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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 FINAL APPROVAL OF
CLASS AND REPRESENTATIVE ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

Date: October 20, 2023

Time: 9:00 a.m.

Courtroom: 21

Judge: Hon. Evelio Grillo

Reservation ID: **408759047135**

Trial Date: Not Set

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1 TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on October 20, 2023, at 9:00 a.m., or as soon thereafter as the
3 matter may be heard, in Department 21 of the above-captioned Court, located at 1221 Oak Street,
4 Oakland, CA 94612, Plaintiffs NAAAYSHON BATTLE, MARIA CHAVEZ and CHANTIA WARREN
5 (“Plaintiffs”) will and hereby do move this Court for an order:

- 6 1. Granting class certification of the Class, solely for settlement purposes pursuant to Code of
7 Civil Procedure § 382;
- 8 2. Finally approving the CLASS AND PAGA ACTION SETTLEMENT AGREEMENT
9 (“Settlement” or “Agreement”);
- 10 3. Appointing counsel for Plaintiffs, Moon Law Group, PC (formerly named Moon & Yang,
11 APC), Capstone Law APC, and Blumenthal Nordrehaug Bhowmik De Blouw, LLP as
12 Class Counsel;
- 13 4. Appointing Plaintiffs as the Class Representatives;
- 14 5. Approving the sufficiency of the notice process;
- 15 6. Approving ILYM Group, Inc. as the third-party administrator;
- 16 7. Ruling that Settlement Class Members who did not timely submit requests for exclusion from
17 the settlement as set forth in the Agreement have released their claims against Defendant and
18 the other releasees as set forth in the Agreement;
- 19 8. Awarding the sums requested in the Motion;
- 20 9. Entering a Final Judgment; and,
- 21 10. Without affecting the finality of the final judgment, reserving continuing jurisdiction over
22 the parties for the purposes of implementing, enforcing and/or administering the settlement
23 as set forth in the Agreement or enforcing the terms of the Final Judgment.

24 Good cause exists to grant this Motion because (a) the Class meets all of the requirements for
25 class certification for settlement purposes under Code of Civil Procedure § 382, (b) the Settlement
26 Agreement is a fair, adequate, and reasonable compromise of the disputed wage and hour claims asserted
27 by Plaintiffs, (c) Plaintiffs and Class Counsel are adequate to represent the Class, and (d) the notice
28 procedures and related forms complied with California Rules of Court 3.766(d) and (e) and this Court’s

1 Order granting preliminary approval of the Settlement, and adequately apprised Class Members of their
2 rights and fully comport with due process.

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

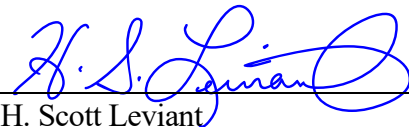
6 **TENTATIVE RULINGS:** Pursuant to Local Rule 3.30, the court has adopted the tentative
7 ruling procedure set out in California Rules of Court, rule 3.1308(a)(1). The tentative ruling or notice to
8 appear will generally be available by 4:00 p.m. two court days prior to the scheduled hearing and no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

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

19 Respectfully submitted,

20 Dated: September 26, 2023

MOON LAW GROUP, PC

21 By: 
22 H. Scott Leviant

23 **CAPSTONE LAW APC**
24 Robert J. Drexler, Jr.

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

28 Attorneys for Plaintiffs

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1 **I. INTRODUCTION**

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

5 After informal discovery, the exchange of documents and data, and an arm’s-length mediation
6 session with mediator Jeff Ross, Esq., Plaintiffs and Defendant (collectively referred to herein as the
7 “Parties”) reached a proposed class action settlement with a gross settlement amount (“GSA”) of
8 **\$2,345,000.00** in compromise of disputed claims asserted on behalf of the below-defined Class
9 consisting of **7,959** members. The notice process was completed in compliance with the Court’s Orders
10 and due process requirements. Plaintiffs now submit this Motion for Final Approval of Class and
11 Representative Action Settlement, along with the Settlement (attached to the Declaration of H. Scott
12 Leviant [“Leviant Decl.”], Exhibit 1 thereto). For the Court’s convenience, below is a summary of the
13 key provisions of the Settlement.

14 **II. THE NOTICE PROCESS WAS SUCCESSFULLY COMPLETED**

15 Plaintiffs and Defendant have fulfilled the class notice procedures set forth in the Settlement. The
16 Settlement Administrator, ILYM Group, Inc. (“ILYM”), sent individual Notices to all Class Members on
17 May 30, 2023 (Declaration of Cassandra Polities [“Polities Decl.”], ¶¶ 3-6.) Of the Notices to Class
18 Members that were mailed, 403 were returned after mailing. (Polities Decl., ¶ 7.) Using skip tracing 238
19 updated addresses were located. (*Ibid.*) After re-mailing, 148 notice packets are considered
20 undeliverable. (Polities Decl., ¶ 8.) Eight individuals requested to be excluded from the Settlement.
21 (Polities Decl., ¶ 9.) No Class Members objected by the written objection deadline. (Polities Decl., ¶ 10.)

22 **PAYMENTS:** For 7,959 Class Members, from the estimated Net Settlement Amount, the
23 estimated average payment per Class Member is at least **\$174.36** (before deductions for taxes). The
24 highest net payment is estimated to be at least **\$645.17**. (Polities Decl., ¶ 13.) The Net Settlement
25 Amount (excluding the PAGA payment to Aggrieved Employees) will be at least **\$1,386,333.00**.
26 (Polities Decl., ¶ 12.) The average PAGA payment to an Aggrieved Employee is **\$2.70** and the highest
27 payment is **\$7.99**. (Polities Decl., ¶ 14.)
28

III. THE MAJOR TERMS OF SETTLEMENT

The provisions of the proposed Settlement include the following:

- Defendant agrees not to oppose certification for purposes of Settlement (Settlement, ¶ 2.6);
- Class: 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 (Settlement, ¶ 1.8.)
- Settlement Amount: Defendant will pay a maximum of **\$2,345,000.00**, referred to as the Gross Settlement Amount (or GSA herein), resulting in an estimated average **gross** benefit per Class Member of approximately **\$294.63** (Settlement, ¶ 1.21);
- Class Size: **7,959** individuals worked **524,899** workweeks.¹ (Politics Decl., ¶ 4.)
- PAGA Group Size: **7,405** individuals, who worked **247,726** pay periods.² (Politics Decl., ¶ 4.)
- PAGA Period: June 6, 2019 through March 15, 2023 (Settlement, ¶¶ 1.33, 1.45);
- Kullar/Munoz Analysis: Plaintiffs address the claims analysis herein, at Part VI.B.3, and in the Declaration of Leviant, at Paragraph 18;
- No Reversion: The Settlement is a ***non-reversionary*** settlement (Settlement, ¶ 6);
- Certification: Plaintiffs address certification requisites herein, at Part VI.A., and in the Declaration of Leviant, at Paragraphs 34-40;
- No Claim Form: No claim form is required (Settlement, ¶ 6);
- Class Release: The Settlement will release specified wage-and-hour claims for Class Members (those Class Members who do not opt out of the Settlement) (Settlement, ¶¶ 1.6, 7.1);
- PAGA Release: Class Members will release the PAGA Claims set forth in this Action, that were identified in the operative complaint and Plaintiffs' LWDA Notice Letters, regardless of whether they opt out of the class portion of the Settlement (Settlement, ¶¶ 1.31, 7.2);
- Net Settlement Amount Available to the Class: After deducting Service Awards, the PAGA

¹ These numbers are smaller than estimated at the time of preliminary approval.

² These numbers are smaller than estimated at the time of preliminary approval. Some Aggrieved Employees are not Class Members due to prior releases.

1 Payment, Administrative Costs, and the Class Counsel Award, the remainder will be available
2 for distribution to Class Members who do not opt out, with each Class Member receiving a share
3 based on the number of workweeks each Class Member worked for Defendant within the Class
4 Period. The Net Settlement Amount is estimated to be at least **\$1,386,333.00**, resulting in an
5 average **net** payment per Class Member of at least **\$174.36**, before any tax withholdings.
6 (Settlement, ¶ 1.27);

- 7 • Tax Allocation: The amounts distributed to Class Members will be characterized as 10% alleged
8 unpaid wages, 90% to penalties and interest, and PAGA Settlement Payments will be allocated as
9 100% penalties. (Settlement, ¶¶ 6.8.1, 6.8.2);
- 10 • Employer's Portion of Payroll Taxes Paid Separately: Defendant's portion of payroll taxes (e.g.,
11 FICA, FUTA, etc.) owed on any settlement payments to Class Members that constitute wages
12 will be paid separate and apart from the GSM (Settlement, ¶ 6.1);
- 13 • Settlement Administrator: The notice portion of the Settlement will be administered by a third-
14 party Administrator, ILYM Group, Inc. ILYM Group, Inc.'s bid for settlement administration
15 services in the amount of **\$37,000.00** was selected from a competitive bidding process.
16 (Settlement, ¶ 4; Politics Decl., ¶ 16.)
- 17 • PAGA Allocation: From the GSA, **\$80,000** will be allocated to settle claims brought pursuant to
18 the California Private Attorneys General Act, Labor Code § 2699 *et seq.* ("PAGA"), and
19 seventy-five percent (75%), or **\$60,000**, will be paid to the California Labor & Workforce
20 Development Agency. (Settlement, ¶¶ 1.32.);
- 21 • Notice to LWDA: Notice was provided prior to the filing of this Motion. Evidence is attached to
22 the Leviant Declaration;
- 23 • Enhancement/Service Awards to Plaintiff: Defendant will not oppose the application for Class
24 Representative Service Payment of up to **\$10,000.00** for each Plaintiff, to be paid from the GSA
25 (Settlement, ¶ 6.4);
- 26 • Fees and Costs: Defendant will not oppose Class Counsel's application for fees not to exceed 33
27
28

1 1/3% of the GSA (\$781,667.00)³, and actual costs, in an amount not to exceed \$30,000, to be
2 paid out of the GSA (Settlement, ¶ 6.3);

- 3 • Check Void Period: Settlement checks will be valid for 180 days (Settlement, ¶ 6.9);
- 4 • Uncashed Checks: Any settlement checks that are mailed to the Class Members and remain
5 uncashed after 180 days of the date of issuance will be cancelled, and the moneys will be directed
6 to a *cy pres*, The California State Bar Justice Gap Fund (Settlement, ¶ 6.9);
- 7 • Judgment Notice: Judgment will be posted on the Administrator’s website after entry;
- 8 • Confidentiality Provisions: The Settlement does not restrict Class Counsels’ ability to discuss the
9 Settlement with Class Members.

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

11 **IV. FACTUAL AND PROCEDURAL BACKGROUND**

12 **A. Plaintiffs’ Claims**

13 On June 10, 2020, Plaintiff Maria Chavez filed a Class Action Complaint in Alameda County
14 Superior Court, Case No. RG20064206. On July 21, 2020 Defendant filed its Answer to Plaintiff’s June
15 10, 2020 Complaint. On September 16, 2020, Plaintiff Chavez filed her First Amended Complaint
16 adding a claim under the Private Attorneys General Act (“PAGA”). Defendant answered the First
17 Amended Complaint on October 20, 2020. (Leviant Decl., ¶ 4.)

18 On August 3, 2020, Plaintiff Naayshon Battle filed a Class Action Complaint in the San
19 Bernardino County Superior Court, Case No. CIVDS2015794. On October 13, 2020, Plaintiff Battle
20 filed her First Amended Complaint adding a claim under PAGA. On March 24, 2021, Plaintiff Battle
21 filed a Motion For Leave to Amend the Complaint in San Bernardino County Superior Court to add
22 Plaintiff Chavez to her action. On June 21, 2021, the Court granted Plaintiff Battle’s Motion for Leave to
23 file a Second Amended Complaint. On June 22, 2021, Plaintiff Battle filed a Second Amended
24 Complaint adding Plaintiff Chavez to the *Battle* action. On July 21, 2021, Defendant filed its Answer to
25 the Second Amended Complaint of Plaintiffs Chavez and Battle. On July 20, 2021, Judge Winifred
26

27 ³ Pursuant to a written fee sharing agreement, the Court-awarded Class Counsels’ attorneys’ fees will
28 be allocated as follows: 47.85% to Moon & Yang, APC, 39.15% to Capstone Law APC, and 13% to
Nordrehaug Bhowmik De Blouw, LLP.

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. (Leviant 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. (Leviant 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:

$$1.96 \sqrt{\frac{0.5(1-0.5)}{1,023}} \sqrt{\frac{8,700-1,023}{8,700-1}} = \text{margin of error}^4 = 2.88\%$$

(*Id.*) The class size was believed to include approximately 8,700 individuals.⁵ (*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. (Levant 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.

⁴ 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.

⁵ The smaller class size has a negligible change on the calculation, lowering the margin of error to 2.86%.

1 The Parties then drafted and signed a long form settlement agreement (the Agreement). (*Id.*)

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

6 Based on the foregoing, Plaintiffs and Class Counsel have determined that the Settlement set
7 forth in this Agreement is a fair, adequate, and reasonable Settlement and is in the best interests of the
8 Class. (Leviant Decl., ¶ 10.) Solely for the purpose of settling this case, the parties agree that the
9 requirements for establishing class action certification with respect to this class have been met and are
10 met. (*Id.*) If this Settlement is not approved by the Court for any reason, Defendant reserves its rights to
11 contest class certification. (*Id.*) This Settlement, if approved, will result in termination of the litigation
12 through the entry of the Judgment and the release of the released claims for all Class Members, including
13 all within the class definition who have not elected to exclude themselves from the Class. (*Id.*)

14 **V. CLASS DEFINITION**

15 The Class is defined as follows:

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

18 (Leviant Decl., ¶ 34 and Exhibit 1.)

19 The PAGA Members are defined as follows:

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

22 **VI. DISCUSSION**

23 **A. Consistent with the Court’s Findings at the Time of Preliminary Approval, the** 24 **Court Should Certify the Class for Settlement Purposes**

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

only, Defendant stipulated to conditional certification of the proposed class. (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 v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2000). The certification question asks whether the theory of recovery advanced by the plaintiff is likely to prove amenable to class treatment. *See, e.g., Jaimez v. Daiohs USA, Inc.*, 181 Cal. App. 4th 1286, 1298 (2010). As the court noted in *Dunk*, although certification requirements are intended “to protect the interests of the non-representative class members,” that concern is “protected by the trial court’s fairness review of the settlement.” *Dunk v. Ford Motor Co.* 48 Cal. App. 4th 1794, 1807 n. 19 (1996). In view of these standards, *as discussed more thoroughly as part of the preliminary approval motion*, the Settlement Class should be certified for settlement. Code Civ. Proc. § 382; Rules of Court, Rule 3.769(c).

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

California courts favor settlement. *See, e.g., Stambaugh v. Superior Court*, 62 Cal. App. 3d 231, 236 (1976). Unlike most settlements, class action settlements involve a court approval process that exists to prevent fraud, collusion, and unfairness to class members. *Malibu Outrigger Bd. of Governors v. Superior Court*, 103 Cal.App.3d 573, 578-579 (1980). This approval process consists of preliminary settlement approval, notice being given to class members, and a final fairness and approval hearing being held at which class members may be heard with respect to the settlement. *Id.* For the reasons discussed below, this Court should finally approve the Settlement and enter Judgment.

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

A settlement of class litigation must be reviewed and approved by the court. Rules of Court, Rule 3.769(a). Approval occurs in two steps: (1) an early (preliminary) review and (2) a subsequent (final) review after notice. The present motion seeks *final approval* and entry of a Judgment. To evaluate a settlement, a court must receive “basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 133 (2008). But the record need *not* contain an explicit statement of the maximum theoretical recovery. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 409 (2010).

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

4 A settlement is presumptively fair where it is reached through arms’ length bargaining, based on
5 sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is
6 experienced in similar litigation, and the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at 1802;
7 *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *7-Eleven Owners for Fair Franchising v.*
8 *Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000). In exercising the power to approve a settlement,
9 the overriding concern is to ensure that a proposed settlement is “fair, adequate, and reasonable,” *Dunk*,
10 at 1801, considering “the complexity and likely duration of further litigation, the risk of maintaining class
11 action status through trial, the amount offered in settlement, the extent of discovery completed and the
12 state of the proceedings, the experience and views of counsel, the presence of a governmental participant,
13 and the reaction of the class members to the proposed settlement. *Id.* These factors require balancing, are
14 non-exhaustive, and, as such, trial courts should tailor the factors considered to each case and give due
15 regard to “what is otherwise a private consensual agreement between the parties.” *Id.*

16 Here, the Settlement resulted from thorough, arms’ length negotiations between experienced
17 counsel with the assistance of highly regarded mediator Jeff Ross, Esq. (Levant Decl., ¶¶ 8-10.) With
18 respect to the claims at issue in this case, Plaintiffs obtained data from Defendant and then carefully
19 reviewed that information. Counsel for Plaintiffs also examined relevant policies and interviewed
20 witnesses in detail about their work experiences and Defendant’s practices. Based on that review,
21 Plaintiffs estimated potential exposure and then estimated risk factors to adjust the reasonable expected
22 outcome. The investigation that Plaintiffs’ counsel conducted was sufficient to provide them with enough
23 information to intelligently evaluate the estimated exposure for purposes of negotiating the Settlement in
24 view of the risks discussed below and was sufficient to allow this Court to do the same. *See, e.g.,*
25 *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 245 (2001). Finally, the number of objections is
26 currently zero, as of the time of filing this motion. Thus, the Settlement is presumed fair.

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

4 The proposed Settlement of \$2,345,000.00 offers substantial, timely, and guaranteed payments to
5 Class Members. A settlement is not judged against what might be recovered at trial and does not have to
6 provide 100% of damages to be reasonable. "In the context of a settlement agreement, the test is not the
7 maximum amount plaintiffs might have obtained at trial on the complaint, but rather whether the
8 settlement is reasonable under all of the circumstances." *Wershba*, 91 Cal.App.4th at 250.

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

20 In light of the uncertainties of protracted litigation, the settlement amount reflects a fair and
21 reasonable recovery for the Class Members. (Leviant Decl. ¶¶ 13-20; Perez Decl., ¶ 6.) The settlement
22 amount is, of course, a compromise figure. (Leviant Decl. ¶ 17.) By necessity it took into account risks
23 related to liability, damages, and the defenses asserted by Defendant. (*Id.*) Moreover, each Class
24 Member will be given the opportunity to opt-out of the Settlement, allowing those who feel they have
25 claims that are greater than the benefits they can receive under this Settlement to pursue their own
26 claims. (*Id.*) For the **7,959** members of the Class, the average **gross** benefit is at least **\$294.63** per class
27 member, and the estimated average **net** recovery for each Class Member is approximately **\$174.36**. (*Id.*)
28 Given that Defendant could challenge certification and liability, this is a significant sum to have achieved

1 in settlement. Moreover, a Class Member who worked a greater number of weeks for Defendant will
2 receive a larger share of the Settlement than a Class Member who worked for a shorter amount of time
3 during the class period. (*Id.*)

4 The maximum calculated possible exposure is **\$39,580,633.20**, including PAGA penalties,
5 though Plaintiffs' Counsel concludes that the likelihood of a recovery close to that size is vanishingly
6 small. (Levant Decl., ¶ 18.) And, after analyzing the claims in this matter, Plaintiffs have concluded
7 that the Gross Settlement Amount of **\$2,345,000.00** is about 30.31% of the **\$7,735,889.97** estimate of
8 *risk-adjusted* recovery (excluding interest) at this stage in the litigation. (*Id.*) This assessment is based
9 on a carefully constructed model of the current fair value of the case, using estimated risks, average wage
10 rates, numbers of employees, and the amount of time covered by the class period. (*Id.*)

- 11 • A reasonably estimated exposure for unpaid wages due to rounding was calculated, with the
12 assistance of an expert, to be approximately **\$184,400.50**. However, with the risk factor
13 discounts for certification and liability proof, the value of that claim is estimated by
14 Plaintiffs' counsel to be approximately **\$90,356.25**, assuming certification probability of 70%
and merits success at 70%. Recent developments in law surrounding rounding are the
primary basis for these high estimated probabilities.
- 15 • A reasonably estimated exposure for unpaid off-the-clock work caused by occasional pre-
16 shift time clock delays or occasional off-the-clock calls related to work (which includes
overtime where applicable) was calculated, with the assistance of an expert, to be
17 approximately **\$868,437.40**. However, with the risk factor discounts for certification and
liability proof, the value of that claim is estimated by Plaintiffs' counsel to be approximately
18 **\$69,474.99**, assuming certification probability of 40% and merits success at 20%. Off-the-
clock work is difficult to certify and difficult to prove, by its nature.
- 19 • A reasonably estimated exposure for rest break violations over the class period was
20 calculated at **\$4,034,218.70**, but with chances of certification and proof of liability (30% and
15% respectively) for a risk-adjusted exposure of **\$181,539.84**. Plaintiffs assume that 100%
21 of the Class missed one rest break per pay period, a generous assumption that would be
difficult to establish on a class-wide basis, given the many facilities and job positions.
- 22 • A reasonably estimated exposure for meal break violations over the class period was
23 calculated at **\$3,949,531.40**, with chances of certification and liability risks (40% and 25%
respectively) resulting in a risk-adjusted exposure of **\$394,953.14**. A 12% violation rate was
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
the claim was based on an assertion that sometimes the employer-provided phones would not
26 work. This allegation is too unpredictable to support a class recovery. However, a value of
\$75,000.00 was still assumed, with chances of certification and liability risks (40% and 25%
27 respectively) resulting in a risk-adjusted exposure of **\$7,500.00**.
- 28 • 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.

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

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.⁶ 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 to Class Members also is fair. As noted, the Parties agreed to allocate the Settlement based on time worked by the Class Member during the Class Period, in relation to the total amount of time worked by all participating Class Members collectively. This proposed method is fair and reasonable because each Class Member's actual potential damages vary based on the number of workweeks he or she actually worked. A Class Member who worked a greater number of weeks for Defendant will receive a larger payment under the Settlement than a Class Member who worked for a shorter amount of time during the relevant period. (Leviant Decl., ¶¶ 11, 17.)

5. The Proposed Enhancement Awards to Plaintiffs Warrant Approval.

The proposed enhancement payments of \$10,000 to each Plaintiff are intended to recognize the substantial initiative and significant efforts on behalf of the Class. Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation, often in much higher amounts than that sought here. Factors considered when awarding an incentive include the actions the plaintiff has taken to protect the class, the degree to which the class has benefitted, the amount of time and effort the plaintiff expended in the litigation, the risk to the class representative in commencing suit (financial and otherwise), the notoriety and personal difficulties encountered, the duration of the litigation, and the personal benefit (or lack thereof) enjoyed by the plaintiff as a result of the litigation. *Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 804 (2009). Here, Plaintiffs contributed time to the prosecution of this matter, including assistance prior to the mediation with information and substantial time conferring with counsel over the course of this litigation and before it was filed. (See, Declarations of Plaintiffs; see also, Leviant Decl., ¶ 33.) The enhancements

⁶ 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).

also recognize risks Plaintiffs took for the Class to be personally liable for costs incurred regardless of the success of the litigation, as well as the personal risk of facing discovery and potential disclosure to future employers that Plaintiffs sued an employer, making future employment less uncertain. The accompanying Declarations confirm Plaintiffs' involvement and support the requested enhancements.

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

a) Plaintiffs' Counsel Should be Awarded Fees Based on a Percentage of the Fund Recovered, Consistent with the Common Fund Method

The request for attorneys' fees as a percentage of the settlement fund is supported by the "common fund theory," where "one who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs." *Serrano v. Priest*, 20 Cal. 3d 25, 35 (1977). The common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." *City and County of San Francisco v. Sweet*, 12 Cal. 4th 105, 110 (1995). The lodestar may be cross-checked against the percentage-of-recovery. *See In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-58 (2009).

The California Supreme Court removed any lingering doubt about the use of the percentage of the fund method to award attorney's fees in California Courts. *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016).⁷ Thus, this Court may and, as strongly encouraged by the California Supreme Court, *should* award attorney's fees to Plaintiffs' counsel based upon the percentage methodology.

"Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery." *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 47 n. 11 (2008). This is also consistent with Plaintiffs' counsels' experience in these types of cases. Here, Plaintiffs' attorneys request attorneys' fees of **\$781,667.00** (33 1/3% of the

⁷ The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing 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.

adjusted GSA), and costs of **\$26,417.52**, which includes payment for mediation, filing fees, and other expenses, including the upcoming costs. (Leviant Decl., ¶ 32.) Given the efforts and risks, and the results, these amounts warrant *final approval*.

b) A Lodestar Cross Check Confirms that Class Counsels' Requested Attorneys' Fees Are Reasonable

Plaintiffs' fee application is also reasonable based on Class Counsels' lodestars. Under the lodestar method, the court considers a compilation of the time spent and a reasonable hourly compensation of each attorney to evaluate the reasonableness of the fee. *Ramos v. Countrywide Home Loans, Inc.*, 82 Cal. App. 4th 615, 622 (2000). The moving party meets its by submitting "declarations evidencing the reasonable hourly rate for their services and establishing the number of hours spent working on the case" as "California case law permits fee awards in the absence of detailed time sheets." *Wershba*, 91 Cal. App. 4th at 254-55; *Dunk*, 48 Cal. App. 4th at 1810; *Nightengale v. Hyundai Motors America*, 31 Cal. App. 4th 99, 103 (1994). The hours spent and the reasonable hourly compensation are used to arrive at a "lodestar" figure which may then be augmented or diminished taking into account various "multiplier" factors. *See Ramos*, 82 Cal. App. 4th at 622 (*citing Serrano*, 20 Cal. 3d at 48-49).

Here, Class Counsels' billed lodestars exceeds \$567,139.99, billed at the attorneys' customary hourly rates (with \$170,844.50 billed by Moon Law Group, PC, \$260,730.00 billed by Capstone Law APC, and \$135,565.49 billed by Blumenthal Nordrehaug Bhowmik De Blouw, LLP). (Leviant Decl., ¶ 32; Perez Decl., ¶ 16; Nordrehaug Decl., ¶ 11.) The actual lodestar is estimated to exceed \$575,089.99. (Leviant Decl., ¶ 32.) The request for **\$781,667.00** in attorneys' fees, which is **1.38** times the final *billed* lodestar and **1.36** times the *estimated* final lodestar, is reasonable under the lodestar method.

(1) Class Counsels' Hours Are Reasonable

In determining whether the number of hours was reasonable, the court must determine that "the time spent was reasonably necessary and that [] counsel made 'a good faith effort to exclude from the fee request hours that are excessive, redundant, or otherwise unnecessary.'" *Jordan v. Multnomah County*, 815 F.2d 1258, 1263 n.8 (9th Cir. 1987). The court should defer to the lawyer's judgment as to how much time he was required to spend on the case. *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008) ("[l]awyers are not likely to spend unnecessary time on contingency fee cases in the hope

of inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee.”). Here, Counsel expended a prudent amount of time to achieve the excellent result. (Leviant Decl. ¶ 32.)

(2) Class Counsels’ Hourly Rates Are Reasonable

The reasonable hourly rate is that prevailing in the community for similar work. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000). “[I]n assessing a reasonable hourly rate, the trial court is allowed to consider the attorneys’ skill as reflected in the quality of work, as well as the attorneys’ reputation and status.” *MBNA American Bank, N.A. v. Gorman*, 147 Cal. App. 4th 1, 3 (2006). The trial court may also “find hourly rates reasonable based on evidence of other courts approving similar rates.” *Parkinson v. Hyundai Motor America*, 796 F.Supp.2d 1160, 1172 (C.D. Cal. 2010).

Class Counsel are experienced litigators who specialize in employment law, with a substantial wage and hour class action practice. (Leviant Decl. ¶¶ 21-27; Perez Decl., ¶¶ 7-15 and Exh. 1; Nordrehaug Decl., ¶¶ 3-5.) A number of courts, including this Court, have approved Class Counsels’ hourly rates. (Leviant Decl. ¶ 27.) Given the skill and experience of Class Counsel, and the excellent result achieved, Class Counsels’ hourly rates are reasonable.

c) Class Counsels’ Costs Are Reasonable

The Settlement Agreement provides for reimbursement of costs not to exceed \$30,000.00. Moon Law Group, PC, seeks costs in the amount of \$12,825.55. (Leviant Decl., ¶ 32 and Exh. 2.) Capstone Law APC, seeks costs in the amount of \$9,292.14. (Perez Decl., ¶ 20.) Blumenthal Nordrehaug Bhowmik De Blouw, LLP seeks costs in the amount of \$4,299.83. (Nordrehaug Decl., ¶ 14.) These costs were reasonably incurred in prosecuting the Action on behalf of the Class Members and should be approved by the Court. Accordingly, Class Counsel respectfully requests the Court approve total costs in the amount of **\$26,417.52**, which is below the \$30,000 limit on cost reimbursements in the Agreement.

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

ILYM Group, Inc., which has been selected due to its competitive bid, will perform administration for **\$37,000.00**. (Polities Decl., ¶ 16.) In counsel’s experience, based on similar wage-and-hour actions, a cost of **\$37,000.00** is a fair and reasonable amount for administration fees and should be approved. (Leviant Decl., ¶ 34.)

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

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

7 Prior to the issuance of *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021), the only sources
8 of persuasive guidance as to how to assess the reasonableness of a PAGA allocation were found in
9 federal court decisions addressing that question. In their view, a PAGA allocation, even if a small
10 portion of the total settlement, could be reasonable if the settlement of the underlying wage and hour
11 claims is robust and serves the deterrent purpose of the PAGA statute. *O’Connor v. Uber Technologies,*
12 *Inc.*, 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016) (“By providing fair compensation to the class members
13 as employees and substantial monetary relief, a settlement not only vindicates the rights of class
14 members as employees, but may have a deterrent effect upon the defendant employer and other
15 employers, an objective of PAGA.”). *Moniz* then provided explicit confirmation that this was an
16 appropriate yardstick by which to measure reasonableness of a PAGA settlement. *Moniz*, 72 Cal. App.
17 5th at 77. *Moniz*, in agreeing with the federal courts that have considered how to evaluate a PAGA
18 settlement, concluded that the class action factors are appropriately considered, along with a
19 consideration of whether the settlement furthers “PAGA’s purposes to remediate present labor law
20 violations, deter future ones, and to maximize enforcement of state labor laws.”

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

25 The second element (the PAGA purposes element) is also satisfied here. As held by *Moniz*,
26 PAGA’s purposes include (1) remediation of present labor law violations, (2) deterrence of future
27 violations, and (3) maximization of enforcement of state labor laws. Here the allocation of a major
28 portion of settlement funds to class members still advances the goal of labor law violation remediation.

1 The allocation of a major portion of settlement funds to class members also deters future violations. This
2 is a \$2,345,000 settlement, not a trivial sum. Deterrence is fulfilled. Finally, allocation of a major portion
3 of settlement funds to class members still advances the goal of enforcement of state labor law. This
4 settlement is, by definition, a response to alleged violations of state labor laws, balanced against risks.

5 In addition, there is no evidence that a court or a commissioner had informed Defendant that its
6 conduct violated the Labor Code. *Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157, 1209 (2008); *Willis v.*
7 *Xerox Bus. Servs., LLC*, 2013 WL 6053831, *7-8 (E.D. Cal. 2013). And in *Cotter*, the court found a
8 significant reduction of the PAGA claim would be appropriate because “[t]his does not appear to be a
9 case where a company has deliberately sought to evade the law.” *Cotter*, 176 F. Supp. 3d at 941.

10 Finally, the PAGA allocation is fair. The LWDA is receiving \$60,000. The Class is receiving,
11 net, an estimated \$1,373,343.00 for the releases of eight other theories of recovery (excluding the
12 \$20,000 as the aggrieved employees’ share of the PAGA Allocation). While the proportion is tipped in
13 favor of the Class Members, the allocation is not unfair because it satisfies the policies underlying
14 California’s wage and hour laws.

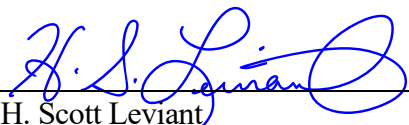
15 **VII. CONCLUSION**

16 For all the foregoing reasons, because the Class meets the requirements for certification, because
17 the Settlement bears all requisite indicia of fairness, and because the notice procedure complied with
18 Rule 3.766 and due process, this Court should grant this Motion for Final Approval.

19 Respectfully submitted,

20 Dated: September 26, 2023

MOON LAW GROUP, PC

21 By: 
22 H. Scott Leviant

23 **CAPSTONE LAW APC**
24 Robert J. Drexler, Jr.

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

28 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 FINAL 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.

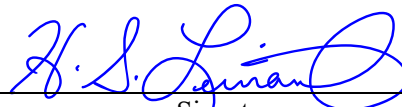
☐ **BY ELECTRONIC SERVICE:** Pursuant to the Court's Order directing Electronic Service, the above-named document(s) has (have) been electronically served on counsel of record by an approved electronic service provider. The transmission of these documents was reported complete and a copy of the service 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 **September 26, 2023** at Los Angeles, California.

H. Scott Leviant
Type or Print Name


Signature

SERVICE LIST

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