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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**
10

11 DEBRA ANDERSON, individually, and on behalf of
12 all similarly situated Class Members, and all
13 “aggrieved employees” pursuant to Labor Code §
2698 et seq.,

14 PLAINTIFF,

15 v.

16 THE TREATMENT SKIN BOUTIQUE, INC., a
17 California corporation; RYAN JENSEN, an
individual; ERIN MARIE JENSEN, an individual
18 and DOES 1 - 20, inclusive,

19 DEFENDANTS.
20

CASE No.: 21STCV01911

**NOTICE OF MOTION AND MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT AND
PRIVATE ATTORNEYS GENERAL
ACT REPRESENTATIVE ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: June 15, 2022
Time: 9:00 a.m.
Dept.: 17

21 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

22 **PLEASE TAKE NOTICE** that on June 15, 2022, at 9:00 a.m., or as soon thereafter as counsel
23 may be heard, in Department 17 of the above-captioned court, located at 312 North Spring Street, Los
24 Angeles, California 90012, the Honorable Maren Nelson presiding, Plaintiff Debra Anderson will, and
25 hereby does, move this Court to:

- 26 1. Preliminarily approve the settlement set forth in the AMENDED JOINT STIPULATION
27 OF CLASS ACTION AND PAGA SETTLEMENT AND RELEASE BETWEEN PLAINTIFF
28 AND DEFENDANTS, attached as Exhibit 1 to the Declaration of Haroon Manjlai;

2. Conditionally certify the proposed Settlement Class;
3. Appoint Debra Anderson as the representative for the Settlement Class;
4. Appoint Manjlai Law, PC as Class Counsel;
5. Approve distribution of the proposed Notice of Class Action Settlement to the Settlement Class;
6. Appoint Phoenix Settlement Administrators as the Settlement Administrator; and
7. Set a hearing date for final approval of the settlement.

This Motion is based upon: (1) this Notice of Motion and Motion; (2) the Memorandum of Points and Authorities in support of Motion for Preliminary Approval of Class Action Settlement; (3) the Declaration of Haroon Manjlai; (4) the Declaration of Debra Anderson; (5) Declaration of J. Andrew Schaffer (6) the AMENDED JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT AND RELEASE BETWEEN PLAINTIFF AND DEFENDANTS; (7) the Notice of Class Action Settlement; (8) the [Proposed] Order Granting Preliminary Approval of Class Action Settlement; (9) the records, pleadings, and papers filed in this action; and (10) upon such other documentary and oral evidence or argument as may be presented to the Court at or prior to the hearing of this Motion. As this Motion is unopposed, the Parties respectfully request relief from the page limit requirement set by California Rules of Court, Rule 3.1113(d).

DATED: May 23, 2022

Respectfully Submitted,

By: Haroon Manjlai
Haroon Manjlai
MANJLAI LAW, PC
Attorney for Plaintiff, DEBRA ANDERSON

I.	INTRODUCTION	5
II.	FACTUAL AND PROCEDURAL BACKGROUND	6
A.	Brief Overview of Litigation	6
i.	Plaintiff's Factual Allegations	6
ii.	Plaintiff's Allegations Regarding Legal Violations	7
iii.	Procedural History	7
B.	Plaintiff's Counsel Conducted a Thorough Investigation of the Factual and Legal Issues and Were Thus Able to Objectively Assess the Settlement's Reasonableness.....	8
C.	The Parties Settled After Mediation	10
i.	Composition of the Settlement Class	10
ii.	Settlement Consideration.....	11
iii.	Formula for Calculating Payments from the Net Settlement Amount	11
iv.	Release by the Settlement Class	14
III.	ARGUMENT	14
A.	The Court Should Preliminarily Approve the Proposed Class Action Settlement	14
i.	Courts Review Class Action Settlements to Ensure that the Terms Are Fair, Adequate, and Reasonable	14
ii.	Plaintiff's Counsel Conducted a Thorough Investigation of the Factual and Legal Issues and Were Thus Able to Objectively Assess the Settlement's Reasonableness.....	15
iii.	The Settlement Was Reached Through Arm's-Length Bargaining in which All Parties Were Represented by Experienced Counsel	16
iv.	The Consideration Provided for the Class Claims Is Fair and Reasonable in Light of the Amount in Controversy Discounted by the Risks of Continued Litigation.....	17
a.	Meal and Rest Period Violations	18
b.	Off-the-Clock Claim (Minimum Wage).....	20
c.	Business Expense Reimbursement Claim	20
d.	Wage Statement Claim	21
e.	Waiting Time Penalties	21
f.	PAGA Penalties	22
v.	The PAGA release is limited to claims for penalties that were brought or could have been brought based on the facts alleged in Plaintiff's notice letter to the LWDA and any claims for penalties under PAGA of the PAGA Aggrieved Employees will be barred consistent with principle of res judicata under California Law	25

1	vi. California Labor Code Section 206.5 release is proper because there is a good faith dispute	
2	between the parties regarding the wages owed.....	26
3	vii. Class Period should extend through Preliminary Approval	26
4	B. The Court Should Preliminarily Approve the Proposed PAGA Settlement.....	26
5	C. The Court Should Preliminarily Approve the Negotiated Class Representative Enhancement	
6	Payment	30
7	D. The Court Should Preliminarily Approve the Negotiated Attorneys' Fees and Costs	31
8	E. California Law Authorizes Provisional Certification for Settlement Purposes.....	32
9	i. The California Standard for Class Certification	32
10	ii. The Proposed Settlement Class Is Ascertainable and There Is a Well-Defined Community of	
11	Interest Among Class Members.....	33
12	iii. The Proposed Notice Properly Informs Class Members about the Case and the Settlement.....	34
13	IV. THE COURT SHOULD APPOINT PHOENIX SETTLEMENT ADMINISTRATORS AS	
14	THE SETTLEMENT ADMINISTRATOR AND APPROVE THE COSTS OF	
15	SETTLEMENT ADMINISTRATION.....	35
16	V. CONCLUSION	36

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Debra Anderson (“Plaintiff”) seeks preliminary approval of the JOINT STIPULATION
4 OF CLASS ACTION AND PAGA SETTLEMENT AND RELEASE BETWEEN PLAINTIFF AND
5 DEFENDANTS (“Settlement Agreement”) which if approved, would provide considerable monetary relief
6 for approximately 45 current and former employees of Defendants, The Treatment Skin Boutique, Inc.,
7 Ryan Jensen, and Erin Marie Jensen (collectively, “Defendants”) (collectively with Plaintiff, the “Parties”).
8 The principal terms of the Settlement provide for the following:

9 (1) Conditional certification of the Class is defined as: any current or former non-exempt
10 employee of Defendants in California who worked for Defendants at any time during the Class
11 Period (January 21, 2017, through Preliminary Approval) (“Class Members”).

12 (2) A non-reversionary Maximum Settlement Amount of \$218,500. The Maximum Settlement
13 Amount includes:

14 (a) A Distributable Amount of approximately \$101,395.00 (the Maximum Settlement
15 Amount minus the requested Attorneys' Fees and Costs, Settlement Administration Costs, the
16 payment to the California Labor and Workforce Development Agency [“LWDA”], the Class
17 Representative Enhancement Payment), which will be allocated to all Class Members on a
18 pro-rata basis according to the number of pay periods each Class Member worked during the
19 Class Period. The entire Distributable Amount will be paid to all Class Members who do not
20 opt out of the Settlement Class, and without the need to submit claims for payment.

21 (b) Attorneys’ fees in the amount of one-third of the Maximum Settlement Amount (or
22 \$72,105.00), and litigation costs and expenses not to exceed \$10,000, to Manjlai Law, PC
23 (“Class Counsel”).

24 (c) Settlement Administrator Fees of approximately \$10,000, to be paid to the jointly
25 selected Settlement Administrator, Phoenix Settlement Administrators.

26 (d) A \$7,500 payment to the LWDA pursuant to the Labor Code Private Attorneys
27 General Act of 2004 (“PAGA”).
28

(e) A Class Representative Enhancement Payment of \$15,000 to Debra Anderson for her service on behalf of the Settlement Class, the risks she took in bringing the action on behalf of the class, and for a general release of all claims arising out of her employment with Defendants.

An objective evaluation of the Settlement Agreement confirms that the relief negotiated on the Settlement Class' behalf is fair, reasonable, and valuable. The Settlement was negotiated by the Parties at arm's length with helpful guidance from Mr. Kelly Knight, an experienced and well-respected PAGA and class action mediator, and the Settlement confers substantial benefits to Class Members. This relief - averaging approximately \$2,253.22 per Class Member from the Distributable Amount - is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases. Moreover, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendants prevailing at trial, or of Plaintiff prevailing at trial but losing on appeal.

As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement approval under California law and falls within the range of reasonableness. Accordingly, Plaintiff respectfully requests that this Court grant preliminary approval of the Settlement Agreement.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Brief Overview of Litigation

i. Plaintiff's Factual Allegations

Defendants own and operate skin care clinics in the counties of Los Angeles, Orange, and San Bernardino. Plaintiff is a licensed esthetician who was employed by Defendants from approximately January 8, 2018, to approximately June 19, 2020, at their Los Angeles County location. Defendants set Plaintiff's compensation at 40% of gross revenue generated by Plaintiff ("commission"). (*Id.*) Defendants did not require Plaintiff to clock-in or clock-out at the start and/or end of any of her shifts, nor did they provide Plaintiff with the means to track her hours worked, which has made it exceedingly difficult to determine with reasonable accuracy the actual hours worked by Plaintiff, and to differentiate between Plaintiff's productive and non-productive time. Defendants required Plaintiff to be present at Defendants' place of business five (5) days per week, for nine (9) hours per day, regardless of whether Plaintiff had

opportunities to earn commission/piece rate. Despite requiring Plaintiff to be at Defendants' place of business, Defendants failed to compensate Plaintiff for her non-productive time. Despite working in excess of eight (8) hours per day, and 40 hours per week, Plaintiff was never paid overtime wages. Defendants did not have a written policy of providing meal breaks or rest periods and failed to authorize the same for their commission-only employees. Often Defendants failed to provide Plaintiff her meal breaks or rest periods, and regularly interrupted Defendants when provided. Furthermore, Defendants employed an arbitrary system of discounting fees charged for services provided by Plaintiff, and price of products sold by Plaintiff, thereby creating an unpredictable and non-uniform system of compensating Plaintiff for services rendered and/or products sold. Defendants issued paystubs to Plaintiff that fail to identify essential information such as her piece-rate, and number of piece rates earned by Plaintiff. Defendants required Plaintiff to attend various trainings and events, unpaid, where Plaintiff had no means to earn her piece rate wages. Plaintiff's experience is illustrative of the experience of Defendants' all non-exempt employees.

ii. Plaintiff's Allegations Regarding Legal Violations

Plaintiff brought this action, individually and as a class action, on behalf of herself and current and former employees of Defendants for various California Labor Code violations and unfair business practices stemming from Defendants' failure to comply with the requirements for piece-rate basis compensation, including failure to compensate for non-productive time and rest and recovery periods separate from any piece-rate compensation, and failure to comply with the wage statement requirements for piece-rate compensation, failure to pay all wages and minimum wages and minimum wage violations, failure to pay overtime wages, failure to provide meal and rest periods, failure to reimburse expenses or losses incurred as a result of performing work duties, waiting time penalties, inaccurate wage statements, and failure to pay all wages by the appropriate pay period.

The purported class consists of Plaintiff and all other persons who have been employed as non-exempt employee by any Defendant in California during the statute of limitations period applicable to the claims pleaded in the operative complaint.

iii. Procedural History

On January 14, 2021, Plaintiff's counsel sent a letter to the California Labor & Workforce Development Agency ("LWDA") via online submission and to Defendant via certified mail regarding

Defendants' alleged violations. (*See* Exhibit ("Ex.") 3 to the Declaration of Haroon Manjlai ("Manjlai Decl.")). The LWDA did not respond to this notice within 65 days, indicating it did not intend to investigate, thus allowing Plaintiff to file the instant lawsuit pursuant to Labor Code Section 2699.3(a)(2)(A). (Manjlai Decl., ¶ 4.)

Plaintiff initially filed her Complaint as a class action on January 19, 2021. (*See* Manjlai Decl., ¶ 6.) On April 12, 2021, Plaintiff filed her First Amended Complaint ("FAC") adding a claim for Enforcement of the Private Attorneys General Act ("PAGA"). (Manjlai Decl., Ex. 4) In her FAC, Plaintiff alleges violations of the following:

1. Failure to Compensate for Non-Productive Time and Rest and Recovery Periods Separate from any Piece-Rate Compensation, and Failure to Comply with the Wage Statement Requirements for Piece-Rate Compensation [Cal. Lab. Code § 226.2]
2. Failure to Pay Minimum and Straight Time Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197]
3. Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198]
4. Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512]
5. Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7]
6. Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203];
7. Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226];
8. Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, et seq.]; and
9. Civil Penalties Under PAGA [Cal. Lab. Code § 2699, et seq.].

B. Plaintiff's Counsel Conducted a Thorough Investigation of the Factual and Legal Issues and Were Thus Able to Objectively Assess the Settlement's Reasonableness

Plaintiff's Counsel conducted a thorough investigation into the factual and legal issues implicated by Plaintiff's claims, and were able to objectively assess the settlement's reasonableness. For example, prior to filing the action, Plaintiff and her Counsel discussed at length the factual bases for pursuing an action against Defendants for Labor Code violations. (Manjlai Decl., ¶ 6.) Plaintiff was intimately familiar with Defendants' labor policies and practices, and over the course of multiple interviews, knowledgeably summarized those policies and practices to Plaintiff's Counsel. During those conversations, she explained

1 how the policies and practices were instituted and provided valuable insight into how they gave rise to the
2 alleged Labor Code violations. (*Id.*) Based on these interviews with Plaintiff, Plaintiff's Counsel
3 determined that there were legally sufficient grounds for pursuing an action against Defendants. (*Id.*)

4 Plaintiff's Counsel also prepared a detailed letter to notify the LWDA of Plaintiff's intent to seek
5 civil penalties and other available relief recoverable under PAGA for Labor Code violations. (Manjlai
6 Decl., Ex. 3.) Significant research and effort were expended to prepare a PAGA notice that was consistent
7 with the developing legal requirements so as to withstand any challenge from Defendants regarding the
8 notice's sufficiency. (Manjlai Decl., ¶ 6.) In preparation for drafting the complaint, Plaintiff's Counsel
9 conducted his own preliminary investigation into the factual bases for Plaintiff's claims, which entailed,
10 *inter alia*, a careful examination of Plaintiff's personnel file and associated records. (*Id.*)

11 Following the filing of the operative Complaint, Defendants agreed to mediate the dispute. (Manjlai
12 Decl., ¶ 7.) To prepare for the mediation, Plaintiff made certain evidentiary requests to Defendants
13 including certain documents and data. (Manjlai Decl., ¶ 8.) In response to Plaintiff's evidentiary requests,
14 Defendants' counsel provided to Plaintiff's Counsel Defendants' policies and procedures manuals which
15 covered a broad range of topics including, *inter alia*, employee clock-in policies and procedures, meal
16 periods/rest periods, overtime & premium pay, etc., and a payroll and time data for all of its non-exempt
17 from January 19, 2018 to April 23, 2021. (*Id.*) This sample size was significant because it covered 51 of
18 the 55 months from the start of the Class Period until the date of mediation, and thus Plaintiff only had to
19 extrapolate the data for the last four (4) months of the Class Period. (*Id.*) This data also covered all potential
20 Class Members at that time. (*Id.*) The document and data exchanges allowed Plaintiff's Counsel to fully
21 assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, and
22 ultimately enabled Plaintiff's Counsel to make an independent assessment of the reasonableness of the
23 settlement's terms. (*See* Manjlai Decl., ¶ 8.) No formal discovery was conducted prior to the mediation.
24 (Manjlai Decl., ¶ 9.)

25 In summary, Plaintiff's Counsel performed a thorough investigation into the claims at issue, which
26 included: (1) determining Plaintiff's suitability as a private attorney general and class representative
27 through interviews, background investigations, and analyses of her employment files and related records;
28 (2) evaluating all of Plaintiff's potential representative claims; (3) researching similar wage and hour class

1 actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing
2 employees' time and wage records; (5) reviewing Defendants' employment policies and practices; (6)
3 researching settlements in similar cases; (7) evaluating Plaintiff's claims and estimating Defendants'
4 liability for purposes of settlement; drafting the initial and then the First Amended Complaint; (9) drafting
5 the mediation brief; and (10) participating in the mediation.

6 By engaging in such a thorough investigation and evaluation of Plaintiff's claims, Plaintiff's Counsel
7 can opine that the Settlement, for the consideration and on the terms set forth in the Settlement Agreement,
8 is fair, reasonable, an adequate, and is in the best interests of Class Members in light of all known facts and
9 circumstances, including the risk of significant delay and uncertainty associated with litigation, and various
10 defenses asserted by Defendants. (Manjlai Decl., ¶ 10.)

11 **C. The Parties Settled After Mediation**

12 The parties attended mediation on August 26, 2021, with Kelly A. Knight, a respected class action
13 and PAGA action mediator. (Manjlai Decl., ¶ 11.) The parties reached an agreement at mediation to settle
14 for the Maximum Settlement Amount of \$218,500. (*Id.*) At the conclusion of the mediation the parties
15 entered into a memorandum of understanding ("MOU.") (Manjlai Decl., ¶ 11, Ex. 11.)

16 Around January 3, 2022, the parties finalized the terms of the Settlement Agreement, which was
17 presented to this Court for Preliminary Approval. (Manjlai Decl., ¶ 12.) However, the Court continued the
18 hearing for Preliminary Approval to June 15, 2022, for further briefing and/or an amended Settlement
19 Agreement to address a list of questions. Plaintiffs and Defendants have entered into a new Settlement
20 Agreement, of which Plaintiff seeks Preliminary Approval by way of this motion. (Manjlai Decl., Ex. 1)
21 Plaintiff provided notice of the Settlement and served a copy of this motion on the LWDA on May 23,
22 2022. (Manjlai Decl., ¶ 14, Ex. 6.)

23 **i. Composition of the Settlement Class**

24 The proposed Settlement Class consists of all non-exempt employees who worked for Defendants
25 at Defendants' locations in California at any time from January 21, 2017 to August 26, 2022. (Settlement
26 Agreement, Section 2(4)) There are approximately 45 Class Members.
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Plaintiff and Defendants have agreed to settle the underlying class claims in exchange for the Maximum Settlement Amount of \$218,500. The Maximum Settlement Amount includes: (1) automatic payments to all participating Class Members-meaning, all Class Members except those who submit timely and valid Requests for Exclusion from the Net Settlement Amount (exclusive of employer taxes); (2) \$72,105 in attorneys' fees (*i.e.*, one-third of the common fund) and up to \$10,000 in litigation costs to Plaintiff's Counsel; (3) Settlement Administration Costs of approximately \$10,000; (4) a \$7,500 payment to the LWDA; and (5) a Class Representative Enhancement Payment of \$15,000 for Plaintiff's service on behalf of the Settlement Class, the risks she took in bringing her representative claims, and for a release of all claims arising out of her employment with Defendants. (Settlement Agreement, Section I.)

iii. Formula for Calculating Payments from the Net Settlement Amount

Each Class Member's share of the Net Settlement Amount will be proportional to the number of weeks he or she worked during the Class Period. (Settlement Agreement, Section (IV)(O)(2).) The Settlement Administrator will calculate Individual Settlement Payments as follows:

Class Calculations: The Settlement Administrator will calculate the total number of pay periods that all Class Members were employed by Defendants during the Class Period. The value of each Pay Period shall be determined by the Settlement Administrator by dividing the Net Settlement Proceeds (less the PAGA Payment(s)) by the total number of Pay Periods available to the Class Members during the Class Period (“Class Pay Period Value”). (*Id.*)

Payment rate per work week for each Class Member is \$40.95. (\$101,395.00 (Distributable Amount) - \$2,500 (PAGA penalties distributable to PAGA Class members) = \$98,895.00 / 2,415 number of workweeks worked by Class Members during the Class Period = \$40.95)

PAGA Calculations: For PAGA Employees, the Settlement Administrator will calculate the total number of pay periods that each PAGA Employee was employed by Defendants during the applicable PAGA Period (“Total PAGA Pay Periods”). The value of each PAGA Pay Period shall be determined by the Settlement Administrator by dividing the PAGA Payment by the Total PAGA Pay Periods for all PAGA Employees (“PAGA Pay Period Value”). (*Id.*)

1 Payment rate per PAGA Pay Period for each Class Member is \$3. (\$2,500 (PAGA penalties
2 distributable to PAGA Class members) / 833 number of PAGA Pay Periods worked by PAGA Class
3 Members during the PAGA Period = \$3.00)

4 **Individual Settlement Payments:** To determine the Individual Settlement Payment for each Class
5 Member, the Settlement Administrator will multiply the Authorized Claimant's Total Pay Periods by
6 Class Pay Period Value and add the total to the product of the PAGA Employee's Total PAGA Pay Periods
7 multiplied by the PAGA Pay Period Value, if the Class Member qualifies as a PAGA Employee. Not all
8 Authorized Claimants will receive the PAGA Payment. The Individual Settlement Payment will be
9 reduced by any required legal tax deduction. (*Id.*)

10 Payments from the Distributable Amount shall be made only to Authorized Claimants and PAGA
11 Employees, pursuant to the manner provided in the Settlement Agreement and Section IV(O)(2) thereof,
12 in particular. As soon as practicable, but no later than ten (10) business days after the Preliminary Approval
13 Date, Defendants shall provide to the Settlement Administrator a list containing the Class Members'
14 names, last known addresses, dates of employment, and social security numbers. (Settlement Agreement,
15 Section (IV)(E.))

16 Defendants' employment records used to calculate each Class Members' Settlement Payment shall
17 be presumed to be correct. (Settlement Agreement, Section (IV)(O)(2.)) However, each Class Member
18 shall be given an opportunity to dispute the number of Total Class Pay Periods and/or Total PAGA Pay
19 Periods as provided in their Notice of Settlement Award. (*Id.*) Any such dispute shall be sent in writing to
20 the Settlement Administrator postmarked on or before the Opt-Out Period deadline, and the Class Member
21 shall provide any information he/she deems proper to support his/her claim. (*Id.*) The Settlement
22 Administrator shall send the dispute information to Defendants' Counsel and Class Counsel within five
23 (5) business days of receiving the dispute. (*Id.*) Defense and Class Counsel shall meet and confer to
24 determine if they can agree to a resolution regarding the Class Member's challenge. (*Id.*) The Settlement
25 Administrator will inform the Class Member. (*Id.*) Defense and Class Counsel will inform the Settlement
26 Administrator to approve payment to the Class Member, as revised by the evidence submitted by the Class
27 Member. (*Id.*) Any Party, including the Class Member, may present the issue to the Court for resolution,
28 if the dispute cannot be resolved. (*Id.*)

1 Payment to each Authorized Claimant shall be allocated as follows: Twenty Percent (20 %) of any
2 settlement funds paid to any Class Member shall be attributed to wages, to be reported on an IRS Form
3 W-2 with legally required tax deductions; Eighty Percent (80%) of any settlement funds paid to any Class
4 Member shall be treated as statutory penalties and interest, to be reportable on IRS Form 1099 with no
5 withholding. (*Id.*) Each Authorized Claimant shall be responsible for any tax consequences of the
6 Settlement or payment of funds pursuant to this Agreement, including the payment of any applicable tax
7 deductions or obligation as if paying through payroll. (*Id.*) Any payroll tax payable from the payment of
8 any settlement funds to any Class Member pursuant to the terms of this Agreement shall not be made from
9 the Distributable Amount. However, Defendants will only be responsible for employer side payroll taxes,
10 separate and apart from the Maximum Settlement Amount. (*Id.*)

11 Given that there are approximately 45 Class Members, the average net recovery will be
12 approximately \$2,253.22. This average net recovery is significantly greater than many other wage and hour
13 class action settlements approved by California state and federal courts. See, e.g., *Sandoval v. Nissho of*
14 *Cal., Inc.*, Case No. 37-2009-00091861 (San Diego County Super. Ct) (average net recovery of
15 approximately \$145); *Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net
16 recovery of approximately \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A.
17 County Super. Ct.) (average net recovery of approximately \$120); *Ressler v. Federated Department Stores,*
18 *Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately \$90); *Doty v.*
19 *Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal.) (average net recovery of
20 approximately \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.) (average
21 net recovery of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange
22 County Super. Ct.) (average net recovery of approximately \$35); *Gomez v. Amadeus Salon, Inc.*, Case No.
23 BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20); *Jones v. Bath & Body Works,*
24 *Inc.*, No. 2:13-cv-05206-FMO-AJW (C.D. Cal.) (average net recovery of approximately \$50); and *Palencia*
25 *v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct.) (average net recovery of
26 approximately \$80).

27 //

28 //

1 **iv. Release by the Settlement Class**

2 In exchange for the Class Settlement Amount, Plaintiff and Participating Class Members will agree
3 to release the Released Claims during the Class Period:

4 *It is the desire of the Representative Plaintiff, Class Members, and Defendants*
5 *to fully, finally, and forever settle, compromise, and discharge disputes and*
6 *claims arising from or related to this Action. After Final Approval by the Court*
7 *of this Agreement, after Defendants have made payment so as to fully fund the*
8 *Maximum Settlement Amount, and by operation of the Agreement's terms, and*
9 *except as to such rights or claims as may be created by this Agreement, all*
10 *Authorized Claimants fully release and discharge the Released Persons from*
11 *all Released Class Claims, whether known or unknown during the Class Period.*
12 *All PAGA Employees and the State will fully release and discharge the Released*
13 *Persons from all Released PAGA Claims upon approval of the settlement of*
14 *PAGA Claims in this Action. Plaintiff and Defendants stipulate and agree that*
15 *the consideration paid to the Class Members pursuant to this Agreement*
16 *compensates the Class Members for all wages and penalties due to them arising*
17 *from the claims alleged in the operative Complaint. (Settlement Agreement, pg.*
18 30, lns. 12-23.)

19 **III. ARGUMENT**

20 **A. The Court Should Preliminarily Approve the Proposed Class Action Settlement**

21 **i. Courts Review Class Action Settlements to Ensure that the Terms Are Fair,**
22 **Adequate, and Reasonable**

23 California Rule of Court ("Rule"), Rule 3.769 requires litigants to obtain court approval of class
24 action settlements. Approval occurs in two steps: (1) an early "preliminary" review by the trial court; and
25 (2) a subsequent "final" review after notice of the settlement has been distributed to class members for their
26 comments and objections. Cal. R Ct. 3. 769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th
27 1110, 1118 (2010) (the court first "preliminarily approves the settlement" and later "conducts a final
28

1 approval hearing to inquire into the fairness of the proposed settlement”). The motion for preliminary
2 approval must be accompanied by (1) the settlement agreement, (2) proposed notice to the class, and (3)
3 the proposed order. *Id* at 3.769(c). The motion must also identify any agreement concerning the payment
4 of attorneys' fees. *Id* at 3. 769(b).

5 If the trial court grants preliminary approval of a settlement, Rule 3.769(f) requires the court to (1)
6 schedule a final approval hearing and (2) approve the method by which the parties are to provide notice to
7 the class of the hearing and “an explanation of the proposed settlement.” The court must also approve a
8 procedure for class members to file objections to the settlement. *Id* at 3.769(f). At the final approval
9 hearing, the court must conduct an inquiry into the fairness of the proposed settlement. *Id* at 3.769(g).

10 Although Rule 3.769 does not provide detail as to the scope of review of the proposed settlement,
11 preliminary approval is warranted if the settlement falls within a “reasonable range.” See *North County*
12 *Contractor's Assn., Inc. v. Touchstone Ins. Services*, 27 Cal. App. 4th 1085, 1089-90 (1994); *Conte &*
13 *Newberg, Newberg on Class Actions*, §§ 11.26 (4th ed. 2002) (“*Newberg*”).

14 Reasonableness and fairness are presumed where, as here: (1) the settlement is reached through
15 “arms-length bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to
16 act intelligently;” (3) counsel is “experienced in similar litigation;” and (4) the percentage of objectors “is
17 small” (collectively, “Dunk Factors”). *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996).¹

18 **ii. Plaintiff's Counsel Conducted a Thorough Investigation of the Factual and Legal**
19 **Issues and Were Thus Able to Objectively Assess the Settlement's Reasonableness**

20 Following the filing of the operative Complaint, Defendants agreed to mediate the dispute. (Manjlai
21 Decl., ¶ 7.) To prepare for the mediation and potentially agreeing to settle the case, Plaintiff made certain
22 evidentiary requests to Defendants including certain documents and data. (*Id.*, ¶ 8.) In response to Plaintiff's
23

25 ¹ The presumption of fairness is consistent with California's public policy goal of favoring settlements. *Stambaugh v. Super. Ct.*, 62 Cal. App. 3d
26 231,236 (1976) (“the law wisely favors settlements”); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1118 (“public policy generally favors the
27 compromise of complex class action litigation”); *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) (“voluntary
28 conciliation and settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class action litigation”); *Skulnick v. Roberts*
Express, Inc., 2 Cal. App. 4th 884, 891 (1992) (“public policy strongly discourages litigation and encourages settlement [because settlements] can produce
peace and goodwill in the community while reducing the expense and persistency of litigation”). Additionally, in reviewing the fairness of a class action
settlement, due regard should be given to what is “otherwise a private consensual agreement between the parties.” *Cellphone Termination Fee Cases*, 180 Cal.
App. 4th at 1117. The inquiry “must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Id*
at 1118.

1 evidentiary requests, Defendants' counsel provided to Plaintiff's Counsel Defendants' policies and
2 procedures manuals which covered a broad range of topics including, *inter alia*, employee clock-in policies
3 and procedures, meal periods/rest periods, overtime & premium pay, etc., and a payroll and time data for
4 all of its non-exempt from January 1, 2018, to April 23, 2021. (*Id.*) The document and data exchanges
5 allowed Plaintiff's Counsel to fully assess the nature and magnitude of the claims being settled, as well as
6 the impediments to recovery, and ultimately enabled Plaintiff's Counsel so as to make an independent
7 assessment of the reasonableness of the settlement's terms. (*Id.*, ¶ 10.) No formal discovery was conducted
8 prior to the mediation. (*Id.*, ¶ 9.) Based on analysis of documents and class data produced by Defendants
9 (including Defendants' written labor policies and procedures), Plaintiff's Counsel was able to realistically
10 assess the value of Plaintiff's claims and intelligently engage defense counsel in settlement discussions that
11 culminated in the proposed settlement now before the Court. (*Id.*, ¶ 10.)

12 By engaging in a thorough investigation and evaluation of Plaintiff's claims and Defendants'
13 potential defenses prior to mediation and settlement, Plaintiff's Counsel can opine that the Settlement, for
14 the consideration and on the terms set forth in the Settlement Agreement, is fair, reasonable, and adequate,
15 and is in the best interests of Class Members in light of all known facts and circumstances, including the
16 risk of significant delay and uncertainty associated with litigation, various defenses asserted by Defendants.
17 (*Id.*)

18 **iii. The Settlement Was Reached Through Arm's-Length Bargaining in which All**
19 **Parties Were Represented by Experienced Counsel**

20 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
21 settlement's fairness.” *State of Cal. v. Levi Strauss & Co.*, 41 Cal. 3d 460, 482 (1986). Courts presume the
22 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered;
23 thus, there is a presumption that settlement negotiations are conducted in good faith. Newberg, § 11.51.

24 As explained above, the Parties participated in a mediation with Mr. Kelly Knight, an experienced
25 mediator of wage and hour class actions. Mr. Knight helped manage the Parties' expectations and provided
26 a useful, neutral analysis of the issues and risks to both sides. *See In re Bluetooth Headset Prod Liab. Litig.*,
27 654 F.3d 935, 948 (9th Cir. 2011) (the presence of a neutral mediator is a factor weighing in favor of
28 finding of no collusion); *In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 WL

1 4820784, at *3 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against any
2 inference of a collusive settlement); *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a
3 “mediator's involvement in pre-certification settlement negotiations helps to ensure that the proceedings
4 were free of collusion and undue pressure.”); *Villegas v. JP. Morgan Chase & Co.*, No. 09---00261, 2012
5 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (participation in mediation "tends to support the conclusion
6 that the settlement process was not collusive”); *Ogbuehi v. Comcast of California/Colorado/Fla./Oregon*,
7 *Inc.*, 303 F.R.D. 337, 350 (E.D. Cal. 2014) (accord). At all times, the Parties' negotiations were adversarial
8 and non-collusive. (Manjlai Decl., ¶ 11.)

9 The Parties were represented by experienced class action counsel throughout the negotiations
10 resulting in this Settlement. Plaintiff is represented by Manjlai Law PC. Plaintiff's Counsel regularly
11 litigates wage and hour claims and has experience settling wage and hour class actions. (Manjlai Decl., ¶
12 20.) Defendants are represented by Adam Y. Siegel and J. Andrew Schaffer of Jackson Lewis P.C., two
13 seasoned class action defense attorneys from a well-respected defense firm.

14 **iv. The Consideration Provided for the Class Claims Is Fair and Reasonable in Light**
15 **of the Amount in Controversy Discounted by the Risks of Continued Litigation.**

16 In seeking approval, a settling party must provide sufficient information to “enable the court to
17 make an independent assessment of the adequacy of the settlement terms.” *Kullar v. Foot Locker Retail*,
18 *Inc.*, 168 Cal. App. 4th 116, 131-32 (2008). However, “[i]t is well-settled law that a cash settlement
19 amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or
20 unfair.” *See Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco*, 688 F.2d 615, 628
21 (9th Cir. 1982). “The proposed settlement is not to be judged against a hypothetical or speculative measure
22 of what might have been achieved by the negotiators.” *Id* at 625. “Estimates of a fair settlement figure are
23 tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected
24 delay in recovery (often measured in years).” *In re Toys R Us-Delaware, Inc. -- Fair & Accurate Credit*
25 *Transactions Act (FACTA) Litig.*, 295 F.R.D. 438,453 (C.D. Cal. 2014). In other words, in valuing the
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claims within a realistic range of outcomes, the settling plaintiff should discount the value of the settled claims for risks such as changes in the law, the probability of success, and other factors.²

Settling parties are not, however, required to partake in a hypothetical accounting exercise: “**Kullar does not ... require any such explicit statement of [maximum] value**; it requires a record which allows ‘an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.’” *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal. App. 4th 399, 409-10 (2010) (quoting *Kullar*, 168 Cal. App. 4th at 120 (emphasis added)). Overall, “the most important factor” in determining “whether a settlement is fair and reasonable” is the “strength of the case for plaintiffs on the merits, balanced against the amount offered in the settlement.” *Id.* at 409 n.6 (quoting *Kullar*, 168 Cal. App. 4th at 130). As explained in detail below, the Class Settlement Amount is within the range of reasonableness in light of the nature and magnitude of the claims being settled and the various potential impediments to recovery.

a. Meal and Rest Period Violations

Plaintiff alleged that throughout the statutory period Defendants wrongfully failed to provide Plaintiff and the Class with legally compliant meal periods. (FAC, ¶ 30.) Based on the sample of time records analyzed by Plaintiff’s consultant, a unique meal period violation was found to occur during 43% of shifts. (Manjlai Decl., ¶ 19, Ex 8.) Extrapolated to the entire Settlement Class, Defendants' exposure for meal premiums for unique meal break violations extrapolated to the entire Class Period would be \$464,037, including interest. (*Id.*)

Plaintiff also alleged that throughout the statutory period, Defendants wrongfully failed to authorize and permit Plaintiff and the Class to take timely and duty-free rest periods. (FAC, ¶ 31.) Plaintiff’s consultant conservatively assumed that Class Members missed a rest period during only 25% of shifts of

² Federal district courts also recognize that there is an inherent “range of reasonableness” in determining whether to approve a settlement “which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion.” *In re World Trade Ctr. Lower Manhattan Disaster Site Litig.*, 66 F. Supp. 3d 477,482 (S.D.N.Y. 2015); see also *Nat’l Rural Telecomm. Coop. v. Directv, Inc.*, 221 F.R.D. 523,527 (C.D. Cal. 2004) (“well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery”); *In re Global Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436,461 (S.D.N.Y. 2004) (“settlement amount’s ratio to the maximum potential recovery need not be the sole, or even dominant, consideration when assessing settlement’s fairness”); *In re IKON Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166□ 184 (E.D. Pa. 2000) (“the fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate does not, in itself, weigh against the settlement; rather the percentage should be considered in light of strength of the claims”); *Officers for Just. v. Civ. Serv. Comm’n of City & Cty. of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982) (it is “the complete package, taken as a whole rather than the individual component parts, that must be examined for overall fairness”).

1 3½ hours or more. (*Id.*) Defendants' total exposure for unpaid rest breaks is \$39,770 with interest and
2 premiums due to rest break violations is \$206,874 with interest, which totals to \$246,644. (*Id.*)

3 At trial, Defendants would have argued that their meal and rest period policies comply with the
4 Labor Code. Defendants would therefore have argued that the onus was on Plaintiff to prove that they had
5 a de facto policy of not providing meal and rest periods. In this vein, defendants regularly argue that under
6 *Brinker Restaurant Corporation v. Super. Ct.*, 53 Cal. 4th 1004 (2012), so long as an employer provides
7 employees with a "reasonable opportunity" to take a duty-free meal period, it has no further duty to "police
8 meal breaks and ensure no work thereafter is performed." *Brinker*, 53 Cal. 4th at I 040-41. Defendants
9 would also have argued that a plaintiff must show the employer actively impeded, discouraged, or
10 prohibited the employee from taking a proper break. *Id.*

11 The California Court of Appeal arguably (as Defendants would argue) expanded on *Brinker's*
12 holding in *Serrano v. Aerotek, Inc.*, 21 Cal. App. 5th 773 (2018). In *Serrano*, the employer implemented
13 compliant meal period policies, which were distributed to all employees and reviewed during orientation.
14 *Id.* at 776-777. The employer's policies instructed employees to notify it if they encountered any problems
15 taking their meal periods. *Id.* Highlighting the employer's policy and the plaintiff's inability to identify
16 specific actions by the employer which prevented her from taking meal periods, the Court of Appeal
17 affirmed summary judgment in the employer's favor. *Id.* at 780-782 ("we specifically reject [plaintiffs]
18 contention that 'time records show[ing] late and missed meal periods creat[ed] a presumption of violations
19 ..."). Defendants would thus have argued that they did nothing to "affirmatively prevent" their employees
20 from taking their meal and rest breaks. *Id.* at 778, 781-82.

21 While Plaintiff was confident that she could establish liability under *Brinker*, there nevertheless
22 remained considerable risk that Defendants might prevail on the meal period and rest period claims, and/or
23 that the Court might have found a predominance of individualized issues over common ones. In *Cacho v.*
24 *Eurostar, Inc.*, 43 Cal. App. 5th 885 (2019), the California Court of Appeal affirmed an order denying class
25 certification even though the employer's written meal period policy failed to advise the employees of their
26 right to receive a meal period within the first 5 hours. Thus, despite a facially non-compliant policy, the
27 defendant still prevailed.

1 Plaintiff's counsel was aware of these risks and took them into account when discounting the claims
2 for settlement purposes.

3 **b. Off-the-Clock Claim (Minimum Wage)**

4 Plaintiff alleges that Defendants failed to pay minimum wages for all hours worked to Plaintiff and
5 all Class Members. (FAC, ¶ 32.) Based on the sample of time records analyzed by Plaintiff's consultant,
6 Defendants were found to have \$6,942 in unpaid overtime wages. (Manjlai Decl., ¶ 19, Ex 8.)

7 At trial, Defendants would have argued that for Plaintiff to establish that they failed to pay
8 employees for all hours worked, Plaintiff would have had to prove that they were aware that employees
9 were working off-the-clock for which they were not compensated. In *Forrester v. Roth's I.G.A. Foodliner,*
10 *Inc.*, 646 F.2d 413 (9th Cir. 1981), the Ninth Circuit held that "where an employer has no knowledge that
11 an employee is engaging in overtime work and that employee fails to notify the employer or deliberately
12 prevents the employer from acquiring knowledge of the overtime work, the employer's failure to pay for
13 the overtime hours is not a violation [of overtime requirements]." *Id* at 414. The California Court of Appeal
14 adopted *Forrester's* analysis in *Jong v. Kaiser Found Health Plan, Inc.*, 226 Cal. App. 4th 391, 395 (2014);
15 *see also Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1051 (2012) ("liability is contingent on
16 proof Brinker knew or should have known off-the-clock work was occurring"). "[T]hat employees are
17 clocked out creates a presumption they are doing no work, a presumption [each employee has] the burden
18 to rebut." *Brinker Rest. Corp.*, 53 Cal. 4th at 1051.

19 Plaintiff's counsel was aware of these risks and took them into account when discounting the claims
20 for settlement purposes.

21 **c. Business Expense Reimbursement Claim**

22 Based on information provided by Plaintiff, Plaintiff's Counsel estimates reimburse for business
23 expenses in the amount of \$111 per employee (in total) for failing to reimburse for mileage reimbursement.
24 Based thereon, Defendants' damages exposure would be as follows: 45 employees x \$111 ≈ \$5,000 total.

25 At trial, Defendants would have argued that employees are entitled to reimbursement for work-
26 related expenses only if they can prove such expenses were required and the employer knew or had reason
27 to know they were incurred. *See Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal. 4th 554, 568 (2007)
28 (requirement to reimburse depends on "whether each of those expenses was 'necessary,' which in turn

depends on the reasonableness of the employee's choices"); *Cassady v. Morgan, Lewis & Bockius LLP*, 145 Cal. App. 4th 220,232 (2006), as modified (Dec. 21, 2006) (Labor Code§ 2802 "expressly conditions the right to indemnity on a showing that the expenditures arose as a direct consequence of the discharge of the employee's duties"); *Snap! Mobile, Inc. v. Croghan*, 2019 WL 884177, at*11 (N.D. Cal. Feb. 22, 2019) ("[F]or purposes of§ 2802, before an employer's duty to reimburse is triggered, it must either know or have reason to know that the employee has incurred an expense") (quoting *Stuart v. RadioShack Corp.*, 641 F. Supp. 2d 901, 903-04 (N.D. Cal. 2009)). Furthermore, at trial, Defendants would have argued that its employees had to seldom incur out of pocket business expenses, and only a small portion of its employees had to do so.

d. Wage Statement Claim

Plaintiff alleges that Defendants violated Labor Code section 226(a)(8) by failing to furnish complete and accurate wage statements that listed the correct number of hours worked. (FAC, ¶ 33.) As per Plaintiff's consultant, Defendants' liability is \$79,560. (Manjlai Decl., ¶ 19, Ex 8.)

At trial, Defendants would have argued that to award statutory penalties under section 226(e), Plaintiff would have needed to show that Defendants "knowingly and intentionally" issued wage statements with unlawful deficiencies. *See* Labor Code§ 226; *Price v. Starbucks Corp.*, 192 Cal: App. 4th 1136, 1142-43 (2011). There was a significant risk that Defendants would have been able to avoid liability due to a defense that they did engage in a "knowing and intentional" violation of the Labor Code, and also Defendants' assertion that they should not be penalized for mere "technical" violations that do not result in any injury. And based on the information and evidence exchanged, there is nothing to indicate that Defendants knowingly or consciously violated the Labor Code.

e. Waiting Time Penalties

Defendants are also allegedly liable for derivative waiting-time penalties because compensation owed to employees as a result of their alleged failure to pay for all hours worked results in a violation of Labor Code section 201 and 202 for each former employee that ended his or her employment during the 3-year statutory period. Section 203 section subjects Defendants to a daily penalty of 30 days for each former employee. Defendants' total exposure to Section 203 penalties for its derivative violation is as follows: based on 15 terminated employees from January 21, 2018 to August 26, 2021 is \$64,384. . (Manjlai Decl.,

¶ 19, Ex 8.)

At trial, Defendants would have argued that no waiting-time penalties can be awarded unless the failure to pay wages is "willful," an element that Plaintiff candidly admits would have been difficult to prove. *See* 8 C.C.R 13520 ("[a] willful failure to pay wages within the meaning of Labor Code section 203 occurs when an employer intentionally fails to pay wages to an employee when those wages were due."); *Smith v. Rae Venter Law Group*, 29 Cal. 4th 345, 354 n.2 (2002) (holding that a good faith dispute that any wages are due will preclude an award of waiting time penalties). Defendants would also have argued that an employer's failure to pay wages is not willful unless it reached the standard of "gross negligence or recklessness." *See Amaral v. Cintas*, 163 Cal. App. 4th 1157, 1203 (2008).

Plaintiff's counsel was aware of these risks and took them into account when discounting the claims for settlement purposes.

f. PAGA Penalties

Plaintiffs also assert that the underlying alleged meal and rest period violations gave rise to penalties for violations of Labor Code §§ 201-203, 204, 226, 226.3, 226.7, 210, 512, 558, 1174, 1174.5, 1197, 2802, 2810.5, and 2699(f) available under the Private Attorneys' General Act. (FAC.) Plaintiff's consultant calculated \$83,341 in PAGA penalties, assuming there was a violation in each PAGA Pay Period. (Manjlai Decl., ¶ 19, Ex 8.) Defendants contend that no claim for PAGA penalties of any nature is valid. The PAGA claims were at issue and were resolved as a part of the overall settlement of the case. In such cases, California Courts have held that none of the proceeds of a settlement must necessarily be allocated and distributed to the LWDA as settled PAGA penalties. *Nordstrom Commissions Cases* (2010) 186 Cal.App.4th 576, 589.16.

Notwithstanding Defendants' asserted defenses based on the underlying meal and rest period and unpaid wages claims, the case law regarding the wholly-derivative and duplicative PAGA claims remains inconsistent at best, and downright murky and conflicted at worst. The asserted § 226.3 penalties sought under PAGA derive from the same conduct for which Plaintiff seeks penalties under § 226, which itself is derivative of the missed break claims, and all of the asserted PAGA penalties are derivative of other underlying claims. Courts have discretion to reduce any amount of penalties awarded under PAGA, and there is currently no uniform guidance or authority available to predict whether this Court would award all

of the PAGA penalties, deem them to be wholly duplicative, or something in between. In counsel's experience, Plaintiffs always calculate potential PAGA penalties, but they are given little weight in settlement negotiations, due to an expectation that a Court would, like the Labor Commissioner, refuse to "stack" duplicative penalties and focus instead on the underlying violations.

Plaintiffs' counsel were aware of these risks and took them into account when discounting the claims for settlement purposes.

Defendant's Exposure for the Class Claims	
Meal Period Claim	\$464,037
Rest Period Claim	\$246,644
Off-the-Clock Claim (Minimum Wage)	\$6,942
Business Expense Reimbursement Claim	\$5,000
Wage Statement Claim	\$79,560
Waiting Time Penalties	\$64,384
PAGA Penalty	\$83,341
Total	\$949,908

This estimate assumes that each and every one of Plaintiff's claims would have been certified for class-wide resolution, that Plaintiff's would have prevailed at trial, and that the jury's verdict would have been affirmed on appeal. In other words, this estimate assumes complete and total victory. Understandably, for purposes of evaluating the settlement's reasonable, this estimate must be "tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often measured in years)." *In re Toys R Us-Delaware, Inc.--Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014).

Ultimately, Plaintiff's Counsel determined an appropriate range of recovery for settlement purposes by offsetting Defendants' maximum theoretical liability by: (i) the strength of the defenses to the merits of Plaintiff's claims; (ii) the risk of class certification being denied; (iii) the risk of losing on any of a number of dispositive motions that could have been brought between certification and trial (e.g., motions to

1 decertify the class, motions for summary judgment, and/or motions in limine) that might have eliminated
2 all or some of Plaintiff's claims, or barred evidence/testimony in support of the claims; (iv) the risk of
3 losing at trial; (v) the chances of a favorable verdict being reversed on appeal; and (vi) the difficulties
4 attendant to collecting on a judgment (collectively, the "Discount Factors").

5 After taking into account the Discount Factors, Plaintiff's Counsel determined that it would be more
6 than reasonable to settle for a fraction of Defendants' maximum potential exposure for the class claims
7 (PAGA discussed in the following section), or approximately 23%, which is essentially greater than the
8 product of the probability of: (i) certification being granted on **all claims** (≈50%); (ii) prevailing on
9 summary judgment/motions in limine/renewed motions to deny certification on **all claims** (≈40%);(iii)
10 prevailing at trial on all of Plaintiff's claims (≈40%); i.e., 50% x 50% x 40%.

11 Such a discount is inherently reasonable given that Plaintiff would have had to overcome **multiple,**
12 **dependent** contingencies to prevail on her claims. If anything, the projected odds for each of the above
13 contingencies is generous to the class' position since plaintiffs in employment cases rarely prevail on **all of**
14 **the claims** at any of these dispositive stages. Courts routinely approve settlements that provide a similar
15 discounted range of the maximum potential recovery. See, e.g., *In re Warfarin Sodium Antitrust Litig.*, 212
16 F.R.D. 231, 256-58 (D. Del. 2002) (recognizing that a reasonable settlement amount can be 1.6% to 14%
17 of the total estimated damages); *In Re Armored Car Antitrust Litig.*, 472 F. Supp. 1357, 1373 (N.D. Ga.
18 1979) (settlements with a value of 1 % to 8% of the estimated total damages were approved); *In Re Four*
19 *Seasons Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla.1972) (approving 8% of damages); *Balderas v.*
20 *Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014) (finding that
21 settlement which amounted to 8% of maximum recovery "[fell] within the range of possible initial approval
22 based on the strength of plaintiff's case and the risk and expense of continued litigation."); *In re Omnivision*
23 *Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. . 2008) (approving settlement of 6% to 8% of estimated
24 damages).³

25
26 ³ See also *In re Uber FCRA Litig.*, No. 14-CV-05200-EMC, 2017 WL 2806698, at *7 (N.D. Cal. June 29, 2017)
27 (granting preliminary approval to class action settlement where gross settlement fund, prior to deducting attorneys' fees and
28 services awards, was valued at 7.5% or less of total possible verdict); *Viceral v. Mistras Grp., Inc.*, No. 15-CV-02198-EMC,
2016 WL 5907869, at *7 (N.D. Cal. Oct 11, 2016) (granting preliminary approval to class action settlement representing "8.1
% of the full verdict value" with net settlement amount representing approximately 5.3% of full verdict value); *Stovall-Gusman*

1 v. **The PAGA release is limited to claims for penalties that were brought or could**
2 **have been brought based on the facts alleged in Plaintiff’s notice letter to the**
3 **LWDA and any claims for penalties under PAGA of the PAGA Aggrieved**
4 **Employees will be barred consistent with principle of res judicata under**
5 **California Law**

6 Pursuant to the Settlement Agreement, subject to Defendants’ full payment of Maximum Settlement
7 Amount, the PAGA Class’s PAGA release will only apply to those claims for penalties that were brought
8 or could have been brought based on the facts alleged in Plaintiff’s notice letter to the LWDA. (Settlement
9 Agreement, Section (II)(33).) Furthermore, pursuant to the Settlement Agreement, subject to Defendants’
10 full payment of Maximum Settlement Amount, any future claims for penalties under PAGA of the PAGA
11 Aggrieved Employees relating to the Released PAGA Claims will be barred consistent with principles of
12 res judicata under California law. (Settlement Agreement, Section (IV)(L).) This is proper because the
13 doctrine of res judicata applies to PAGA judgments. (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th
14 56, 82 [287 Cal.Rptr.3d 107, 131, 72 Cal.App.5th 56, 82]) *Robinson v. Southern Counties* (2020) 53
15 Cal.App.5th 476, 482–483, 267 Cal.Rptr.3d 633 [claim preclusion prevented second PAGA representative
16 action]; *Magana v. Zara USA, Inc.* (9th Cir. 2021) 856 Fed.Appx. 83, 85–87 [claim preclusion did not bar
17 second PAGA representative suit with claim implicating different primary right].) “Taken together,
18 PAGA’s statutory scheme and the principles of preclusion allow, or ‘authorize,’ a PAGA plaintiff to bind
19 the state to a judgment through litigation that could extinguish PAGA claims that were not specifically
20 listed in the PAGA notice where those claims involve the same primary right litigated. (*Moniz, Supra*, 72
21 Cal.App.5th 56, 83 [287 Cal.Rptr.3d 107, 131, 72 Cal.App.5th 56, 83.])

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25 v. *WW Granger, Inc.*, No. B-cv-02540- HSG, 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015) (granting final approval to
26 settlement with net recovery to Plaintiffs valued at 7.3% of potential maximum recovery); *Cruz v. Sky Chefs, Inc.*, No. 12-cv-
27 02705- DMR, 2014 WL 7247065, at *5 (N.D. Cal. Dec. 19, 2014) (granting final approval where gross settlement amount
28 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); *In re*
LDK Solar Sec. Litig., No. 07-cv-05182-WHA, 2010 WL 3001384, at *2 (N.D. Cal. July 29, 2010) (granting final approving
where “[t]he proposed settlement amount is[...] only about five percent of the estimated damages before fee and costs-even
before any reduction thereof for attorney’s fees and costs.”).

1 **vi. California Labor Code Section 206.5 release is proper because there is a good**
2 **faith dispute between the parties regarding the wages owed**

3 The Settlement Agreement includes a California Labor Code Section 206.5 release. (Settlement
4 Agreement, Section (IV)(M.)) Plaintiff has alleged in the operative Complaint that the Defendant have
5 failed to pay Class Members for minimum and straight time wages [Cal. Lab. Code §§ 204, 1194, 1194.2,
6 and 1197] and overtime wages [Cal. Lab. Code §§ 1194 and 1198.] (*See* FAC, pg 8, ln 12-13, attached as
7 Exhibit 4 to Manjlai Decl.) Defendants vehemently dispute this, and maintain that they have paid all
8 employees for all wages due, including straight time, and overtime. In light of this good faith dispute,
9 California Labor Code Section 206.5 release is proper.

10 **vii. Class Period should extend through Preliminary Approval**

11 After an all-day mediation, the parties were able to reach a settlement agreement with the help of
12 the mediator. The good faith, “arms-length” negotiated agreement that was reach, was memorialized in a
13 Memorandum of Understand (“MOU”) executed at the end of the mediation on August 26, 2021. (Manjlai
14 Decl., Ex. 11.) One of the negotiated terms was that the Class Period will run through preliminary approval.
15 (*Id.*) Since then, the parties have worked cooperatively and diligently to enter into a “long- form” settlement
16 agreement and get the settlement preliminary approved. (*Id.*) Neither party has caused an undue delay to
17 preliminary approval of the settlement, and the period between the negotiated settlement agreement, and
18 preliminary approval is largely due to the Court’s setting of hearings on motions for preliminary approval
19 months out. Therefore, the terms of the agreement which the parties entered into should not be disturbed
20 due to the length of time between mediation and preliminary approval.

21
22 **B. The Court Should Preliminarily Approve the Proposed PAGA Settlement**

23 Where settlements negotiate a good faith amount for PAGA penalties and "there is no indication
24 that this amount was the result of self-interest at the expense of other" class members, such amounts are
25 generally considered reasonable. (*Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133,
26 at *1, 9 (N.D. Cal. Apr. 3, 2009).) Courts routinely approve of amounts for PAGA penalties in the range
27 of zero to two percent of the total maximum amount of the Settlement. (*See McKenzie v. Fed. Express*
28 *Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012)

1 (acknowledging that courts approve PAGA settlements in the range of zero to two percent of the total
2 Settlement).) Here, the amount to be paid to the LWDA is larger than many other PAGA settlement
3 amounts approved by the courts where seemingly nominal amounts were allocated for such claims. (*See*,
4 *e.g.*, *Zubia v. Shamrock Foods Co.*, No. CV1603128ABAGRX, 2017 WL 10541431, at *14 (C.D. Cal.
5 Dec. 21, 2017) (approving a PAGA settlement of 0.1 %); *Hopson, supra*, 2008 WL 3385452, at *1 (N.D.
6 Cal. Aug. 8, 2008) (approving a PAGA settlement of 0.3% or \$1,500); *Garcia v. Gordon Trucking, Inc.*,
7 No. 1:10-CV-0324 AWI SKO, 2012 WL 5364575, at *3 (E.D. Cal. Oct. 31, 2012) (approving a PAGA
8 settlement of 0.27%).)

9 Here, the Parties negotiated a good faith amount of \$10,000 to be paid to the LWDA for PAGA
10 penalties, of which 75% (\$7,500) will be paid directly to the LWDA, and the remaining 25% (\$2,500) will
11 be paid to Participating Class Members. (Settlement Agreement, pg. 24, lines 15-19.) This PAGA
12 allocation represents approximately 4.58% of the Maximum Settlement Amount ($\$10,000/\$218,500 =$
13 4.5766% .) The amount is reasonable considering that the maximum PAGA penalties were estimated to be
14 \$83,341. (*See* the Statistical Analysis of the wage and hour data provided by Defendants, attached to
15 Manjlai Decl. as Ex. 8.) This result was reached after good-faith negotiation between the parties. The
16 amount was valued as follows: Based on information and evidence produced by Defendants during
17 informal discovery, Plaintiff's Counsel determined that aggrieved employees worked a combined total of
18 approximately 833 pay periods during the PAGA statute of limitations period ("PAGA Period"). (*Id.*)
19 Statutory penalties would be calculated according to Labor Code 2699(f)(2): If, at the time of the alleged
20 violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for
21 each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each
22 aggrieved employee per pay period for each subsequent violation.

23 However, a number of courts have found that the "subsequent" penalty under PAGA applies only
24 after a court or the Labor Commissioner determines that the employer has violated the Labor Code,
25 including recently by the Ninth Circuit Court of Appeal. *See Bernstein v. Virgin Am., Inc.*, 990 F.3d 1157,
26 1173 (9th Cir. 2021) (reversing judgment as to "heightened civil penalties" because the defendant was not
27 given notice by the Labor Commissioner when the "subsequent" violations occurred); *see also Vieyara-*
28 *Flores v. Sika Corp.*, No. EDCV1 9606NSKKX, 2019 WL 2436998, at *5 (C.D. Cal. June 10, 2019)

1 ("employers are not subject to heightened penalties ... until a court or commissioner notifies the employer
2 that it is in violation of the Labor Code ... [Plaintiff] has not offered evidence that the Labor Commission
3 or a court has notified them of PAGA violations [thus] PAGA's heightened penalty of \$200 for subsequent
4 violations will not be calculated to determine the amount in controversy") sequent violations unless and
5 until a court or commissioner notifies the employer that it is in violation of the Labor Code"), citing *Amaral*
6 *v. Cintas Corp.* No. 2, 163 Cal. App. 4th 1157 (2008). Under this line of cases, Defendants' exposure was
7 estimated be approximately \$83,341 = 833 violative pay periods x \$100. (See the Statistical Analysis of
8 the wage and hour data provided by Defendants, attached to Manjlai Decl. as Ex. 8.)

9 Moreover, had Plaintiff successfully litigated this case to judgment and obtained a verdict for
10 substantial civil penalties, Plaintiff would have remained vulnerable to appellate reversal, as appellate
11 courts have not shied away in doing so to the dearth of binding case law on PAGA. For example, in the
12 recent *Magadia v. Wal-Mart Assocs., Inc.*, No. 19-16184, 2021 WL 2176584 (9th Cir. May 28, 2021), a
13 Ninth Circuit panel reversed a \$100 million judgment obtained after a full-blown PAGA trial based on
14 novel theories of Article III standing and Labor Code liability. A substantial discount must be issued,
15 particularly in PAGA actions, due to the heightened risk of reversal.

16 It should be noted that PAGA gives the Court wide latitude to reduce the amount of civil penalties
17 “based on the facts and circumstances of a particular case” when “to do otherwise would result in an award
18 that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code§ 2699(h). In reducing PAGA
19 penalties, courts have considered issues including whether the employees suffered actual injury from the
20 violations, whether the defendant was aware of the violations, and the employer's willingness to fix the
21 violation. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504,528 (2018) (awarding PAGA penalties of
22 only 0.2% of the maximum); see also *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016);
23 *Fleming v. Covidien Inc.*, No. ED CV 10-01487 RGK(OPX), 2011 WL 7563047, at *4 (C.D. Cal. Aug. 12,
24 2011).

25 For example, during the penalty phase of trial in *Carrington*, the plaintiff requested PAGA penalties
26 in the amount of approximately \$70 million. The trial court instead awarded only \$150,000-- or 0.21 % of
27 the maximum-and stated that this reduction was warranted because imposing the maximum penalty would
28 be “unjust, arbitrary, and oppressive” based on Starbucks's “good faith attempts” to comply with meal

1 period obligations and because the court found the violations were minimal. *Carrington*, 30 Cal. App. 5th
2 at 517. The Court of Appeal affirmed the lower court's reduced award of a \$150,000 penalty under PAGA.
3 *Id* at 529. Defendants, with the help of their counsel, have implemented steps to ensure full compliance
4 with the various applicable Labor Codes. (Manjlai Decl., 22) Therefore, it is highly that the court would
5 have applied a similar reduction hereunder which Plaintiff would have recovered only approximately
6 \$175.02 (\$83,341 x 0.0021 reduction).

7 Likewise, in *Covidien*, the Court reduced the potential penalties by over 82%, awarding \$500,000
8 instead of maximum penalties of \$2.8 million. *Covidien*, 2011 WL 7563047 at *4; *see also Thurman v.*
9 *Bayshore Transit Mgmt.*, 203 Cal. App. 4th 1112, 1135-36 (2012) (affirming 30% reduction under specified
10 PAGA claim where the employer produced evidence that it took its obligations seriously); *Elder v. Schwan*
11 *Food Co.*, No. B223911, 2011 WL 1797254, at *5-*7 (Cal. Ct. App. May 12, 2011) (reversing trial court
12 decision denying any civil penalties where violations had been proven, remanding for the trial court to
13 exercise discretion to reduce, but not wholly deny, civil penalties); *Li v. A Perfect Day Franchise, Inc.*, No.
14 5:10-CV-01189-LHK, 2012 WL 2236752, at * 17 (N.D. Cal. June 15, 2012) (denying PAGA penalties for
15 violation of California Labor Code section 226 as redundant with recovery on a class basis pursuant to
16 California Labor Code section 226, directly); *Aguirre v. Genesis Logistics*, No. SACV 12-00687 NS (ANx),
17 2013 WL 10936035 at *2-*3 (C.D. Cal. Dec. 30, 2013) (reducing penalty for past PAGA violations from
18 \$1.8 million to \$500,000, after rejecting numerous other PAGA claims).

19 Plaintiff therefore determined an appropriate range of settlement for PAGA penalties as a
20 percentage of the settlement range that was consistent with other hybrid class/PAGA settlements approved
21 by California courts.⁴ Where PAGA penalties are negotiated in good faith and "there is no indication that
22

23 ⁴ *Dearaujo v. Regis Corp.*, No. 2:14-cv-01408-KJM-AC, 2016 WL 3549473 at *3 (E.D. Cal.
24 June 29, 2016) (preliminarily approving \$1.95 million settlement containing \$10,000 PAGA penalties
25 with \$7,500 paid to LWDA); *Garcia v. Gordon Trucking, Inc.*, No. 1 :10-CV--0324 A WI SKO, 2012
26 WL 5364575 at *7 (E.D. Cal. Oct. 31, 2012) (approving \$3.7 million settlement containing \$10,000
27 PAGA penalties with \$7,500 paid to L WDA); *Chu v. Wells Fargo Invst., LLC*, No. C 05--4526 MHP,
28 2011 WL 672645 at *1 (N.D. Cal Feb. 16, 2011) (approving \$6.9 million settlement containing \$10,000
PAGA penalties with \$7,500 paid to L WDA); *Guerrero v. R.R. Donnelley & Sons Co.*, Case No. RIC
10005196 (Riverside County Super. Ct. July 16, 2013; Judge Matthew C. Perantoni) (gross settlement
fund of \$1,100,000, of which \$3,000 (or 0.3%) was allocated to the settlement of PAGA penalties);
Parra v. Aero Port Services, Inc., No. BC483451 (L.A. County Super. Ct. April 20, 2015; Judge Jane

1 [the] amount was the result of self-interest at the expense of other Class Members," such amounts are
2 generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133,
3 at *9 (N.D. Cal. Apr. 3, 2009); *see, e.g., Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 579 (2010) ("[T]rial
4 court did not abuse its discretion in approving a settlement which does not allocate any damages to the
5 PAGA claims.").

6 **C. The Court Should Preliminarily Approve the Negotiated Class Representative**
7 **Enhancement Payment**

8 Enhancement payments "are fairly typical in class action cases." *Cellphone Termination Fee Cases*,
9 186 Cal. App. 4th 1380, 1393 (2010) (affirming incentive awards of \$10,000); *Rodriguez v. West*
10 *Publishing Corp.*, 563 F.3d 948, 958 (9th Cir. 2009), citing 4 Newberg on Class Actions (4th ed. 2002) §
11 11:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53 UCLA
12 L. Rev. 1303 (2006). Enhancement payments "are intended to compensate class representatives for work
13 done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action,
14 and, sometimes, to recognize their willingness to act as a private attorney general." *Rodriguez*, 563 F.3d at
15 958-59. "[T]he rationale for making enhancement or incentive awards to named plaintiffs is that they
16 should be compensated for the expense or risk they have incurred in conferring a benefit on other members
17 of the class." *Clark v. American Residential Services LLC*, 175 Cal. App. 4th 785, 806 (2009).

18 Approximately 45 current and former employees will share a \$218,500 settlement fund due entirely
19 to the effort and commitment of Debra Anderson. Subject to Court approval, therefore, the Settlement
20 provides for a Class Representative Enhancement Payment of \$15,000. The Class Representative
21 Enhancement Payment is fair and reasonable compensation for Plaintiff's effort in pursuing the action,
22

23
24 Johnson) (gross settlement fund of approximately \$1,458,900, of which \$5,000 (or 0.3%) was allocated
25 to the settlement of PAGA penalties); *Thompson v. Smart & Final, Inc.*, No. BC497198 (L.A. County
26 Super. Ct. Nov. 18, 2014; Judge William F. Highberger) (gross settlement fund of \$3,095,000, of which
27 approximately \$13,333 (or 0.4%) was allocated to the settlement of PAGA penalties); *Chavez v.*
28 *Vallarta Food Enterprises, Inc.*, No. BC490630 (L.A. County Super. Ct. Nov. 10, 2014; Judge William
F. Highberger) (gross settlement fund of \$1,545,900, of which \$10,000 (or 0.6%) was allocated to the
settlement of PAGA penalties); *Coleman v. Estes & press Lines, Inc.*, No. BC429042 (L.A. County
Super. Ct. Oct. 3, 2013; Judge Kenneth R. Freeman) (gross settlement fund of \$1,535,000, of which
\$1,000 (or 0.1 %) was allocated to the settlement of PAGA penalties).

1 serving as a private attorney general under PAGA, assisting counsel with the litigation and settlement,
2 regularly conferring with counsel on the status of her case and the strategies for prosecuting the claims,
3 and reviewing the proposed settlement to ensure that its terms are fair and provide adequate relief for the
4 Settlement Class.

5 Plaintiff and Class Counsel will request, and Defendants agree not to oppose, payments by
6 Defendants from the Class Settlement Amount of \$15,000 to Plaintiff as a service payment. The named
7 Plaintiff is entitled to an enhancement award for her service as Class Representative and the risks in
8 connection with that role. Enhancement awards in overtime cases typically range from \$5,000.00 to
9 \$40,000.00, although some awards are higher. Often, multiple class representatives receive awards in the
10 higher range. (See e.g., *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399,
11 412). Here, the requested enhancement is relatively modest, reasonable, and should be preliminarily approved.
12 The requested award of \$15,000 is less than 10 percent, 6.86 percent, of the total settlement. Plaintiff has
13 performed considerable services on behalf of the Class during the litigation by seeking an attorney, participating
14 throughout litigation, searching for and providing information relating to her employment and the employment
15 conditions, spending time in meetings with counsel to get a better understanding of her work environment and
16 requirements, provided needed information for mediation, settlement discussions, and potential class
17 certification, and approved the settlement on behalf of all class members.

18 Plaintiff will file a formal motion for the negotiated Class Representative Enhancement Payment
19 once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above
20 showing is sufficient for preliminary approval of the negotiated Class Representative Enhancement
21 Payment.

22 **D. The Court Should Preliminarily Approve the Negotiated Attorneys' Fees and Costs**

23 The purpose of an attorneys' fee award in class action litigation is to reward counsel who took
24 the risk of non-payment and invested in a case that achieved a substantial positive result for the class.
25 California courts routinely award attorneys' fees equaling one-third or more of the potential value of the
26 common fund. See *Laffitte v. Robert Half, Inc.*, 1 Cal. 5th 480 (2016) (affirming a fee award representing
27 one-third of the common fund); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008) ("Empirical
28

1 studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in
2 class actions average around one-third of the recovery.”). At final approval, Plaintiff will seek Court
3 approval of attorneys' fees of \$72,105.00 (one-third of the Class Settlement Amount) and less than \$10,000
4 in litigation costs

5 **E. California Law Authorizes Provisional Certification for Settlement Purposes**

6 **i. The California Standard for Class Certification**

7
8 Class actions are statutorily authorized “when the question is one of common or general
9 interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before
10 the court.” Cal. Civ. Proc. Code § 382; *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1332 (2008). Class
11 certification is appropriate when there is an “ascertainable class and a well-defined community of interest
12 among class members.” *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 326 (2004). Class
13 treatment is appropriate even if class members at some point may be required to make an individual
14 showing as to eligibility for recovery. *Bufile v. Dollar Financial Group, Inc.*, 162 Cal. App. 4th 1193, 1207
15 (2008); *Sav-On*, 34 Cal. 4th at 333.

16 Conditional certification of the proposed Settlement Class is particularly warranted here
17 given the relatively relaxed standard for certification at the preliminary approval stage. *See Dunk v. Ford*
18 *Motor Co.*, 48 Cal. App. 4th 1794 (1996) (courts can apply a “lesser standard of scrutiny” for class
19 certification in settlement cases).⁸ In *Dunk*, the California Court of Appeal specifically rejected the
20 argument that the standard for certifying a class for purposes of settlement is identical to the standard for
21 certifying the same class for purposes of litigation:

22 Geer argues the court must use the same standard under Federal Rules of Civil
23 Procedure, rule 23 (28 U.S.C.) to determine the propriety of both settlement and
24 litigation class certifications ... That rule is contrary to the Ninth Circuit rule, stated
25 in *Officers for Justice v. Civil Service Com.* supra, 688 F.2d at p. 633, and the
26 position of the leading commentators (Newberg & Conte, supra, § 11.28 at p. U-58),
27 which allow a lesser standard of scrutiny for settlement cases ... We agree with the
28 latter. The two basic purposes for the Rule 23 certification requirements, as they
relate to questions of a nationwide class, are: (1) to keep the lawsuit manageable for
trial; and (2) to protect the interests of the non-representative class members. The
first purpose is inapposite in the settlement context, and the second, as it relates to
commonality of issues, only makes a difference if the non-representative class
members would do much better by litigating on their own or in their own

jurisdiction. The second category concerns are protected by the trial court's fairness review of the settlement.

Id. at n19.

ii. The Proposed Settlement Class Is Ascertainable and There Is a Well-Defined Community of Interest Among Class Members

Whether a class is “ascertainable” within the meaning of Code of Civil Procedure section 382 is “determined by examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying class members.” *Lee*, 166 Cal. App. 4th at 1334. Class members are ascertainable where they may be readily identified without unreasonable expense or time by reference to official records. *Id.*

The community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) a class representative with claims or defenses typical of the class; and (3) a class representative and counsel who can adequately represent the class. Cal. Civ. Proc. Code § 382.

In April of 2012, the California Supreme Court expounded on the element of predominance:

The “ultimate question” the element of predominance presents is whether “the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.”

Brinker Rest. Corp. v. Super. Ct., 53 Cal. 4th 1004, 1021 (2012) (citations omitted).

The proposed Settlement Class consists of any current or former non-exempt employee of The Treatment Skin Boutique, Inc. who worked any of their locations in California at any time from January 21, 2017 to August 26, 2021, approximately 45 individuals. Because all Class Members are either current or former employees of Defendants, the class is readily ascertainable from Defendants' regular business records.

Here, common issues of fact and law predominate because the California statutes relating to each of Plaintiff's claims, and Defendants' defenses thereto, apply with equal force and effect to all Class Members. Factually, Plaintiff contends that Defendants' policies and practices apply class-wide and Defendants' liability can be determined by facts common to all members of the class. The wage and hour issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Settlement Class Members.

1 Plaintiff's wage and hour claims are typical of the proposed Settlement Class because they arise
2 from the same factual bases and are based on the same legal theories applicable to the other Class Members.
3 Likewise, Plaintiff's interests are entirely coextensive with the interests of the Class. Plaintiff maintains
4 that she was injured by the same company-wide practices to which the proposed Settlement Class was
5 subject and seeks the same relief. Plaintiff has already demonstrated her ability to advocate for the interests
6 of the Class by initiating this litigation, undertaking representative discovery, and evaluating the proposed
7 settlement to assure that it is fair.

8 Additionally, Plaintiff is represented by competent counsel who have extensive experience in
9 litigating wage and hour class action cases. (See Manjlai Decl., ¶ 13.) Plaintiff's Counsel's wage and hour
10 class action expertise establishes that they are well qualified to represent the interests of this Class.

11 A class action is superior to a multitude of individual lawsuits. Given the size and amount of each
12 individual Class Member's claim, Class Members likely have little incentive to litigate their claims on an
13 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
14 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
15 adjudication.

16 **iii. The Proposed Notice Properly Informs Class Members about the Case and the**
17 **Settlement**

18 Class members are entitled to the best practical notice under the circumstances. *Kass v. Young*, 67
19 Cal. App. 3d 100, 106 (1977). The purpose of the notice is to give class members sufficient information to
20 decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to
21 the settlement. *Trotsky v. Los Angeles Fed Savings & Loan Assn.*, 48 Cal. App. 3d 143, 151-52 (1975). The
22 notice must advise class members “that they may be excluded from the class if they so request and that
23 they will be bound by the judgment, whether favorable or not, if they do not request exclusion.” *Kass*, 67
24 Cal. App. 3d at 106. In a case such as this involving a significant number of class members, California
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authorities generally require service of the class notice by mail or similar reliable means. *Chance v. Super. Ct.*, 58 Cal. 2d 275, 290 (1962); *Cartt v. Super. Ct.*, 50 Cal. App. 3d 960, 972 (1975).⁵

The Parties have jointly drafted the proposed Notice of Class Action Settlement (“Class Notice”), (attached as Exhibit 5 to Manjlai Decl.) which fairly and neutrally informs Class Members of their rights and remedies in this action. The proposed Class Notice will be mailed to all Class Members by First Class mail and will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement's terms, the class definition, the procedure and time period within which to submit Requests for Exclusions or objections to the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the Released Claims. (See Settlement Agreement, attached as Exhibit 3 to Declaration of Haroon Manjlai.)

In the event Class Notices are returned as undeliverable, the Settlement Administrator will attempt to locate a current address using, among other resources, a skip-trace search. (Settlement Agreement, pg. 17, ln. 17-23.)

Accordingly, both the method of disseminating the Class Notice and content of the Class Notice satisfy due process and the requirements of California law. See Cal. R. Ct. 3.776(e)-(t); *State of Cal. v. Levi Strauss*, 41 Cal. 3d 460, 485 (1986) (the class notice must “fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members.”).

The notice will be given English only. Counsel for the parties have conferred and agree that because Defendants expected Class Members to be literate and conversant in English in order to understand the Notice and exercise their rights, there is no need to translate the Class Notice into other languages. (Manjlai Decl., ¶ 20.) (Declaration of J. Andrew Schaffer, ¶ 3.)

IV. THE COURT SHOULD APPOINT PHOENIX SETTLEMENT ADMINISTRATORS AS THE SETTLEMENT ADMINISTRATOR AND APPROVE THE COSTS OF SETTLEMENT ADMINISTRATION.

The settlement contemplates that the parties would jointly select a Settlement Administrator who will be responsible for mailing and re-mailing class notices, processing claim forms and requests for

⁵ Due process does not require that each Class Member actually receive a notice, but rather a procedure reasonably certain to reach Class Members. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986). If appropriate notice is given, Class Members will be bound by the judgment even if they never actually receive the notice. *Fontana v. Elrod*, 826 F.2d 729, 732 (7th Cir. 1987).

1 exclusion, calculating settlement awards, preparing reports, and verifying payments. Phoenix Settlement
2 Administrators is well qualified to serve as the Administrator and has numerous years of experience in
3 providing notice and settlement class action administration services. (Attached as Ex. 10 to Manjlai Decl.
4 is a declaration by Phoenix Settlement Administrators regarding their qualifications and experience,
5 affirmation that they have sufficient safeguards in place to protect the data and funds entrusted to it (e.g.,
6 insurance for the theft of money or data), and have no relationship to any counsel in this matter.) The parties
7 nominate Phoenix Settlement Administrators to be the Settlement Administrator and request that the Court
8 preliminarily approve the payment of up to \$10,000 to Phoenix Settlement Administrators to administer
9 the settlement. Given that the quote obtained from Phoenix Settlement Administrators is less than \$10,000,
10 the Settlement Agreement provides that any amounts not used by the Settlement Administrator for
11 Settlement Administration shall be added to the Distributable Amount to the Class Members. (Settlement
12 Agreement, Pg. 21, ln 19-21.)

13 **V. CONCLUSION**

14 The Parties have negotiated a fair and reasonable settlement of claims. Having appropriately
15 presented the materials and information necessary for preliminary approval, the Parties request that the
16 Court preliminarily approve the settlement.

17
18
19 DATED: May 23, 2022

Respectfully Submitted,

20 By: *Haroon Manjlai*
21 Haroon Manjlai
22 **MANJLAI LAW, PC**
23 Attorney for Plaintiff, DEBRA ANDERSON
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