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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

GAIL WILKERSON, on behalf of herself
and all other similarly-situated employees,

Plaintiff,

v.

INTUIT, INC., a Delaware Corporation; and
DOES 1 through 100, Inclusive,

Defendants.

Case No. 37-2020-00030371-CU-OE-CTL
ASSIGNED FOR ALL PURPOSES TO:
The Honorable Gregory W. Pollack
Department C-71

CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT**

Date: September 30, 2022

Time: 9:30 a.m.

Dept: C-71

Judge: Honorable Gregory W. Pollack

Reservation: 2501884

[IMAGED FILE]

Complaint filed: August 28, 2020

Trial date: Not set

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I. INTRODUCTION

Plaintiff Gail Wilkerson (“Plaintiff”) seeks preliminary approval of a \$150,000 non-reversionary wage and hour class and Private Attorney Generals Act (“PAGA”) settlement with Defendant Intuit Inc. (“Defendant” or “Intuit”) for an estimated 100 non-exempt “Tax Support” employees (Job Code “CTS11”) employed by Intuit in the State of California at any time from August 28, 2016 to August 7, 2020. Declaration of J. Jason Hill, (“Hill Decl.”), ¶10, Exhibit 1 – Joint Stipulation of Class and PAGA Representative Action Settlement and Release (“Settlement Agreement” or “SA”), ¶¶ 1.7, 1.9.

II. THE PARTIES

A. Plaintiff

Plaintiff Gail Wilkerson was employed by Intuit as a seasonal, remote Tax Support employee (job code CTS11) from January 2020 through March 2020. Hill Decl. ¶11; Declaration of Gail Wilkerson ¶3.

B. Defendant

Intuit is a leading financial technology company that helps consumers and small businesses overcome important financial challenges by offering a wide-range of resources and products, including TurboTax, QuickBooks, and Mint. Hill Decl. ¶12.

C. The Class, Aggrieved Employees, Prior *Shumway* Settlement, and Key Statistics

The Class is defined as “all non-exempt employees employed by Intuit Inc. in the State of California in the role of “Tax Support” (job code CTS11) from August 28, 2016, to August 7, 2020.” Hill Decl. ¶13; SA ¶1.7.

Based on its business records, Intuit has confirmed that the company employed 100 individuals in this role during the period from approximately December 14, 2017, (when Intuit created the Tax Support role at issue in this case) through August 7, 2020, (when Intuit eliminated the role entirely).” Hill Decl. ¶14; SA ¶1.7. The parameters of the Class Members and Class Period at issue in the Settlement Agreement not only are informed by the period from December 14, 2017, through August 7, 2020 when the Tax Support role (job code CTS11)

existed, but also a prior class and PAGA settlement – *Wade Shumway v. Intuit*, Santa Clara Superior Court Case No. 18-cv-330368 (the “*Shumway* action”) – which included a release that covered many of Plaintiff’s claims in this action.

On February 14, 2020, the Santa Clara Superior Court granted final approval of a previous statewide class and PAGA settlement in the *Shumway* action. The *Shumway* action primarily involved a technical wage calculation claim stemming from Intuit’s peer to peer recognition program where employees could reward coworkers for exemplifying the company’s values, and redeem them for a variety of gift cards from a third-party vendor. The *Shumway* plaintiffs also alleged various related wage and hour claims, including for direct and indirect wage statement violations and waiting time penalties. The case ultimately settled shortly after Intuit filed a motion for summary judgment while the motion was still pending. The release in the approved *Shumway* settlement included a Civil Code section 1542 release as to all claims that were alleged or could have been alleged, including claims for direct or indirect wage statement violations, waiting time penalties, and related PAGA penalties. The *Shumway* release covered all non-exempt California employees of Intuit from before the beginning of the limitations period in this case through February 14, 2020. Hill Decl. ¶15.

Factoring in the limited time period that Intuit employed individuals in the Tax Support role (job code CTS11), the key statistics for the Class Members provided by Intuit are below:

<u>Category of Information</u>	<u>12/04/2017 – 8/07/20¹</u> <u>(Unless Otherwise Specified)</u>	<u>2/14/20 – 8/07/20 (i.e. post-</u> <u>Shumway Release date)</u>
Number of Tax Support CTS11 (TS) Employees	100	43
No. of Separations of TS Employees	132 ²	43
Average Hourly Base Rate	\$21.21	\$21.34

¹ This is the entire period from 12/04/2017 (when the CTS11 position was first created) through 8/7/20 (when the CTS11 role was eliminated).

² The number of separations is higher than the total number of Tax Support employees because the Tax Support role that Wilkerson and other employees filled was a *seasonal* position related to tax season, and thus, many of the employees separated and were rehired.

Category of Information	<u>12/04/2017 – 8/07/20¹</u> <i>(Unless Otherwise Specified)</i>	<u>2/14/20 – 8/07/20 (i.e. post-Shumway Release date)</u>
Workweeks Worked by TS Employees	2,460	447
Pay Periods Worked by TS Employees	1,276	Approx. 224
Pay Periods Worked by TS Employees	479 <i>(From 08/28/2019 - 8/7/2020, i.e., the 1-year limitations period applying to wage statement and PAGA Claims)</i>	231

D. Proposed Second Amended Complaint

As part of the proposed Settlement, following preliminary approval, the Parties agree that Plaintiff will file a Second Amended Complaint that more directly specifies claims related to expense reimbursement for use of home office by the tax support employee settlement Class Members during the Class Period, which were raised and investigated prior to and during the Parties' mediation. Hill Decl. ¶16; SA¶¶1.32, 11.16 - Exhibit D. More specifically, the proposed Second Amended Complaint will amend Plaintiff's complaint to: (1) assert a separate PAGA claim based on the same underlying allegations and violations set forth in Plaintiff's Complaint, FAC, and 8/27/20 letter to the Labor & Workforce Development Agency ("LWDA"); and (2) asserts Plaintiff's allegations (raised prior to and during mediation) in support of her expense reimbursement claim that she and other Class Members are entitled to reimbursement for use of their residence and a reasonable portion of all related expenses (e.g., utilities, mortgage/rent, etc.). If preliminary approval is granted, Plaintiff will file the proposed Second Amended Complaint within five court days of the order. Hill Decl. ¶17.

III. CLASS AND PAGA CLAIMS - PROCEDURAL HISTORY & DISCOVERY

Plaintiff submitted a notice letter to the California LWDA on August 27, 2020, (in an effort to exhaust her required administrative remedies to bring a PAGA claim) before filing this lawsuit. Hill Decl. ¶18, Exh. 2 - PAGA Letter.

On August 28, 2020, plaintiff Gail Wilkerson filed a putative class action complaint alleging Defendant: (1) failed to pay all minimum, regular, and overtime wages; (2) failed to

1 provide meal periods or premiums; (3) failed to provide rest periods or premiums; (4) failed to
2 provide one day's rest in seven; (5) made unlawful deductions; (6) failed to reimburse business
3 expenses; (7) failed to provide accurate wage statements; and (8) failed to timely pay all final
4 wages; which are (8) violations of California's Unfair Competition Laws. Hill Decl. ¶19.

5 On November 2, 2020, Plaintiff filed a First Amended Complaint ("FAC") adding
6 claims and causes of actions under PAGA. Defendant filed an Answer on or about December 1,
7 2020. Hill Decl. ¶20.

8 After answering Plaintiff's FAC on December 1, 2020, Intuit's counsel reached out to
9 Plaintiff's counsel to explain why the claims at issue should be limited to non-exempt
10 employees employed by Intuit in California in a remote "Tax Support" role (job code CTS11)
11 (i.e., the same position Plaintiff held) during the Class Period, rather than all non-exempt
12 California employees – the putative class alleged in Plaintiff's FAC. These discussions included
13 Intuit confirming that only the Tax Support employees used their personal computers for work
14 and other Intuit employees were issued a company-purchased computer. Intuit's counsel also
15 notified Plaintiff's counsel of the *Shumway* settlement and how it released some of Plaintiff's
16 claims for a significant portion of the relevant time period at issue. Intuit's counsel further
17 confirmed that it had eliminated the "Tax Support" role on August 7, 2020 (prior to Wilkerson
18 filing her lawsuit). Based on these discussions, the Parties eventually agreed to conduct early,
19 informal discovery and schedule a mediation with experienced mediator Michael Young of
20 Judicate West limited to trying to resolve the claims of remote Tax Support employees who
21 worked in California in the same position as Plaintiff. Hill Decl. ¶21; SA ¶ 2.3.

22 Plaintiff's counsel provided Intuit with a detailed list of requests for data, documents and
23 policies related to each of Plaintiff's claims. On April 1, 2021, Intuit provided Plaintiff's
24 counsel with a production that included responsive documents and policies related to Plaintiff's
25 claims (e.g., Intuit's meal/rest period, timekeeping, and expense reimbursement policies, Intuit's
26 meal period acknowledgement form, etc.) as well as key case statistics, including without
27 limitation: the number of Tax Support employees employed by Intuit in California during the
28 relevant time period, the number of Tax Support employee separations, the average base hourly

1 pay rate for these employees, and the number of workweeks and pay periods worked by these
2 employees during the relevant time period. Intuit also provided expense reimbursement
3 information confirming that from February 2020 through August 2020, (when the CTS11 role
4 was eliminated prior to Wilkerson's lawsuit), the average monthly reimbursement payment(s) to
5 Tax Support employees was approximately \$49.50 (primarily for internet reimbursement). Prior
6 to the May 13, 2021, mediation, Intuit also provided Wilkerson's counsel with a copy of its
7 mediation brief, which included data and information related to the analysis of a random sample
8 of 10 Tax Support employees' pay and time records (e.g., how many times the sample
9 employees worked 7 consecutive days, their reimbursement information, etc.). The brief also
10 provided data regarding how often all Tax Support employees received pay for work conducted
11 in a different pay period (generally due to late time entries by the employees), which related to
12 Wilkerson's wage statement, unpaid wages and overtime claims. Hill Decl. ¶22; SA ¶ 2.3.

13 **IV. PLAINTIFF'S CLAIMS AND INTUIT'S DEFENSES**

14 During the time that Intuit employed Tax Support employees (job code CTS11) (*i.e.*, the
15 "Class Members"), they worked as remote employees performing various customer and
16 consumer technical support for Turbo-Tax software created by Intuit. Class Members used
17 home offices and were provided a stipend of approximately \$49.50 for home high-speed
18 internet, which Plaintiff contends was necessary for their work and insufficient to adequately
19 compensate Class Members. Plaintiff also contends that Tax Support employees are entitled to
20 reimbursement for use of their residence and a reasonable portion of all related expenses (e.g.,
21 utilities, mortgage/rent, etc.). Hill Decl. ¶23.

22 Plaintiff further contends that because Class Members worked off-site, many were
23 unaware or could not break away from Intuit customers for compliant meal and rest periods.
24 Plaintiff alleges that, commonly, Class Members worked either earlier or later than reported.
25 However, if reported, Plaintiff contends Intuit did not pay overtime to the non-exempt remote
26 employees in the CTS11 position and alleges that of the 100 or so total settlement Class
27 Members, including Plaintiff, that meal or rest period premiums were never paid and there was
28 no specific process or procedure to claim a meal or rest period premium separate and apart from

1 Intuit’s general meal and rest period policies applying to all non-exempt employees. Obviously,
2 this is complicated by the remote “work from home” setting such that Intuit could not readily
3 monitor break times. Nonetheless, in California, at least for meal period for non-exempt
4 employees, it is the employer’s obligations under IWC Wage Order 4-2001 (technical workers)
5 under Section 7 to record all hours worked and to justify any unworked time with
6 documentation. Hill Decl. ¶24. Plaintiff also claims that all time was not paid where she and
7 other Class Members were “subject to employer control.” IWC Wage Order 4-2001, section
8 1(k) “hours worked” includes “all times subject to employer control, whether exercised or not
9 and the employee was suffered or permitted to work.” While 10-minute paid rest periods are not
10 required to be recorded, 30-minute unpaid meal periods are under section 7 of the Wage Order.
11 Hill Decl. ¶25.

12 These alleged violations create certain derivative claims for violations of proper and
13 accurate itemized wage statements under Labor Code section 226(a)-(e) and for untimely pay,
14 particularly for separated or terminated employees under Labor Code section 203. Both of these
15 claims, however, have a knowing and willfulness element, such that as remote employees, Intuit
16 may have a defense. Although Plaintiff believes she may be able to overcome this defense by
17 relying on interpretations of login, payroll and time keeping records, there is litigation risk
18 raised by this defense. Hill Decl. ¶26.

19 In addition, although Plaintiff believes there is merit to Plaintiff’s meal and rest period
20 policies, Plaintiff recognizes that Intuit contends that, at all relevant times, it had compliant
21 meal and rest break and time-keeping policies that required all non-exempt employees,
22 including remote Tax Support employees, to take compliant meal and rest breaks and accurately
23 record all hours worked. Intuit maintained a time-keeping process in which Class Members
24 either confirmed they were provided all required meal and rest breaks or reported instances
25 when they were not and paid a penalty. Even though Plaintiff believes these defenses can be
26 refuted, Plaintiff recognizes that these defenses present litigation risks that must be considered
27 in determining the fairness of the Parties’ proposed Settlement Agreement. Hill Decl. ¶27.

28 ///

1 Finally, Plaintiff recognizes that Intuit contends that its payments for internet
2 reimbursement were sufficient and that Intuit contends its expense reimbursement policies
3 allowed Plaintiff and other Tax Support employees to receive reimbursement for all reasonably
4 necessary work expenses. Plaintiff further acknowledges that Intuit has argued that it is not
5 liable for any alleged work expenses that it was not made aware of and/or which were not
6 reasonably necessary. As with Intuit's other defenses, Plaintiff believes these defenses could be
7 refuted, but acknowledges that these defenses present litigation risk that must be considered in
8 evaluating the fairness of this settlement.

9 **V. INVESTIGATION AND MEDIATION**

10 The Parties agreed to mediate with Michael D. Young, Esq., with Judicate West, who is
11 an experienced and respected wage and hour class action mediator. Hill Decl. ¶28. As noted
12 above, to prepare, the Parties exchanged documents and data, including relevant policies and
13 procedures for the class period; personnel file, pay data and time-keeping records for Plaintiff;
14 pay information on wages, workweeks, pay period totals and limitations (i.e., the *Shumway*
15 settlement) for the limited class period and the limited number of remote, CA-based, CTS11
16 Tax Support employees at issue in this litigation. Hill Decl. ¶¶22, 29. Plaintiff retained a
17 consultant to analyze the time and pay data and create a class-wide damage model. *Id.*

18 Both Plaintiff's counsel and defense counsel have extensive experience litigating and
19 evaluating class and PAGA actions, and particularly wage and hour cases. Defendant provided a
20 complete and thorough response to Plaintiff's data requests to allow Plaintiff and the mediator
21 to evaluate and value the claims at issue. Due to the limited number of employees involved, the
22 fact that the Tax Support position in California (CTS11 Tax Support) was eliminated in August
23 of 2020 and the fact that many claims were released in the earlier *Shumway* class settlement,
24 counsel agreed that despite serving formal discovery and negotiating a comprehensive
25 protective order, the best way to proceed was to informally exchange detailed data and
26 information and mediate the case. Hill Decl. ¶30.

27 With significant investigation, research, informal discovery, and analysis of the data and
28 information by Plaintiff and her damages consultant, the Parties mediated with Mr. Young on

May 13, 2021. After a full day of arms'-length negotiations facilitated by Mr. Young, the Parties eventually reached an agreement with a memorandum of understanding, which the parties eventually finalized in the proposed Settlement Agreement. Hill Decl. ¶31, Exh. 1 – Settlement Agreement.

VI. SUMMARY OF PROPOSED SETTLEMENT

A. Settlement Terms

The Parties agreed, subject to Court approval, Defendants will pay \$150,000, the Total Settlement Amount (“TSA”), which includes: (a) attorneys’ fees up to \$50,000 (one-third of the TSA) to compensate Class Counsel for work performed and work remaining to secure final Court approval; (b) litigation costs up to \$8,000; (c) Class Representative Service Award of up to \$10,000 to Ms. Wilkerson, in recognition of bringing the case, work performed, risks undertaken for costs if the case had not successfully concluded, and substantial benefits conferred on absent Class Members, (d) PAGA Payment of \$10,000 [\$7,500 to the LWDA (75%) /\$2,500 to Aggrieved Employees (25%)]; and (e) Simpluris, Inc.’s (“Settlement Administrator”) costs in an amount not to exceed \$6,000. Hill Decl. ¶32; SA ¶¶1.4, 1.5, 1.21, 1.331, 1.35, 1.40. In addition to the TSA, Defendant will pay the employer-sided taxes due on the wage component of the Individual Settlement Payments. Hill Decl. ¶33; SA ¶¶1.40, 4.1. If the Court approves each of the requested amounts above, the Net Distribution Fund (“NDF”) made available to the approximately 100 Class Members is estimated to be \$66,000 (*i.e.*, \$150,000 – [\$50,000 fees + \$8,000 costs + \$10,000 service award + \$10,000 PAGA award + \$6,000 administration costs]). Hill Decl. ¶34.

“Participating Class Members” are those Class Members who do not opt out of the class action settlement, and thus, are entitled to a prorated portion of the estimated \$66,000 NDF if this Settlement receives final approval and the Settlement becomes effective³. The Settlement is ‘all-in’ and non-revisionary, does *not* require Class Members to submit a claim form to participate, and allows for substantial payments on a prorated basis depending on the number of

³ The Settlement will become “Effective” and binding when and if the Court grants final approval and the Settlement can no longer be challenged or appealed as further detailed in Paragraph 1.14 of the Settlement Agreement.

1 pay periods each Participating Class Member worked during the Class Period in relation to total
2 number of pay periods all Participating Class Members worked during the Class Period. Hill
3 Decl. ¶35; SA ¶4.2.5.1.a.

4 Class Members employed during the PAGA Period (August 27, 2019, to August 7,
5 2020), will also receive a share of the \$2,500 PAGA Penalties based on the number of pay
6 periods each PAGA Employee⁴ worked during the PAGA Period in relation to total number of
7 pay periods all PAGA Employees worked during the PAGA Period, whether they opt-out of the
8 Settlement or not. Hill Decl. ¶36; SA ¶4.2.5.1.b.

9 The Settlement is non-reversionary, and thus, Intuit will pay the full Total Settlement
10 Amount (\$150,000) in addition to any employer-side taxes due on the wage component of the
11 Individual Settlement Payments to Participating Class Members once the Settlement becomes
12 effective and binding. After 180 days of issuance, all proceeds from uncashed checks will be
13 forwarded to Race Forward, a non-profit organization whose mission includes supporting youth
14 education to help ensure racial equality as well as developing research and recommendations for
15 racially equitable communications in workforce development. Hill Decl. ¶37; SA ¶4.2.5; *see*
16 *also* <https://www.raceforward.org/>.

17 As detailed above, the estimated total number of class member pay periods is 1,276 and
18 the total number of PAGA pay periods is 479. Class Members who do not opt-out will receive
19 an estimated \$51.72 (*i.e.*, \$66,000/1,276) for each pay period worked during the Class Period.
20 PAGA Employees will received an estimated \$5.22 (*i.e.*, \$2,500 / 479) for each pay period
21 worked during the PAGA Period. Given that there are an estimated 100 Class Members, if no
22 Class Members opt out, the average payment to each Class Member (not including any PAGA
23 payment) would be \$660 (*i.e.*, \$66,000/100). Hill Decl. ¶38.

24 The payments are prorated based on pay periods worked during the relevant time
25 periods. Thus, for example, a Participating Class Member who worked 12 pay periods during
26 the Class Period, with 10 of those pay periods also being during the PAGA Period would then

27 _____
28 ⁴ “PAGA Employees” means Class Members employed during the PAGA Period, which is the
period from August 27, 2019 (*i.e.*, the start of the PAGA limitations period), to August 7, 2020,
when the “Tax Support” position (CTS11) at issue was eliminated by Intuit.

1 receive \$672.84 (minus applicable withholdings for the wage portion of the payment) (*i.e.*, [the
2 Class Pay Period Value of \$51.72 x 12 = \$620.64] + [the PAGA Pay Period Value of \$5.22 x 10
3 = \$52.20].) Hill Decl. ¶39.

4 Individual Settlement Payments will be characterized as 20% for payment of wages and
5 reported using IRS Form W-2, and 80% for payment of penalties, interest and unpaid business
6 expense reimbursement and will be reported using IRS Form 1099. Hill Decl. ¶40; SA ¶4.2.5.2

7 **B. Settlement Administration and Class Notice**

8 Phoenix Settlement Administrators is an experienced and well-respected settlement
9 administrator based in Orange, California, that has successfully administered numerous class
10 and PAGA settlements in California for years. See <http://www.phoenixclassaction.com/>.
11 Phoenix Settlement Administrators will update Class Member addresses with the National
12 Change of Address database and mail a Notice of Class Action Settlement to each Member
13 identified by Defendant’s Class Information as well as carry out the other duties specified in the
14 Settlement Agreement. Hill Decl. ¶41; SA ¶¶1.6, 3.4, 7.2.

15 The proposed Class Notice advises Members of their right, manner and timing to: (1)
16 participate in the Settlement without submitting a claim; (2) dispute the basis of the Individual
17 Settlement Payment; (3) object or opt-out. Class Members are informed of estimated payments,
18 the settlement payment calculation formula, the release to be given, the date of the Final
19 Approval hearing, and how to obtain further information about the Settlement. Hill Decl. ¶42;
20 SA, Exh. A.

21 **C. Released Claims**

22 In exchange for settlement payments, Class Members will release “all claims for wages,
23 expenses, benefits, debts, liabilities, demands, obligations, guarantees, statutory and civil
24 penalties, damages, interest, attorneys’ fees, costs, and/or other amounts or relief recoverable
25 under state, local or federal law that Plaintiff asserted or could have asserted in the Action – on
26 behalf of themselves, the State of California, the putative Class Members and the PAGA
27 Employees – based on the facts alleged in Plaintiff’s original, Amended, or Second Amended
28 Complaints, including but not limited to: (1) Failure to Pay Minimum, Regular, and Overtime

Wages (Cal. Labor Code §§ 510, 1194; IWC Wage Order 4, §§ 3 & 4) (e.g., for alleged off-the-clock work, etc.); (2) Failure to Provide Meal Periods or Compensation in Lieu Thereof (Lab. Code §§ 226.7 and 512; IWC Wage Order 4, § 11); (3) Failure to Provide Paid Rest Periods or Compensation in Lieu Thereof (Lab. Code § 226.7; IWC Wage Order 4, § 12); (4) Failure to Provide One Day’s Rest in Seven (Lab. Code §§ 550, 551, 553, 1198; IWC Wage Order 4, § 3); (5) Unlawful Deduction of Wages (Lab. Code §§ 221, 223, 224); (6) Failure to Reimburse Necessary Business Expenses (Lab. Code § 2802; IWC Wage Order 4, § 7) (e.g., for alleged unpaid expenses for use of personal computer, phone, mortgage/rent, utilities, office supplies, etc.); (7) Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226); (8) Failure to Timely Pay Wages Due Upon Separation of Employment (Lab. Code §§ 201-203); (9) Unfair Business Practices (Bus. & Prof. Code §§ 17200-17208); (10) PAGA Civil Penalties for Failure to Pay Minimum, Regular, and Overtime Wages (Lab. Code §§ 2698, et seq.); (11) PAGA Civil Penalties for Failure to Provide At Least One Day’s Rest in Seven (Lab. Code §§ 2698, et seq.); (12) PAGA Civil Penalties for Failure to Provide Meal Periods (Lab. Code §§ 2698, et seq.); (13) PAGA Civil Penalties for Failure to Provide Rest Periods (Lab. Code §§ 2698, et seq.); (14) PAGA Civil Penalties for Unlawful Deduction of Wages (Lab. Code §§ 2698, et seq.); (15) PAGA Civil Penalties for Failure to Reimburse Business-Related Expenses (Lab. Code §§ 2698, et seq.); (16) PAGA Civil Penalties for Failure to Provide Accurate Itemized Wage Statements (Lab. Code §§ 2698, et seq.); (17) PAGA Civil Penalties for Failure to Maintain Accurate Records (Lab. Code §§ 2698, et seq.); (18) PAGA Civil Penalties for Failure to Pay Wages Due During and Upon Termination of Employment (Lab. Code §§ 2698, et seq.).” Hill Decl. ¶43; SA ¶1.2.

VII. ARGUMENT

A. Class Action Settlements Are Subject to Court Review and Approval

“Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.” CRC, Rule 3.769 (g). Where a settlement is reached on terms agreeable to all Parties, a court should disapprove of the settlement “only with considerable circumspection.” *Jamison v. Butcher & Sherrerd*, 68 F.R.D. 479, 481 (E.D. Pa. 1975).

At preliminary approval, a court “limits its inquiry 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.” *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006).

B. The Settlement is Fair, Reasonable, and Adequate

In deciding whether to approve a proposed class action settlement under Code of Civil Procedure § 382, the Court must find a proposed settlement is “fair, adequate and reasonable.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996). The trial court considers all relevant factors, such as: “the strength of Plaintiff’s 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.” *Id.* The Court’s primary function is to determine the Settlement is not the product of fraud, overreaching, or collusion, and, taken as a whole, is fair, reasonable and adequate to all concerned. *Id.*

A proposed class action settlement is presumed fair where: (1) the parties reached agreement after extensive arms’-length negotiations; (2) investigation and discovery were 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. *Id.*, at 1802.

The proposed Settlement is entitled to a presumption of fairness if: (1) it is the product of serious, informed, non-collusive negotiations with an experienced mediator; (2) investigation of the facts and law allow Plaintiff, her counsel, and the Court to make informed settlement decisions; and, (3) the Class is represented by experienced counsel. The percentage of objectors (4) cannot be known until the Class has notice and an opportunity to respond. At this stage, the proposed Settlement is entitled to the presumption of fairness.

1. Serious, Informed, Non-Collusive Negotiations Led to Settlement

The Parties mediated with a respected and experienced wage and hour class action mediator, Michael Young of Judicate West (<https://www.judicatewest.com/adr/michael-young>),

1 reached a settlement in principle after a full-day mediation, and negotiated a detailed written
2 settlement agreement. All Counsel aggressively pursued their positions at all times and
3 conducted significant arms-length fact investigation and negotiations prior to reaching a
4 settlement. Hill Decl. ¶¶21, 22. As such, the Parties' Settlement resulted from serious, informed,
5 and non-collusive negotiations.

6 **2. Discovery and Stage of the Proceedings Support the Settlement**

7 Plaintiff's Counsel investigated all claims and defenses before filing the Complaint.
8 When the Parties agreed to mediation, Defendants produced data (including the key data points
9 outlined above) and documents (including relevant communications and policies) to allow
10 Plaintiff's counsel to assess potential liability and calculate potential Class-wide damages. The
11 data, along with input from Plaintiff and four other former Tax Support employees confirmed
12 potential problems with the remote Tax Support position, particularly some extended customer
13 interactions that Plaintiff asserted occurred off the clock and a potential failure to cover all
14 home office costs by the Defendant. Hill Decl. ¶44. Nevertheless, the produced documents also
15 revealed that Intuit has policies requiring employees to record all hours worked, providing meal
16 and rest breaks (and an opportunity to report and be paid a penalty in instances where they were
17 not provided), and providing monthly reimbursement payments of \$49.50 for home internet use.
18 Plaintiff analyzed all this information in valuing this case for settlement purposes and
19 investigation and informal discovery gave the Parties a clear understanding of their strengths
20 and weaknesses before negotiations. *Id.*, *See Munoz v. BCI Coca-Cola Bottling Co. of Los*
21 *Angeles*, 186 Cal. App. 4th 399, 410 (2010) (approving settlement where "considerable
22 information [exists] from which to assess the strength of the class claims" and litigation risks).

23 Proof of wage and hour class claims is based, at any stage, almost entirely on written
24 policies and time and pay records. Plaintiff's counsel obtained those records, and an expert
25 analyzed them, before negotiating a settlement. Hill Decl. ¶45.

26 **3. Counsel are Experienced in Similar Litigation**

27 Plaintiff's Counsel have significant experience in litigating wage and hour employment
28 class actions. Hill Decl. ¶¶3-9, 46; Declaration of Emil Davtyan, ("Davtyan Decl.") ¶¶3-5.

1 Counsel was able to compare settlement of Class claims with the risks of further litigation,
2 including trial and appeals. Defense counsel, Joshua Levine and Jocelyn Hannah of Littler
3 Mendelson, P.C, are skilled and sophisticated lawyers, with significant class action experience.
4 They defended their client vigorously throughout the case. Hill Decl. ¶47.

5 Plaintiff's Counsel believes the Settlement is fair, reasonable, and in the Class' best
6 interest in light of the monetary recovery, difficulties of this litigation, the developing state of
7 the law, risks of certification/decertification, summary adjudication, the lengthy process of
8 establishing damages, and delay and uncertainty of appeals. Hill Decl. ¶48. The prior settlement
9 in *Shumway* means that many of the proposed class members in this case received a prior
10 recovery as absent class members, which limited the nature, scope and time of this resolution.
11 Hill Decl. ¶49. Similarly, the remote home-office model for this particular group of employees
12 tended to complicate even common policies and practices by Intuit as the nature of remote work
13 could lead to significant argument and evidence of substantial variation. Hill Decl. ¶50.

14 Experienced counsel, operating at arms'-length, weighed case strengths, examined all
15 risks of litigation and endorse the proposed Settlement. The view of attorneys actively
16 conducting the litigation "is entitled to significant weight" in settlement approval. *Fisher Bros.*
17 *v. Cambridge Lee Industries, Inc.*, 630 F.Supp. 482, 488 (E.D. Pa. 1985).

18 The Settlement satisfies the first three requirements of *Dunk*. The fourth, the percentage
19 of objectors, remains unknown until notice is given and the Class has had an opportunity to
20 respond.

21 **C. The Settlement is a Reasonable Compromise of Claims**

22 "[T]o ensure that the recovery represents a reasonable compromise, given the magnitude
23 and apparent merit of the claims being released, discounted by the risks and expenses of
24 attempting to establish and collect on those claims by pursuing the litigation," information is
25 presented to the Court, as a fiduciary for absent class members. *Kullar v. Foot Locker Retail,*
26 *Inc.*, 168 Cal.App.4th 116, 129 (2008).

27 *Kullar* does not require the parties to submit an illusory prediction of the outer reaches
28 of exposure without taking into account actual risks of certification, decertification, dispositive

1 motions, and trial. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal.App.4th 399,
2 408 (2010). It does not require an explicit statement of the maximum amount the class could
3 recover if it prevailed on all claims provided the record allows “an understanding of the amount
4 that is in controversy and the realistic range of outcomes of the litigation.” *Id.*, at 409.

5 *Munoz* examined the trial court record including number of class members, payroll data,
6 declarations regarding hours worked, and variances in duties and rest and meal period
7 experience. It found this “an adequate basis from which to garner a reasonably adequate
8 understanding of the amount that is in controversy within the meaning of *Kullar*.” *Id.*

9 Class Counsel relied on similar documents and data as in *Munoz*, including time and pay
10 records for Class Members. Class counsel reviewed handbooks and company policies.
11 Plaintiff’s economist reviewed, organized, and analyzed voluminous data and documents, and
12 calculated Class-wide damages through the date of mediation. Hill Decl. ¶51.

13 **1. Labor Code § 1194 Unpaid Wages**

14 Based on data and information provided by Plaintiff, Plaintiff’s counsel asserts that
15 Class Members worked an average of 6 minutes (0.1 hrs) off the clock for each workweek (or
16 \$2.12 [.1 x 21.21 ave. hourly rate during the Class Period]) a total of 2,460 workweeks during
17 the Class Period for a maximum exposure of \$5,215 in alleged unpaid time. Even one full hour
18 per workweek would only yield \$52,176 in exposure. Intuit maintained a policy that all hours be
19 recorded and paid overtime, if reported. Plaintiff concluded that because of variation in the
20 manner in which employees recorded time, only a nominal valuation is assessed to these claims.
21 Hill Decl. ¶52.

22 Proof of this claim would have been based almost entirely on anecdotal evidence. Based
23 on that, Plaintiff’s counsel believed there only a 10% probability of certifying the claim and
24 prevailing at trial, which resulted in a realistic exposure of approximately \$5,000. Hill Decl.
25 ¶53.

26 **2. Labor Code § 226.7 Meal and Rest Period Premiums**

27 “[A]n uninterrupted 30-minute period during which the employee is relieved of all
28 duty,” must “start after no more than five hours.” *Brinker Restaurant Corp. v. Superior Court*,

53 Cal. 4th 1004, 1042 (2012). Similar to the issues of seasonal work and the issue of remote work, employees may have recorded meal period times as compliant, but the records are inconclusive. Arguably, Wage Order 4-2001, section 11 and section 7 require the employer, not the employee to accurately record all hours worked, but here, Intuit apparently delegated that responsibility to the employee. Again, due to the nature of remote “home office” work, the best viable legal claim is technical, that Intuit improperly delegated meal and rest period time to employees to record. Like the off-the-clock and the potential unpaid overtime claim, even a violation rate of 2 non-compliant breaks during the workweeks at issue result in an exposure of \$104,353 (*i.e.*, \$21.21 x 2,460 x 2) for break period premiums. Hill Decl. ¶54.

Plaintiff asserted that, in practice, meal and rest periods were not always provided to Tax Support employees. However, Intuit produced policies and screenshots showing that when Tax Support employees entered their time into Workday (Intuit’s timekeeping system), they verified that they were provided compliant meal and rest breaks— and if they reported they were not, Intuit automatically paid them a one-hour premium payment. Thus, Plaintiff’s counsel assessed a 20% probability of certifying and succeeding on the claim, even if violations were much more common than estimated, as a result of Intuit’s facially-compliant policy and the potential difficulty of certifying this claim due to Intuit’s argument that individualized issues of fact would predominate over the claim. Hill Decl. ¶55. This estimate also accounts for the difficulty of collecting pattern and practice evidence directly from the class in a sufficient number to show that Intuit’s meal and rest break policies were not enforced. Accordingly, the realistic exposure for such claims would be in the realm of \$20,000 class wide. Hill Decl. ¶56.

3. Labor Code § 226 Wage Statement Penalties

Wage statements must show, among other things, “total hours worked by the employee” and “corresponding number of hours worked at each hourly rate.” Labor Code § 226 (a)(2)(9).

Plaintiff contended wage statements were non-compliant because they did not show all hours worked due to unrecorded off the clock work. Plaintiff also contended it was difficult to determine whether the correct regular rate was used when overtime wages were paid. To recover these penalties, Plaintiff would be required to prevail on the underlying claims, and

show any violation was knowing, intentional, or willful. *Pedroza v. PetSmart, Inc.*, 2012 U.S. Dist. LEXIS 189530, *20 (C.D. Cal. June 14, 2012).

As with waiting time penalties, only wage violations clearly support this penalty. *Naranjo, Id.*, at 474. And even proof of underlying violations may not establish willfulness. *Hill v. Walmart Inc.*, 2021 U.S. Dist. LEXIS 20950, *17 (N.D. Cal. January 14, 2021).

With only 479 eligible pay periods⁵, and disregarding a potential good faith defense, maximum exposure would likely default to the \$100 penalty per pay period amount \$47,900 [497 pay periods x the \$100 max per pay period penalty]. Hill Decl. ¶57. At best, the exposure to Intuit on this claim are workweeks where the login data to the systems by employees far exceeded the amount of pay and certification on that might be accomplished, but only after more than \$25,000 of expert consultant and forensic analysis. Hill Decl. ¶58.

Plaintiff estimated probability of prevailing on a certification motion at 50% and at trial at 50%, resulting in a 75% discount for realistic exposure of \$11,975. Hill Decl. ¶59.

4. Labor Code § 203 Waiting Time Penalties

If Plaintiff proves the underlying claims for failure to pay all wages due, and rest and meal period premiums, then derivative claims arise under Labor Code § 203 for failure to pay all wages due on separation of employment.

An employer must pay all wages due to an involuntarily terminated employee at the time of termination, or within 72 hours to an employee voluntarily terminating. Labor Code § 203. If failure to pay final wages is willful, they continue at the same rate for up to 30 days. It was assumed all 43 former employees (in the relevant post-*Shumway* release period) were owed maximum penalties of \$218,887 (8 hrs a day x \$21.21 per hr x 30 days x 43 employees). Hill Decl. ¶60.

The only claim which clearly supported waiting time penalties was for unpaid wages. *Naranjo v. Spectrum Security Services, Inc.*, 40 Cal. App. 5th 444, 474 (2019); review granted, 2020 Cal. LEXIS 167 (January 2, 2020) (Finding rest and meal period premiums do not support

⁵ This figure is for the time period from the start of the 1-year limitations period on 8/28/2019 through the end of the Class Period on 8/7/2020.

1 waiting time penalties, pending in California Supreme Court.)

2 Plaintiff would be required to prove the underlying claim for unpaid wages and show a
3 “willful” violation. Plaintiff’s counsel believed there was no more than a 25% probability of
4 prevailing based on difficulties in certifying and proving the underlying violation, particularly
5 showing willfulness given the basis of the wage claim was off the clock work. Even if wages
6 were found to be owed, a court could find Intuit had a good faith belief it was paying all wages,
7 and “a good faith dispute that any wages are due will preclude imposition of waiting time
8 penalties under Section 203.” *Hill v. Walmart Inc.*, 2021 U.S. Dist. LEXIS 20950, *17 (N.D.
9 Cal. January 14, 2021). A good faith defense in this case posed a particularly high risk to
10 Plaintiff due to the fact that Tax Support employees worked remotely, and thus, Intuit argued
11 that the burden was on these employees to accurately and fully report their own time,
12 particularly given that there was no direct supervision over their at-home work.

13 Taking all this into account, Plaintiff estimated realistic exposure for this claim to be
14 **\$54,741** (i.e., \$218,887 x 0.25). Hill Decl. ¶61.

15 **5. Labor Code §2802 Reimbursement of Business Expenses**

16 An employer must indemnify employees for necessary expenses incurred in discharge of
17 their duties. Labor Code § 2802. A reasonable percentage of an employee’s cell phone charges
18 must be reimbursed if the use of a personal cell phone was reasonable and necessary to the
19 employee’s work duties. “Because of the differences in cell phone plans and work-related
20 scenarios, the calculation of reimbursement must be left to the trial court and parties in each
21 particular case.” *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1145
22 (2014). Plaintiff asserts that this includes home internet, home office space and other ancillary
23 equipment to operated and provide services required for the position. In California, unlike many
24 states, an employer may not require an employee to use their wages to provide capital or cost of
25 equipment expenses that are primarily for the benefit of the employer. For purposes of this case,
26 this is the primary claim for which Defendant sought to resolve that was not resolved in
27 *Shumway*. Hill Decl. ¶62.

28 Intuit intended the Tax Support (CTS11) employees to have home offices and provided

1 a process for them to be reimbursed \$45 per month for home internet. (Note, the average
2 reimbursement was slightly higher per month at \$49.50) Hill Decl. ¶63. As noted above, only
3 the Tax Support employees used their personal computers for work and other Intuit employees
4 were issued a company-purchased computer. Intuit also had a policy to reimburse employees for
5 work related expenses, but did not have a policy that paid employees for the use of space in
6 one's home. Plaintiff alleged that Class Members used their cell phones to deal with some
7 TurboTax clients/customers. Hill Decl. ¶64. Under relevant law, unless a stipend is clearly
8 measured to fully account for all costs incurred and to reimburse, it is illegal. See, *Gattuso v.*
9 *Harte-Hanks Shoppers, Inc.*, 133 Cal. App. 4th 985 (2005).

10 After investigation and damages consultation for prices and norms for home office
11 expenses, Plaintiff's counsel determined that a \$45.00 or \$49.50 stipend was inadequate to
12 account for remote "home office" work by CTS11 employees in California. Maximum exposure
13 for this claim could be \$250-300 per month. Assuming 2,460 workweeks divided by 4 weeks
14 per month = a total of 615 work-months, the exposure on this claim is between \$153,750 to
15 \$184,500. Assuming a discount or "off-set" of roughly \$50 per month that Intuit did provide,
16 the exposure is reduced by \$30,750. Thus, a fair *Kullar* exposure is between \$123,000 to
17 \$153,750, less attorneys' fees and litigation costs as permitted by Labor Code section 2802-
18 2804. Hill Decl. ¶65.

19 In valuing this claim for settlement purposes, it is also important to consider Intuit's
20 defenses, including that its policies allowed Tax Support employees to affirmatively request
21 expense reimbursement for any business expenses. Intuit also contended that it did not require
22 Tax Support employees to use their personal cell phones or office supplies for work because all
23 communications and work conducted by Tax Support employees was to be done over the
24 computer. Plaintiff's counsel believes they would be able to overcome these arguments but
25 acknowledges that there is some risk presented by these defenses that must be taken into
26 account when evaluating the fairness of the Parties' Settlement. Plaintiff also acknowledges that
27 individualized questions of fact could arise regarding whether individual Tax Support
28 employees used their personal cell phones or other personal supplies, etc., which presents some

1 risk that Plaintiff's counsel would not be able to certify this claim. Again, Plaintiff's counsel
2 believes that they could refute these defenses, but acknowledges that they do pose risk and
3 should be taken into account when evaluating the fairness of the Parties' proposed Settlement.

4 **6. Labor Code §§ 2699 PAGA Penalties**

5 "PAGA penalties are paid 75% to the California Labor and Workforce Development
6 Agency and 25% to aggrieved employees. Thus, in wage and hour class action cases that settle,
7 [] very little of the total settlement is paid to PAGA penalties in order to maximize payments to
8 class members." *Magadia v. Wal-Mart Assocs.*, 384 F. Supp. 3d 1058, 1101 (2019).

9 "[T]he amount of the common settlement fund reserved for PAGA penalties [is
10 adequate], as courts frequently approve settlements in wage and hour class action and PAGA
11 actions that minimize the total amount of the settlement that is paid to PAGA penalties in order
12 to maximize payments to class members." (citations omitted) *Mejia v. Walgreen Co.*, 2020 U.S.
13 Dist. LEXIS 220685, *26 (E.D. Cal. Mar. 24, 2021).

14 Using initial violation rates under Labor Code section 2699(f)(2) for 479 pay periods
15 during the one-year PAGA limitations period, penalties were estimated at \$47,900 for wage
16 violations, either off-the-clock or overtime; \$47,900 for meal and rest violations, \$47,900 for
17 wage statements. For Labor Code 203, there are only 43 separated employees during the
18 relevant time period, so the amount is \$4,300 at the initial PAGA violation rate and assuming
19 Labor Code section 2802 is prorated into workweeks without proper reimbursement, the
20 \$47,900 range could apply. Hill Decl. ¶66. Maximum PAGA exposure therefore is in the range
21 of \$195,000.00 (the summation of all of the above). Hill Decl. ¶67.

22 Penalties were calculated using initial violation rates based on the defense argument,
23 "courts have held that employers are not subject to heightened penalties for subsequent
24 violations unless and until a court or commissioner notifies the employer that it is in violation of
25 the Labor Code." *Vieyara-Flores v. Sika Corp.*, 2019 U.S. Dist. LEXIS 98081, *13 (C.D. Cal.
26 2019).

27 Maximum exposure was discounted for several reasons, including the risk of not
28 proving the underlying violations as described above, and Court authority to completely reduce

penalties, as long as not to “zero.” *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal. App. 4th 1112, 1135 (2012). *Carrington v. Starbucks* (2018) 30 Cal. App. 5th 504, 529; Cal. Lab. Code § 2699(e)(2); *see, e.g., Ghrdilyan v. RJ Financial, et al.*, Los Angeles Superior Court, Case No. BC430633 (94% discretionary reduction of PAGA penalties); *Parr v. Golden State Overnight Delivery Service, Inc.*, Alameda County Superior Court, Case No. RG12-618103 (94% reduction); *Fleming v. Covidien, Inc.*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. Aug. 12, 2011) (82% reduction); *Gola v. University of San Francisco*, Case No. CGC-18-565018 (Sup. Ct. Decision dates July 21, 2020) (85% reduction).

Based on these risks, Plaintiff assessed reasonable exposure was approximately \$9,750, 5% of the \$195,000.00 maximum exposure. (LWDA served with this motion when filed). Hill Decl. ¶¶ 68, 71, Exh. 3 – LWDA Confirmation of Receipt.

“[T]he amount of the common settlement fund reserved for PAGA penalties [is adequate], as courts frequently approve settlements in wage and hour class action and PAGA actions that minimize the total amount of the settlement that is paid to PAGA penalties in order to maximize payments to class members.” (citations omitted) *Mejia v. Walgreen Co.*, 2020 U.S. Dist. LEXIS 220685, *26 (E.D. Cal. Mar. 24, 2021); *Alcala v. Meyer Logistics, Inc.*, 2019 LEXIS 166879, *26 (C.D. Cal. June 17, 2019) (PAGA penalties 1.25% of settlement reasonable, as “within the zero to two percent range for PAGA claims approved by courts.”); *In re M.L. Stern Overtime Litig.*, 2009 LEXIS 31650, *1 (S.D. Cal. Apr. 13, 2009) (PAGA settlement 2%); *Ceja-Corona v. CVS Pharm., Inc.*, 2015 U.S. Dist. LEXIS 5118 (E.D. Cal. Jan. 14, 2015) (PAGA 0.011%, recommendation adopted, 2015 U.S. Dist. LEXIS 25730 (E.D. Cal. Mar. 3, 2015)).

D. The Settlement is Fair, Adequate, and Reasonable

Plaintiff and her Counsel considered all issues and concluded the Settlement is fair and reasonable. Excluding PAGA’s theoretical exposure, the class settlement represents a fair and reasonable recovery for seasonal Tax Support (CTS11) employees who worked remotely from home to support TurboTax and Intuit customers and clients. The reasonable potential exposure on wage, hour, and expenses claims for this relatively small number of 100 Class Members and

only 2,640 eligible pay periods (or less depending on the claim) is in the range of approximately \$214,716 (*i.e.*, the sum of Plaintiff’s estimated valuations above of the claims for unpaid wages [\$5,000], meal/rest breaks [\$104,353], wage statement penalties [\$11,975], waiting time penalties [\$54,741], expense reimbursement [\$123,000]). The GSA represents approximately 70% of the reasonable value of Class claims, (\$150,000 / \$214,716= 70%). Adding reasonable PAGA exposure of another \$9,750 (total \$224,466) drops the GSA ratio to 67% of what could be considered a fair recovery if the matter were certified and Plaintiff prevailed at trial. The settlement is well within the “ballpark” of reasonableness to avoid litigation risk, allow more prompt recovery, avoid years of delay with litigation and potential appeals, and to allow all parties to move on. Hill Decl. ¶69. For similar claims for small groups (which are notoriously difficult to resolve), counsel’s experience indicates there will be wide acceptance of the terms for absent class member. Hill Decl. ¶70.

A settlement is not judged solely against what might have been recovered at trial, nor must a settlement provide 100% of damages sought to be fair and reasonable. *Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1242 (9th Cir. 1998). Adequacy must be judged as “a yielding of absolutes. . . Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties each give up something they might have won had they proceeded. . .” “It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not . . . render the settlement inadequate or unfair.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 628, 624 (9th Cir. 1982)

VIII. CONDITIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE

When an ascertainable and sufficiently numerous class exists, with a well-defined community of interest, and class litigation would be superior to alternate means of resolution, certification is appropriate. See *Brinker, Id.*, at 1021.

Ascertainability is determined by examining class definition, size, and means for identifying members. *Reyes v. Bd. of Supervisors*, 196 Cal. App. 3d 1263, 1271 (1987). The Class is ascertainable from Defendant’s records and joinder is impracticable.

The community of interest requirement embodies three factors: Predominant common

questions of law or fact; class representatives with claims typical of the class; who, with counsel, can adequately represent the class. *Fireside Bank v. Sup. Ct.*, 40 Cal. 4th 1069, 1089 (2007).

Plaintiff alleged each Class Member was subject to policies Plaintiff alleged caused damage to her and the Class, including policies which underpaid wages, caused missed meal and rest breaks, or resulted in non-compliant wage statements. Where the same alleged conduct forms the basis for claims of Plaintiff and the class, they are common for settlement purposes.

Plaintiff can protect the interests of the Class and her interests are not antagonistic to the Class. Wilkerson Decl. ¶4. *Wershba v. Apple Computers, Inc.*, 91 Cal. App. 4th 224, 238; *McGhee v. Bank of Am.*, 60 Cal. App. 3d 442, 450 (1976). Plaintiff's counsel are qualified to protect the interests of Class Members. Hill Decl. ¶¶3-9; Davtyan Decl. ¶¶3-6.

IX. PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS

The Parties proposed the following schedule for the fairness hearing and final proceedings:

- | | |
|--|---|
| 1. Class Information to Administrator: | Within 21 calendar days of entry of Order granting Preliminary Approval |
| 2. Mail Notice Packet to the Class: | Within 14 calendar days of receiving Information |
| 3. Notice Response Deadline: | On or before 45th calendar day from initial date Administrator first mails Notice to Class |
| 4. File Motion for Final Approval and Administrator's Declaration Re Claims: | No sooner than calendar 20 days after the close of the Notice Response Deadline |
| 5. Final Approval Hearing: | A date convenient for the Court, no sooner than 100 days after entry of Order granting Preliminary Approval |

X. CONCLUSION

Plaintiff requests that the Settlement be preliminarily approved as set forth in the Proposed Order granting preliminary approval (Exhibit "B" to the Settlement), Plaintiff be granted leave to file the proposed Second Amended Complaint (attached as Exhibit "D" to the Settlement), the Class be certified for settlement purposes only in accordance with the Settlement, the Notice of Settlement be approved and ordered disseminated to the Class,

1 Phoenix Class Action Administration Solutions be appointed Administrator, Cohelan Khoury &
2 Singer and Davtyan Law Firm, Inc. be confirmed as Class Counsel, Plaintiff Gail Wilkerson be
3 confirmed as Class Representative, and a Final Approval Hearing date set.

4 Respectfully submitted,

5 COHELAN KHOURY & SINGER
6 DAVTYAN LAW FIRM, INC.

7 Dated: March 29, 2022

8 By:  _____

J. Jason Hill, Esq.

9 Attorneys for Plaintiff GAIL WILKERSON
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