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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

KYREE WILSON, and RHONDA GUERRERO, individually, and on behalf of other members of the general public similarly situated, Plaintiffs, vs. IKEA NORTH AMERICA SERVICES, LLC, an unknown business entity; IKEA US RETAIL LLC, an unknown business entity; IKEA DISTRIBUTION SERVICES INC., an unknown business entity and DOES 1 through 100, inclusive, Defendants.	Case No. 20STCV32154 Hon. Elihu M. Berle Dept. 6 **<u>CLASS ACTION</u>** **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** Date: May 2, 2023 Time: 10:00 a.m. Dept.: 6 Complaint Filed: August 24, 2020 Trial Date: None

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I. INTRODUCTION

With this Motion, Plaintiffs request that the Court take the first step in the settlement approval process and grant preliminary approval of their class and representative claims against Ikea.[1] The purpose of the Court's preliminary evaluation of the proposed settlement is to determine whether it is within the "range of reasonableness" and, thus, whether notice to the Class of the terms and conditions of the settlement, and the scheduling of a formal fairness hearing, are worthwhile. *Newberg on Class Actions*, § 11:26. Here, the proposed Settlement satisfies all the criteria for preliminary approval under California law and falls well within the range of reasonableness.

Defendants are part of the world's largest furniture retailer, which owns and operates retail stores throughout the United States, including eight stores in California. Plaintiffs are former employees who worked at Defendants' retail location in Burbank, California. Plaintiffs allege that Defendants violated California labor laws by failing to compensate Class Members for their off-the-clock work and failing to compensate Class Members for non-compliant meal periods. In their complaints, Plaintiffs sought monetary damages, civil penalties, and other relief, on behalf of the Class, the State of California, and Aggrieved Employees.

Following several rounds of motions practice, and formal discovery efforts, the Parties agreed to attend mediation before experienced mediator Jeff Krivis, Esq. After engaging in informal discovery and further exploring the strengths and weaknesses of each other positions at mediation, the Parties finally agreed to accept the mediator's proposal, leading to a $2.75 million Settlement of Plaintiffs' claims. Plaintiffs and their counsel believe that the Settlement provides compelling and certain benefits for the Class, particularly in light of the significant risks of continuing with litigation, and request the Court to preliminarily approve it and permit notice of its terms to be disseminated to Class Members.

II. BACKGROUND

A. Summary of Plaintiffs' Claims

Plaintiffs' claims are premised on the following two main sets of facts. Cottrell Decl., ¶13.

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[1] Unless otherwise defined herein, capitalized terms have the meaning ascribed to them in the Joint Stipulation Re: Class Action Settlement ("Stipulation" or "Settlement"), attached as **Exhibit A** to the Declaration of Carolyn H. Cottrell in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Cottrell Decl."), filed concurrently herewith.

First, Plaintiffs allege that they and Class Members are expected to arrive before the start of their scheduled shifts, to sign in to receive the necessary tools/equipment to perform their work duties for the day. *Id*. at ¶ 14. Then, because there is only one clock station in their work facility, after receiving their tools/equipment, Plaintiffs and Class Members must wait in line before they can finally clock-in for their scheduled shifts. *Id*. The time spent in connection with securing tools/equipment and waiting in lines for the time clock qualify as time worked, however, Defendants do not compensate Plaintiffs and Class Members for this compensable time. *Id*. Defendants' policies and practices in this regard resulted in Defendants' failure to pay Plaintiffs and Class Members all of their wages (including minimum wages and overtime wages) for their work in violation of the Cal. Lab. Code. *Id*.

Second, Plaintiffs allege that due to the single time clock station, Plaintiffs and Class Members must additionally wait in lines in order to clock back in to work after their meal breaks. *Id*. at ¶ 15. The time spent waiting in lines for the time clock eat into the 30-minutes allotted to Plaintiffs and Class Members for meal periods, however, Defendants do not compensate Plaintiffs and Class Members premium wages for their non-compliant meal periods. *Id*. Defendants' policies and practices in this regard resulted in Defendants' failure to provide premium wages for non-compliant meal periods, in violation of the Cal. Lab. Code. *Id*.

The Class is defined as all current and former hourly paid or non-exempt employees who worked for any of the Defendants within the State of California at any time during the time period from August 24, 2016, through January 31, 2023. *Id*. at ¶¶ 11, 116.

The PAGA Group Members are all current and former non-exempt employees employed in California at any time during the time period between September 1, 2019, through January 31, 2023. *Id*. at ¶ 12.

B. Summary of the Procedural History[2]

On August 24, 2020, Plaintiffs filed their complaint in the instant Action. Cottrell Decl., ¶17.

In the October 2020 to January 2021 timeframe, the Parties engaged in briefing in relation to Defendant's removal of the Action to federal court and eventual remand back to this Court, and engaged in formal discovery. *Id*. at ¶¶18-25.

[2] The procedural history is set forth in detail in the Cottrell Decl. and summarized here.

In the February 2021 to April 2021 timeframe, the Parties engaged in briefing in relation to Defendant's Motion for Judgment on the Pleadings ("MJOP"). *Id*. at ¶ 27.

On April 22, 2021, the Court granted Defendants' MJOP. *Id*. at ¶ 28.

On May 6, 2021, Defendants filed their Answer. *Id*. at ¶ 29.

Subsequently, the Parties agreed to attend mediation with experienced mediator Jeff Krivis for this Action and the related PAGA Action,[3] and the Parties engaged in informal discovery to assess issues concerning liability, potential damages, and potential PAGA penalties. *Id*. at ¶¶ 32-33.

On June 28, 2022, the Parties, by and through counsel, participated in a full-day private mediation before Mr. Krivis, where the Parties exchanged their mediation briefs and additional facts and arguments in support of their positions. *Id*. at ¶¶ 34-35.

The Parties did not reach resolution on June 28, 2022, but continued their settlement negotiations with the assistance of Mr. Krivis. *Id*. at ¶ 36. Mr. Krivis ultimately provided a mediator's proposal. *Id*.

On July 15, 2022, the Parties accepted the mediator's proposal. *Id*. at ¶ 37.

Subsequently, the Parties engaged in negotiating, drafting, and finalizing the long-form settlement agreement and accompanying notice to the Class. *Id*. at ¶38. At the culmination of this process, all Parties and their Counsel executed the Settlement. *Id*.

III. TERMS OF THE SETTLEMENT

A. Monetary Terms

The Settlement provides for a Total Class Action Settlement Amount of $2,750,000.00. Cottrell Decl., ¶ 51. With the motion for final approval, Class Counsel will seek fees not to exceed 33 1/3% of the Total Class Action Settlement Amount, or $916,666.67, and actual costs not to exceed $20,000.00. *Id*. at ¶ 52. The Settlement also sets aside $63,500 for the costs of settlement administration, and $10,000.00 each for the Class Representatives' Enhancement Awards to Plaintiffs for their service to the Class. *Id*. at ¶¶ 52-53. Additionally, the Settlement sets aside $150,000.00 to resolve the Class Members' claims arising under PAGA, $112,500.00 of which is payable to the LWDA and $37,500.00 is payable *pro rata* to the PAGA Group Members. *Id*. at ¶54.

[3] The procedural history for the PAGA Action is set forth in ¶¶ 39-50 of the Cottrell Decl.

B. Individual Settlement Amounts for Participating Class Members

The estimated Net Settlement Amount available to the approximately 7,975 Class Members totals $1,579,833.33. Cottrell Decl., at ¶ 56.[4] This provides an estimated average recovery of $198.10 per Class Member, assuming 100% participation in the Settlement. *Id*. at ¶56.[5]

The Net Settlement Amount shall be divided by the number of aggregate Qualified Workweeks worked by Class Members during the Class Period to produce a "Weekly Settlement Value." *Id*. at ¶ 57. Each Participating Class Member shall be eligible to receive a settlement payment in the amount of the total number of Qualified Workweeks attributable to the Participating Class Member during the Class Period multiplied by the Weekly Settlement Value, less applicable withholdings, provided that the Participating Class Member has not submitted a Request for Exclusion. *Id*.[6]

Individual Settlement Payment checks will be valid for 180 days after issuance. *Id*. at ¶59. If there are $75,000.00 or more in residual funds due to uncashed checks after the check cashing deadline, those funds will be redistributed on a pro rata basis to the Participating Class Members that cashed their Individual Settlement Payment checks. *Id*. at ¶ 60.

If the amount of uncashed check funds is less than $75,000.00, the amount will revert to the proposed *cy pres* recipient, Legal Aid at Work, in compliance with Cal. Code Civ. Proc. § 384. *Id*. at ¶61. The Parties have proposed the Legal Aid at Work, which assists low-income, working families exercise and advance their workplace rights, as the *cy pres* recipient, subject to the Court's approval. *Id*. Plaintiffs and their counsel do not have any financial or business relationships with the Legal Aid at Work. *Id*.[7] Class Counsel submits that the *cy pres* distribution fulfills the purposes of the lawsuit and is otherwise appropriate. *Id*. *See also State of Cal. v. Levi*

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[4] The estimated Net Settlement Amount is the balance of the Total Class Action Settlement Amount after all Court-approved deductions for attorneys' fees and actual costs, the Settlement Administrator's costs and fees, the Class Representatives' enhancement awards, and the PAGA Allocation. *Id*. at ¶ 55.

[5] This does not include the portion of the PAGA Allocation provided to Class Members. ¶ 56.

[6] With respect to the PAGA Allocation, the 25%, or $16,750.00, of the PAGA Allocation that will be paid to the PAGA Group Members shall be divided by the number of aggregate Qualified Pay Periods worked by all PAGA Group Members during the PAGA Period to produce a "Pay Period Settlement Value." A "Qualified Pay Period" shall be a pay period where a PAGA Group Member was employed by Defendants in California as a non-exempt employee, at any time from September 1, 2019 through Preliminary Approval or January 31, 2023, whichever occurs sooner. Each PAGA Group Member shall be eligible to receive a settlement payment in the amount of the total number of Qualified Pay Periods attributable to the PAGA Group Member during the PAGA Period multiplied by the Pay Period Settlement Value.

[7] As noted in the Cottrell Decl., Joshua Konecky, one of the partners at SWCK, is a volunteer member on the board of Legal Aid at Work, but is not paid for his volunteer services. *Id*. at ¶61.

Strauss & Co. (1986) 41 Cal.3d 460, 472 ("The propriety of fluid recovery in a particular case depends upon its usefulness in fulfilling the purposes of the underlying cause of action."); *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 722; *Nachshin v. AOL, Inc*. (9th Cir. 2011) 663 F.3d 1034, 1038-41; *Dennis v. Kellogg Co.* (9th Cir. 2012) 697 F.3d 858, 865.

C. Settlement Administration

The Parties have agreed to retain Phoenix as the Settlement Administrator and determined that its bid for administration is fair. Cottrell Decl., ¶ 62. Phoenix is a qualified and experienced Settlement Administrator with procedures in place to protect the security of class data and adequate insurance in the event of a data breach or defalcation of funds. *See* Declaration of Jodey Lawrence of Phoenix Settlement Administrators in Support of Motion, submitted concurrently herewith. No later than 14 calendar days following preliminary approval, Defendants will provide Phoenix the Class Data. Cottrell Decl., ¶ 63. Within 10 calendar days after receiving the Class Data, Phoenix will send the Court-approved Notice to Class Members. *Id*.

Class Members will have 30 calendar days after the date the Settlement Administrator first mails the Class Notice to submit objections to the Settlement, requests for exclusion, and disputes regarding Qualifying Workweeks or Qualifying Pay Periods. *Id*. at ¶ 64. If 5% or more Class Members opt-out of the Settlement, Defendant may, at its election, revoke the Settlement by notifying Class Counsel and the Court of its election to revoke no later than 7 calendar days after the Settlement Administrator sends the total percentage of opt-outs. *Id*. at ¶ 65. If the Settlement is finally approved, the Settlement Administrator will administer payments to the Participating Class Members and PAGA Group Members, including preparation of Form 1099 tax reporting, within 10 calendar days after Defendants' transfer of funds to the Qualified Settlement Fund. *Id*. at ¶ 66.

D. Release of Claims

As of the Effective Date, Plaintiffs and Participating Class Members (including the Class Representatives) release the Released Parties from the following:

> All causes of action and factual or legal theories/allegations that were alleged in the operative complaint in the Action, including but not limited to all of the following claims for relief: (a) failure to pay minimum wages or overtime wages; (b) failure to provide all legally required meal periods or pay premiums in lieu thereof; (c) failure to provide all legally required rest periods or pay premiums in lieu thereof; (d) failure to pay final wages due at time of separation; (e) failure to pay all wages timely during employment; (f) failure to provide accurate itemized wage

> statements; (g) failure to maintain complete and accurate payroll records; (h) failure to indemnify for necessary business expenditures; (i) unfair, and unlawful business practices in violation of California's Business & Professions Code section 17200, et seq.; (j) any other claims or penalties under the wage and hour laws pleaded in the Action or primary rights associated with such laws; and (k) all damages, penalties, interest and other amounts recoverable under said causes of action under California and federal law, to the extent permissible, including but not limited to the California Labor Code, the applicable Wage Orders, the California Unfair Competition Law, and the Fair Labor Standards Act as to the facts alleged in the Action. Plaintiffs and Participating Class Members do not release claims or actions to enforce the Settlement, claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

Id. at ¶ 67.

As of the Effective Date, Plaintiffs, the PAGA Group Members, and the State of California will release the Released Parties from the following claims for civil penalties during the PAGA Period:

> All causes of action, claims, and/or legal theories for civil penalties, both potential and actual, that were alleged or reasonably could have been alleged based on the facts and theories of the operative complaints in the Action, including but not limited to claims for: (a) failure to pay minimum wages or overtime wages; (b) failure to provide legally required meal periods or pay premiums in lieu thereof; (c) failure to provide legally required rest periods or pay premiums in lieu thereof; (d) failure to pay final wages due at time of separation; (e) failure to pay all wages timely during employment; (f) failure to provide accurate itemized wage statements; (g) failure to maintain complete and accurate payroll records; (h) failure to indemnify for necessary business expenditures; (i) failure to provide a day of rest pursuant to Labor Code sections 551 and 552; (j) failure to pay split shift premiums; (k) any other claims for civil penalties under the wage and hour laws pleaded in the Action or that are based on the same predicate facts or primary rights associated with such laws; and (l) all statutory penalties and other amounts recoverable under said causes of action under California law, to the extent permissible, including but not limited to the California Labor Code and the applicable Wage Orders. The Released PAGA Claims do not include any claims or actions to enforce this Stipulation, claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the PAGA Period.

Id. at ¶ 68.

Additionally, the Class Representatives release the Released Parties from any and all claims, actions, demands, causes of action, suits, debts, obligations, damages, rights, or liabilities of any nature and description whatsoever, known or unknown, that the Class Representatives individually may possess against the Released Parties arising from the Class Representatives' employment with Defendants. *Id*. at ¶ 69.

The Released Parties are Defendants and all of Defendants' current or former parent companies, subsidiary companies, and/or related companies, partnerships, joint ventures, affiliates, divisions, and, with respect to each of them, all of their and/or such related entities' predecessors and successors, and, with respect to each such entity, all of its past, present, and/or future, officers, partners, principals, directors, stockholders, managers, owners, representatives, assigns, attorneys, agents, insurers, employee benefit programs (and the trustees, administrators, fiduciaries, and insurers of such programs), and any other persons acting by, through, under, or in concert with any of the persons or entities listed in this subsection, and their successors. *Id*. at ¶ 70.

The Released Claims are proper under California class action law. "In a class action settlement, a clause providing for the release of claims may refer to all claims, both potential and actual, that may have been raised in the pending action with respect to the matter in controversy. A court may release not only those claims alleged in the complaint and before the court, but also claims which could have been alleged by reason of or in connection with any matter or fact set forth or referred to in the complaint." *Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537; *Uribe v. Crown Bldg. Maint. Co*. (2021) 70 Cal.App.5th 986, 1005; *Robinson v. Southern Counties Oil* (2020) 53 Cal.App.5th 476.

IV. PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE

A. Applicable Legal Standard

The decision to approve or reject a proposed settlement is committed to a court's broad discretion. *Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 234-35. To grant preliminary approval of a class action settlement, courts need find only that the settlement falls within the range of possible final approval, also described as "the range of reasonableness." *See, e.g., North County Contractor's Assn., Inc. v. Touchstone Ins. Svcs*. (1994) 27 Cal.App.4th 1085, 1089-90; *see also Newberg on Class Actions*, § 11:25.

To make this determination, courts must consider several relevant factors, including "the strength of [the] plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and views of counsel." *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801.

"The list of factors is not exclusive, and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." *Wershba*, 91 Cal.App.4th at 245. Under the relevant factors, the Settlement warrants preliminary approval.

B. The Proposed Settlement is Entitled to a Presumption of Fairness

A presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk*, 48 Cal.App.4th 1802.

Here, the material terms of the Settlement were only agreed to by the Parties after mediation with Jeff Krivis, Esq., who is a well respected and experienced mediator in wage and hour class actions. *See* Cottrell Decl., ¶¶ 17-37. Mr. Krivis mediated a full day where he reviewed and discussed each Party's positions and potential damages/penalties analysis. *Id*. at ¶ 35. The Parties did not reach resolution at the end of the mediation but continued to negotiate their positions following mediation with the assistance of Mr. Krivis. *Id*. at ¶ 36. Finally, Mr. Krivis made a mediator's proposal which both Parties accepted. *Id*. Subsequently, the Parties engaged in negotiating, drafting, and finalizing the long-form settlement agreement and accompanying notice to the Class. *Id*. at ¶38. At the culmination of this process, all Parties and their Counsel executed the Settlement. *Id*. Thus, the Settlement was clearly the result of an arms-length bargaining process, and the first factor is satisfied.

In addition, the material terms of the Settlement were only agreed to by the Parties after significant investigation and discovery. *Id*. at ¶¶ 17-37. The Parties engaged in motions practice in connection with Defendant's Motion for Judgment on the pleadings, had numerous meet and confers to discuss discovery disputes, and exchanged their mediation briefs which allowed the Parties to explore their legal positions. *Id*. at ¶¶ 25-36. The Parties also engaged in formal discovery and informal discovery – where Defendants produced data points (*e.g.*, total number of the Class, total number of Aggrieved Employees, aggregate number of shifts and workweeks, aggregate number of pay periods), policy documents, Plaintiff's personnel files, Plaintiff's time records and earning statements, payroll data for the Class, time records for the Class – which allowed Class Counsel to formulate and assess potential damages and PAGA penalties against the risk of continuing litigation. *Id*. at ¶¶25, 33. Thus, the second factor is satisfied.

Class Counsel are experienced and respected class action litigators. *Id*. at ¶¶6-8. Thus, the third factor is satisfied.[8]

C. The Proposed Settlement is Within the Range of Fairness

The Settlement provides a Net Settlement Amount of approximately $1,579,833.33 for all Class Members. Cottrell Decl., ¶56. This amount will be available to the approximately 7,975 putative Class Members, providing an estimated average recovery of $198.10 per Class Member, assuming 100% participation in the Settlement. *Id*.

Class Counsel's damages analysis supports the Settlement. *Id*. at ¶¶75-86. The Total Class Action Settlement Amount is approximately **15.7%** of the total estimated exposure of the substantive Class claims and the PAGA claims. *Id*. at ¶84.

This is a recovery that easily falls within the range of reasonableness. *Viceral v. Mistras Grp., Inc.* (N.D. Cal. 2016) 2016 U.S. Dist. LEXIS 140759, at *7 (approving wage and hour settlement which represented approximately 8% of the total verdict value); *Stovall-Gusman v. W.W. Granger, Inc.* (N.D. Cal. 2015) 2015 WL 3776765, at *4 ("10% gross and 7.3% net figures are 'within the range of reasonableness."); *Balderas v. Massage Envy Franchising, LLP* (N.D. Cal. 2014) 2014 WL 3610945, at *5 (gross settlement amount of 8% of maximum recovery and net settlement amount of 5%); *Ma v. Covidien Holding, Inc.* (C.D. Cal. 2014) 2014 WL 360196, at *4-5 (9.1% of "the total value of the action" is within the range of reasonableness); *In re Omnivision Techs. Inc*. (N.D. Cal. 2008) 559 F.Supp.2d 1036, 1042 (approving settlement of 6% to 8% of estimated damages); *In re Uber FCRA Litig*. (N.D. Cal. June 29, 2017) No. 14-cv-05200-EMC, 2017 U.S. Dist. LEXIS 101552, at *23- 24 (granting preliminary approval to class action settlement where gross settlement fund, prior to deducting attorneys' fees and services awards, was valued at 7.5% or less of total possible verdict); *Cruz v. Sky Chefs, Inc*. (N.D. Cal. Dec. 19, 2014) No. 12-cv-02705-DMR, 2014 WL 7247065, at *5 (granting final approval where gross settlement amount represented 8.6% of the maximum potential recovery from the class claims and estimated amount distributable to class after accounting for attorneys' fees and other deductions represented approximately 6.1% of maximum potential recovery).[9]

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[8] After preliminary approval and notice to the Class, Plaintiffs expect that the fourth factor will also be satisfied.

[9] Courts routinely approve settlements that provide a fraction of the maximum potential recovery. *See, e.g., Officers for Justice v. Civil Serv. Com*. (9th Cir. 1982) 688 F.2d 615, 628. "It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair." *In Re Mego Fin. Corp. Sec. Litig*. (9th Cir. 2000) 213 F.3d 454, 459.

D. The Proposed Settlement Provides Compelling Benefits to the Class as Compared to the Significant Risks of Continued Litigation

It is well-settled that a proposed settlement is not to be measured against a hypothetical ideal result that might have been achieved. *See, e.g., 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1150. "[I]t is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Id*. (quoting *Linney v. Cellular Alaska P'ship* (9th Cir. 1998) 151 F.3d 1234, 1242).

Here, the certain benefits of the Settlement must be considered in conjunction with the risks of continuing litigation, which Class Counsel carefully assessed. Cottrell Decl., ¶¶ 87-99. Throughout this litigation, Defendants have vigorously denied the allegations in Plaintiffs' complaints, and have denied any and all liability. *Id*. at ¶ 88. Defendants have taken the position that this case is not suitable for class treatment and have asserted that they have fully complied with their obligations under California's labor laws. *Id*. Defendants have asserted numerous legal and factual grounds available to defend this action, all of which present difficult hurdles for Plaintiffs. *Id*. at ¶¶ 88-91.

Litigating the class claims will require substantial additional preparation and discovery and ultimately would involve the depositions of Class Members and experts, the presentation of percipient and expert witnesses at trial, as well as the consideration, preparation, and presentation of voluminous documentary evidence and the preparation and analysis of expert reports. *Id*. at ¶¶ 92-94.

While Plaintiffs believe that they would have prevailed on these issues and others, they also realistically recognize the risk that a fact finder may have found for Defendants on one or more of these issues and or found damages to be significantly less than what Plaintiffs claim. *Id*. at ¶ 95. Given the broad scope and magnitude of risks, Class Counsel concluded that the Settlement here that provides a material percentage of the substantive damages estimate is a beneficial and just result for the Class. *Id*. at ¶¶ 96-98.

E. The Proposed Class Representatives' Enhancement Awards Are Reasonable

Incentive awards "are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393–1394.

Here, Plaintiffs have substantially contributed their time and efforts over a period of almost two and a half years, in pursuing the Class claims and the enforcement claims on behalf of the State of California, and Plaintiffs' roles were crucial in this case. Cottrell Decl., ¶¶ 100-105. As demonstrated in Plaintiffs' declarations, Plaintiffs had numerous discussions with Class Counsel, worked with Class Counsel to review facts and answer questions, responded to numerous discovery requests, assisted Class Counsel in their mediation efforts, and remained apprised of the case at all times since electing to become Class Representatives. *See* Declaration of Rhonda Guerrero in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, and Declaration of Kyree Wilson in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, filed concurrently herewith.

Moreover, Plaintiffs took the significant risk of coming forward to represent the interests of their fellow employees. Cottrell Decl., ¶103. They stepped into this matter so that the Class claims could proceed out of a sincere desire to see through the adjudication of Defendants' treatment of its employees. *Id*. As a result of their service, they subjected themselves to considerable risk with regards to having their names and suit in the public forum. *Id*. Plaintiffs' enhancement award in the amount of $10,000.00 each is reasonable considering the efforts they made and the risks they took in prosecuting this action to obtain the Settlement. *Id*. at ¶¶104-105.

F. The Proposed Payment of Attorneys' Fees and Costs is Reasonable

Plaintiffs seek reasonable attorneys' fees and expenses from the Total Class Action Settlement Amount. Under the terms of the Settlement, Class Counsel may seek up to 33 1/3% of the Total Class Action Settlement Amount, or $916,666.67. Cottrell Decl., ¶ 106.

In this case, there was no guarantee of compensation or reimbursement. *Id*. at ¶ 107. Rather, Class Counsel has undertaken all the risks of this litigation on a completely contingent fee basis. *Id*. The inherent risk of proving liability and damages on a class-wide basis and Defendants' representation by skillful counsel confronted Class Counsel with the prospect of recovering nothing or close to nothing for their commitment to and investment in the case. *Id*. Nevertheless, Plaintiffs and Class Counsel have committed themselves to developing and pressing

Plaintiffs' legal claims to enforce the employees' rights and maximize the Class recovery. *Id*. at ¶ 108.

Class Counsel's fee request of 33.33% of the settlement fund is well within the range customarily approved by California and federal courts in comparable class actions. *See e.g., Laffitte v. Robert Half Int'l Inc*. (2016) 1 Cal. 5th 480, 506 ("33 1/3 percent of the common fund is consistent with, and in the range of, awards in other class action lawsuits").[10]

Furthermore, reasonable litigation expenses are ordinarily included with an award of attorneys' fees pursuant to California wage and hour law. *Serrano v. Priest* (1977) 20 Cal.3d 25, 35; *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1424. Class counsel's expenses were reasonable, were necessary to the prosecution, and are customarily billed to fee-paying clients. Cottrell Decl., ¶ 114. Thus, the requested Attorneys' Fees and Costs are reasonable compensation for the excellent recovery achieved and should be preliminarily approved. *Id*. at ¶ 115.

V. THE COURT SHOULD CERTIFY THE PROPOSED SETTLEMENT CLASS FOR SETTLEMENT PURPOSES

This Court should certify the proposed Class pursuant to Cal. Code Civ. Proc. § 382 for purposes of the Settlement. Cal. Code Civ. Proc. § 382 provides: "[W]hen the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all." California has a strong public policy in favor of broad enforcement of wage and hour laws for the benefit of workers and in favor of using the class action device. *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 340.

The party seeking certification has the burden to establish the existence of both an

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[10] *See also Chavez v. Netflix, Inc*. (2008) 162 Cal.App.4th 43, 66 n.11; Eisenberg & Miller, Attorney Fees in Class Action Settlements: An Empirical Study, J. of Empirical Legal Studies, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies of class action litigation nationwide conclude that fees representing one-third of the total recovery is consistent with market rates); *Ochoa v. Haralambos Beverage Co*. (Los Angeles Super. Ct., Feb. 1, 2007) No. BC319588 (approving 33.3% fee award with no mention of lodestar crosscheck); *Jones v. Alliance Imaging, Inc*. (Alameda County Super. Ct., No. RG05210418, Nov. 27, 2006) (approving 33% fee award with no mention of lodestar crosscheck); *Garcia v. Save Mart Supermarkets* (Stanislaus County Super. Ct., No. 312026, Aug. 3, 2004) (approving 33% fee award with no mention of lodestar crosscheck); *Terrell v. Ocean's 11 Casino, Inc*. (San Diego County Super. Ct., No. GIC795732, Feb. 10, 2004) (approving 33% fee award with no mention of lodestar crosscheck); *Vorise v. 24 Hour Fitness USA, Inc*., Contra Costa County Superior Court, Case No. C 15-02051(33.33% fee awarded on a PAGA case); *Garcia v. Pep Boys, Orange County Superior Court*, Case No. 30-2014-00720574-CU-OE-CJC (33.33% fee awarded on a PAGA-only case); *Perez v. Staffmark Investment, LLC*, Riverside County Superior Court, Case No. MCC1401137 (33.33% fee awarded on a $650,000 settlement of a PAGA only case).

ascertainable class and a well-defined community of interest among class members. *Id*. at 326. The "community of interest" requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." *Id*. Plaintiffs can meet that burden here.

A. Plaintiffs Satisfy the Ascertainability and Numerosity Requirements

In determining whether a class is "ascertainable," courts "examine the class definition, the size of the class, and the means of identifying the class members." *Reyes v. Bd. of Supervisors* (1987) 196 Cal.App.3d 1263, 1274-75. Plaintiffs have defined the Class according to objective criteria. Cottrell Decl., ¶119. The Class Members are easily identifiable and can be easily located from Defendants' records. *Id*. at ¶120. With respect to numerosity, the Class consists of approximately 7,975 putative individuals. *Id*. at ¶121. This size clearly renders the class so large as to make joinder impracticable.

B. Common Questions of Law and Fact Predominate in This Action

"[T]he focus in a certification dispute is on what type of questions – common or individual – are likely to arise in the action[.]" *Sav-On*, 34 Cal.4th at 427. Predominance does not require that all questions of law and fact be uniform for all members of the class. *Id*. at 338.

Here, Plaintiffs contends that Defendants' class-wide policies and procedures raise common issues of law and fact that are applicable to the claims of Plaintiffs and Class Members. Cottrell Decl., ¶¶ 122-25. At issue are Defendants' policies applied uniformly to Class Members, including Defendants' policies for compensating employees for off-the-clock work and overtime work, Defendants' procedures for how employees are to obtain necessary tools/equipment to perform their work duties for the day, Defendants' maintenance of clock-in stations, and Defendants' maintenance of working conditions resulting in employees spending unrecorded and uncompensated time waiting in lines for the clock-in stations. *Id*. at 122. Where, as in this case, uniform policies and procedures apply on a class-wide basis, "the legal question to be resolved is not an individual one. To the contrary, the common legal question remains the overall impact of [Defendant's] policies on its [alleged employees] . . . " *Jaimez v. Daiohs USA, Inc*. (2010) 181 Cal.App.4th 1286, 1299.

C. The Typicality Requirement Is Satisfied

A representative plaintiff's claims are "typical" if they arise from the same event, practice, or course of conduct that gives rise to the claims of the other class members and if their claims are based on the same legal theory. *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46-47; *Linder v. Thrifty Oil Co* (2000) 23 Cal.4th 429, 435. The typicality requirement is not onerous and does not require the claims to be identical. *Id*.

Here, Plaintiffs contend that they, like other Class Members, were subject to Defendants' policies and practices described above, and suffered damages from the alleged wage and hour violations that emanated as a result. Cottrell Decl., ¶126. Plaintiffs also assert that the Class Members were subjected to the same illegal practices and policies to which Plaintiffs were subjected and the Class claims are based on the same legal theory as Plaintiffs' individual claims. *Id*. at ¶127. Accordingly, Plaintiffs are members of the Class they seek to represent, and their claims are "typical" of those asserted by other Class Members. *Id*.

D. The Adequacy Requirement Is Satisfied

A plaintiff is an adequate class representative if his or her claims are not inconsistent with or antagonistic to the claims of the class members. *See Johnson v. GlaxoSmithKline, Inc*. (2008) 166 Cal.App.4th 1497, 1509. Here, Plaintiffs' interests are exactly in line with those of the Class, Plaintiffs have agreed to prosecute this case as Class Representatives with the interests of the Class in mind and understand their responsibilities, and there are no conflicts between Plaintiffs and the proposed Class. Cottrell Decl. at ¶128. Furthermore, Plaintiffs are represented by counsel with extensive experience in class action and employment litigation, including wage and hour class actions, and who do not have any conflict with the Class. *Id*. at ¶129. For these reasons, the adequacy requirement is satisfied. *Id*. at ¶130.

VI. THE PROPOSED NOTICE PROVIDES ADEQUATE NOTICE TO THE CLASS

"Adequate notice is critical to court approval of a class settlement…." *Hanlon v. Chrysler Corp*. (9th Cir. 1998) 150 F.3d 1011, 1025. A class action settlement notice "is satisfactory if it generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard." *Churchill Village LLC v. General Electric* (9th Cir. 2004) 361 F.3d 566, 575.

Here, Defendants will identify all Class Members, and Phoenix will send the Class Notice in English via U.S. Mail to each Class Member at their last known addresses provided by Defendants. Cottrell Decl., ¶ 131. Prior to mailing the Notice to Class Members, the Settlement Administrator will run the addresses in the data provided by Defendants through the National Change of Address Database for any address updates and update the data as necessary. *Id*. The Settlement Administrator will engage in address searches consistent with its normal practices in administering settlements of wage claims, including skip tracing. *Id*. Such search efforts will include, where necessary, using social security numbers to obtain better address information and attempting to call such Class Members. *Id*. Any returned envelopes from this mailing with forwarding addresses will be utilized by the Settlement Administrator to forward the Notices to the Class Members. *Id*.

The proposed Class Notice is clear and straightforward, and provides information on the case, the meaning and nature of the proposed Settlement, its terms and provisions, and the rights of the Class Members to participate, opt out, and object. *Id*. at ¶132. It describes the monetary awards that the Settlement will provide to Class Members and PAGA Group Members, how the awards were calculated, and the Class release. *Id*. It also provides the date, time, and location of the Final Approval Hearing, and the identity and contact information for Class Counsel. *Id*. The proposed Class Notice fulfills the requirement of neutrality in class notices. *See Newberg on Class Actions* at §§ 8:21 and 8:39; *Manual for Complex Litig*. at §§ 21:311 and 21:312. Based on the foregoing, the Class Notice complies with the standards of fairness, completeness, and neutrality required of a settlement class notice disseminated under authority of the Court.

VII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant this Motion for Preliminary Approval and enter an order consistent with the [Proposed] Order submitted herewith.

Respectfully Submitted,

Dated: February 11, 2023

Esther L Bylsma

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Esther L Bylsma
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PROOF OF SERVICE

I, the undersigned, declare that I am, and was at the time of service of the papers herein referred to, over the age of 18 years and not a party to the within action or proceeding. I am employed at Schneider Wallace Cottrell Konecky LLP located at 300 S Grand Avenue, Suite 2700, Los Angeles, California 90071.

On February 11, 2023 I served the following document(s):

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

on the following person(s) listed below, as follows:

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☒ **BY ELECTRONIC SERVICE**: Eugene Huffman, Paralegal, has submitted an electronic version of the above-referenced document to the person(s) whose email address(es) are known to me as listed above.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed on February 11, 2023, in Los Angeles, California.

Eugene Huffman