuant to PAGA due to Defendants' alleged: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely

> pay wages during employment; (6) failure to timely pay wages owed upon separation from employment; (7) knowing and intentional failure to comply with itemized wage statement provisions;(8) failure to reimburse for business expenses; (9) failure to keep accurate records; (10) failure to pay sick pay; (11) failure to provide COVID-19 supplemental paid sick pay; and (12) unlawful background/consumer credit reports. This release shall include, without limitation, claims for penalties pursuant to PAGA that were raised, or that reasonably could have been raised based on the same facts and theories of liability alleged in the Action, under the applicable Wage Orders and California Labor Code provisions, including Labor Code §§ 201-204, 210, 218.5, 218.6, 221-224, 226, 226.3, 226.7, 245-249, 510, 512, 516, 558, 1024.5, 1174, 1194, 1194.2, 1195, 1197, 1198 and/or 2802, based on alleged violations of these Labor Code provisions.

(*Id.* § I.V).

In addition to the release above, Plaintiffs also executed the following release:

> [A]ny and all claims, actions, charges, complaints, grievances and causes of action, of whatever nature, whether known or unknown, which exist or may exist on Plaintiffs' behalf as of the date of this Agreement, including, but not limited to, any and all tort claims, contract claims, wage claims, wrongful termination claims, disability claims, benefit claims, public policy claims, retaliation claims, statutory claims, personal injury claims, emotional distress claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit claims and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance, including, but not limited to, claims for violation of the Fair Labor Standards Act (FLSA), the California Labor Code, the Wage Orders of California's Industrial Welfare Commission, other state wage and hour laws, the Americans with Disabilities Act, the Age Discrimination in Employment Act (ADEA), the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, the California Family Rights Act, the Family Medical Leave Act, California's Whistleblower Protection Act, California Business & Professions Code Section 17200 et seq. and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance.

(*Id.* § III.E).

Plaintiffs' release also includes the release of the rights and benefits of Section 1542 of the California Civil Code. (*Id.*).

G. Plaintiffs' Enhancement Payment and Class Counsel's Fees and Costs Requests

Plaintiffs Brandy L. Skutley and Timothy Miller will request Enhancement Payments in the amount of $10,000 each ($20,000 total). (*Id.* § III.O.4). Courts routinely approve service awards to "compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." (*Cellphone Termination Fee Cases,* 186 Cal.App.4th 1380, 1394 (2010) (approving an award of $10,000). Importantly, these awards "are fairly typical in class action cases." (*Id.*). The requested sum is reasonable and justified because Plaintiffs dedicated a significant amount of time and effort in litigating this action, and undertook significant risks to represent the Class.

In connection with the Settlement, Class Counsel will request an award of reasonable attorneys' fees and costs incurred in connection with the litigation. Class Counsel will request attorneys' fees up 35% of the GSA equal to $1,190,000 and litigation costs up to $30,000. (Settlement, § III.O.5).

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

A. Class Action Settlements Are Subject to Court Review and Approval Under the California Rules of Court.

The law favors settlements. *Bush v. Superior Court*, 10 Cal.App.4th 1374, 1382 (1992). This is particularly true in class actions. However, a class action may not be dismissed, compromised or settled without Court approval. See Cal. Civ. Code § 1781(f); Cal. R. Ct. 3.769 (a). The procedures for approval of a class action are (1) preliminary approval of the settlement by the Court; (2) notice to Class Members as directed by the Court; and (3) a final approval hearing to inquire into the fairness of the settlement. *See* Cal. R. Ct. 3.769(c), (e)-(f).

The decision to approve a proposed settlement lies within the Court's discretion. *See Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008); *Wershba v. Apple Computer, Inc.,* 91 Cal. App. 4th 224, 234-25 (2001). Nevertheless, in considering a settlement for approval, a court is not to turn the approval hearing "into a trial or rehearsal for trial on the merits…[or] to reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute." *Officers for Justice v. Civil Serv. Comm'n,* 688 F.2d 615, 625 (9th Cir. 1982). The Court's duty is to determine whether the settlement is fair, adequate, and reasonable. *See Dunk v. Ford Motor Co.,* 48 Cal. App. 4th 1794, 1801 (1996) (citing *Officers for Justice,* 688 F.2d. at 625). The Court should consider factors including:

> [T]he 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…and the reaction of the class members to the proposed settlement.

Dunk at 1801. Furthermore, the Court must give "[due] regard to what is otherwise a private consensual agreement between the parties." *Wershba*, 91 Cal. App. 4th at 245. The inquiry must be limited "to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties." *Id.* (citation and internal quotation marks omitted).

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." *Dunk*, 48 Cal. App. 4th at 1802 (citing Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* ("*Newberg*") § 11.41). As shown below, the settlement falls well within the range of approval because there are no grounds to doubt its fairness.

B. The Settlement is Fair, Reasonable, and Adequate

1. The Settlement is the Result of Arm's-length Negotiations.

The Settlement was the product of extensive arm's length bargaining by the Parties and a full day of mediation. (Hawkins Dec. ¶¶ 10-16). At all times, the negotiations were adversarial and non-collusive. The information exchanged between the Parties allowed them to assess the merits of the claims and defenses and reach a compromise. (Id. ¶ 10). Plaintiffs and Class Counsel have considered the uncertainty and risk of further litigation and the potential outcome. Plaintiffs and Class Counsel have conducted extensive settlement negotiations, including the above-mentioned mediation. Plaintiffs and Class Counsel believe the Settlement is fair, adequate, and reasonable, and it is in the best interests of the Class Members. (Id. ¶ 15).

2. The Extent of Discovery and the Early Stage of the Proceedings Support Settlement.

The Parties thoroughly investigated and evaluated the factual strengths and weaknesses of their respective claims and defenses before reaching the Settlement. (Id. ¶ 20). The Settlement was reached after extensive investigation and research, substantial exchanges of documents, and a thorough evaluation of class-wide data produced to Class Counsel. (Id. ¶ 10). As such, this litigation has reached the stage where "the Parties certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support the settlement. *In re Warner Commc'ns Sec. Litig.,* 618 F. Supp. 735, 745 (S.D.N.Y. 1985).

3. The Settlement is a Reasonable Compromise of Claims

The Settlement compares favorably to other class settlements in terms of potential recovery. (See *In re MyFord Touch Consumer Litig.,* 2019 WL 1411510, at *10 (citing cases where settlement ranges from 5% to 10% of potential recovery). While Plaintiffs believe in the strength of their allegations and that their claims are appropriate for class certification, certification was far from certain given Defendants' defenses. (Id. ¶ 20). The risk that Defendants could defeat certification, defeat the representative claims, and prevail on their defenses, warranted a compromise. (*Id*.). After arms-length negotiations between experienced and informed counsel and with the assistance of a mediator, the Parties agreed on a GSA of $3,400,000. (Id. ¶¶ 10-13). As the *Glass* court held:

> In light of the above-referenced uncertainty in the law, the risk, expense, complexity, and likely duration of further litigation likewise favors the settlement. Regardless of how this Court might have ruled on the merits of the legal issues, the losing party likely would have appealed, and the parties would have faced the expense and uncertainty of litigation an appeal. "The expense and possible duration of the litigation should be considered in evaluating the reasonableness of [a] settlement." (Citated omitted).

(*Glass v. UBS Fin. Servs.,* (N.D. Cal. Jan. 26, 2007) 2007 WL 221862, at *9). "Generally, unless the settlement is clearly inadequate, its acceptable and approval are preferable to lengthy and expensive litigation with uncertain results," (*Ching v. Siemens Indus, Inc.,* (N.D. Cal. June 27, 2014) 2014 WL 2926210, at *4 (quotation omitted).) This factor weighs in favor of approval.

4. The Risks Inherent in Continued Litigation Are Great.

To assess a class action settlement, the Court should consider "[t]he strength of Plaintiffs' case, the risk, expense, complexity, and likely duration of further litigation, [and] the risk of maintaining class action status." *See Dunk* at 1801.

Defendants asserted strong defenses to Plaintiffs' claims that create a possibility that the claims might not be certified or might fail on the merits. Counsel recognized the expense and length of proceedings necessary to continue the litigation through trial and any appeals. Counsel also considered the uncertainty and risk of further litigation, and the difficulties and delays inherent in such litigation (Id. ¶ 15). While Plaintiffs believe in the strength of their allegations and that their claims are certifiable, Plaintiffs and Class Counsel have balanced their evaluation of the validity and merit of the asserted claims against potential problems of proof, the legal standards governing litigation of class claims, uncertainty of obtaining and maintaining class certification, the potential for appeals, and the expense and burden of prolonged litigation. (Id. ¶ 20). Based on Class Counsel's evaluation, the Settlement is fair, adequate, and reasonable and in the best interest of the Class, including Plaintiffs. (Id. ¶ 21).

5. The Fairness of the Distribution to Class Members Also Supports Approval.

The Settlement treats all Class Members equally, providing no preferential treatment for the named Plaintiffs or any segment of the Class. The Parties have allocated Settlement Payments to the Class Members according to the number of Workweeks that each Class Member worked during the Class Period versus the total workweeks worked by all Class Members during the Class Period. (Settlement, § III.O).

6. Class Counsel Are Experienced in Similar Litigation.

The view of the attorneys actively conducting the litigation "is entitled to significant weight" in deciding whether to approve the settlement. *Fisher Bros. v. Cambridge-Lee Indus, Inc.,* 630 F. Supp. 482, 488 (E.D. Pa. 1985); *Ellis v. Naval Air Rework Facility,* 87 F.R.D. 15, 18 (N.D. Cal. 1980), aff'd, 661 F. 2d. 939 (9th Cir. 1981); *Boyd v. Bechtel Corp.,* 485 F. Supp. 610, 616-17 (N.D. Cal. 1979). Class Counsel are experienced in wage-and-hour class actions. (Hawkins Dec. ¶ 63; Matern Dec. ¶ 4, et. seq).

Counsel negotiated this Settlement at arm's length, and believe this is a fair and reasonable settlement in light of the complexities of the case, the state of the law, and uncertainties of class certification and litigation. Given the risk inherent in litigation and the defenses asserted, this settlement is fair, adequate, and reasonable and in the best interests of the Class Members, and should be preliminarily approved. (Hawkins Dec. ¶¶ 50-53, 71).

VI. CONDITIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE

California Rule of Court 3.769(d) provides that the Court may make an order approving certification of a provisional class at preliminary approval. Trial courts should use a "lesser standard of scrutiny" for determining the propriety of certifying a settlement class, as opposed to a litigation class. *Dunk*, 48 Cal. App. 4th at 1807 n.19. Because no trial is anticipated in a settlement, case management issues inherent in determining if the class should be certified need not be confronted, and the trial court's fairness review of the settlement protects the interests of the class members. (*Id.*). Here, for the purposes of this settlement, the Parties ask this Court to provisionally certify the Class.

A. Numerosity and Ascertainability

Numerosity is met if a proposed class is so large that joinder of all members would be impracticable. *See* Cal. Code Civ. Proc. § 382. A proposed class is ascertainable if the class members can be objectively identified and given notice of the litigation without unreasonable time or expense. *See Medrazo v. Honda of N. Hollywood*, 166 Cal. App. 4th 89, 101 (2008). The class size of approximately 3,101 Class Members is sufficiently numerous to warrant conditional class certification. (Hawkins Dec. ¶ 58). The proposed Class is ascertainable as all of the Class Members worked for Defendants and can be identified through employee files and payroll records. (Id. ¶ 60).

B. Well-Defined Community of Interest

1. Commonality.

To justify certification, the class proponent must show that questions of law or fact common to the class predominate over the questions affecting the individual members. *See Arenas v. El Torito Rests, Inc.,* 183 Cal. App. 4th 723, 732 (2010) (citing *Washington Mut. Bank v. Superior Court,* 24 Cal. 4th 906, 913 (2001)). The claims of Plaintiffs and the Class Members all flow from the same facts and legal claims, *i.e.*, that Defendants' alleged policies, practices, and procedures resulted in Defendants' failure to pay minimum wages and overtime wages, failure to provide meal periods, failure to provide rest periods, failure to timely pay wages during employment, failure to timely pay all wages due at the time of separation from employment, failure to provide accurate wage statements, failure to reimburse necessary expenses, and engaging in unfair competition. Under these circumstances, the commonality requirement is satisfied. (Id. ¶ 60).

2. Typicality

Typicality "focuses on whether there exists a relationship between the plaintiffs' claims and the claims alleged on behalf of the class." *Newberg,* §3.13. The typicality requirement is met, as the proposed Class Representatives and Class Members all claim Defendants committed similar violations based upon similar conduct, policies and practice and they seek the same remedies. Plaintiffs contend that their claims are typical of the Class because they arise from the same factual basis and legal theories as those of the Class Members. (Hawkins Dec. ¶ 57).

3. Adequacy of Representation

The proposed class representative must establish that he or she will adequately represent the proposed class. *See Barboza v. West Coast Digital GSM, Inc.,* 179 Cal. App. 4th 540, 546 (2009). Class Counsel is not aware of any interests of the Class Representative which are adverse to the interests of the Class. (Hawkins Dec. ¶ 63; Skutley Dec. ¶ 22; Miller Decl. ¶ 17). Adequacy of counsel may be established by the fact that counsel are experienced practitioners. *See Local Joint Exec. Bd. Of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.,* 244 F.3d 1152, 1162 (9th Cir. 2001). Here, Class Counsel, James Hawkins, APLC and Matern Law Group, PC, are experienced in wage-and-hour class action litigation (Hawkins Dec. ¶¶ 68-78; Matern Dec. ¶ 4, et seq.).

VII. THE COURT SHOULD APPOINT CPT GROUP, INC. AS CLAIMS ADMINISTRATOR

The parties propose that the Court appoint CPT Group, Inc. ("CPT") to serve as the Claims Administrator. CPT has estimated its fees and costs for this settlement at $22,000. (Settlement § III.O.7; Declaration of CPT Group, Inc.).

A. The Notice to be Provided to Class Members Is Sufficient.

California statutory and case law vests the Court with broad discretion in fashioning an appropriate notice program. What constitutes adequate notice will depend on the circumstances of each case, and such efforts and their costs must be proportional to the magnitude of the claims. The notice plans here satisfies all due process requirements.

B. The Content of The Notice Provided to Class Members Is Sufficient.

The Notice of the Class and Representative Action Settlement identifies the Parties, describes the action and classes, summarizes the proceedings and the terms and conditions of the Settlement in an informative and coherent manner, and is accurate, objective, and understandable to Class Members (Settlement, Ex. 1). It clearly states the Settlement is not an admission of liability by Defendants and that the Court has not ruled on the merits and that the final settlement approval decision has yet to be made (Id.). The proposed notice meets the applicable legal standards since it apprises the Class Members "of the terms of the proposed compromise and of the options open to dissenting class members." (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 251 [citation omitted]; see Cal. R. Ct., Rule 3.766, subd. (d).)

C. The Manner of Supplying Notice to Class Members Is Sufficient.

There is no statutory or due process requirement that all class members actually receive notice of the settlement. Rather, "[t]he notice given should have a reasonable chance of reaching a substantial percentage of the class members…." *Cartt v. Super. Ct.* (1975) 50 Cal.App.3d 960, 973. This is satisfied by mailing the Notice of Class Action Settlement by First-Class USPS to all Class Members on the Class list (Settlement § III.L.3).

VIII. CONCLUSION

Plaintiffs respectfully request this Court: (1) grant preliminary approval of the Settlement; (2) provisionally certify the proposed Class; (3) approve the proposed Notice and distribution plan; (4) appoint Plaintiffs as Class Representatives, James R. Hawkins, Christina M. Lucio, and Mitchell J. Murray of James Hawkins APLC and Matthew J. Matern and Mikael H. Stahle of Matern Law Group, PC as Class Counsel, and CPT Group, Inc. as Settlement Administrator; and (5) schedule a final approval hearing approximately 120 days from the date of preliminary approval.

Dated: February 13, 2025

JAMES HAWKINS APLC

James R. Hawkins
Christina M. Lucio
Mitchell J. Murray

Attorneys for Plaintiff Brandy Skutley,
on behalf of herself and all others similarly situated