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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

CATHY KOLEFF, individually and on behalf of all similarly situated and/or aggrieved employees of Defendant in the State of California,

Plaintiff,

v.

STARSIDE SECURITY AND INVESTIGATION, INC., a corporation; and DOES 1 through 50, inclusive,

Defendant.

Case No.: 37-2021-00010371-CU-OE-CTL

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT

[IMAGED FILE]

Date: February 21, 2025
Time: 9:00 a.m.
Dept: C-75
Judge: Hon. James A. Mangione

Complaint Filed: March 9, 2021
Trial Date: None set

[*Filed concurrently herewith Notice of Motion; Declarations of Nathan J. Reese and Cathy Koleff; and [Proposed] Order*]

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I. INTRODUCTION

Plaintiff Cathy Koleff ("Plaintiff") seeks preliminary approval of a non-reversionary $525,000 class and Private Attorneys General Act ("PAGA") action settlement on behalf of herself and other non-exempt employees who worked for Defendant Starside Security and Investigation, Inc. ("Defendant"). Plaintiff and Defendant (collectively, the "Parties") reached the settlement after extensive investigation, including a thorough analysis and review of Defendant's employment policies, putative class members' time and payroll records during the class period, in-depth employee interviews, and a full-day mediation before Todd A. Smith, Esq., an experienced mediator well-versed in wage and hour class actions. The Settlement, if approved, will provide a significant monetary recovery to the approximately 307 potential Class Members who worked for Defendant as non-exempt employees in California during the Class Period.

Subject to Court-approval, and after deductions for a payment to the California Labor Workforce and Development Agency ("LWDA") pursuant to the PAGA, settlement administration expenses, the Class Representative Service Payment to Plaintiff, and attorneys' fees and costs to Class Counsel, the remaining amount will be distributed to Class Members as follows:

Gross Settlement Amount	$525,000
PAGA Payment	$20,000
Administration Expenses Payment	Up to $10,000
Class Representative Service Payment	Up to $10,000
Class Counsel's Fees	Up to $175,000
Class Counsel's Expenses	Up to $17,500
Net Settlement Amount	At least $292,500

II. FACTUAL BACKGROUND

A. Procedural Background

On October 29, 2020, Plaintiff submitted written notice to the LWDA and Defendant of the company's alleged violations of the California Labor Code ("Labor Code"). (Declaration of Nathan J. Reese in Support of Plaintiff's Unopposed Motion for Preliminary Approval ["Reese Decl."], ¶ 9.)

Plaintiff filed a class and representative action in San Diego Superior Court on March 9, 2021, against Defendant. (*Id.*, ¶ 10.) The complaint alleged the following causes of action on behalf of Plaintiff and the members of the putative class: (1) Failure to Provide Meal Periods; (2) Failure to Provide Rest

Periods; (3) Failure to Pay Minimum and Regular Wages; (4) Failure to Pay Overtime Wages; (5) Failure to Indemnify All Necessary Expenditures; (6) Failure to Provide Accurate Itemized Wage Statements; (7) Failure to Timely Pay All Wages Due Upon Separation of Employment; (8) Violation of Business & Professions Code §§ 17200, *et seq.*; and (9) Violation of the Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* (*Id.*)

B. Plaintiff's Class and PAGA Causes of Action

Plaintiff's wage and hour allegations are centered around Defendant's policies and practices, which required Plaintiff and other putative class members to remain on duty throughout their shifts, including during meal and rest breaks. (Reese Decl., at ¶ 22.) Specifically, Plaintiff alleges that putative class members were responsible for maintaining constant observation and physical control over inmates at all times, as specified in Defendant's contracts with its clients. (*Id.*) Plaintiff alleges that Defendant required class members to sign meal break waivers and to monitor their cell phone continuously during their shifts for communication with supervisors and other class members, with failure to answer resulting in reprimand. (*Id.*) Plaintiff further alleges that Defendant failed to authorize and permit lawful meal and rest breaks, as putative class members were required to stay on the premises, respond to calls and emergencies, and were never relieved of their duties. (*Id.*) Plaintiff claims that these conditions resulted in Plaintiff and other putative class members being forced to work through their meal periods. (*Id.*) For the same reasons, Plaintiff alleges Defendant failed to authorize and permit Plaintiff and other putative class members to take legally compliant rest breaks of at least ten minutes for every four-hour work period, or major fraction thereof. (*Id.*, ¶ 23.) Plaintiff alleges that she and other putative class members regularly worked through their rest breaks. (*Id.*)

Additionally, Plaintiff alleges that Defendant failed to reimburse class members for necessary business expenses. (*Id.*, ¶ 26.) Plaintiff and class members were required to use personal cell phones for work-related communications, monitor their phones during shifts, and respond to schedule changes and assignments, but were never reimbursed for these expenses. (*Id.*)

C. Defendant Strongly Denies Plaintiff's Class and PAGA Claims

Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the litigation and further denies that this action is appropriate for class treatment for any purpose other than

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settling this litigation. (Reese Decl., ¶¶ 26-35.) Defendant maintains that Plaintiff and other putative class members are covered by a collective bargaining agreement, and that their claims are preempted under the Labor Management Relations Act. (*Id.*, ¶ 35.)

III. DISCOVERY COMPLETED PRIOR TO MEDIATION

The Parties have spent significant time and effort exchanging formal and informal discovery, contacting and communicating with putative class members, and reviewing and exchanging information relating to all existing causes of action and the related PAGA claims. (Reese Decl., ¶¶ 39-42.) The Parties engaged in voluminous formal and informal discovery in this case, including the production of time payroll records, Defendant's written policies and procedures, meal period waivers, daily activity reports, and various class data points. (*Id.*, ¶ 39.) After undertaking a thorough review of these documents and interviewing putative class members, Class Counsel prepared a comprehensive mediation brief that outlined factual and legal issues relevant to the litigation, contained a detailed synthesis of Defendant's timekeeping and payroll records, and presented a complete damages analysis of the potential liability Defendant faced if Plaintiff succeeded on all claims at trial. (*Id.*, ¶ 40-42.)

The documents, information, and data obtained from Defendant, in addition to the information gleaned from interviews with putative class members, were more than sufficient for Class Counsel to analyze the Labor Code violations alleged in the operative complaint and make an informed decision about the resolution of this case. (*Id.*, ¶ 45.) During mediation, the Parties engaged in good-faith, non-collusive negotiations and discussed the realistic damages exposure to Defendant, the relative strength and weakness of the claims, the risks and delays of further litigation, and the potential difficulty in maintaining class certification. (*Id.*, ¶ 14.) Each party is represented by experienced class action attorneys well-versed in employment law, who determined that the $525,000 settlement is a fair resolution of the class and PAGA claims in this action. (*Id.*, ¶¶ 21, 43.)

IV. SETTLEMENT TERMS AND RELIEF OBTAINED

The general structure and terms of the settlement are straightforward: following preliminary approval, the notice packet will be distributed to all individuals currently or formerly employed by Defendant in California as hourly, non-exempt employees during the Class Period. All employees who do not opt-out of the settlement (the "Participating Class Members") will receive their individual settlement

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allocations following final approval. (Reese Decl., Ex. 1 [the "Settlement Agreement" or "SA"].) The basic terms of the Settlement Agreement are as follows:

A. Settlement Class

"Class Members" is defined as "all individuals currently or formerly employed by Defendant in California as hourly, non-exempt employees during the Class Period." (SA at ¶ 2.6.) The Class Period is from March 9, 2017, through the date the Court grants preliminary approval or February 1, 2025, whichever occurs first. (SA at ¶ 2.8.) The Alternative End Date is the last day on which the workweeks worked by Class Members during the Class Period does not exceed a 10% increase from the originally estimated 37,000 workweeks; Defendant may elect to shorten the Class Period on this day. (SA at ¶ 8.)

B. Settlement Amounts

1. Gross Settlement Amount. Defendant will pay a sum of $525,000 to resolve all class and PAGA claims in this action. (SA at ¶ 2.21.) This amount does not include Defendant's share of all state and federal payroll taxes, which Defendant will pay separately to the Settlement Administrator. (SA at ¶ 3.1.2.) None of the Gross Settlement Amount will revert to Defendant. (*Id.*)

2. Administration Costs. The Parties selected CPT Group, Inc. ("CPT") to serve as the Settlement Administrator after considering several different administration bids, in which CPT provided the lowest bid. (Reese Decl., ¶ 67.)

3. Class Representative Service Payment. Plaintiff will request, and Defendant will not oppose, a Class Representative Service Payment of $10,000. (Reese Decl., ¶ 70; SA ¶ 2.46, 3.2.1.)

4. Class Counsel's Attorneys' Fees and Reimbursement Costs. Class Counsel will seek an award of fees and costs for the services rendered and yet to be rendered on behalf of the Class. Class Counsel will seek, and Defendant will not oppose, an award of $175,000 for attorneys' fees (equal to one third of the Gross Settlement Amount), and the reimbursement of reasonable litigation costs actually incurred, in an amount not to exceed $17,500. (Reese Decl., ¶ 71; SA at ¶ 3.2.2.)

5. PAGA Allocation. The Parties agreed to allocate the sum of $20,000 to settle the claims for civil penalties pursuant to PAGA. (Reese Decl., ¶ 68; SA at ¶ 2.36.) Of this amount, 75% ($15,000) will be paid to the LWDA from the Gross Settlement Amount to cover the State of California's share of the total penalty amount, with the remaining 25% ($5,000) made available for distribution to the PAGA

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Group Members. (*Id.*, at ¶¶ 2.35, 2.36, 3.2.4.)

C. <u>Calculation of Individual Class Payments to Class Members</u>

Class Members will be paid their Individual Class Payments from the Net Settlement Amount. Defendant will provide the Settlement Administrator the number of workweeks each Class Member worked during the Class Period. (Reese Decl., ¶ 74; SA at ¶ 4.1.) Class Members shall be allocated a *pro rata* portion of the Net Settlement Amount available for distribution based on their respective number of workweeks in comparison to the total number of workweeks that all Class Members worked for Defendant. (Reese Decl., ¶ 73; SA at ¶ 3.2.5.) For purposes of this Motion, there are approximately 37,000 workweeks worked by the Class Members. (Reese Decl., ¶ 76.)

D. <u>Disposition of Unclaimed Funds</u>

For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member, thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). (Reese Decl., ¶ 86; SA at ¶ 4.3.3.)

V. <u>PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE</u>

Settlement of a class action requires court approval to prevent fraud, collusion, or unfairness to the class. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1800-1801 (Ct. App. 1996). The purpose of the court's preliminary evaluation of class action settlements is to determine whether the proposed settlement is within the range of reasonableness, and whether notice to the class of the settlement terms and conditions and the scheduling of a formal fairness hearing are worthwhile. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 234-35 (Ct. App. 2001); *see* Alba Conte & Herbert Newberg, *4 Newberg on Class Actions* (2002) ("*Newberg*"), § 11.25.

A trial court must exercise its discretion through the application of several well-recognized factors when deciding whether a class action settlement is fair. The list of factors, which "is not exhaustive and should be tailored to each case," includes "the strength of plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience

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and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (Ct. App. 2008) (quoting *Dunk*, 48 Cal. App. 4th at 1801). The most important factor the trial court should consider at the preliminary approval stage is the strength of the case for plaintiff on the merits, balanced against the amount offered in settlement. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 407-408 (Ct. App. 2010); *Kullar*, 168 Cal. App. 4th at 130.

Here, the proposed Settlement meets all the criteria for preliminary approval because it is supported by experienced counsel, was reached after hard fought negotiations, extinguishes the risk of continued litigation, provides significant monetary recovery to Class Members, and provides a fair and adequate distribution of Settlement proceeds to Class Members. (Reese Decl., ¶¶ 14, 43, 51-59, 78-79.)

A. <u>The Settlement is the Result of Arms' Length Negotiations and Presumptively Fair</u>

California courts recognize that a "presumption of fairness exists where (1) the settlement is reached through arm's-length bargaining; (2) sufficient investigation allows 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 at 1802. Courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence to the contrary is offered. In short, there is a presumption that the negotiations were conducted in good faith. William B. Rubenstein, et al., *Newberg on Class Actions* § 13:45 (5th ed. 2011-2017). Here, the Settlement is the result of extensive, non-collusive negotiations between the Parties, conducted at arm's length, and informed by substantial factual and legal investigation. (Reese Decl., ¶¶ 14, 36-42.) The Parties participated in a full-day mediation with Todd A. Smith, Esq., a well-respected, neutral third-party mediator well-versed and experienced in wage and hour class actions, who helped the Parties reach the Settlement. (*Id*. at ¶¶ 12, 14, 18.) At all times, the Parties' negotiations were hard-fought and conducted at arm's length between attorneys with substantial wage and hour class action experience. (*Id*. at ¶¶ 14, 36, 40.)

In sum, the Settlement is presumptively fair and should be approved because it is the product of well-informed, arm's-length negotiations between experienced attorneys.

B. <u>The Proposed Settlement Was Reached After Substantial Investigation</u>

A proposed settlement is fair and reasonable when there has been sufficient investigation and discovery to permit counsel and the court to act intelligently. *Dunk*, 48 Cal. App. 4th at 1802. Here, a lengthy and thorough investigation went into the merits of Plaintiff's class action claims, and Class Counsel devoted a considerable amount of time and effort to the legal and factual investigation of Plaintiff's claims. (Reese Decl., ¶¶ 36-42.) The investigation undertaken allowed Class Counsel to assess the strengths and weaknesses of Plaintiff's claims and Defendant's defenses thereto, and to evaluate the benefits of the Settlement under the circumstances of this case. Thus, this factor also weighs in favor of preliminary approval of the Settlement.

C. Class Counsel is Highly Experienced and Supports Preliminary Approval

Plaintiff and the Class have been represented by well-qualified counsel who have several years of experience in wage and hour class action litigation. (Reese Decl., ¶¶ 6-8; Ex. 3 to Reese Decl.) Class Counsel believes the Settlement is fair, adequate, and reasonable, and in the best interest of all Class Members. This factor also supports preliminary approval of the Settlement.

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D. The Settlement Provides Substantial Monetary Relief to the Class

Courts must be provided with "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*, 168 Cal. App. 4th at 133; *Clark v. American Residential Services LLC*, 175 Cal. App. 4th 785, 799 (Ct. App. 2009). A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. *Wershba*, 91 Cal. App. 4th at 246, 250. Here, the Gross Settlement Amount of $525,000 is an excellent result providing substantial benefits to all Class Members.

1. The Amount of the Settlement is Fair and Reasonable Based on the Strength of Plaintiff's Case and the Risk, Expense, and Likely Duration of Further Litigation

In reaching this Settlement, Class Counsel carefully considered the strength of the case versus the amount offered in settlement; the risk, expense, complexity, and likely duration of litigation and of maintaining class certification through trial; the present state of the law as it applies to wage and hour class actions; and the burdens of proof necessary to establish liability against Defendant. (Reese Decl., ¶¶ 44, 46-57.) Class Counsel analyzed the merits of the class claims, which presented significant hurdles and risks. (*Id*., ¶¶ 47-52.) Although Plaintiff maintains the claims are meritorious, Plaintiff acknowledges that Defendant possesses legitimate defenses to liability in the action. (*Id*., ¶¶ 26-35.)

Thus, Plaintiff faces substantial obstacles in maintaining her class claims, as well as establishing the full amount of Plaintiff's estimated damages and civil penalties for her claims at trial. (*Id*., ¶¶ 51-53.) While Plaintiff believes that the case possesses substantial merit, the litigation cannot legitimately be characterized as being one without risk or one where Plaintiff would inevitably prevail at trial. (*Id*.) These risks are averted by the proposed Settlement.

Additionally, continued litigation would likely be extremely expensive and time consuming, reducing and substantially delaying any recovery by the Class. (*Id*., ¶ 54.) Defendant had a pending motion to compel arbitration, which would require the Parties to devote substantial time preparing for and attending the hearing. (*Id*.) Although the Parties have engaged in a significant amount of investigation, the Parties are far from completing formal discovery. (*Id*.) Even if Plaintiff was successful in certifying the class and proving the merits of the class action claims, Defendant would likely submit an appeal. (*Id*., ¶ 56.) Thus, the Parties will likely have to engage in expensive and protracted appellate practice. (*Id*.) This Settlement avoids all the risks and expenses associated with further litigation and instead provides for immediate and substantial monetary relief to the Class Members. (*Id*.) The Settlement here commits Defendant to create a Gross Settlement Amount of $525,000 to compensate Class Members for their alleged damages, whereas continued litigation would be costly and time consuming, and appeal from the class certification decision and appeal from any judgment would likely occur, further drawing out the litigation.

2. The Amount Offered in Settlement Given the Estimated Value of the Claims Similarly Favors Preliminary Approval of the Settlement

After reviewing the records and conducting interviews, Plaintiff calculated the maximum possible exposure for all of the class claims alleged in this litigation, as well as the PAGA claims, to be $30,275,782, with a realistic value of $5,676,709.13 after discounts are applied for the pending Motion to Compel Arbitration, the likelihood of class certification, and the likelihood of success on the merits. (Reese Decl., ¶¶ 47-49.) Plaintiff calculated the corresponding civil penalties under the PAGA by assuming a 100% liability for the PAGA aggrieved employees for meal break, rest break, unpaid wage,

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reimbursement, wage statement, and inaccurate records violations. (*Id*., ¶ 48.)

The $525,000 settlement amount is an excellent result considering the risks of prevailing at trial given the relative strength of Defendant's defenses, and risks presented given the uncertainty of the law. Here, the possibility of recovering a seven-figure dollar amount on behalf of the Class is remote, particularly in light of the difficulty in certifying and proving off-the-clock work, and the existence of potential variations among Class Members, which will reduce the overall value of the claims. (*Id*., ¶ 50-52.) Moreover, the reasonableness of the proposed Settlement is underscored by the fact that Defendant has potentially viable grounds for not only challenging liability and Plaintiff's right to assert claims on behalf of the Class but also disputing Plaintiff's estimate of the potential value of each class claim. (*Id*., ¶ 56.) By contrast, the average Individual Class Payment will be approximately $952.77 for each Class Member if all estimated 307 Class Members participate. (*Id*., ¶ 77.) This will provide fair and reasonable recovery to the entire Class without further delay. While the amount paid to Class Members represents a discount on Plaintiff's estimate of the overall exposure to Defendant, this reduction in the amount of recovery represents an extremely reasonable compromise considering the substantial risks Plaintiff would face in the litigation. (*Id*., ¶ 53.)

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3. The Settlement Has No Obvious Deficiencies and Does Not Grant Improper Preferential Treatment to Part of the Class or the Class Representative

The Settlement provides the fairest way to distribute the Settlement proceeds to Class Members. (Reese Decl., ¶¶ 72-79.) Each one of the Class Members shall be entitled to receive a pro-rata portion of the Net Settlement Amount available for distribution based upon his or her respective number of workweeks worked during the Class Period. (*Id*., ¶ 73.) Class Members who worked workweeks during the Class Period, and thus presumably experienced more violations, will be entitled to a larger portion of the Net Settlement Amount compared to those who worked less. (*Id*., ¶ 75.) Thus, all Class Members are treated equitably and fairly. (*Id*.)

E. <u>The Penalties Allocated to PAGA Are Reasonable</u>

Where settlements negotiate a good faith amount for PAGA penalties and "there is no indication that this amount was the result of self-interest at the expense of other" class members, such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *1, 9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA penalties in the range of zero to two percent of the total maximum amount of the settlement. *See McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA settlements in the range of zero to two percent of the total Settlement); *Calhoun, et al. v. Celadon Trucking Services, Inc*., No. 5:16-cv-01351-PSG-FFM (C.D. Cal. Nov. 13, 2017) (approving $14,500 payment to LWDA from $950,000.00 settlement); *Garcia v. Gordon Trucking, Inc.*, No. 1:10-CV-0324 AWI SKO, at *7 (E.D. Cal. Oct. 31, 2012) (approving $10,000 payment to the LWDA from $3.9 million settlement);

Here, the parties negotiated a good faith PAGA settlement amount of $20,000, 75% of which ($15,000) will be paid to the LWDA, with the remaining 25% ($5,000) to be distributed to Aggrieved Employees. (SA at ¶ 2.36.) The $20,000 allocated to the PAGA Payment equates to approximately 4% of the Gross Settlement Amount, which is in line with amounts that are routinely approved by courts in this state. Accordingly, the proposed $20,000 allocation to the PAGA Payment strikes a balance between the interest of all parties, including the LWDA and the general public, by penalizing the employer and providing relief to the Aggrieved Employees. (Reese Decl., ¶ 48.)

F. <u>The Service Payment to Plaintiff Falls Well Within the Range of Reasonableness</u>

Courts routinely approve service awards to compensate named plaintiffs for the services they provide and the risks they incur during the course of the class litigation. *Bell v. Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 726 (Ct. App. 2004) (upholding "service payments" to plaintiffs for their efforts in bringing class case). Courts frequently approve awards of $10,000 or more. *In re Cellphone Fee Termination Cases*, 186 Cal. App. 4th 1380, 1393-1395 (Ct. App. 2010) (upholding $10,000 service awards).

Plaintiff assisted and consulted with Class Counsel during the litigation, provided relevant information, identified witnesses, and had her deposition taken, among other things. (Reese Decl., ¶ 107; Declaration of Cathy Koleff ["Koleff Decl."], ¶¶ 18-26.) As Plaintiff explains in her declaration, Plaintiff effectively, and fairly, represented the Class Members, and did not place her interests above those of any member of the putative Class. (Koleff Decl., ¶¶ 29-30.) Plaintiff faced real risks by bringing the class litigation, including payment of fees and costs to Defendant in the event Defendant prevailed. (Koleff

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Decl., ¶¶ 13-14.) Accordingly, the $10,000 Service Payment for Plaintiff is reasonable, appropriate, and justified.

G. The Work Performed by Class Counsel Supports the Fees and Costs Requested

Class Counsel has performed a significant amount of work in this class action, including conducting extensive research, investigation, and analysis of each potential cause of action, and anticipates in engaging in additional work if this Court approves the Settlement. (Reese Decl., ¶¶ 98-99.) Class Counsel's work resulted in the Settlement which provides significant benefits to Class Members.

The California Supreme Court has unanimously held "that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created." *Laffitte v. Robert Half International, Inc.*, 1 Cal.5th 480, 503 (Cal. 2016). Courts have awarded common fund fees calculated using a percentage-of-fund method that is not dependent on counsel's lodestar amount. *Pearl, California Attorney Fee Awards* (CEB 3d ed. 2010) § 5.19 (citing *In re Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009); *Bell*, 115 Cal. App. 4th at 726; *Apple Computer, Inc. v. Superior Court*, 126 Cal. App. 4th 1253, 1270 (Ct. App. 2005)). This common fund approach is especially suitable where, as here, a settlement fund is readily available. *See Dunk*, 48 Cal. App. 4th at 1808-09.

Here, the proposed Settlement provides that Class Counsel may seek attorney's fees of $175,000 (or one-third of the Gross Settlement Amount), in addition to reimbursement for the actual litigation costs, in an amount not to exceed $17,500. (Reese Decl., ¶ 97; SA at ¶ 3.2.2.) As demonstrated in the Declaration of Nathan J. Reese filed concurrently herewith, Class Counsel has already performed a significant amount of work litigating this action, including performing extensive legal and factual research, which Class Counsel measured against the relative strength of the claims in order to better identify an appropriate range of settlement figures. (Reese Decl., ¶¶ 36-41.) Class Counsel's request for attorneys' fees and costs will be explained further in the attorneys' fees motion that will be filed along with the final approval motion. Accordingly, for purposes of this Motion, and as will be explained in detail in the fee application, the requested fee amount falls well within the range of reasonableness. *See e.g., Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 297 (N.D. Cal. 1995) (noting class counsel fee awards of 30-50% are more typical

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where the common fund is less than $10 million).

VI. THE NOTICE PLAN SATISFIES DUE PROCESS

California Rules of Court, Rule 3.769(f) requires that class members be provided with notice of the final approval hearing, as well as an explanation of the proposed settlement and objection procedures. Procedural due process does not guarantee any particular procedure but requires notice reasonably calculated to apprise interested parties of the pendency of the action affecting their interests and an opportunity to present their objections. *Ryan v. Cal. Interscholastic Fed'n – San Diego Section*, 94 Cal. App. 4th 1048, 1072 (Ct. App. 2001). Notice that meets this standard and is neutrally worded satisfies due process. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985).

A. The Notice is Accurate and Informative

Here, the proposed Class Notice provides all the information a reasonable person would need to make a fully informed decision about the Settlement. (Reese Decl., ¶¶ 88-90; Ex. 2 to Reese Decl.) The Class Notice summarizes the litigation, including the contentions and denials of the Parties, and the proceedings to date, and explains the terms and conditions of the Settlement in plain language in an informative and coherent manner. (*Id.*; Ex. A to Settlement Agreement.) It also fully informs Class Members of their rights and options as Class Members (i.e., to object, to Request Exclusion or opt out, and/or do nothing to receive their share of the Settlement), as well as explains the consequences of exercising any of these options. (*Id.*) The Class Notice makes clear that each Class Member will receive an Individual Class Payment and will release the Released Claims unless they submit a Request for Exclusion within the Response Deadline. (*Id.*) The Notice clearly explains the process for submitting a Request for Exclusion and objecting to the Settlement. (*Id.*) The Notice also notifies the Class Members of their reported workweeks and the estimated Individual Class Amount they will receive if the Settlement is finally approved. (*Id.*)

B. The Notice Plan Provides the Best Notice Practicable

There is no statutory or due process requirement that all class members receive actual notice. As the Court of Appeals has explained, "[t]he notice given should have a reasonable chance of reaching a substantial percentage of the class members." *Cartt v. Superior Court*, 50 Cal. App. 3d 960, 973-974 (Ct. App. 1975). Here, the proposed notice plan is consistent with class notices approved by state and federal

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courts, and, under the circumstances here, is the best notice practicable and is the method most likely to give actual notice to the greatest number of Class Members. Defendant's records should provide the best-known address available for the majority of the Class, but the Settlement Administrator will nevertheless attempt to locate the best possible mailing addresses prior to the mailing. (Reese Decl., ¶ 94.)

VII. THE PROPOSED CLASS SHOULD BE CONDITIONALLY CERTIFIED FOR SETTLEMENT PURPOSES

Courts have generally found that class action suits are appropriate "when the question is one of a common or general interest . . . or when the parties are numerous, and it is impracticable to bring them all before the court." Code Civ. Proc. § 382; *see Richmond v. Dart Indus., Inc*. 29 Cal. 3d 462, 469-475 (Cal. 1981). Provisional certification is appropriate at the preliminary approval stage where, as here, the Court has not yet certified the class and the requirements for certification are met. *Newberg on Class Actions* §§ 13:16-13:18 (5th ed. 2011-2017). To certify a settlement class, two requirements must be met: (1) there must be an ascertainable class; and (2) there must be a well-defined community of interest in the questions of law and fact involving the parties represented. *Vasquez v. Superior Court*, 4 Cal. 3d 800, 809-811 (Cal. 1971).

A. There is an Ascertainable and Sufficiently Numerous Class

Here, the Class (defined as all individuals currently or formerly employed by Defendant in California as hourly, non-exempt employees during the Class Period) is clearly ascertainable because Class Members are easily identifiable from Defendant's own records. (Reese Decl., ¶ 114.) There is a class size of approximately 307 Class Members, easily meeting the numerosity requirement. (*Id*., ¶ 115.)

B. There is a Well-Defined Community of Interest

The community of interest requirement involves 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. *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 435 (Cal. 2000).

The predominance element tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation. *See, e.g., Clothesrigger, Inc. v. GTE Corp.*, 191 Cal. App. 3d 605 (Ct. App. 1987). Here, common issues of fact and law predominate as to each of the claims alleged by Plaintiff on behalf of the Class because this action concerns Plaintiff's allegations that Defendant's common policies and practices failed to provide Class Members with compliant meal and rest periods, failed to pay Class Members for all hours worked, failed to provide accurate wage statements, failed to reimburse business expenditures, and failed to timely pay Class Members all wages owed upon separation of their employment. Each class claim is united in its proof. (Reese Decl., ¶ 116.)

Moreover, Plaintiff's claims are typical of the Class because Plaintiff, like all Class Members, was subject to the same allegedly non-compliant policies and procedures that were applicable to the entire Class throughout the Class Period. (Reese Decl., ¶ 117; Koleff Decl., ¶¶ 4-9.)

The adequacy of representation requirement is met by fulfilling two conditions: first, a named plaintiff must be represented by counsel qualified to conduct the pending litigation; second, a named plaintiff's interests cannot be antagonistic to those of the class. *Classen v. Weller*, 145 Cal. App. 3d 27, 46-47 (Ct. App. 1983). Here, both adequacy requirements are met. Plaintiff has no conflicts of interest with the Class. (Reese Decl., ¶ 118-119; Koleff Decl., ¶ 16.) Plaintiff worked toward a positive resolution of this case, demonstrating her interest in prosecuting this action and dedication to obtaining the best possible recovery for the Class, and was involved during the litigation and settlement process. (Reese Decl., ¶ 118; Koleff Decl., ¶¶ 17-26.) In addition, because Plaintiff's interests are co-extensive with those of the Class and Plaintiff seeks relief identical to that of every other Class Member, Plaintiff can and will pursue the interests of all Class Members adequately. (Reese Decl., ¶ 118.) Furthermore, Plaintiff retained counsel with significant wage and hour class action experience, who have worked diligently to obtain the Settlement on behalf of the Class. (*Id.*, ¶¶ 6-8.) Over the course of this litigation, Plaintiff and Class Counsel have adequately represented the interests of the Class and will continue to do so.

VIII. <u>CONCLUSION</u>

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the Class and PAGA Action Settlement.

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Respectfully submitted,

Dated: January 30, 2025

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