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[Continued on following page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

Coordination Proceeding Special Title (Rule
3.550)

Telecare Wage and Hour Cases

Included actions:

Naayshon Battle and Maria Chavez v. Telecare
Corporation

Chantia Warren v. Telecare Corporation

JCCP No.: **5204**

Alameda Sup. Ct. Case No.: 22CV021308
Alameda Sup. Ct. Case No.: RG21096006
Alameda Sup. Ct. Case No.: HG21099839

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS AND REPRESENTATIVE
ACTION SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES**

Date: May 3, 2023
Time: 10:00 a.m.
Courtroom: 21
Judge: Hon. Evelio Grillo

Trial Date: Not Set

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3 Aparajit Bhowmik (SBN 248066)
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1 TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on May 3, 2023, at 10:00 a.m., or as soon thereafter as the matter
3 may be heard, in Department 21 of the above-captioned Court, located at 1221 Oak Street, Oakland, CA
4 94612, Plaintiffs NAAAYSHON BATTLE, MARIA CHAVEZ and CHANTIA WARREN (“Plaintiffs”)
5 will and hereby do move this Court for an order:

6 1. Granting class certification of the Class, solely for settlement purposes pursuant to
7 Code of Civil Procedure § 382;

8 2. Preliminarily approving the CLASS AND PAGA ACTION SETTLEMENT
9 AGREEMENT (“Settlement” or “Agreement”);

10 3. Appointing counsel for Plaintiffs, Moon & Yang, APC, Capstone Law APC, and
11 Blumenthal Nordrehaug Bhowmik De Blouw, LLP as Class Counsel;

12 4. Appointing Plaintiffs as the Class Representatives;

13 5. Approving the use of the proposed notice procedure and related notice form;

14 6. Approving ILYM Group, Inc. as the third-party administrator;

15 7. Directing that notice be mailed to the Class; and,

16 8. Scheduling a hearing date for motions for final approval of class action settlement
17 and awards of attorneys’ fees and costs.

18 Good cause exists to grant this Motion because:

19 1. The Class meets all of the requirements for class certification for settlement
20 purposes under Code of Civil Procedure § 382;

21 2. The Settlement Agreement is a fair, adequate, and reasonable compromise of the
22 disputed wage and hour claims asserted by Plaintiffs;

23 3. Plaintiffs and Class Counsel are adequate to represent the Class;

24 4. The proposed notice procedures and related forms comply with California Rules of
25 Court 3.766(d) and (e), adequately apprise Class Members of their rights, and fully comport
26 with due process; and

27 5. Based on the foregoing, notice should be directed to the Class Members and a final
28 fairness hearing should be scheduled (Plaintiffs suggest about 150 days after preliminary

1 approval is granted).

2 This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court,
3 which require approval by the Court of a class action settlement and permit the Court to extend the page
4 limit for memoranda.

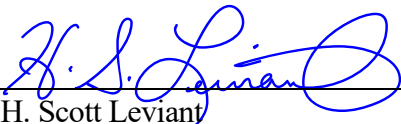
5 **TENTATIVE RULINGS:** Pursuant to Local Rule 3.30, the court has adopted the tentative
6 ruling procedure set out in California Rules of Court, rule 3.1308(a)(1). The tentative ruling or notice to
7 appear will generally be available by 4:00 p.m. two court days prior to the scheduled hearing and no later
8 than 3:00 p.m. the court day before the hearing. Unless the court directs otherwise, the court's tentative
9 ruling will be available online or by calling (866) 223-2244. The process for viewing a tentative ruling
10 online are subject to change. Instructions for access to tentative rulings online can be found at
11 <http://www.alameda.courts.ca.gov/Pages.aspx/Tentative-Rulings>. Whenever a tentative ruling has not
12 been issued, the parties are to appear at the hearing unless otherwise ordered.

13 This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points
14 and Authorities, the Declarations of H. Scott Leviant, Raul Perez, Kyle Nordrehaug, Naayshon Battle,
15 Maria Chavez, and Chantia Warren, and the Settlement Administrator in support thereof, all papers and
16 pleadings on file with the Court in this action, all matters judicially noticeable, and on such oral and
17 documentary evidence as may be presented in connection with the hearing on the Motion.

18 Respectfully submitted,

19 Dated: April 11, 2023

MOON & YANG, APC

20 By: 
21 H. Scott Leviant

22 **CAPSTONE LAW APC**
23 Robert Drexler

24 **BLUMENTHAL NORDREHAUG**
25 **BHOWMIK DE BLOUW LLP**
26 Kyle Nordrehaug

27 Attorneys for Plaintiffs
28

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	iii
I. INTRODUCTION.....	1
II. THE MAJOR TERMS OF SETTLEMENT	1
III. FACTUAL AND PROCEDURAL BACKGROUND	4
A. Plaintiffs' Claims	4
B. Pre-Mediation Data Production and Analysis.....	5
C. Settlement.....	6
IV. CLASS DEFINITION.....	7
V. DISCUSSION.....	7
A. The Court Should Conditionally Certify the Class for Settlement Purposes.....	7
1. The Members of the Class Are Both Ascertainable and Numerous.	8
2. There Are Common Questions That Predominate Over Any Questions That May Be Unique to Individual Class Members.....	8
3. Plaintiffs' Claims Are Typical of Those of the Class.	9
4. Plaintiffs and Plaintiffs' Counsel Will Adequately Represent the Class.	10
5. Proceeding as a Class Action is Superior to Individual Actions.....	10
6. The Proposed Class Notice Complies with Rule 3.766(d) and (e)	10
a) The Notice Procedure Satisfies Due Process	10
b) The Notice is Accurate and Informative	11
B. The Court Should Preliminarily Approve the Settlement Because It Is a Fair, Adequate, and Reasonable Compromise of Disputed Wage Claims.....	11
1. Class Action Settlements Are Subject to Review and Approval.	12
2. The Parties Reached the Settlement Through Arms' Length Negotiations Between Experienced Counsel with the Assistance of a Highly Qualified Mediator After Sufficient Data Was Exchanged to Evaluate Settlement.	12

1	3.	The Settlement Represents a Fair, Adequate, and Reasonable Compromise of	
2		Class Members’ Claims Based on Defendant’s Estimated Liability Exposure	
3		Given the Risks Continued Litigation Would Entail.	13
4	4.	The Proposed Method for Allocating Settlement Funds Is Fair.	16
5	5.	The Proposed Enhancement Awards to Plaintiffs Warrant Approval.	17
6	6.	The Proposed Award of Attorneys’ Fees and Costs Is Also Fair, Adequate,	
7		and Reasonable and Merits Preliminary Approval.	17
8	7.	The Proposed Payment to the Administrator Is Fair and Reasonable.....	18
9	8.	The PAGA Allocation is Reasonable.....	18
10	VI.	THE COURT SHOULD SCHEDULE A FINAL FAIRNESS HEARING	20
11	VII.	CONCLUSION.....	20

TABLE OF AUTHORITIES

CALIFORNIA DECISIONAL AUTHORITY

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> , 85 Cal. App. 4th 1135 (2000)	12
<i>Amaral v. Cintas Corp.</i> , 163 Cal. App. 4th 1157 (2008)	19
<i>Amaro v. Anaheim Arena Mgmt., LLC</i> , 69 Cal. App. 5th 521 (2021)	18
<i>Brinker Rest. Corp. v. Super. Ct.</i> , 53 Cal. 4th 1004 (2012)	7, 9, 16
<i>Cartt v. Sup. Ct.</i> , 50 Cal. App. 3d 960 (1975)	11
<i>Clark v. Am. Residential Servs. LLC</i> , 175 Cal. App. 4th 785 (2009)	17
<i>Clothesrigger, Inc. v. GTE Corp.</i> , 191 Cal. App. 3d 605 (1987)	8
<i>Dunk v. Ford Motor Co.</i> 48 Cal. App. 4th 1794 (1996)	8, 12, 18
<i>Duran v. US Bank Nat’l Ass’n</i> , 59 Cal. 4th 1 (2014)	14
<i>Ghazaryan v. Diva Limousine, Ltd.</i> , 169 Cal. App. 4th 1524 (2008)	9
<i>Global Minerals & Metals Corp. v. Superior Court</i> , 113 Cal. App. 4th 836 (2003)	8
<i>Jaimez v. Daiohs USA, Inc.</i> 181 Cal. App. 4th 1286 (2010)	8
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal. App. 4th 116 (2008)	12
<i>Laffitte v. Robert Half Intern. Inc.</i> , 1 Cal. 5th 480 (2016)	18
<i>Linderv. Thrifty Oil Co.</i> , 23 Cal. 4th 429 (2000)	7, 10
<i>Malibu Outrigger Bd. of Governors v. Superior Court</i> , 103 Cal. App. 3d 573 (1980)	11
<i>McGhee v. Bank of America</i> , 60 Cal. App. 3d 442 (1976)	10
<i>Miller v. Woods</i> , 148 Cal. App. 3d 862 (1983)	8
<i>Moniz v. Adecco USA, Inc.</i> , 72 Cal. App. 5th 56 (2021)	18, 19
<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> , 186 Cal. App. 4th 399 (2010)	12
<i>Noel v. Thrifty Payless, Inc.</i> , 7 Cal. 5th 955, 980 (2019)	8
<i>Sav-on Drug Stores, Inc. v. Superior Court</i> , 34 Cal. 4th 319 (2004)	7, 8
<i>Seastrom v. Neways, Inc.</i> , 149 Cal. App. 4th 1496 (2007)	9
<i>Stambaugh v. Superior Court</i> , 62 Cal. App. 3d 231 (1976)	11
<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224 (2001)	13

FEDERAL DECISIONAL AUTHORITY

<i>Air Line Stewards & Stewardesses Ass’n, Local 550 v. American Airlines, Inc.</i> , 455 F.2d 101 (7th Cir. 1972)	13
<i>Miller v. CEVA Logistics U.S.A., Inc.</i> , 2015 WL 729638 (E.D. Cal. Feb. 19, 2015).....	16
<i>O’Connor v. Uber Technologies, Inc.</i> , 201 F.Supp.3d 1110 (N.D. Cal. 2016).....	19
<i>Rodriguez v. West Publishing Corp.</i> , 563 F.3d 948 (9th Cir. 2000)	16
<i>Willis v. Xerox Bus. Servs., LLC</i> , 2013 WL 6053831 (E.D. Cal. 2013)	19

STATUTES

Code of Civil Procedure § 382.....	7, 8, 20
------------------------------------	----------

RULES

Rules of Court, rule 3.766	10
Rules of Court, Rule 3.769	8, 11, 12

OTHER AUTHORITIES

<i>Findings of the Study of California Class Action Litigation</i> , 2000-2006	16
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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court, Rules 3.769, Plaintiffs requests that this Court
3 preliminarily approve the class action settlement set forth in the CLASS AND PAGA ACTION
4 SETTLEMENT AGREEMENT (“Settlement” or “Agreement”) with TELECARE CORPORATION
5 (“Defendant”).

6 After informal discovery, the exchange of documents and data, and an arm’s-length mediation
7 session with mediator Jeff Ross, Esq., Plaintiffs and Defendant (collectively referred to herein as the
8 “Parties”) reached a proposed class action settlement with a gross settlement amount (“GSA”) of
9 **\$2,345,000.00** in compromise of disputed claims asserted on behalf of the below-defined Class
10 consisting of approximately **8,700** members. Plaintiffs believe this settlement is a fair, adequate, and
11 reasonable compromise of disputed claims for alleged wage and hour violations and penalties.

12 Plaintiffs now submit this Motion for Preliminary Approval of Class and Representative Action
13 Settlement, along with the Settlement (attached to the Declaration of H. Scott Leviant [“Leviant Decl.”],
14 Exhibit 1 thereto). For the Court’s convenience, below is a summary of the key provisions of the
15 Settlement.

16 **II. THE MAJOR TERMS OF SETTLEMENT**

17 The provisions of the proposed Settlement include the following:

- 18 • Defendant agrees not to oppose certification for purposes of Settlement (Settlement, ¶ 2.6);
- 19 • Class: Current and former non-exempt Telecare Corporation employees in California who
20 worked at any time during the period of July 17, 2018 through March 15, 2023, and who did not
21 execute general releases of claims (Settlement, ¶ 1.8.)
- 22 • Settlement Amount: Defendant will pay a maximum of **\$2,345,000.00**, referred to as the Gross
23 Settlement Amount (or GSA herein), resulting in an estimated average **gross** payment per Class
24 Member of approximately **\$269.54** (Settlement, ¶ 1.21);
- 25 • Class Size: approximately **8,700** individuals who worked an approximately **580,000** workweeks.
- 26 • PAGA Group Size: an estimated **8,120** individuals, who worked roughly **258,000** pay periods
27 (Leviant Decl., ¶ 18);
- 28 • PAGA Period: June 6, 2019 through March 15, 2023 (Settlement, ¶¶ 1.33,1.45);

- 1 • Kullar/Munoz Analysis: Plaintiffs address the claims analysis herein, at Part V.B.3, and in more
2 detail the Declaration of Leviant, at Paragraph 18;
- 3 • No Reversion: The Settlement is a *non-reversionary* settlement (Settlement, ¶ 6);
- 4 • Certification: Plaintiffs address certification requisites herein, at Part V.A., and in the
5 Declaration of Leviant, at Paragraphs 34-40;
- 6 • No Claim Form: No claim form is required (Settlement., ¶ 6);
- 7 • Class Release: The Settlement will release specified wage-and-hour claims for Class Members
8 (those Class Members who do not opt out of the Settlement) (Settlement, ¶¶ 1.6, 7.1);
- 9 • PAGA Release: Class Members will release the PAGA Claims set forth in this Action, that were
10 identified in the operative complaint and Plaintiffs' LWDA Notice Letters, regardless of whether
11 they opt out of the class portion of the Settlement (Settlement, ¶¶ 1.31, 7.2);
- 12 • Net Settlement Amount Available to the Class: After deducting Service Awards, the PAGA
13 Payment, Administrative Costs, and the Class Counsel Award, the remainder will be available
14 for distribution to Class Members who do not opt out, with each Class Member receiving a share
15 based on the number of workweeks each Class Member worked for Defendant within the Class
16 Period. The Net Settlement Amount is estimated to be at least **\$1,386,333.00**, resulting in an
17 average **net** payment per Class Member of at least **\$159.35**, before any tax withholdings.
18 (Settlement, ¶ 1.27);
- 19 • Tax Allocation: The amounts distributed to Class Members will be characterized as 10% alleged
20 unpaid wages, 90% to penalties and interest, and PAGA Settlement Payments will be allocated as
21 100% penalties. (Settlement, ¶¶ 6.8.1, 6.8.2);
- 22 • Employer's Portion of Payroll Taxes Paid Separately: Defendant's portion of payroll taxes (e.g.,
23 FICA, FUTA, etc.) owed on any settlement payments to Class Members that constitute wages
24 will be paid separate and apart from the GSM (Settlement, ¶ 6.1);
- 25 • Settlement Administrator: The notice portion of the Settlement will be administered by a third-
26 party Administrator, ILYM Group, Inc. ILYM Group, Inc.'s bid for settlement administration
27 services in the amount of **\$37,000.00** was selected from a competitive bidding process.
28 (Settlement, ¶ 4; Mullins Decl., Exh. C.)

- Class Data for Administration: The Settlement Administrator will receive the Class List within 30 calendar days of Preliminary Approval, use the NCOA database to update the Class List, and then use skip tracing on returned Notices (Settlement, ¶ 4.3);
- Notice: The Notice will issue within 14 days of receipt of the Class List (Settlement, ¶ 4.4.1). The Notice describes how to dispute workweeks, submit an objection in writing, in person, or through an attorney, or request exclusion (Settlement, ¶ 4);
- Objections: Objections can be submitted in person, through an attorney, or in writing to the Settlement Administrator, with no pre-requisite to being heard (Settlement, ¶ 5.3);
- Exclusion Requests: The procedure for exclusion requests, mailing a request to the Settlement Administrator, is the same as the procedure for submitting a written objection (Settlement, ¶ 5.2);
- PAGA Allocation: From the GSA, **\$80,000** will be allocated to settle claims brought pursuant to the California Private Attorneys General Act, Labor Code § 2699 *et seq.* (“PAGA”), and seventy-five percent (75%), or **\$60,000**, will be paid to the California Labor & Workforce Development Agency. (Settlement, ¶¶ 1.32.);
- Notice to LWDA: Notice was provided prior to the filing of this Motion. Evidence is attached to the Leviant Declaration;
- Enhancement/Service Awards to Plaintiff: Defendant will not oppose the application for Class Representative Service Payment of up to **\$10,000.00** for each Plaintiff, to be paid from the GSA (Settlement, ¶ 6.4);
- Fees and Costs: Defendant will not oppose Class Counsel’s application for fees not to exceed 33 1/3% of the GSA (**\$781,667.00**)¹, and actual costs, in an amount not to exceed **\$30,000**, to be paid out of the GSA (Settlement, ¶ 6.3);
- Check Void Period: Settlement checks will be valid for 180 days (Settlement, ¶ 6.9);
- Uncashed Checks: Any settlement checks that are mailed to the Class Members and remain uncashed after 180 days of the date of issuance will be cancelled, and the moneys will be directed

¹ Pursuant to a written fee sharing agreement, the Court-awarded Class Counsels’ attorneys’ fees will be allocated as follows: 47.85% to Moon & Yang, APC, 39.15% to Capstone Law APC, and 13% to Nordrehaug Bhowmik De Blouw, LLP.

to a *cy pres*, The California State Bar Justice Gap Fund (Settlement, ¶ 6.9);

- Judgment Notice: Judgment will be posted on the Settlement Administrator’s website after entry;
- Confidentiality Provisions: The Settlement does not restrict Class Counsels’ ability to discuss the Settlement with Class Members.

(Leviant Decl., ¶¶ 11-12 and Exhibit 1 thereto.)

III. FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiffs’ Claims

On June 10, 2020, Plaintiff Maria Chavez filed a Class Action Complaint in Alameda County Superior Court, Case No. RG20064206. On July 21, 2020 Defendant filed its Answer to Plaintiff’s June 10, 2020 Complaint. On September 16, 2020, Plaintiff Chavez filed her First Amended Complaint adding a claim under the Private Attorneys General Act (“PAGA”). Defendant answered the First Amended Complaint on October 20, 2020. (Leviant Decl., ¶ 4.)

On August 3, 2020, Plaintiff Naayshon Battle filed a Class Action Complaint in the San Bernardino County Superior Court, Case No. CIVDS2015794. On October 13, 2020, Plaintiff Battle filed her First Amended Complaint adding a claim under PAGA. On March 24, 2021, Plaintiff Battle filed a Motion For Leave to Amend the Complaint in San Bernardino County Superior Court to add Plaintiff Chavez to her action. On June 21, 2021, the Court granted Plaintiff Battle’s Motion for Leave to file a Second Amended Complaint. On June 22, 2021, Plaintiff Battle filed a Second Amended Complaint adding Plaintiff Chavez to the *Battle* action. On July 21, 2021, Defendant filed its Answer to the Second Amended Complaint of Plaintiffs Chavez and Battle. On July 20, 2021, Judge Winifred Smith entered an Order dismissing Plaintiff Chavez’s action in Alameda County Superior Court. (Leviant Decl., ¶ 5.)

On April 1, 2021, Plaintiff Chantia Warren filed a Class Action Complaint in this Court, Case No. RG21096006. On June 21, 2021 Defendant filed an Answer to Plaintiff Warren’s Class Action Complaint. On May 4, 2021, Plaintiff Warren filed a separate representative action in this Court, alleging civil penalties pursuant to PAGA, Case No. HG21099839. On July 13, 2021 Defendant filed an Answer to Plaintiff Warren’s representative action Complaint. On September 30, 2021, Defendant filed a notice

of submission of Petition for coordination of the *Battle/Chavez* action, on the one hand, and the later-filed *Warren* action. The Petition was granted, designated as JCCP 5204, and assigned to this Court (the “Action”). On November 9, 2022, The Court required counsel for Battle and Chavez to obtain an Alameda County case number and add it to this Action (Case number 22CV021308). In the consolidated Action, Plaintiffs assert claims on behalf of the Representative Plaintiffs individually and on behalf of other alleged similarly situated employees for (1) failure to pay wages and overtime (Lab. Code §§ 204, 210, 221, 233, 246, 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198), (2) failure to provide timely, adequate, and compliant meal periods and accurately and fully pay meal period premiums (*id.* §§ 226.7, 512, 512(a), 516, and 1198), (3) failure to provide timely, adequate, and compliant rest breaks and accurately and fully pay rest break premiums (*id.* §§ 226.7, 516, and 1198), (4) failure to reimburse business expenses (*id.* §§ 222.5 and 2802); (5) failure to provide accurate, complete, and compliant wage statements (*id.* § 226, 226(a), 1174, 1174.5, and 1198), (6) failure to pay earned wages upon termination and “waiting time” penalties (*id.* § 201, 202, and 203), (7) unfair business practices (Bus. & Prof. Code § 17200, *et seq.*) for violations of the aforementioned Labor Code provisions, and (8) civil penalties under Labor Code §§ 226.3, 558, 1174.5, and 2698, *et seq.* for violations of the aforementioned Labor Code provisions and the California Wage Order. (Levant Decl., ¶ 6.)

B. Pre-Mediation Data Production and Analysis

The Parties conducted informal discovery and investigation of the facts and law. Such investigation included, inter alia, the exchange of informal data and discoverable information in preparation for the mediation sessions. (Levant Decl., ¶ 7.) The Parties have analyzed payroll and other data pertaining to Plaintiffs and the Class during the relevant Settlement Period, including but not limited to the numbers of former and current members of each purported subclass within the Class, average workweeks, and average rate of hourly pay. (*Id.*) Because of the time and expense of producing data, Defendant provided data for most of the class, but not all class members. (*Id.*) Counsel agreed to this sampling as it was robust, and they confirmed the reliability of the sample. (*Id.*) To make that calculation, Class Counsel had to calculate the margin of error for the size of a sample from the putative class. The margin of error calculation for the sample of the Class in this case is as follows:

$$1.96 \sqrt{\frac{0.5(1-0.5)}{1,023}} \sqrt{\frac{8,700-1,023}{8,700-1}} = \text{margin of error}^2 = 2.88\%$$

(*Id.*) The class size IS believed to include approximately 8,700 individuals. (*Id.*) With a sample of 1,023 individuals, Class Counsel calculated that the margin of error, using the population adjustment factor, was no more than 2.88 percent. (*Id.*) In addition, Defendant also provided documents reflecting its wage and hour policies and practices during the Settlement Period and information regarding the total number of current and former employees in the Class. (*Id.*) After reviewing documents regarding Defendant’s wage and hour policies and practices and other information obtained during the informal exchange of discovery, Class Counsel were able to evaluate the probability of class certification, success on the merits, and the plausible maximum monetary exposure for all claims. Class Counsel reviewed these records and prepared a damage analysis prior to mediation. (*Id.*)

C. Settlement

On September 13, 2022, the Parties participated in an all-day mediation presided over by mediator Jeff Ross, Esq. (Leviant Decl., ¶ 8.) The Parties discussed at length the burdens and risks of continuing with the litigation as well as the merits of the claims and defenses. (*Id.*) The Parties were unable to reach a settlement during the mediation. (*Id.*) However, they continued their meet and confer efforts and settlement negotiations after the mediation, and they have reached a settlement of this action. The Parties then drafted and signed a long form settlement agreement (the Agreement). (*Id.*)

Plaintiffs and Class Counsel are aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, both generally and in response to Defendant’s defenses thereto. (Leviant Decl., ¶ 9.) Plaintiffs and Class Counsel have also taken into account Defendant’s agreement to enter into a Settlement that confers substantial relief upon the Class.

Based on the foregoing, Plaintiffs and Class Counsel have determined that the Settlement set forth in this Agreement is a fair, adequate, and reasonable Settlement and is in the best interests of the

² The term “1.96” is derived from a standard deviation table for a 95% confidence interval, known as a “z-table.” It is not affected by sample or population size. The margin of error is an “overestimate” of because the variance is presumed to be at its highest value, using 0.5(1-0.5) to represent p*q in the variance equation of (p*q)/n.

Class. (Leviant Decl., ¶ 10.) Solely for the purpose of settling this case, the parties agree that the requirements for establishing class action certification with respect to this class have been met and are met. (*Id.*) If this Settlement is not approved by the Court for any reason, Defendant reserves its rights to contest class certification. (*Id.*) This Settlement, if approved, will result in termination of the litigation through the entry of the Judgment and the release of the released claims for all Class Members, including all within the class definition who have not elected to exclude themselves from the Class. (*Id.*)

IV. **CLASS DEFINITION**

The Class is defined as follows:

Current and former non-exempt Telecare Corporation employees in California who worked at any time during the period of July 17, 2018 through March 15, 2023, and who did not execute general releases of claims.

(Leviant Decl., ¶ 34 and Exhibit 1.)

The PAGA Members are defined as follows:

All current and former non-exempt employees of Telecare in California in the PAGA Period (June 6, 2019 through March 15, 2023).

V. **DISCUSSION**

A. **The Court Should Conditionally Certify the Class for Settlement Purposes**

The Class should be provisionally certified for settlement because: (1) the Class is ascertainable and sufficiently numerous; (2) there exists a well-defined community of interest; and (3) a class action is the superior method of adjudication for this settlement. Code of Civ. Proc. § 382; *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1021 (2012); *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 435 (2000).

Under Code of Civil Procedure § 382, class certification is warranted so long as there is a numerous and ascertainable class with a well-defined community of interest among its members and a “class action proceeding is superior to other means for a fair and efficient adjudication of the litigation.” *See, e.g., Sav-on Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 326, 332 (2004). For purposes of this Settlement *only*, Defendant stipulates to conditional certification. (Settlement ¶ 12.1.)

“The certification question is ‘essentially a procedural one that does not ask whether an action is legally or factually meritorious.’” *Id.*, at 326, quoting *Linder*. Indeed, the certification question simply asks whether the theory of recovery advanced by the plaintiff is likely to prove amenable to class

1 treatment. *See, e.g., Jaimez v. Daiohs USA, Inc.*, 181 Cal. App. 4th 1286, 1298 (2010). “[I]t is also well
2 established that trial courts should use different standards to determine the propriety of a settlement class,
3 as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for
4 settlement cases.” *Global Minerals & Metals Corp. v. Superior Court*, 113 Cal. App. 4th 836, 859
5 (2003), citing *Dunk v. Ford Motor Co.* 48 Cal. App. 4th 1794, 1807 n. 19 (1996).

6 In view of these standards, and as shown below, the Class should be certified for purposes of
7 settlement. Code Civ. Proc. § 382; Rules of Court, Rule 3.769(c).

8 **1. The Members of the Class Are Both Ascertainable and Numerous.**

9 Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of
10 the class, and (3) the means of identifying the class members. *See Miller v. Woods*, 148 Cal. App. 3d
11 862, 873 (1983). In this case, Plaintiffs contend that all three considerations favor class certification.

12 A class is ascertainable when “it is defined ‘in terms of objective characteristics and common
13 transactional facts’ that make ‘the ultimate identification of class members possible when that
14 identification becomes necessary.’” *Noel v. Thrifty Payless, Inc.*, 7 Cal. 5th 955, 980 (2019).

15 The class definition is sufficiently specific to enable the Parties, Class Members, and the Court to
16 readily determine the parameters of the class. *See Clothesrigger, Inc. v. GTE Corp.*, 191 Cal. App. 3d
17 605, 617 (1987). In this case, there are approximately 7,000 Class Members, all of whom may be
18 identified by reference to Defendant’s records that pertain to non-exempt status and dates of
19 employment. Accordingly, the Class is not only ascertainable, but also numerous. (Levant Decl., ¶ 35.)

20 **2. There Are Common Questions That Predominate Over Any Questions That** 21 **May Be Unique to Individual Class Members.**

22 The community of interest requirement embodies three factors: (1) predominant questions of law
23 and fact; (2) class representatives with claims or defenses typical of the class; and (3) class
24 representatives who can adequately represent the class. *Dunk*, 48 Cal. App. 4th at 1806; *Richmond*, 29
25 Cal. 3d at 473-75. A question of law or fact is common to the members of a class if it may be resolved
26 through common proof. *See, Jaimez*, 181 Cal.App.4th at 1305. As for predominance, it “is a comparative
27 concept, and ‘the necessity for class members to individually establish eligibility and damages does not
28 mean individual fact questions predominate.’” *Sav-on*, 34 Cal. 4th at 334.

1 In this case, common questions include, but are not limited to: i. Whether or not Defendant paid
2 proper wages to the Class; ii. Whether or not Defendant provided meal periods to the Class; iii. Whether
3 or not Defendant provided rest periods to the Class; iv. Whether or not Defendant paid compensation
4 timely upon separation of employment to former Class Members; v. Whether or not Defendant paid
5 compensation timely throughout Class Members' employment; vi. Whether or not Defendant provided
6 accurate itemized wage statements to the Class; and, vii. Whether or not penalties are available to the
7 Class for violation of Labor Code provisions. (Leviant Decl., ¶¶ 37-38.)

8 In the Action, Plaintiffs' claims present sufficient common issues of law and fact that
9 predominate over individual issues and warrant class certification. From their review of the
10 documentation provided, Class Counsel determined that for purposes of these claims, Defendant's
11 policies and practices are either identical, or sufficiently similar, to raise the same questions of liability,
12 and applied to all Class Members. Because Class Members would have to prove the same issues of law
13 and fact to prevail, and because their potential legal remedies are identical, it would be preferable to
14 resolve all Class Members' claims by means of the Settlement than to require each Class Member to
15 litigate his or her individual claims. Therefore, common questions predominate over questions that may
16 be unique to individual Class Members, and class-wide settlement is superior to any other resolution.

17 **3. Plaintiffs' Claims Are Typical of Those of the Class.**

18 Typicality "requires a showing that the class representative has claims or defenses typical of the
19 class." *See, e.g., Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1534 (2008), approved
20 by *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004 (2012). California law does not require that
21 plaintiffs have claims identical to the other class members. Rather, the test of typicality for a class
22 representative is whether other members have the same or similar injury, whether the action is based on
23 conduct which is not unique to the named plaintiffs, and whether other class members have been injured
24 by the same course of conduct. *Seastrom v. Neways, Inc.*, 149 Cal. App. 4th 1496, 1502 (2007).

25 In light of these standards, Plaintiffs are typical of class members. Like other Class Members,
26 Defendant employed Plaintiffs in non-exempt positions during the Class Period, and Plaintiffs claim that
27 they were subject to the same policies alleged to have impacted the entire class. (Leviant Decl., ¶ 36.)
28 Plaintiffs allege that they and other Class Members share the same claims stemming from Defendant's

1 alleged violations of the Labor Code and relevant wage order. In addition, Defendant's main defenses,
2 including that the wage and hour policies and practices fully comply with California law, apply equally
3 to the claims of all Class Members. Thus, Plaintiffs are typical of the Class.

4 **4. Plaintiffs and Plaintiffs' Counsel Will Adequately Represent the Class.**

5 The adequacy requirement is met where the plaintiff is represented by counsel qualified to
6 conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to class members'
7 interests. *McGhee v. Bank of America*, 60 Cal.App.3d 442, 451(1976). In other words, where the plaintiff
8 has adequate counsel, the plaintiff may represent the entire class absent any disabling conflicts of interest
9 that might hinder the plaintiff's ability to represent the class. *Id.*

10 In the Action, Plaintiffs have no conflicts of interest with other Class Members and have agreed
11 to place Class interests above Plaintiffs' own. (Chavez Decl., ¶¶ 5-20; Battle Decl., ¶¶ 3-14; Warren
12 Decl., ¶¶ 3-16; Leviant Decl., ¶ 39.) Moreover, Plaintiffs' counsel are experienced in wage and hour
13 class action litigation and have no conflicts of interest with absent Class Members. (Leviant Decl., ¶¶
14 21-26, 39; Perez Decl., ¶¶ 7-14; Nordrehaug Decl., ¶¶ 3-13.) As such, this Court should appoint Plaintiffs
15 as Class Representatives for the Class and appoint Plaintiffs' Counsel as Class Counsel.

16 **5. Proceeding as a Class Action is Superior to Individual Actions**

17 Plaintiffs contend that proceeding as a class action is a superior means of resolving this dispute,
18 as the Class Members and the Court will derive substantial benefits. Class certification would serve as
19 the only means to deter and redress the alleged Labor Code violations. *See Linder v. Thrifty Oil Co.* 23
20 Cal. 4th at 434. Furthermore, individual actions arising out of the same operative facts would unduly
21 burden the courts and could result in inconsistent results, which may be avoided by class certification.

22 **6. The Proposed Class Notice Complies with Rule 3.766(d) and (e)**

23 Notice requirements are set forth in Rules of Court, Rule 3.766. In determining the manner of
24 notice, the court must consider interests of the class, relief requested, stakes of individual class members,
25 costs of notifying class members, resources of the parties, possible prejudice to class members who do
26 not receive notice, and the *res judicata* effect on class members. Rules of Court, Rule 3.766(e).

27 *a) The Notice Procedure Satisfies Due Process*

28 The proposed procedure for distributing the Proposed Notice is robust and meets the requirement

1 that it have “a reasonable chance of reaching a substantial percentage of the class members.” *Cartt v.*
2 *Sup. Ct.*, 50 Cal.App.3d 960, 974 (1975). There is no statutory or due process requirement that all class
3 members receive actual notice, but in this matter, the Class Members will receive direct notice. Here, the
4 proposed procedure includes safeguards, including, but not limited to, mailing notice to Class Members’
5 last known addresses; skip tracing; searches for address changes; and the re-mailing of returned notices
6 to any forwarding addresses. This manner of giving notice complies with Rule of Court 3.766(c)
7 because it provides a reasonable chance that Class Notice will reach most if not all Class Members.

8 *b) The Notice is Accurate and Informative*

9 The proposed Notice of Class Action Settlement should be approved for dissemination to the
10 Class Members because its content complies with Rule of Court 3.766(d) in that it contains a brief
11 explanation of the case, including the basic contentions or denials of the Parties, detailed information
12 about Class Members’ rights to be excluded from the Settlement and object to the Settlement; a
13 statement that the Settlement will bind all members who do not timely opt-out. Thus, the Notice also
14 satisfies Rule of Court 3.769(f) regarding the contents of settlement notices.

15 The Notice also fulfills the requirement of neutrality in class notices. 3 NEWBERG § 8.39. It
16 summarizes the proceedings and the terms and conditions of the proposed Settlement, in an informative
17 and coherent manner, in compliance with the Manual for Complex Litigation (“MANUAL”), (2d Ed.
18 1993), which states that “the notice should be accurate, objective, and understandable to Class Members .
19 . . .” MANUAL, § 30.211. It makes clear that the Settlement does not constitute an admission of liability
20 by Defendant and recognizes that this Court has not ruled on the merits. It also states that the final
21 settlement approval decision has yet to be made. Accordingly, the Notice complies with the standards of
22 fairness, completeness, and neutrality required of a combined settlement-certification class notice.

23 **B. The Court Should Preliminarily Approve the Settlement Because It Is a Fair,**
24 **Adequate, and Reasonable Compromise of Disputed Wage Claims**

25 California courts favor settlement. *See, e.g., Stambaugh v. Superior Court*, 62 Cal. App. 3d 231,
26 236 (1976). Unlike most settlements, class action settlements involve a court approval process that exists
27 to prevent fraud, collusion, and unfairness to class members. *Malibu Outrigger Bd. of Governors v.*
28 *Superior Court*, 103 Cal.App.3d 573, 578-579 (1980). This approval process consists of preliminary

1 settlement approval, notice being given to class members, and a final fairness and approval hearing being
2 held at which class members may be heard with respect to the settlement. *Id.* For the reasons discussed
3 below, this Court should preliminarily approve the Settlement, allow the Parties to give notice to the
4 Class as proposed, and schedule a final fairness and final approval hearing.

5 **1. Class Action Settlements Are Subject to Review and Approval.**

6 Any settlement of class litigation must be reviewed and approved by the presiding court. Rules
7 of Court, Rule 3.769(a). Approval occurs in two steps: (1) an early (preliminary) review and (2) a
8 subsequent (final) review after notice has been distributed to the class members. The Preliminary
9 Approval Hearing and Final Approval Hearing coincide with these two steps. The present motion seeks
10 *preliminary approval* and the setting of a Final Approval Hearing.

11 To evaluate a settlement, the trial court must receive “*basic*” information about the nature and
12 magnitude of the claims in question and the basis for concluding that the consideration being paid for the
13 release of those claims represents a reasonable compromise.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.
14 App. 4th 116, 133 (2008). However, the record need *not* contain an explicit statement of the maximum
15 theoretical amount that the class could recover. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*,
16 186 Cal. App. 4th 399, 409 (2010).

17 **2. The Parties Reached the Settlement Through Arms’ Length Negotiations**
18 **Between Experienced Counsel with the Assistance of a Highly Qualified**
19 **Mediator After Sufficient Data Was Exchanged to Evaluate Settlement.**

20 A settlement is presumptively fair where it is reached through arms’ length bargaining, based on
21 sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is
22 experienced in similar litigation, and the percentage of objectors is small.³ *Dunk*, 48 Cal.App.4th at 1802;
23 *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *7-Eleven Owners for Fair Franchising v.*
24 *Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000). In exercising the power to approve a settlement,
25 the overriding concern is to ensure that a proposed settlement is “fair, adequate, and reasonable,” *Dunk*,
26

27 ³ Because the fourth prerequisite for the presumption to arise cannot be addressed until the final
28 approval hearing, only the first three prerequisites are relevant at this preliminary stage of the settlement
approval process.

1 at 1801, considering “the complexity and likely duration of further litigation, the risk of maintaining class
2 action status through trial, the amount offered in settlement, the extent of discovery completed and the
3 state of the proceedings, the experience and views of counsel, the presence of a governmental participant,
4 and the reaction of the class members to the proposed settlement. *Id.* These factors require balancing, are
5 non-exhaustive, and, as such, trial courts should tailor the factors considered to each case and give due
6 regard to “what is otherwise a private consensual agreement between the parties.” *Id.*

7 Here, the Settlement resulted from thorough, arms’ length negotiations between experienced
8 counsel with the assistance of highly regarded mediator Jeff Ross, Esq. (Leviant Decl., ¶¶ 8-10.) With
9 respect to the claims at issue in this case, Plaintiffs obtained data from Defendant and then carefully
10 reviewed that information. Counsel for Plaintiffs also examined relevant policies and interviewed
11 witnesses in detail about their work experiences and Defendant’s practices.

12 Based on that review, Plaintiffs estimated potential exposure and then estimated risk factors to
13 adjust the reasonable expected outcome. The investigation that Plaintiffs’ counsel conducted was
14 sufficient to provide them with enough information to intelligently evaluate the estimated exposure for
15 purposes of negotiating the Settlement in view of the risks discussed below and was sufficient to allow
16 this Court to do the same. *See, e.g., Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 245 (2001).

17 **3. The Settlement Represents a Fair, Adequate, and Reasonable Compromise**
18 **of Class Members’ Claims Based on Defendant’s Estimated Liability**
19 **Exposure Given the Risks Continued Litigation Would Entail.**

20 A settlement is not judged against what might have been recovered had a plaintiff prevailed at
21 trial and does not have to provide 100% of damages sought to be fair and reasonable. “In the context of a
22 settlement agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the
23 complaint, but rather whether the settlement is reasonable under all of the circumstances.” *Wershba*, 91
24 Cal. App. 4th at 250. Accordingly, because settlements involve compromise, even one that provides for
25 substantially narrower relief than would likely be obtained if the suit were successfully litigated can be
26 reasonable given that “the public interest may indeed be served by a voluntary settlement in which each
27 side gives ground in the interest of avoiding litigation.” *Id.*

28 With respect to the claims asserted on behalf of the Class in this case, there are serious risks that

1 support the reduced compromise amount. These risks include, but are not limited to: (i) the risk that
2 Plaintiffs would be unable to establish liability for unpaid straight time or overtime wages, *see Duran v.*
3 *US Bank Nat'l Ass'n*, 59 Cal. 4th 1, 39 & n. 33 (2014) ("*Duran*"); (ii) the risk that Defendant's meal and
4 rest period policies might not ultimately support class certification or a class-wide liability finding; (iii)
5 the risk that uncertainties pertaining to the ultimate legality of Defendant's policies and practices could
6 preclude class-wide awards of statutory penalties; (iv) the risk that individual differences between Class
7 Members could be construed as pertaining to liability and not solely to damages; (v) the risk that any
8 civil penalties award under the PAGA could be reduced by the Court in its discretion; (vi) the risk that
9 class treatment could be deemed improper as to one or more claims, except for settlement purposes; and,
10 (vii) the risk that appellate litigation could ensue. (Leviant Decl., ¶ 16.) These risks are non-exhaustive.

11 In light of the uncertainties of protracted litigation, the settlement amount reflects a fair and
12 reasonable recovery for the Class Members. (Leviant Decl. ¶¶ 13-20.) The settlement amount is, of
13 course, a compromise figure. (Leviant Decl. ¶ 17.) By necessity it took into account risks related to
14 liability, damages, and the defenses asserted by Defendant. (*Id.*) Moreover, each Class Member will be
15 given the opportunity to opt-out of the Settlement, allowing those who feel they have claims that are
16 greater than the benefits they can receive under this Settlement to pursue their own claims. (*Id.*) For the
17 approximately **8,700** members of the Class, the average **gross** recovery is at least **\$269.54** per class
18 member, and the estimated average **net** recovery for each Class Member is approximately **\$159.35**. (*Id.*)
19 Given that Defendant could challenge certification and liability, this is a significant sum to have achieved
20 in settlement. Moreover, a Class Member who worked a greater number of weeks for Defendant will
21 receive a larger share of the Settlement than a Class Member who worked for a shorter amount of time
22 during the class period. (*Id.*)

23 The maximum calculated possible exposure is **\$39,580,633.20**, including PAGA penalties,
24 though Plaintiffs' Counsel concludes that the likelihood of a recovery close to that size is vanishingly
25 small. (Leviant Decl., ¶ 18.) And, after analyzing the claims in this matter, Plaintiffs have concluded
26 that the Gross Settlement Amount of **\$2,345,000.00** is about 30.31% of the **\$7,735,889.97** estimate of
27 *risk-adjusted* recovery (excluding interest) at this stage in the litigation. (*Id.*) This assessment is based
28 on a carefully constructed model of the current fair value of the case, using estimated risks, average wage

1 rates, numbers of employees, and the amount of time covered by the class period. (*Id.*)

- 2 • A reasonably estimated exposure for unpaid wages due to rounding was calculated, with the
3 assistance of an expert, to be approximately **\$184,400.50**. However, with the risk factor
4 discounts for certification and liability proof, the value of that claim is estimated by
5 Plaintiffs' counsel to be approximately **\$90,356.25**, assuming certification probability of 70%
6 and merits success at 70%. Recent developments in law surrounding rounding are the
7 primary basis for these high estimated probabilities.
- 8 • A reasonably estimated exposure for unpaid off-the-clock work caused by occasional pre-
9 shift time clock delays or occasional off-the-clock calls related to work (which includes
10 overtime where applicable) was calculated, with the assistance of an expert, to be
11 approximately **\$868,437.40**. However, with the risk factor discounts for certification and
12 liability proof, the value of that claim is estimated by Plaintiffs' counsel to be approximately
13 **\$69,474.99**, assuming certification probability of 40% and merits success at 20%. Off-the-
14 clock work is difficult to certify and difficult to prove, by its nature.
- 15 • A reasonably estimated exposure for rest break violations over the class period was
16 calculated at **\$4,034,218.70**, but with chances of certification and proof of liability (30% and
17 15% respectively) for a risk-adjusted exposure of **\$181,539.84**. Plaintiffs assume that 100%
18 of the Class missed one rest break per pay period, a generous assumption that would be
19 difficult to establish on a class-wide basis, given the many facilities and job positions.
- 20 • A reasonably estimated exposure for meal break violations over the class period was
21 calculated at **\$3,949,531.40**, with chances of certification and liability risks (40% and 25%
22 respectively) resulting in a risk-adjusted exposure of **\$394,953.14**. A 12% violation rate was
23 assumed to apply to the entire class, based upon class member interviews and time records.
- 24 • The claim for unreimbursed expenses was determined, after investigation, to have little value,
25 given that the claimed unreimbursed expenses did not impact a majority of the class, since
26 the claim was based on an assertion that sometimes the employer-provided phones would not
27 work. This allegation is too unpredictable to support a class recovery. However, a value of
28 \$75,000.00 was still assumed, with chances of certification and liability risks (40% and 25%
respectively) resulting in a risk-adjusted exposure of **\$7,500.00**.
- Risk-adjusted penalty recoveries for wage statement and Labor Code § 203 penalties were
estimated to be approximately **\$2,103,319.17** and **\$2,134,671.58**, respectively, on maximum
exposures of **\$6,009,483.33** and **\$6,099,061.67**, respectively (using risk factors of 70% and
50% respectively).
- Performing risk-adjusted valuations for all claims yields a total value in the range of
\$4,981,814.97, excluding PAGA. (*Id.*)
- PAGA penalties were calculated as having a maximum realistic exposure of **\$18,360,500.00**,
but a risk adjusted value of **\$2,754,075.00**, after factoring in risks of reduction in penalties
pursuant to Court discretion and the high risk of the inability to prove violations for all
aggrieved employees.

25 The concurrently-filed Declaration of H. Scott Leviant sets forth claim valuation in additional detail.
26 (*See*, Leviant Decl., ¶ 18.) Using the current, risk-adjusted valuation, 90.38% of the current value
27 constitutes penalties, which supports the allocation of 10% to wages for tax purposes.

28 This result here is fully supportable as reasonable. First, it is important to recognize the

wilfulness finding required for Labor Code §§ 203 and 226 is challenging to establish. (Leviant Decl., ¶ 19.) Second, rest break and meal period claims have been challenging to certify for many years, even after *Brinker*. (Leviant Decl., ¶ 19.) Third, the certification rates in California are lower than conventional wisdom holds. See, H. Scott Leviant, *Second Interim Report on class actions in California sheds new light on certification* (February 19, 2010), www.thecomplexlitigator.com, available at <http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html>; see also, *Findings of the Study of California Class Action Litigation, 2000-2006*, available at <http://www.courtinfo.ca.gov/reference/documents/class-action-lit-study.pdf> (finding, at page 5, and in Table 9, at page 15, that only 21.4% of all class actions were certified either as part of a settlement *or* as part of a contested certification motion). Here, the estimated certification probabilities are *above* the average rate at which cases were certified in California over the study years, based upon data available through the California Courts websites. (Leviant Decl., ¶ 19.) In sum, well *under* 20% of all cases filed as proposed class actions are ultimately certified by way of a *contested* motion. (*Id.*) The recovery is about 6% of the maximum plausible recovery (estimated to be approximately **\$39,580,633.00**, including PAGA), which falls within the expected outcome under the likelihood of success metric. (*Id.*) It would also be appropriate to evaluate the result by examining only the premium wages at issue (approximately \$9,036,588.00, with no risk reduction), excluding penalties and interest; the settlement is about 26% of the premium wages (unpaid wages, meal period premiums, and rest break premiums) at maximum plausible exposure value.⁴ This Settlement achieves the goals of the litigation.

4. The Proposed Method for Allocating Settlement Funds Is Fair.

The proposed method of allocating the Settlement Fund to Class Members also is fair and reasonable. As noted, the parties agreed to allocate the Settlement Fund between all Class Members

⁴ The exclusion of interest and penalties from the fairness evaluation is proper because, first, PAGA penalties are discretionary (see Lab. Code § 2699(e)(2) (the court in its discretion “may award a lesser amount than the maximum civil penalty amount specified by this part...”), and, second, courts evaluate the strength of a proposed settlement without taking potential penalties or interest into consideration. See *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 955 (9th Cir. 2000); see also *Miller v. CEVA Logistics U.S.A., Inc.*, 2015 WL 729638, at *7 (E.D. Cal. Feb. 19, 2015) (court utilized calculation of a defendant’s exposure exclusive of interest and penalties to determine whether the settlement fell within the range of possible approval).

1 based on time worked by the Class Member during the Class Period, in relation to the total amount of
2 time worked by all participating Class Members collectively during the class period. This proposed
3 method is fair and reasonable because each Class Member's actual potential damages vary based on the
4 number of workweeks he or she actually worked (e.g., Lab. Code § 226.7 provides for an extra hour of
5 pay at the employee's regular rate of pay for each violation, resulting in a higher potential damage when
6 a higher number of incidents occur). A Class Member who worked a greater number of weeks for
7 Defendant will receive a larger payment under the Settlement than a Class Member who worked for a
8 shorter amount of time during the relevant period. (Leviant Decl., ¶¶ 11, 17.)

9 **5. The Proposed Enhancement Awards to Plaintiffs Warrant Approval.**

10 The proposed enhancement payments of \$10,000 to each Plaintiff are intended to recognize the
11 substantial initiative and significant efforts on behalf of the Class. Courts routinely approve incentive
12 awards to compensate named plaintiffs for the services they provide and the risks they incur during class
13 action litigation, often in much higher amounts than that sought here. Factors considered when awarding
14 an incentive include the actions the plaintiff has taken to protect the class, the degree to which the class
15 has benefitted, the amount of time and effort the plaintiff expended in the litigation, the risk to the class
16 representative in commencing suit (financial and otherwise), the notoriety and personal difficulties
17 encountered, the duration of the litigation, and the personal benefit (or lack thereof) enjoyed by the
18 plaintiff as a result of the litigation. *Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 804
19 (2009). Here, Plaintiffs contributed time to the prosecution of this matter, including assistance prior to the
20 mediation with information and substantial time conferring with counsel over the course of this litigation
21 and before it was filed. (Leviant Decl., ¶ 33.) The enhancements also recognize risks Plaintiffs took for
22 the Class to be personally liable for costs incurred regardless of the success of the litigation, as well as
23 the personal risk of facing intrusive discovery and potential disclosure to future employers that Plaintiffs
24 sued an employer, making future employment less uncertain. The accompanying Declarations confirm
25 Plaintiffs' involvement and support appointment as Class Representatives.

26 **6. The Proposed Award of Attorneys' Fees and Costs Is Also Fair, Adequate,** 27 **and Reasonable and Merits Preliminary Approval.**

28 The California Supreme Court removed any lingering doubt about the use of the percentage of

1 the fund method to award attorney's fees in California Courts. *Laffitte v. Robert Half Intern. Inc.*, 1 Cal.
2 5th 480, 503 (2016).⁵ Thus, this Court may and, pursuant to *Laffitte*, *should* award fees to Plaintiffs'
3 counsel based upon the percentage of the fund methodology.

4 Setting *Laffitte* aside, whether the once-again-confirmed percentage of the fund method or the
5 lodestar method is used, the outcome is roughly the same: "[F]ee awards in class actions average around
6 one-third of the recovery' regardless of 'whether the percentage method or the lodestar method is used.'" *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal. App. 5th 521 (2021). This is also consistent with
7 counsels' experience in class cases. Here, Plaintiffs' attorneys intend to request attorneys' fees of up to
8 \$781,667.00 (one-third of the GSA), and costs capped at \$30,000 (which includes payment for
9 mediation, filing fees, service of process fees, and other standard expenses). (Leviant Decl., ¶ 32.) Given
10 the efforts and risks involved in this case, as well as the results achieved, these amounts are within the
11 range of reasonableness and warrant *preliminary approval*.

12 13 **7. The Proposed Payment to the Administrator Is Fair and Reasonable**

14 ILYM Group, Inc., which has been selected due to its competitive bid, estimates that
15 administration can be performed for **\$37,000.00**. In counsel's experience, based on similar wage-and-
16 hour actions, an estimated cost of **\$37,000.00** is a fair and reasonable amount for administration fees and
17 should be preliminarily approved. (Leviant Decl., ¶ 34.)

18 **8. The PAGA Allocation is Reasonable**

19 The ultimate decision as to the amount of penalties is always up to the discretion of the Court.
20 Labor Code § 2699(e)(2) states: "In any action by an aggrieved employee seeking recovery of a civil
21 penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil
22 penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do
23 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."

24 Prior to the issuance of *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021), the only sources
25

26
27 ⁵ The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing
28 doubt about the use of the percentage method: "The *Dunk* court, while finding the percentage method
inapplicable to the settlement before it due to the lack of a readily valued common fund, did not purport
to bar its usage generally in common fund cases." *Laffitte*, 1 Cal. 5th at 501.

1 of persuasive guidance as to how to assess the reasonableness of a PAGA allocation were found in
2 federal court decisions addressing that question. In their view, a PAGA allocation, even if a small
3 portion of the total settlement, could be reasonable if the settlement of the underlying wage and hour
4 claims is robust and serves the deterrent purpose of the PAGA statute. *O'Connor v. Uber Technologies,*
5 *Inc.*, 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016) (“By providing fair compensation to the class members
6 as employees and substantial monetary relief, a settlement not only vindicates the rights of class
7 members as employees, but may have a deterrent effect upon the defendant employer and other
8 employers, an objective of PAGA.”). *Moniz* then provided explicit confirmation that this was an
9 appropriate yardstick by which to measure reasonableness of a PAGA settlement. *Moniz*, 72 Cal. App.
10 5th at 77. *Moniz*, in agreeing with the federal courts that have considered how to evaluate a PAGA
11 settlement, concluded that the class action factors are appropriately considered, along with a
12 consideration of whether the settlement furthers “PAGA’s purposes to remediate present labor law
13 violations, deter future ones, and to maximize enforcement of state labor laws.”

14 As to the first set of elements (the class-type analysis), it is embodied in Plaintiffs’ discussion of
15 the adequacy of the settlement generally. Here, the expense, complexity and likely duration of future
16 litigation was to some extent an unknown. However, what is certain is that to adequately establish the
17 violations that would support a substantial penalty, tremendous time and expense would be invested.

18 The second element (the PAGA purposes element) is also satisfied here. As held by *Moniz*,
19 PAGA’s purposes include (1) remediation of present labor law violations, (2) deterrence of future
20 violations, and (3) maximization of enforcement of state labor laws. Here the allocation of a major
21 portion of settlement funds to class members still advances the goal of labor law violation remediation.
22 The allocation of a major portion of settlement funds to class members also deters future violations. This
23 is a \$2,345,000 settlement, not a trivial sum. Deterrence is fulfilled. Finally, allocation of a major portion
24 of settlement funds to class members still advances the goal of enforcement of state labor law. This
25 settlement is, by definition, a response to alleged violations of state labor laws, balanced against risks.

26 In addition, there is no evidence that a court or a commissioner had informed Defendant that its
27 conduct violated the Labor Code. *Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157, 1209 (2008); *Willis v.*
28 *Xerox Bus. Servs., LLC*, 2013 WL 6053831, *7-8 (E.D. Cal. 2013). And in *Cotter*, the court found a

1 significant reduction of the PAGA claim would be appropriate because “[t]his does not appear to be a
2 case where a company has deliberately sought to evade the law.” *Cotter*, 176 F. Supp. 3d at 941.

3 Finally, the PAGA allocation is fair. The LWDA is receiving \$60,000. The Class is receiving,
4 net, an estimated \$1,373,343.00 for the releases of eight other theories of recovery (excluding the
5 \$20,000 as the aggrieved employees’ share of the PAGA Allocation). While the proportion is tipped in
6 favor of the Class Members, the allocation is not unfair because it satisfies the policies underlying
7 California’s wage and hour laws.

8 **VI. THE COURT SHOULD SCHEDULE A FINAL FAIRNESS HEARING**

9 The last step in the settlement approval process is the fairness hearing, where the Court makes a
10 final determination about the propriety of settlement. Plaintiffs request that the fairness hearing in this
11 case be scheduled for about 150 days after issuance of the Court’s Order granting preliminary approval
12 of the Settlement. Under the Settlement, the Defendant will have 30 days to provide the mailing data to
13 the Settlement Administrator, which will then have 14 days to mail out class notice. Class Members
14 have 45 days after mailing of the notice to submit exclusions or objections (with a 14-day extension
15 available for deficient but timely submissions). Therefore, Plaintiffs propose a final approval hearing
16 scheduled for the first available hearing date that is about 150 days after preliminary approval is granted.

17 **VII. CONCLUSION**

18 For all the foregoing reasons, because the Class meets the requirements for certification, because
19 the Settlement bears all requisite indicia of fairness, reasonableness, and adequacy, and because the
20 proposed notice procedure and forms comport with Rule 3.766 and due process, this Court should grant
21 this Motion for Preliminary Approval, adopt the [Proposed] Order Granting Preliminary Approval of
22 Class Action Settlement submitted herewith, and schedule a Final Fairness Hearing.

23 Respectfully submitted,

24 Dated: April 11, 2023

MOON & YANG, APC

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26 By: _____

H. Scott Leviant

27 Attorneys for Plaintiffs
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1055 W. 7th Street, Suite 1880, Los Angeles, CA 90017.

On the date indicated below, I served the document described as: **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

SEE ATTACHED SERVICE LIST

- ☒ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.
- ☐ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.
- ☐ **BY ELECTRONIC SERVICE:** Pursuant to the Court's Order directing Electronic Service, the above-named document(s) has (have) been electronically served on counsel of record by an approved electronic service provider. The transmission of these documents was reported complete and a copy of the service confirmation will be maintained, along with the original document(s) and proof of service in our office.
- ☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the offices of the addressee(s) named herein.
- ☐ **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed this **April 11, 2023** at Los Angeles, California.

H. Scott Leviant
Type or Print Name


Signature

SERVICE LIST

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