

Patrick R. Kitchin, Esq. (SBN: 162965)
KITCHIN LEGAL, APC
1999 Harrison Street, 18th Floor (#3535)
Oakland, CA 94612
Telephone: (415) 677-9058
Email: prk@kitchinlegal.com
Attorneys for Plaintiff Holly La Luz

SUPERIOR COURT OF CALIFORNIA
FOR THE CITY AND COUNTY OF SAN FRANCISCO

HOLLY LA LUZ, an individual and on behalf
of all others similarly situated;

Plaintiff,

vs.

VOXELMAPS, INC., a Delaware corporation;
TECH MAHINDRA (AMERICAS), INC.;
PETER ATALLA, an individual; and DOES
1-50, inclusive,

Defendants.

Case No.: CGC-20-584129

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR CONDITIONAL
CERTIFICATION OF SETTLEMENT
CLASS AND PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: March 18, 2021

Time: 9:30 a.m.

Dept: 302

Hon. Judge: Judge Ethan P. Schulman

Complaint Filed: April 2, 2020

First Amend. Complaint Filed: July 29, 2020

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1 **I. INTRODUCTION**

2 Plaintiff Holly La Luz respectfully requests this Court grant preliminary approval of the
3 Stipulation of Settlement and Release of Claims (“Settlement” or “Settlement Agreement”)
4 entered into between Plaintiff, on behalf of herself and other similarly-situated employees, and
5 Defendant VoxelMaps, Inc. This Motion requests the Court grant preliminary approval of the
6 \$175,000 Settlement, finding there is a prima facie evidence showing it is fair, adequate, and
7 reasonable.¹ Plaintiff requests the Court conditionally certify the proposed Class for settlement
8 (“Settlement Class”), approve Patrick R. Kitchin of Kitchin Legal, APC as Class Counsel,
9 approve Holly La Luz as Class Representative, approve CPT Group, Inc. as the third-party
10 Settlement Administrator, approve the form and method of notice, and approve the proposed
11 mechanism for receiving and handling objections and notices of election to opt out of the
12 Settlement and objections.

13 **II. SUMMARY OF THE CASE**

14 A. The Parties

15 In mid-2019 Plaintiff Holly La Luz applied for and was hired as a “temporary employee”
16 to work for VoxelMaps on a data gathering project. Together with 52 others (“Image and Data
17 Collectors” or “Collectors”), Plaintiff was required to sign an agreement stating that she would
18 be classified as an independent contractor and paid \$18.50 per hour. The agreement provided
19 that she would be required to provide her own equipment and supplies, and did not provide for
20 the reimbursement of expenses. (All Collectors were required to sign materially-identical
21 agreements.) Collectors were required to download a free phone app to record and report their
22 worktime and meal breaks.

23 Defendant VoxelMaps, Inc. is an AI company. It is engaged in an effort to “build a 4D
24 volumetric model of the planet, combining visual, spatial and temporal data to create the most
25 detailed map of the world.” Headquartered in San Francisco, it works with “some of the world’s

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¹ A true and correct copy of the fully executed Settlement Agreement is attached as Exhibit A to the Decl. of
Patrick Kitchin (“Kitchin Decl.”), filed and served herewith.

largest companies across North America and Europe.” <https://www.voxelmaps.com/>

Defendant Tech Mahindra (Americas), Inc. (“Tech Mahindra”) was VoxelMaps’ customer for this project. VoxelMaps and Tech Mahindra maintain that Tech Mahindra had no involvement in the design or management of the data collection project. In October 2020 VoxelMaps and Tech Mahindra provided declarations to Plaintiff under penalty of perjury that provided adequate evidence that Tech Mahindra had not served as a joint employer of Plaintiff and the other Collectors. Pursuant to this motion, Plaintiff requests dismissal without prejudice of Tech Mahindra.

Defendant Peter Atalla is the CEO of VoxelMaps. As part of the proposed settlement, Plaintiff has agreed to ask the Court to dismiss him without prejudice at this time. Mr. Atalla, in turn, has stipulated that if VoxelMaps fails to satisfy its obligations under the proposed settlement, Plaintiff may file a request for default against him based on Plaintiff’s original service of the summons, complaint and first amended complaint upon him. (See Exhibit E to Settlement Agreement.)

B. The Work

VoxelMaps hired Ms. La Luz on April 8, 2019 and she worked through June 14, 2019. The entire project lasted from March 23, 2019 to June 17, 2019. (See, La Luz Decl., *passim*, and Plaintiff’s First Amended Complaint.)

Plaintiff alleges that VoxelMaps’ program director trained her to take photos with her own iPhone of a range of objects, including business cards, book covers, banners and store fronts across the Bay Area. The photos were needed for an artificial intelligence/machine learning project conducted by VoxelMaps for Defendant Tech Mahindra (Americas, Inc.).²

Each Collector was trained how to use their personal iPhone and iPads to take photographs of specific categories of objects from different angles and under different lighting conditions.

² According to sworn declarations from VoxelMaps and Defendant Tech Mahindra (Americas), Inc., this was the only data gathering project ever undertaken by VoxelMaps in California. (See, Kitchin Decl., ¶ 20.)

1 They were all expected to work as many hours as possible to complete the project over the
2 course of its short schedule.

3 Collectors were free to choose where to seek out their assigned subjects and when to work
4 during each day. They were required to text or call their group managers at the beginning of
5 their shift and to stay in close contact with them throughout the day.

6 According to records produced by VoxelMaps prior to mediation, Collectors worked a wide
7 range of hours. Some worked straight through each day, while others worked a more sporadic
8 and interrupted schedule. (Kitchin Decl., ¶ 25)

9 At the end of each shift, the Collectors were required to upload all of their photos and
10 location data to VoxelMaps. VoxelMaps encouraged the Class to upload data using their home
11 internet to increase the speed of the uploads. (Please see Plaintiff's First Amended Complaint,
12 ¶¶ 7-40.)

13 C. Procedural History

14 Ms. La Luz filed her Complaint on April 2, 2020. After exhausting her notice requirements
15 under the Labor Code Private Attorneys General Act ("PAGA"), Plaintiff filed her First
16 Amended Complaint ("FAC") on July 29, 2020 (the "lawsuit").

17 D. Summary of the Claims

18 In her FAC Plaintiff asserts eight causes of action pertaining to Defendants' alleged labor
19 law violations on behalf of a Class now known to be comprised of 53 employees. Plaintiff
20 alleges Defendants: (1) Failed to Pay Overtime Wages; (2) Failed to Provide Paystubs (Labor
21 Code § 226); (3) Failed to Reimburse Expenses (Labor Code § 2802); (4) Failed to Provide
22 Rest Periods, (5) Failed to provide Meal Periods; (6) Willfully Failed to Pay All Wages Due
23 Upon Termination (Labor Code § 203); (7) Engaged in Unfair Competition (Business and
24 Professions Code §§ 17200); and (8) Violations under the Labor Code Private Attorneys
25 General Act (Labor Code §§ 2698).
26

1 Plaintiff's FAC asserted the right to civil penalties under the PAGA for the 13 Labor Code
2 sections she had referenced in her notice letter to the California Labor and Workforce
3 Development Agency ("LWDA").

4 **III. DISCOVERY AND INFORMATION EXCHANGE**

5 Plaintiff prepared, served and received responses to extensive written discovery from
6 VoxelMaps and Tech Mahindra. After receiving VoxelMaps' discovery responses, Plaintiff
7 engaged in extensive meet-and-confer efforts with VoxelMaps, and through those efforts
8 obtained additional documents and information relating to Plaintiff and the putative class. In
9 October 2020, VoxelMaps and Plaintiff agreed to temporarily suspend formal discovery and
10 engage in mediation. (Kitchin Decl., ¶¶ 23 and 24)

11 In lieu of engaging in further formal discovery, VoxelMaps shared class-wide timekeeping
12 and wage data pursuant to the mediation privilege (Evidence Code §§ 1115, et seq.), redacted
13 of identifying information. Those data permitted Plaintiff to analyze the extent to which any
14 Class Member worked overtime hours, the number and lengths of all Class Members' shifts,
15 the number of workweeks and pay periods, the taking and timing of meal periods, and the
16 amount of wages paid. (Kitchin Decl., ¶¶ 25 and 26, and see Exhibit B thereto)

17 Plaintiff and VoxelMaps retained Michael Loeb of JAMS as mediator. Following a full day
18 of arms-length negotiations facilitated by Mr. Loeb on December 15, 2020, Plaintiff and
19 VoxelMaps reached a resolution memorialized by a memorandum of understanding subject to
20 Evidence Code § 664.6. (Kitchin Decl., ¶¶ 27 and 28)

21 **IV. TERMS OF THE PROPOSED SETTLEMENT**

22 The Settlement Agreement contains all of the terms necessary to effectuate a fair
23 distribution of the settlement funds and protect the interests of absent Class Members. (See
24 Exhibit A to Kitchin Decl.) The central terms of the Settlement are outlined herein below.

25 a. "Settlement Class Members" or "Class" or "Class Members" are comprised of:
26 "All former independent contractors, who allegedly should have been classified as employees,

1 who worked for VoxelMaps in California as Image and Data Collectors from April 2, 2016 to
2 the [date of preliminary approval].”

3 Defendants will pay \$175,000.00 (the “Gross Settlement Amount”) in full settlement of all
4 claims alleged, or that could have been alleged under the facts set out in Plaintiffs’ FAC.
5 Defendants will also pay the employer’s share of taxes on the wage portion of the settlement.

6 The Gross Settlement Amount will pay:

7 b. \$5,500.00 to CPT Group, Inc., the proposed Settlement Administrator.

8 c. No more than \$58,333.33 in attorneys’ fees, plus litigation costs of approximately
9 \$10,500.00.³

10 d. PAGA penalties paid to the California Labor Workforce Development Agency for
11 \$7,500,000, (75% of the \$10,000 PAGA penalties to be paid under the Settlement).

12 e. Class Representative Service Payments to Class Representative Holly La Luz for up
13 to \$7,500.00.

14 The remaining amount will constitute the Net Settlement Amount (“NSA”), and will be
15 distributed to the Settlement Class Members on the basis of the number of weeks each worked.

16 The Settlement Administrator will determine the pro rata portion of the NSA owed to each
17 Class Member based on data provided by VoxelMaps, upon which Plaintiff based her
18 evaluations of damages and penalties.

19 The Settlement Administrator is experienced and qualified to manage all aspects of the
20 settlement notice and settlement payment process under the direction of the parties’ counsels in
21 compliance with the express terms of the Settlement and the Court’s orders. (See, Decl. of Julie
22 Green, CPT Group, Inc.)

23 Funds from uncashed settlement payments, if any, will be used to pay the employers’ share
24 of payroll taxes. If any uncashed settlement payments then remain, those funds shall be donated
25

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³ Defendants agreed not to oppose Plaintiffs’ attorneys’ fees and costs motion at these levels. Plaintiffs are entitled to recover their fees and costs pursuant to Labor Code §§ 218.5, 1194, 2699 and 2802.

1 to the not-for-profit organization, **Swords to Plowshares**, which since 1984 has helped Bay
2 Area homeless veterans obtain employment.

3 VoxelMaps has the right to revoke the Settlement if seven or more Class Members submit
4 timely opt outs, but if it does so, it must reimburse Plaintiff for the cost of mediation (\$6,450).
5 (See, Paragraph 70 of the Settlement Agreement.)

6 The claims released by Settlement Class Members are limited to those that were or could
7 have been made based on the factual allegations in the FAC. The only individual providing
8 Defendants with Civil Code § 1542 waiver is Plaintiff Holly La Luz. (See, ¶¶ 17, 31, 42, 67
9 and 68 of the Settlement Agreement.)

10 **V. CERTIFICATION OF THE CLASS FOR SETTLEMENT PURPOSES IS**
11 **APPROPRIATE**

12 Whether to grant class certification does not turn on the merits of the claims, but turns,
13 instead, on the appropriateness of adjudication of claims on behalf of a class of persons whose
14 claims are based on common issues of fact and law. *Sav-On Drug Stores, Inc. v. Superior Court*
15 34 Cal. 4th 319, (2004) The central goal of the class process is to avoid “a multiplicity of trials
16 conducted at great expense to both the judicial system and the litigants.” *Id.* at p. 319. To
17 accomplish this goal, California law and public policy favor the fullest and most flexible use of
18 the class action device. *Richmond v Dart Indus., Inc.*, 29 Cal.3d 462, 470, (1981) “Courts long
19 have acknowledged the importance of class actions to prevent a failure of justice in our judicial
20 system.” *Linder v. Thrifty Oil Co.*, 23 Cal.4th 429, 434, 445, (2000)

21 The proposed Settlement Class is particularly well suited for class certification. All claims
22 relate to VoxelMaps’ employment practices that Plaintiff alleges violated the legal rights of all
23 Class Members. The Class is easily ascertainable and all Class Members have suffered
24 damages; thus, it satisfies Code of Civil Procedure § 382, which provides:

25 [W]hen the question is one of a common or general interest, of many persons,
26 or when the parties are numerous, and it is impracticable to bring them all
before the court, one or more may sue or defend for the benefit of all.

1 To support class certification, two requirements of section 382 must be met : “(1) there must
2 be an ascertainable class; and (2) there must be a well-defined community of interest in the
3 questions of law and fact involved affecting the parties to be represented.” *Daar v. Yellow Cab*
4 *Co.*, 67 Cal.2d 695, 704, (1967) (citations omitted) “The community-of-interest requirement
5 embodies three factors: “(1) predominant common questions of law or fact; (2) class
6 representatives with claims or defenses typical of the class; and (3) class representatives who
7 can adequately represent the class.” *Sav-On Drug Stores* 34 Cal. 4th 319

8 A. An Ascertainable Class Exists That Is So Numerous That Joinder of All Members
9 Is Impracticable

10 The proposed Class is easily ascertainable, and it includes 53 individuals who worked for
11 VoxelMaps in 2019. All Class Members can be identified within VoxelMaps’ hiring and
12 payroll and personnel records. The Class satisfies the ascertainability requirement.

13 The proposed Class is considerably larger than the 28-member class certified in *Hebbard v.*
14 *Colgrove*, 28 Cal.App.3d 1017, 130, (1972) and the 42 member class certified in *Rose v. City*
15 *of Hayward*, 28 Cal.App.3d 926, (1981). As in *Hebbard* and *Rose*, joinder of all 53 Class
16 Members in this matter would be impracticable and unmanageable. A class-wide proceeding
17 is preferable.

18 B. There Is a Well-Defined Community of Interest in Questions of Law and Fact

19 The Court should grant class certification when questions of law and fact common to all
20 Class Members predominate over any questions affecting only individual Class Members. The
21 predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant
22 adjudication on a representative basis. (*See, e.g., Sav-On Drug Stores, supra.*)

23 The proposed Settlement embodies all three factors of the “community of interest” test: (1)
24 common questions of law and fact predominate; (2) Plaintiff’s claims are typical; (3) Plaintiff
25 and her counsel will fairly and adequately protect the interests of the Class.
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1. Predominant common questions

The claims asserted by Plaintiff on behalf of the 53 Class Members concern predominant common issues of law and fact, including: (1) whether all Class Members were misclassified as independent contractors; (2) whether Class Members were paid all wages due them at termination; (3) whether Class Members were afforded the opportunity to take rest and meal breaks; (4) whether Class Members are entitled to the reimbursement of all or a portion of their cell carrier and home internet fees; (5) whether Class Members are entitled to the reimbursement of travel expenses for work performed within the Bay Area; (6) whether Class Members were provided compliant wage statements; and (7) whether Defendants willfully failed to pay all wages earned by Class Members.

2. Plaintiff's claims are typical

Typicality does not focus on individual characteristics or circumstances of the representative compared to those of the remainder of the Class, but rather upon the typicality of the proposed representative's claims as they relate to the defendants' conduct and activities. See, *Classen v. Weller*, 145 Cal.App.3d 27, 47, (1983) ("[t]he only requirements are that common questions of law and fact predominate and that the class representative be similarly situated"). The representative plaintiff's claims are typical if they arise from the same event, practice or course of conduct that gives rise to the claims of other class members, and if their claims rest on the same legal theories. *Id.*

In this case, the claims of the proposed Class Representative are typical of the Settlement Class. Ms. La Luz worked pursuant to the same written contract, was paid the same amount per hour as all Class Members, was engaged on the same project as all Class Members, and was subject to the same policies and practices that affected the entire Class.

3. Plaintiff and her counsel will fairly and adequately protect the interests of the Settlement Class

The adequacy of representation requirement is met by fulfilling two conditions: (1) a named plaintiff must be represented by counsel qualified to conduct the pending litigation; and (2) a

1 named plaintiff's interests cannot be antagonistic to those of the class. *McGhee v. Crocker-*
2 *Citizens Nat. Bank*, 60 Cal.App.3d 442, 451, (1976)

3 First, Class Counsel is "qualified, experienced and generally able to conduct the proposed
4 litigation." *Miller v. Woods*, 148 Cal.App.3d 862, 875, (1983) Plaintiff's attorney has extensive
5 expertise in handling all aspects of wage and hour and class action litigation. (Kitchin Decl., ¶¶
6 2-12)

7 Second, Plaintiff alleges that Defendants have injured the representative Plaintiff and every
8 Class Member in the same manner; therefore, the named Plaintiff's interests are co-extensive
9 with those of the Class. Plaintiff has demonstrated her commitment to achieving the best results
10 possible for her fellow Class Members. *McGhee*, 60 Cal.App.3d at 451 Plaintiff assisted in
11 the investigation and litigation efforts undertaken by her attorney. In addition to gathering her
12 own records and helping counsel understand the employment practices at issue, Plaintiff
13 assisted her attorney to identify specific areas to address thorough written discovery. Plaintiff
14 also participated in the day-long mediation. As a direct result of her efforts, her attorney
15 gathered sufficient documentary and testimonial evidence to engage in meaningful class-wide
16 mediation within nine months of filing their complaint that resulted in the proposed \$175,000
17 class settlement for 53 California workers. (*See*, La Luz Decl. *passim*.)

18 4. A class action is superior to a multiplicity of litigation.

19 Finally, the Court must determine that a class action would be superior to alternative means
20 for the fair and efficient adjudication of the claims. By consolidating 53 potential individual
21 actions into a single class-wide proceeding, the Court can manage this litigation in a manner
22 that serves the economics of time, effort and expense for the litigants and the judicial system.
23 Absent class treatment, similarly-situated employees with relatively small but meritorious
24 claims for damages would, as a practical matter, have no means of redress because of the time,
25 effort and expense required to prosecute individual actions. *Daar v. Yellow Cab Co.* 67 Cal.2d
26 at 713

1 **VI. THE SETTLEMENT IS WITHIN THE RANGE OF POSSIBLE APPROVAL**

2 Approval of the Settlement is warranted under the standards applicable to both preliminary
3 and final approval of class action settlements. As a threshold matter, “a voluntary conciliation
4 and settlement are the preferred means of dispute resolution.” *7-11 Owners For Fair*
5 *Franchising v. Southland Corp.* 85 Cal.App.4th 1135, 1151, (2000) (citation omitted).

6 Court approval of a class action settlement under California law involves a two-step process.
7 (See, Cal.R.Ct. 3.769 (c) and (g).) The trial court must determine first if a settlement
8 proposal is “within the range of possible approval. If it finds the proposed settlement to be
9 within this range, it then proceeds to the second step in the review process, the fairness hearing.”
10 *Dunk v. Ford Motor Co.* 48 Cal.App.4th 1794, (1996) At the final approval stage, the court
11 determines if a settlement is “fair, adequate and reasonable” and “not the product of fraud or
12 overreaching by, or collusion between, the negotiating parties.” See, *Wershba v. Apple*
13 *Computer, Inc.* 91 Cal.App.4th 224, 244-45, (2001).⁴

14 The trial court possesses broad discretion to determine the fairness of a class settlement.
15 Both the federal circuit courts and the California Court of Appeal have adopted a mix of
16 considerations, including “[1] the strength of plaintiff’s case, [2] the risk, expense, complexity
17 and likely duration of further litigation, (3) the risk of maintaining class action status through
18 trial, [4] the amount offered in settlement, [5] the extent of discovery completed and the stage
19 of the proceedings, [6] the experience and views of counsel, . . . and [7] the reaction of the class
20 members to the proposed settlement.” (See, *Dunk. supra*, at 1801 and *Kullar v. Foot Locker*
21 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 128,

22 This Settlement satisfies these factors. While the Court need not and should not at this stage
23 determine whether the proposed Settlement is fair and adequate for final approval, the
24 Settlement falls well “within the range” of fairness and adequacy for preliminary approval.

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⁴ The factors to be applied in determining whether to grant final approval are set forth by the Court of Appeal for
the First District in *7-Eleven v. The Southland Corp.*, 85 Cal.App.4th 1135, 1146, (2000).

1 A. The Strength of Plaintiffs' Case

2 Misclassification: Plaintiff is confident that all members of the Class were misclassified as
3 independent contractors under California law.⁵ The ABC Test set out in *Dynamex Operations*
4 *v. Superior Court* (2018) 4 Cal. 5th 903 (“*Dynamex*”) will apply to all of Plaintiff’s claims.
5 VoxelMaps would not be able to satisfy any part of this test. VoxelMaps’ managers maintained
6 substantial control over all significant aspects of the work (subpart A). The work performed
7 was within the usual course of VoxelMaps’ business (subpart B). Plaintiff and the Class were
8 not engaged in an independently established trade taking photos of inanimate objects with
9 iPhones (Subpart C). Plaintiff, for example, is a yoga instructor who was interested in earning
10 extra money on a short project. (La Luz Decl., ¶ 2)

11 Reimbursement of Expenses (Labor Code § 2802): Plaintiff’s right to reimbursement of
12 business-related expenses will be determined pursuant to the ABC Test in *Dynamex* as well.

13 For Plaintiff to prevail on liability for non-reimbursement of expenses on a class-wide basis,
14 she would be required to develop sufficient evidence of actual costs incurred by Class Members
15 to overcome VoxelMaps’ Constitutional defenses to class treatment and to meet Plaintiff’s
16 burden of proof. VoxelMaps will argue that calculating the reimbursement value for all Class
17 Members would require timely and costly individual proof, and would make class certification
18 of the claim difficult or impossible due to manageability problems associated with obtaining
19 and presenting individual proof.

20 Plaintiff’s expense reimbursement model estimates the value of this claim to be \$16,170
21 Class wide, based on estimates generated from Plaintiff’s own expenses and the cost of cellular
22 and internet service, adjusted by the number of days worked during each month of the project.
23 Plaintiff is confident in the strength of this claim, but acknowledges that it has a relatively low
24 monetary value and could be costly to establish class wide.

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5 See, ¶ 32 of Kitchin Decl. addressing each claim. Also see, Exhibit B to Kitchin Decl. showing the methodology
Plaintiff used at mediation to evaluate likely outcomes for each of Plaintiff’s class-wide claims.

1 Overtime Wages: VoxeMaps' payroll records show that some Collectors did not receive
2 overtime compensation when they worked overtime hours. Plaintiff was one of the Class
3 Members who worked overtime but was not paid overtime wages. This also is a strong claim,
4 but the class-wide value is relatively low at \$5,798.61.

5 Meal and rest periods: Plaintiff did not take regular meal or rest breaks while working in
6 the field because she felt pressured by her managers at VoxeMaps to complete as many
7 photographs as possible each shift. VoxeMaps disputes these claims. It points out that all
8 Collectors worked on their own at their personally chosen locations, and had free reign to take
9 as many breaks as they wanted. VoxeMaps argues that these claims would require individual
10 proof and make class treatment improper. Plaintiff estimates the full potential value of these
11 claims is \$18,278, based on the assumption that every Class Member missed a rest period during
12 any shift that lasted more than 3.5 hours, and missed a meal period when they worked over 6.0
13 hours without record of clocking out for a meal period.

14 Labor Code § 203: If Plaintiff prevailed on her unpaid overtime wage claims, then she
15 would be in a strong position to obtain waiting time penalties under Labor Code § 203 for some
16 members of the Class. VoxeMaps argues that even if Plaintiff prevails on the overtime wage
17 claim, however, it had a viable defense to the willfulness requirement of Labor Code § 203.
18 According to its discovery responses, the decision to classify the workers as independent
19 contractors was based on VoxeMaps' belief that by permitting the Class Members to control
20 their own work time and to choose where they performed work, Class Members were properly
21 classified as independent contractors. While Plaintiff believes she will overcome VoxeMaps'
22 defenses with respect to classification, a decision that VoxeMaps' failure to pay was not willful
23 would jeopardize the full value of this claim, \$122,671.65.

24 Labor Code § 226: If Plaintiff prevails on her misclassification claim, then Class members
25 would be entitled to recordkeeping penalties under Labor Code § 226(e)(1), which Plaintiff
26 calculates to be \$9,600 class wide.

1 PAGA civil penalty claims: The PAGA claims are based on the same evidence Plaintiff
2 would marshal to prove damages and statutory penalties, and subject to similar risks. In
3 addition, however, the Court has discretion to limit or lower the amount of civil penalties “if,
4 based on the facts and circumstances of the particular case, to do otherwise would result in an
5 award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code §2699(e)(2)

6 B. The Risk, Expense, Complexity and Likely Duration of Further Litigation

7 Defendants raise several factual and legal defenses that, if successful, would defeat or
8 substantially impair the value of Plaintiff’s claims. For example, VoxelMaps has testified in
9 verified discovery responses and in a sworn declaration that this was its only data collection
10 project of its kind in California. (Kitchin Decl., ¶ 22) Because this involved a single project of
11 limited duration, Plaintiff faces the risks that a jury would not find that the misclassification
12 was willful. In addition, VoxelMaps claims that because Class Members controlled their own
13 schedules, they were always free to take rest and meal breaks. If Class Members failed to take
14 these breaks, it was because they chose to waive them.

15 Furthermore, although Plaintiff seeks penalties for violations of the California Labor Code
16 under the PAGA, courts have discretion to reduce penalties they deem “unjust, arbitrary and
17 oppressive or confiscatory.” See, Labor Code § 2699(e)(2). Given the paucity of precedential
18 interpretations of the implementation of the scope of this discretion, Plaintiff recognizes the
19 risk that the trial court could significantly limit the recovery of civil penalties.

20 Furthermore, Plaintiff is cognizant that the final resolution of her claims could be delayed
21 substantially by one or more appeals of the court’s orders. These risks would arise during class
22 certification, class and merits discovery and during and after trial.

23 Litigating all of Plaintiff’s claims would involve extensive and expensive discovery that
24 would not likely increase the value of the claims. To establish that the employment practices
25 were consistent among all Class Members, Plaintiff would need to take several depositions of
26 field managers and to gather individualized data in support of her damages claims. Defendants

1 could, in turn, take several Class Member depositions. Although the attorneys' fees and costs
2 would increase substantially with the continuation of litigation, the damages recovered for the
3 Class would not substantially increase.

4 Plaintiff is also concerned that Defendants would be unable to pay the costs of defense plus
5 a judgment rendered against them. VoxelMaps is a small AI company with only a handful of
6 employees. Thus, the proposed Settlement is based not only on the estimated likelihood that
7 Plaintiff would or would not prevail on her various claims, but also on the risk that litigation
8 expenses and a judgment could render Defendants insolvent.

9 C. The Risk of Maintaining Class Action Status Through Trial

10 Plaintiff is confident that she could obtain class certification and maintain class certification
11 through trial. However, she understands that in the absence of settlement, VoxelMaps would
12 fight class certification and could seek decertification once formal discovery comes to a close.

13 D. The Amount Offered in Settlement

14 The total monetary value of the Settlement is \$175,000. Plaintiff's counsel ran damage and
15 penalty models based on actual timekeeping records of Class Members that contained
16 timestamps showing when work began each day and when work ended. Some of these records
17 showed when meal periods were taken, many did not. The timekeeping records memorialized
18 some overtime hours worked for some Class Members, including Plaintiff.

19 With respect to the estimation of non-reimbursed expenses (Labor Code § 2802), Plaintiff
20 developed a reasonable model based on the fees Plaintiff paid for internet service and cellular
21 service, and her estimate of transportation costs per work day. (See, Exhibit B to Kitchin Decl.)

22 Plaintiff generated a series of estimates based on the potential recovery of civil penalties
23 under Labor Code § 226.8, which permits a court to impose civil penalties under the PAGA of
24 between \$5,000 and \$15,000 against an employee who willfully misclassifies someone as an
25 independent contractor. Based on the evidence, Plaintiff relied on a settlement model at
26

1 mediation that gave full value to all of her PAGA claims, with the exception of section 226.8.
2 This model constituted a fair and reasonable approach to valuing the PAGA penalties.

3 The maximum potential recovery under Plaintiff's damage model, assuming 100%
4 recovery of all damages, statutory penalties, interest, and with all PAGA civil penalties (except
5 Labor Code § 226.8) valued at \$100 per pay period per Class Member, is \$244,079.

6 Under the Settlement, each Class Member will receive a pro-rata share of the Net
7 Settlement Amount. The exact amount paid to each Settlement Class Member will be based on
8 the number of workweeks each person worked.

9 E. The Extent of Discovery Completed and the Stage of the Proceedings

10 Plaintiff gathered sufficient evidence through formal discovery and the informal exchange
11 of information before mediation to generate reasonable estimates of damages and to negotiate
12 settlement in good faith. (Kitchin Decl., ¶¶ 20-26)

13 VoxelMaps produced timekeeping and payroll data for all Class members for the full length
14 of their employment. Before and during mediation, the parties made further exchanges of
15 information relating to the Defendants' policies, workforce, financial viability, absence of
16 insurance coverage and legal positions. The records produced provide a sufficient
17 "understanding of the amount that is in controversy and the realistic range of outcomes of the
18 litigation." *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* 186 Cal.App.4th 399, 409,
19 (2010) and, see, *Kullar*, 168 Cal.App.4th at 128.

20 With sufficient data in hand to evaluate Defendants' minimum and maximum exposures,
21 Plaintiff and her counsel evaluated the chances of success on a claim-by-claim basis, and
22 whether additional discovery and litigation would increase or decrease the likelihood of
23 prevailing on the claims. The Gross Settlement Amount is substantially higher than the lowest
24 judgment that could be entered, and substantially lower than the most Plaintiff could recover
25 for herself, the Class and the State of California if she prevailed on every one of her claims.
26 Ultimately, Plaintiff had sufficient information to negotiate this Settlement in good faith.

1 Plaintiff and her counsel are confident this Settlement is grounded on information sufficient to
2 evaluate the merits of the class-wide claims, the strengths of Defendants' defenses and the
3 sufficiency of settlement value.

4 F. The Experience and Views of Counsel

5 Plaintiff's counsel frequently advises employers and employees regarding wage and hour
6 laws, and has conducted seminars and presentations to county and state bar associations
7 regarding wage and hour laws and litigation. Plaintiff's counsel has become a leader in this area
8 of employment litigation in California. Plaintiff and her counsel developed a well-conceived
9 litigation strategy to prosecute and resolve these claims.

10 Plaintiff's counsel understands the burden his client faces to obtain class certification and
11 to prosecute these claims. He is familiar with the difficulties associated with pursuing claims
12 on a class basis, and experienced in the evaluation of the kinds of claims asserted in this action.
13 He also understands the problems small employers encounter when faced with significant
14 judgements or awards. Plaintiff's counsel believes the proposed Settlement is a good result for
15 the Class. (*See*, Kitchin Decl., ¶ 33)

16 G. The Reaction of The Class Members to The Proposed Settlement

17 The Settlement permits VoxelMaps to void the proposed Settlement if more than seven
18 Class Members opt out. Under factor 7 of the criteria set forth in *7-Eleven*, this provision will
19 largely measure the Class Members' reaction to the proposed Settlement (85 Cal.App.4th at
20 1146). In addition, any objecting Class Member can be heard at the fairness hearing.

21 H. Absence of Fraud or Collusion

22 Finally, this Settlement results from Plaintiff's advocacy on behalf of the Class and is based
23 on serious and sustained negotiations between the parties. It is a settlement reached through
24 arm's length negotiations under the direction of a very qualified mediator and its value to the
25 Class is a powerful indication of the propriety of the negotiation process.

1 **VII. THE PROPOSED NATURE AND METHOD OF CLASS NOTICE ARE**
2 **CONSTITUTIONALLY SOUND AND APPROPRIATE.**

3 A. The Proposed Notice Plan Satisfies Due Process

4 California law vests courts with broad discretion in fashioning an appropriate notice
5 programs. *Cartt v. Super. Ct.*, (1975) 50 Cal.App.3d 960, 973-74 “The notice given should
6 have a reasonable chance of reaching a substantial percentage of the Class Members . . .” *Id.*,
7 at p. 974. Here, VoxelMaps has the last known contact information for past and present
8 employees. Notice by U.S. mail is most appropriate.

9 After the Administrator conducts a NCOA address update search on all Class Members,
10 notice of the proposed Settlement will be mailed to Class Members’ current addresses. The
11 Administrator will conduct skip-trace research on Class Members whose notices are returned
12 as undeliverable, and will send out timely follow-up notices. Mailed notices will be effective
13 and constitutes the best notice practicable. (See, Cal.R.Ct. 3.766(e).)

14 B. The Proposed Notice Is Accurate and Informative

15 The content of the proposed Notice satisfies Cal.R.Ct. 3.766(d) by providing Class
16 Members straight-forward information about the litigation, the meaning and nature of the
17 proposed Settlement, the terms and provisions of the proposed Settlement, relief the Settlement
18 will provide, the application of Class Counsel for payment of their attorneys’ fees and
19 reimbursement of their costs, the date, time and place of the final approval hearing, and the
20 procedure and deadlines for opting out of the proposed Settlement or for submitting comments
21 and objections. (See, Exhibit A to Settlement Agreement.)

22 The Notice also fulfills the requirement of neutrality in class notices, by summarizing the
23 proceedings and terms of the proposed Settlement in an informative and coherent manner. It
24 states that the Settlement constitutes no admission of liability by the Defendants, and that the
25 Court has not ruled on the merits of the claims. It also states that the final settlement approval
26 decision has yet to be made. The Notice complies with the standards of fairness, completeness,

1 and neutrality required of a combined settlement-certification class notice disseminated under
2 authority of the Court.

3 Class Members need not submit additional forms or information, unless a Class Member
4 opts out of the Class Settlement, a procedure set out in the Notice. Class Members will not need
5 to submit any forms to receive payment.

6 **VIII. SCHEDULING A FINAL APPROVAL HEARING IS APPROPRIATE**

7 The last step in the settlement approval process is the formal hearing, at which the Court
8 may hear all evidence and argument to evaluate conclusively the proposed Settlement. At that
9 hearing, proponents of the proposed Settlement may explain and describe its terms, and offer
10 argument to support its final approval, and Settlement Class Members (or their counsel) may
11 be heard to support or oppose the Settlement.

12 **IX. CONCLUSION**

13 Plaintiff respectfully requests that the Court conditionally certify the proposed Class for
14 settlement, approve Patrick R. Kitchen as Class Counsel, approve Plaintiff Holly La Luz as the
15 Class Representatives, approve CPT Group, Inc. as the third-party Settlement Administrator,
16 approve the form and method of notice, and approve the proposed mechanism for receiving and
17 handling notices of election to opt out of the Settlement and objections.

18 Respectfully submitted,

19
20 Date: February 17, 2021

KITCHIN LEGAL, APC

21
22 By /s/ Patrick Kitchen
Patrick R. Kitchen