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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JOSELYN CORREA, individually, and on behalf of other members of the general public similarly situated, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act; Plaintiff, vs. FINANCIAL PARTNERS CREDIT UNION, a California corporation; and DOES 1 through 100, inclusive, Defendants.	Case No.: 21STCV07183 Honorable Stuart M. Rice Department 1 **<u>CLASS ACTION</u>** **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** Date: December 16, 2024 Time: 10:30 a.m. Dept.: 1 Complaint Filed: February 24, 2021 FAC Filed: July 29, 2024 Trial Date: None Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on **December 16, 2024** at **10:30 a.m.** in Department 1 of the Superior Court of California for the County of Los Angeles, located at 312 North Spring Street, Los Angeles, California 90012, pursuant to California Code of Civil Procedure section 382, Rule 3.769 of the California Rules of Court, and California Labor Code section 2699(l), Plaintiff Joselyn Correa ("Plaintiff") will and hereby does move the Court for an Order granting preliminary approval of the proposed class action and California Labor Code Private Attorneys General Act of 2004 ("PAGA") settlement between Plaintiff and Defendant Financial Partners Credit Union ("Defendant").

Plaintiff requests that the Court enter an Order:

1. Preliminarily approving the Class Action and PAGA Settlement Agreement and Class Notice ("Settlement" or "Settlement Agreement") attached as <u>Exhibit 1</u> to the Declaration of Jill J. Parker in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement;

2. Certifying the Class for settlement purposes;

3. Preliminarily appointing Plaintiff Joselyn Correa as the Class Representative for settlement purposes;

4. Preliminarily appointing Arby Aiwazian, Joanna Ghosh, and Yasmin Hosseini of Lawyers *for* Justice, PC and Jill J. Parker and S. Emi Minne of Parker & Minne, LLP as Class Counsel for settlement purposes;

5. Approving the proposed Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval attached as <u>Exhibit A</u> to the Settlement Agreement ("Class Notice") to be mailed to the Class;

6. Approving the opt-out and objection procedures provided in the Settlement Agreement and set forth in the Class Notice;

7. Directing Defendant to furnish for each Class Member their: (1) full name, (2) last-known mailing address, (3) last known telephone number, (4) Social Security number, (5) number of Class Period Workweeks and (6) number of PAGA Pay Periods to the Settlement Administrator no later than fourteen (14) calendar days after the Court grants preliminary approval of the Settlement;

8. Approving the proposed deadlines for the settlement administration process;

9. Approving Phoenix Settlement Administrators as the settlement administrator; and

10. Setting a Final Approval Hearing.

Pursuant to California Labor Code section 2699(l)(2), a copy of the proposed Settlement, as well as information regarding the preliminary approval hearing on this matter, were submitted to the California Labor and Workforce Development Agency via online submission on September 6, 2024.

This motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of a class action settlement, allow the Court to preliminarily certify a class for settlement purposes, and permit the Court to extend the page limit for memoranda.

This motion is based upon this notice, the attached memorandum of points and authorities, the Declaration of Jill J. Parker in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement, the Declaration of Yasmin Hosseini in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement, the Declaration of Joselyn Correa in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement, the Declaration of Michael Moore on Behalf of Phoenix Class Action Settlement Administration in Support of Preliminary Approval, the Declaration of Wanda Williams in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement, the Declaration of Jina Lee in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement, the pleadings and other records on file with the Court in this matter, and any other further evidence or argument that the Court may properly receive at or before the hearing.

Dated: September 6, 2024 **PARKER & MINNE, LLP**

By: Jill J. Parker

Jill J. Parker
Attorneys for Plaintiff Joselyn Correa

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is a wage and hour putative class action brought by Joselyn Correa ("Plaintiff") against Financial Partners Credit Union ("Defendant") on behalf of Defendant's current and former hourly-paid or non-exempt employees. By way of this motion, Plaintiff seeks preliminary approval of the non-reversionary Class Action and PAGA Settlement Agreement and Class Notice ("Settlement," "Settlement Agreement," or "Agreement")[1], which, if approved, will resolve this action in its entirety. The key terms of the Agreement are as follows:

- Number of Class Members: Approximately 480.
- Gross Settlement Amount: One Million Four Hundred Fifty Thousand Dollars and Zero Cents ($1,450,000.00), exclusive of employer payroll taxes.
- Administration Expenses Payment: Not to exceed Fifteen Thousand Dollars and Zero Cents ($15,000.00).
- Requested Class Representative Service Payment: Seven Thousand Five Hundred Dollars and Zero Cents ($7,500.00).
- Requested Class Counsel Fees Payment: Five Hundred Seven Thousand Five Hundred Dollars and Zero Cents ($507,500.00).
- Requested Class Counsel Litigation Expenses: Not to exceed Thirty Thousand Dollars and Zero Cents ($30,000.00).
- PAGA Penalties: One Hundred Fifty Thousand Dollars and Zero Cents ($150,000.00), 75% of which will be paid to the California Labor and Workforce Development Agency ("LWDA"), with the remaining 25% paid to Aggrieved Employees.
- Estimated Net Settlement Amount: Seven Hundred Forty Thousand Dollars and Zero Cents ($740,000.00).

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[1] The Class Action and PAGA Settlement Agreement and Class Notice is attached as Exhibit 1 to the Declaration of Jill J. Parker in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Parker Decl.").

- Average Estimated Individual Class Payment: $1,541.67.[2]
- Average Estimated Individual PAGA Payment: $130.21.[3]

As set forth herein, the Settlement Agreement is the product of informed discovery, arms-length negotiations by experienced counsel, and provides a fair, adequate, and reasonable recovery for the Class. Plaintiff therefore respectfully requests that the Court enter an order granting preliminary approval of the proposed Settlement.

II. FACTUAL AND PROCEDURAL BACKGROUND

As a credit union, Defendant provides financial services to members and loans to local businesses and residents. Plaintiff worked for Defendant from approximately April 2015 to November 2020 as an hourly-paid, non-exempt Contact Center Representative. (Declaration of Joselyn Correa in Support of Plaintiff's Motion for Preliminary Approval ["Correa Decl."], ¶ 3).

On February 24, 2021, Plaintiff filed the Class Action Complaint for Damages ("Complaint") in the Superior Court for the County of Los Angeles, captioned *Joselyn Correa v. Financial Partners Credit Union*, Case No. 21STCV07183 (the "Class Action"). In the Complaint, Plaintiff alleges, *inter alia*, on behalf of herself and all others similarly situated, that Defendant violated the following provisions of the California Labor Code: (1) California Labor Code sections 510 and 1198 (failure to pay overtime); (2) California Labor Code sections 226.7 and 512(a) (failure to provide compliant meal periods and associated premiums); (3) California Labor Code section 226.7 (failure to provide rest periods and associated premiums); (4) California Labor Code sections 1194, 1197, and 1197.1 (failure to pay minimum wages); (5) California Labor Code sections 201-203 (failure to timely pay final wages); (6) California Labor Code section 204 (failure to timely pay wages during employment); (7) California Labor Code section 226(a) (failure to provide accurate wage statements); (8) California Labor Code section 1174(d) (failure to keep requisite payroll records); (9) California Labor Code

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[2] The amount of the Individual Class Payments will vary based on the total Workweeks that each Class Member worked during the Class Period and the number of Class Members who request to be excluded from the Settlement. However, at this stage, dividing the estimated Net Settlement Amount ($740,00.00) by the estimated number of Class Members (480) yields an average Individual Class Payment of approximately $1,541.67. (Parker Decl., ¶ 27).

[3] Individual PAGA Payments will be distributed based on the number of workweeks worked by Aggrieved Employees during the PAGA Period. However, at this stage, dividing the Aggrieved Employees' 25% share of PAGA Penalties ($37,500.00) by the estimated number of Aggrieved Employees (288) yields an average Individual PAGA Payment of $130.21. (Parker Decl., ¶ 29).

sections 2800 and 2802 (failure to reimburse necessary business expenses); and (10) California Business & Professions Code sections 17200, *et seq*. (unlawful business acts and practices).

On April 21, 2021, Plaintiff filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq., in the Superior Court for the County of Los Angeles, captioned *Joselyn Correa v. Financial Partners Credit Union*, Case No. 21NWCV00238 (the "PAGA Action").

Following the filing of the Class Action and the PAGA Action (collectively, the "Litigation"), the parties met and conferred with respect to the potential resolution of the Litigation by means of a private mediation, and agreed to exchange informal discovery as part of that process. (*Id*. at ¶ 10). Pursuant to this agreement to mediate, Defendant produced a random sampling of Class Members' time and pay records, as well as information and documents concerning the claims alleged in the Litigation, such as multiple versions of Defendant's employee handbook in use during the Class Period, relevant wage and hour policies, information regarding the number of Class Members and Aggrieved Employees (including the number of current versus former employees), the total number of workweeks worked by Class Members during the Class Period, the number of pay periods worked by Aggrieved Employees during the PAGA Period, and the average rate of pay for the Class Members. (*Id*. at ¶ 11).

After a thorough investigation and analysis of these documents and data, on June 27, 2022, the parties attended a full day of formal mediation with Jeffrey A. Ross, Esq., a neutral and respected mediator with extensive experience in complex wage and hour matters. (Parker Decl., ¶ 13). At the mediation, the Parties engaged in intensive settlement discussions during which they debated their respective positions and exchanged views regarding the strengths and weaknesses of the alleged claims. (*Id*.).

Ultimately, the Parties reached an impasse and did not come to an agreement to resolve the Litigation at mediation. (Parker Decl., ¶ 13). Thereafter, Plaintiff propounded formal discovery, met and conferred with Defendant regarding its responses, and obtained supplemental responses from Defendant. Plaintiff also took two days of depositions of Defendant's Persons Most Knowledgeable. (*Id*., ¶ 14). However, the Parties continued to explore the possibility of settlement. (*Ibid*.). Ultimately, the Parties were able to reach an agreement to settle the Litigation through a mediator's proposal which was accepted by the Parties on November 3, 2023. (*Id.*, ¶ 15). Thereafter, the parties worked diligently to negotiate and memorialize the terms in a long form settlement agreement. (*Id.*, ¶ 16). On July 18, 2024, after additional discussions and revisions to the agreement, the Settlement Agreement was fully executed. (Parker Decl., Exh. 1).

On July 29, 2024, Plaintiff filed the First Amended Class Action Complaint For Damages And Enforcement Action Under The Private Attorneys General Act, California Labor Code § 2698 Et Seq. (the "First Amended Complaint"). (Parker Decl., ¶ 17). The First Amended Complaint added an eleventh cause of action pursuant to PAGA, which re-alleged the PAGA claims asserted in the PAGA Action. (*Ibid*.). Thereafter, on August 2, 2024, Plaintiff dismissed the PAGA Action without prejudice. (*Ibid*.).

In accordance with Labor Code sections 2699 et. seq., Class Counsel provided notice of the proposed settlement to the LWDA on September 6, 2024. (Parker Decl., ¶ 57, Exh. 4).

III. THE KEY TERMS OF THE SETTLEMENT AGREEMENT

A. <u>The Class and Aggrieved Employee Definitions</u>

For purposes of settlement only, the Parties have agreed that the Class Members (also referred to as the "Class") shall be defined as:

> All current and former hourly-paid or non-exempt employees of Defendant in California employed at any time during the Class Period.

(Settlement Agreement, § 1.5). The Class Period is the period from February 24, 2017 through January 31, 2024. (Settlement Agreement, § 1.13). It is estimated that there are 480 Class Members. (Settlement Agreement, § 8).

The Aggrieved Employees are defined as:

> All current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time during the PAGA Period.

(Settlement Agreement, § 1.4). The PAGA Period is defined as the period from February 24, 2020 through January 31, 2024. (*Id.* at § 1.36). It is estimated that there are 288 Aggrieved Employees. (Parker Decl., ¶ 22).

B. The Gross Settlement Amount

The parties have agreed to settle the class and PAGA claims at issue in the Litigation for a non-reversionary Gross Settlement Amount of One Million Four Hundred Fifty Thousand Dollars and Zero Cents ($1,450,000.00), exclusive of any employer-side payroll taxes.[4] (Settlement Agreement, §§ 1.23, 3.1).

C. Allocation and Funding of the Gross Settlement Amount

The Gross Settlement Amount is a common fund and therefore includes all requested costs, fees, and other allocations. As stated above, the Gross Settlement Amount includes: (1) Class Counsel Fees Payment in the amount of thirty-five percent (35%) of the Gross Settlement Amount, equaling Five Hundred Seven Thousand Five Hundred Dollars and Zero Cents ($507,500.00); (2) Class Counsel Litigation Expenses, not to exceed Thirty Thousand Dollars and Zero Cents ($30,000.00); (3) Administration Expenses Payment, not to exceed Fifteen Thousand Dollars and Zero Cents ($15,000.00); (4) Class Representative Service Payment in the amount of Seven Thousand Five Hundred Dollars and Zero Cents ($7,500.00) to Plaintiff; and (5) PAGA Penalties of One Hundred Fifty Thousand Dollars and Zero Cents ($150,00.00). (Settlement Agreement, §§ 3.2.1-3.2.3, 3.2.5). After the above-estimated amounts are deducted from the Gross Settlement Amount, approximately 480 Class Members will share in a Net Settlement Amount of approximately Seven Hundred Forty Thousand Dollars and Zero Cents ($740,000.00). (Parker Decl., ¶ 25).

The Net Settlement Amount will be distributed and paid to Participating Class Members on a pro rata basis based on the number of Workweeks worked during the Class Period. (Settlement Agreement § 3.2.4). This will provide Participating Class Members with an average estimated payment of $1,541.67. (Parker Decl., ¶ 27). The actual payments to Participating Class Members will vary based on the actual weeks worked by Participating Class Members during the Class Period and

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[4] Defendant represented that the Class Members worked a total of 65,000 Workweeks during the Class Period. (Settlement Agreement, § 8). If the number of Workweeks during the Class Period is actually more than 10% higher than 65,000, i.e., there are more than 71,500 Workweeks for the referenced time period ("Workweeks Threshold"), then the Gross Settlement Amount shall be increased on a *pro rata* basis to the extent the Workweeks Threshold is exceeded (for example, if the Workweeks for the referenced time period exceed the Workweeks Threshold by 1%, then the Gross Settlement Amount will be increased by 1%). (*Ibid*.)

shall be confirmed by the Settlement Administrator in advance of the final approval hearing. (*Id*.). Payments to Participating Class Members will be allocated as 15% wages and as 85% penalties, interest, and non-wage damages. (Settlement Agreement, § 3.2.4.1). The employee share of any applicable payroll taxes on wages will be deducted from the wage portion of each Participating Class Member's Individual Class Payment. (*Ibid*.). Employer-side payroll taxes will be paid by Defendant separately from and in addition to the Gross Settlement Amount. (*Id*., § 3.1).

Employees who worked during the PAGA Period shall receive a share of the 25% portion of the PAGA Penalties designated for distribution to Aggrieved Employees. (Settlement Agreement, § 3.2.5.1). These payments will be distributed on a pro rata basis based on the number of pay periods worked during the PAGA Period. (*Ibid*.) This will provide Aggrieved Employees with an average estimated payment of $130.21. (Parker Decl., ¶ 29). The actual payments to Aggrieved Employees will vary based on the actual pay periods worked by Aggrieved Employees during the PAGA Period and shall be confirmed by the Settlement Administrator in advance of the final approval hearing. (*Id*.). The Individual PAGA Payments to Aggrieved Employees shall be reported on IRS 1099 Forms, and Aggrieved Employees are responsible for any taxes owed on their Individual PAGA Payments. (Settlement Agreement, §§ 3.2.5.1-3.2.5.2).

The Settlement Agreement is a non-reversionary and non-claims made settlement. (Parker Decl., ¶ 23; Settlement Agreement, § 3.1). All money from the Net Settlement Amount will be distributed to Participating Class Members. (Parker Decl., ¶ 25; Settlement Agreement, § 3.2.4). Any Individual Class Payment checks remaining uncashed after 180 days will be transferred to the California State Controller's Office and held in trust for those Participating Class Members and Aggrieved Employees who did not timely cash their checks. (Settlement Agreement, §§ 4.4.1, 4.4.3). This provision was put in place so that Participating Class Members and Aggrieved Employees would not lose the right to obtain their payment from the Settlement after the timeframe to cash the settlement checks expires. See *Wilson v. Tesla, Inc.*, No. 17-cv-03763-JSC, 2019 U.S. Dist. LEXIS 112866 at *4, fn. 3 (N.D. Cal. July 8, 2019) (authorizing any residue from uncashed checks to be transmitted to the State Controller's Office because the California Industrial Relations Unclaimed Wages Fund would no longer accept uncashed checks arising from private litigation in which the Labor

Commissioner was not involved). As such, no "unpaid residue" under California Code of Civil Procedure section 384 will result from the Settlement. (Settlement Agreement, § 4.4.3).

D. Release of Wage and Hour Claims

In exchange for participating in the Settlement, Participating Class Members will release their wage and hour claims against Defendant; however, the release for Participating Class Members is narrowly tailored to only release claims arising out of the claims expressly pleaded in the operative complaint in the Class Action, or which could have been pleaded based on the allegations in the operative complaint in the Class Action. (Settlement Agreement, § 5.2). Moreover, all Class Members who are Aggrieved Employees will release PAGA claims even if they request exclusion from the Class. (*Id.,* §§ 7.5.4). In addition to the release of claims made by all Participating Class Members and Aggrieved Employees, as set forth above, Plaintiff, in her individual capacity, agrees to a general release of all claims against Defendant. (*Id.,* § 5.1.1).

Class Counsel is unaware of any other pending matters or actions that assert claims that will be extinguished or adversely affected by the Settlement. (Parker Decl., ¶ 60; Declaration of Yasmin Hosseini in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement ["Hosseini Decl."], ¶ 16; Declaration of Jina Lee in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement ["Lee Decl."], ¶ 3).

IV. STANDARD FOR PRELIMINARY APPROVAL

The review and approval of a proposed class action settlement involves a two-step process. Cal. Rules of Court, Rule 3.769(c). First, counsel submits the terms of the settlement and the Court makes a preliminary assessment of whether the settlement appears to be sufficiently within the range of a fair settlement to justify providing notice of the proposed settlement to class members. *Id.* Then, after notice is provided to the class, the Court conducts a second inquiry into whether the proposed settlement is fair, reasonable, and adequate. *Id.*

"[T]he settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits." *Officers for Justice v. Civil Serv. Com.*, 688 F.2d 615, 625 (9th Cir. 1982). However, the, Court must consider several relevant factors, including "the strength of the 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 and view of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996).

V. THE SETTLEMENT IS PRESUMED FAIR

California Courts recognize that a presumption of fairness exists where: (a) the settlement is reached through arm's-length bargaining; (b) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (c) counsel is experienced in similar litigation; and (d) the percentage of objectors is small. *In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 723 (2006); *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal.App.4th 1135, 1146 (2000). Because the proposed Settlement was reached through arm's-length negotiations based on sufficient investigation and discovery by qualified counsel, it is entitled to a presumption of fairness.[5]

A. <u>The Settlement Was Reached as a Result of Arms-Length Bargaining</u>

The Settlement was reached following a full day of mediation with Jeffrey A. Ross, Esq., a highly respected mediator. (Parker Decl., ¶ 13). The settlement negotiations were conducted at arm's-length and, although conducted in a professional manner, were adversarial. (*Id.*). Class Counsel went into settlement discussions willing to explore the potential for a settlement of the dispute, but were also prepared to litigate Plaintiff's position through class certification, trial, and appeal if a settlement was not reached. (*Id.*). Indeed, the matter did not settle until more than a year after the mediation, after formal discovery and further extensive negotiations were conducted. (*Id.* at ¶¶ 14-15). The Settlement was ultimately reached pursuant to a mediator's proposal which was accepted by the Parties. (*Id.* at ¶ 15). The proposed Settlement was reached at the end of a process that was neither fraudulent nor collusive. (Parker Decl., ¶ 18). To the contrary, counsel for the Parties advanced their respective positions throughout the settlement negotiations. (Parker Decl., ¶¶ 13, 32-42).

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[5] At the preliminary approval stage, the fourth factor – the percentage of objectors – is not applicable, as notice has not yet been provided to the Class and Class Members have not yet had an opportunity to object to the Settlement.

B. Plaintiff Conducted Sufficient Investigation and Discovery

Courts typically assess the extent of discovery that was conducted when determining whether a proposed class action settlement is fair, reasonable, and adequate. *Dunk*, 48 Cal.App.4th at 1801. As detailed above, prior to reaching the Settlement, Plaintiff obtained extensive informal discovery which included, but was not limited to, a sampling of time and payroll documents for one-third of the Class Members; multiple versions of Defendant's employee handbooks in use during the Class Period; performance evaluations; incentive plans; dozens of job descriptions; customer service policies; training materials; time and attendance policies and FAQs; organizational structure charts; document retention policies; reimbursement forms; and payroll calendars. (Parker Decl., ¶ 11). Class Counsel thoroughly reviewed this informal discovery prior to mediation, which included consulting with an expert to fully analyze Class Members' time and payroll records. (*Id.*, ¶ 12). Class Counsel also conducted further independent investigation and researched Plaintiff's claims and Defendant's defenses thereto. (*Ibid.*) Based on this investigation, Class Counsel prepared a detailed assessment of Defendant's potential liability, and extensively briefed the strengths and weaknesses of Plaintiff's claims and Defendant's anticipated defenses prior to mediation. (*Ibid.*). After mediation concluded unsuccessfully, Plaintiff propounded formal discovery consisting of Form Interrogatories – General (Set One), Special Interrogatories (Sets One and Two), and Requests for Production of Documents (Set One). (*Id.*, ¶ 14). Plaintiff met and conferred with Defendant regarding its responses to this discovery, and was able to obtain supplemental responses from Defendant. (*Ibid.*). In addition, the Parties engaged in a *Belaire-West* opt-out administration process for the class contact information in January 2023. (*Ibid.*). Thus, Class Counsel was able to act intelligently and effectively in negotiating the proposed Settlement due to the amount of informal and formal discovery that was conducted.

C. Class Counsel is Experienced in Class Action Litigation

The settlement negotiations were conducted by highly capable and experienced counsel. Class Counsel are respected members of the bar with strong records of effective advocacy for their clients, and are experienced in handling complex wage-and-hour class action litigation. (Parker Decl., ¶¶ 3-6; Hosseini Decl., ¶¶ 2-7). Although Plaintiff and her counsel were prepared to litigate the claims in this action, they support the proposed Settlement as being in the best interests of the Class Members.

(Parker Decl., ¶¶ 13, 53).

VI. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE IN LIGHT OF THE PARTIES' RESPECTIVE POSITIONS AND RISKS OF CONTINUED LITIGATION

A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to obtain 100% of the damages sought to be fair and reasonable. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 246, 250 (2001). In evaluating the reasonableness of a settlement, a trial court must consider "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience 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 (2008).

Class Counsel has carefully considered Plaintiff's claims and analyzed class-wide violation rates. Based on information gathered by Class Counsel, including calculations of Defendant's maximum potential liability exposure and the risks associated with continued litigation, Class Counsel has determined that the proposed Settlement is fair, adequate, and reasonable. (Parker Decl., ¶¶ 32-53).

A. <u>Defendant's Potential Exposure</u>

Based on information gathered through informal discovery, Class Counsel estimated that if all class claims were adjudicated in favor of the Class, Defendant's maximum potential liability for the Class claims would be $10,223,303.85. (Parker Decl., ¶ 43). This estimate can be broken down by claim as follows: $2,265,250.00 in unpaid overtime wages; $1,509,950.00 in unpaid minimum wages; $958,818.25 in unpaid meal period premiums; $3,019,900.00 in unpaid rest period premiums; $325,000.00 in unreimbursed business expenses; $992,385.60 in waiting time penalties under Labor

Code section 203; and $1,152,000.00 in wage statement penalties under Labor Code section 226.[6] (*Ibid*.).

In addition to the damages for the Class claims, Class Counsel also separately calculated Defendant's potential liability for civil penalties under PAGA to be $6,955,750.00, which can be broken down by violation as follows: $619,250.00 for unpaid overtime; $1,238,500.00 for unpaid minimum wages; $1,238,500.00 for meal period violations; $1,238,500.00 for rest period violations; $1,238,500.00 for failure to timely pay wages during employment; $144,000.00 for failure to maintain required payroll records; and $1,238,500.00 for failure to reimburse business expenses for failure to reimburse business expenses. (Parker Decl., ¶ 51). These calculations do not include penalties that would likely be considered duplicative of statutory penalties recoverable as part of Plaintiff's Class claims, i.e., waiting time penalties under Labor Code § 203 and wage statement penalties under Labor Code § 226. (*Ibid.*)

B. <u>Strengths and Weaknesses of Plaintiff's Claims and Risks of Continued Litigation</u>

Despite Defendant's significant potential exposure, Class Counsel recognized that there were also significant risks associated with proceeding with this case through class certification, trial, and likely appeals. As with all class actions, this is a complex case that raises difficult management and proof issues. Accordingly, there was a significant risk that the Court would have denied class certification. While Plaintiff and Class Counsel were confident that Plaintiff's claims are fundamentally meritorious and suitable for class-wide resolution, consideration of these risks factored into their decision to enter into the Settlement at this point in the litigation. (Parker Decl., ¶ 32).

For example, a significant portion of Defendant's estimated liability is based on Plaintiff's meal period claim. Plaintiff contends that notwithstanding Defendant's formal meal period policies, as a matter of actual practice, Class Members were often required to miss meal periods, take late meal periods after their fifth hour of work, cut their meal periods shorter than thirty minutes, and were

[6] The amounts at issue for penalties for failure to timely pay wages during employment (Labor Code section 204) and failure to keep requisite payroll records (Labor Code section 1174(d)) were assessed in Plaintiff's PAGA analysis.

subjected to work-related interruptions during their meal periods. (Parker Decl., ¶ 34). Plaintiff further contends that Class Members were not paid meal premiums for such violations. (*Id*.). Defendant asserted that its written policies complied with California law. (*Id*.). Defendant also maintained that as a matter of practice it provided ample opportunity for Class Members to take meal periods, and that if Class Members did not take compliant meal breaks, it is because they voluntarily chose not to do so. (*Id*.). Defendant also argued that questions of whether employees had received compliant meal periods, why such meal periods were not taken, and whether such meal periods were voluntarily waived were individualized issues that would bar certification. (*Id*.). Defendant also asserted that Class Members worked in a variety of different job positions with different job duties, and that this variation between employees raised highly individualized questions of fact. (*Id*.). While Class Counsel disagreed with Defendant's assessment, they recognized that meal period claims can be difficult to certify absent facially unlawful written policies. (*Id*.).

Class Counsel was also cognizant of the challenges associated with maintaining Plaintiff's rest period claims on a class-wide basis. (Parker Decl., ¶ 35). Plaintiff contends that Class Members were required to miss, take late, interrupt, and/or shorten their rest periods. (*Id*.). Plaintiff further contends that Defendant required Class Members to stay on Defendant's premises during their rest periods in a manner that violated California law as set forth in *Augustus v. ABM Securities*, 2 Cal.5th 257, 270 (2016). Defendant asserted that its policies were facially lawful, that Class Members were free to leave the premises during their breaks, and that any Class Members who worked through their rest periods did so voluntarily. (Parker Decl., ¶ 35). Defendant likewise argued that whether Class Members had received a compliant rest period and the reasons why Class Members failed to receive compliant rest periods raised individualized issues that could not be certified. (*Id*.). While Class Counsel disagreed with Defendant's positions, they also recognized that rest period claims are inherently difficult to certify and prove, given that an employer has no obligation to maintain records of rest periods. (*Id*.).

Plaintiff also faced challenges related to certifying and proving liability for her minimum wage and off-the-clock claims. (Parker Decl., ¶ 33). Such claims were primarily based on Plaintiff's allegations that Defendant failed to pay Class Members all minimum wages and overtime compensation owed due to their practice of pressuring Class Members to work off-the-clock. (*Id.*). Defendant asserted that its formal written policies regarding payment of wages were facially compliant, and that Class Members were instructed to record all hours worked. (*Id.*). Defendant also argued that individual liability issues predominate, including whether each employee worked off-the-clock, and whether Defendant knew or should have known about each employee's off-the-clock work. (*Id.*). Moreover, given that these claims were based on off-the-clock work not reflected in Defendant's time records, Defendant argued that proving damages at trial would not be manageable. (*Id.*). While Class Counsel strongly disagreed with Defendant's contentions, Class Counsel also recognized that the off-the-clock claims can be particularly challenging to certify and prove due to potential for individualized issues and lack of records. (*Id.*).

In addition to meal period, rest period, overtime, and minimum wage claims, Plaintiff also contended that Defendant failed to reimburse Class Members for necessary business expenses, such as for the use of their personal cell phones for work purposes. (Parker Decl., ¶ 36). Defendant asserted that the majority of Class Members were not required to use their personal cell phones. (*Id.*). Defendant further asserted that individualized inquiries regarding why a Class Member failed to receive reimbursement for certain expenses would predominate. (*Id.*). While Class Counsel disagreed with Defendant's arguments, they acknowledged the potential for individualized issues regarding Plaintiff's expense reimbursement claim. (*Id.*)

There are also substantial risks attached to Plaintiff's claims for waiting time penalties and wage statement penalties. (Parker Decl., ¶ 37). Such claims are derivative of Plaintiff's primary claims for overtime, minimum wage, meal period, and rest period violations. (*Id.*). Thus, if certification were to be denied on the primary claims, these derivative claims would also likely fail. (*Id.*). Moreover, even if Plaintiff prevailed on the underlying claims, Plaintiff would still be required to show that Defendant's conduct was willful in order to obtain Labor Code section 203 penalties – a standard that can be challenging to meet. *See, e.g.*, *Choate v. Celite Corp.*, 215 Cal App. 4th 1460, 1468 (2013) (holding that "an employer's reasonable, good faith belief that wages are not owed may negate a finding of willfulness"). Likewise, the California Supreme Court recently held that employers may also assert a good faith defense for wage statement penalties. *Naranjo v. Spectrum Security Services, Inc.*, 15 Cal. 5th 1056, 1087 (2024).

Class Counsel also separately contemplated the numerous risks of proceeding with a PAGA claim. First, the same defenses and merits-based risks associated with Plaintiff's direct Labor Code claims are also applicable to a PAGA claim. *Green v. Lawrence Service Co.,* LA CV12-06155 JAK (VBKx), 2013 WL 3907506 at *5, fn. 5 (C.D. Cal. July 22, 2013) ("whether each PAGA claims succeed or fails is determined by the merits of the substantive claims on which each is based.") Second, at the time of mediation, there was a split in authority over whether PAGA claims could be stricken based on manageability concerns. *Compare Wesson v. Staples The Office Superstore*, 68 Cal.App.5th 746 (2021), *with Estrada v. Royalty Carpet Mills, Inc.*, 76 Cal.App.5th 685 (2022). The California Supreme Court has since held that a court does not have inherent authority to strike a PAGA claim on the basis of mangeability in *Estrada v. Royalty Carpet Mills, Inc*., 15 Cal. 4th 582 (2024). Nonetheless, *Estrada* left an open question of "whether, and under what circumstances, a defendant's right to due process might ever support striking a PAGA claim." *Id*. at 618. Even if Plaintiff defeated any challenges to manageability, the Court could ultimately exercise its discretion to find that the imposition of heightened civil penalties was inappropriate, particularly if Plaintiff prevailed on her class claims. Cal. Lab. Code § 2699(2); *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1122 (2012).[7] (Parker Decl., ¶ 41).

Finally, Class Counsel recognized the significant risk and expense generally associated with continued litigation, trial, and possible appeals, all of which would substantially delay and reduce any recovery by the Class Members. (Parker Decl., ¶ 52). Even if Plaintiff prevailed at class certification, proving the amount of wages due to each Class Member would be an expensive, time-consuming, and extremely uncertain proposition. (*Id*.). In order to prove liability and damages, Plaintiff would need to request and analyze thousands of pages of documents, and obtain numerous declarations at great

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[7] *See also, Cotter v. Lyft, Inc.,* 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016) (reducing penalties by 97.5%); *Fleming v. Covidien*, No. ED CV10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590, *8-9 (C.D. Cal. Aug. 12, 2011) (reducing potential PAGA penalties by over 80 percent); *Magadia v. Wal-Mart Assocs. et al.*, 384 F. Supp. 3d 1058, 1069 (N.D. Cal. 2019) (applying 67% and 80% reductions to PAGA Penalties).

expense. (*Id.*). Obtaining the cooperation of current employees would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a current employer. (*Id.*). On the other hand, Defendant would likely be able to obtain the cooperation of their current employees. Moreover, even if Plaintiff prevailed at class certification and trial, possible appeals would substantially delay any recovery by the Class. (*Id.*). These risks are all obviated by the Settlement, which if approved by the Court will ensure that class members receive timely relief without the risk of an unfavorable judgment. (*Id.*).

Taking into account the specific strengths and weaknesses of each claim, and the unique risks associated therewith, the general risks and significant costs associated with litigation this Action through class certification, trial, and appeals, Class Counsel estimated that Defendant faced a risk-adjusted liability of $1,276,259.58 for Plaintiff's Class claims alone. (Parker Decl., ¶ 43).

Therefore, after considering the strengths and weaknesses of each claim, and the unique risks associated therewith, the general risks of continued litigation, and the significant costs, expenses, and delay that would result from continued litigation, it is clear that the Settlement is fair, reasonable, and adequate, and is in the best interest of the Class. (Parker Decl., ¶ 53). Moreover, the Gross Settlement Amount of $1,450,000.00 falls within an acceptable range of recovery for this type of litigation given the strengths and weaknesses of the case and the inherent costs and risks associated with class certification, representative adjudication, trial, and/or appeals. *See, e.g., Stovall-Gusman v. W.W. Granger, Inc.*, No. 13-cv-02540-HSG, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. June 17, 2015) (approving settlement amount representing approximately 10% of the estimated actual damages to the class); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 256 (N.D. Cal. 2015) (approving settlement representing approximately 8.5% of the maximum damages); *Avila v. Cold Spring Granite Co.*, No. 1:16-cv-01533-AWI-SKO, 2017 U.S. Dist. LEXIS 130878 at *22 (E.D. Cal Aug. 15, 2017) (approving settlement where gross recovery was 11% of the maximum damages).

C. <u>The Allocation for PAGA Penalties is Reasonable</u>

The $150,000.00 allocated for penalties under PAGA is fair and reasonable. PAGA penalties are not intended to be compensatory in nature, but are instead intended to facilitate enforcement of California's labor laws by financing state activities and educating and deterring non-compliance. Cal.

Labor Code § 2699(i); *Arias v. Sup. Ct.*, 46 Cal. 4th 980; *Williams v. Sup. Ct.,* 3 Cal.5th 531, 546 (2017); *Iskanian v. CLS Transp. Los Angeles, LLC,* 59 Cal.4th 348, 379 (2014). Where, as here, the parties reach a substantial class-wide settlement providing employees with monetary compensation for underlying Labor Code violations, many of PAGA's underlying policy objectives are satisfied. Indeed, the $150,000.00 allocated to PAGA Penalties (approximately 10.3% of the Gross Settlement Amount) is well-within the range approved by California courts. *See, e.g., Nordstrom Comm. Cases,* 186 Cal.App.4th 576, 589 (2010) (finding no abuse of trial court's discretion in approval of release that included PAGA claims but allocated $0 to PAGA penalties); *Alcala v. Meyer Logistics, Inc.,* No. CV 17-7211 PSG (AGRx), 2019 U.S. Dist. LEXIS 166879, *26 (C.D. Cal. June 17, 2019) (holding that allocation of 1.25% of gross settlement amount to PAGA penalties "falls within the zero to two percent range for PAGA claims approved by courts."); *In re M.L. Stern Overtime Litig*., No. 07-CV-0118-BTM (JMA), 2009 U.S. Dist. LEXIS 31650, *4 (S.D. Cal. Apr. 13, 2009) (approving allocation of 2% of gross settlement amount towards PAGA penalties); *Davis v. Brown Shoe Co*., No.: 1:13-cv-01211-LJO-BAM, 2015 U.S. Dist. LEXIS 149010 *34 (E.D. Cal. Nov. 3, 2015) (approving PAGA penalties of $5,000.00 out of a gross $1.5 million settlement); *Zamora v. Ryder Integrated Logistics, Inc.*, No. 13cv2679-CAB (BGS), 2014 U.S. Dist. LEXIS 184096, *28 (S.D. Cal. Dec. 23, 2014) (approving $7,500 payment to LWDA for PAGA on a $1.5 million class settlement); *Lusby v. Gamestop Inc*., No. C12-03783 HRL, 2015 U.S. Dist. LEXIS 42637, *26 (N.D. Cal. Mar. 31, 2015) (approving allocation of $5,000 to PAGA penalties out of $500,000 class settlement); *Cruz v. Sky Chefs, Inc.*, No. C-12-02705 DMR, 2014 U.S. Dist. Lexis 176393, *8 (N.D. Cal. Feb. 1,. 2014) (approving payment of $10,000 to the LWDA for PAGA out of $1,750,000 class settlement.)

VII. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

California Code of Civil Procedure section 382 "authorizes class actions when the question is one of a common or general interest, of many persons, or when the Parties are numerous, and it is impracticable to bring them all before the court." *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies "both [1] an ascertainable class and [2] a well-defined community of interest among class members." *Id.* Courts utilize a less stringent standard for class certification during settlement. *Global Minerals & Metals*

Corp. v. Superior Court, 113 Cal.App.4th 836, 859 (2003). The reason: "no trial is anticipated in a settlement class case, so the case management issues inherent in the ascertainable class determination need not be confronted." *Id.*

As demonstrated below, all three requirements for certification of the Class as defined by the Settlement are satisfied. Furthermore, Defendant has stipulated to certification of the proposed Class for settlement purposes only. (Settlement Agreement, § 12.1).

A. <u>The Class is Ascertainable and Sufficiently Numerous</u>

Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of the class, and (3) the means of identifying the class members. *Miller v. Woods*, 148 Cal.App.3d 862, 873 (1983). In this case, all three factors strongly favor class certification. The Class is defined as all current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time during the period from February 24, 2017 through January 31, 2024. (Settlement Agreement, §§ 1.5, 1.13). This provides a clear and definite scope for the proposed class.

Next, the class is sufficiently numerous. There is no set number that satisfies the numerosity requirement. However, courts have certified classes with as few as ten or twenty-eight class members. *Rose v. City of Hayward*, 126 Cal. App. 3d 926, 934 (1981); *Bowles v. Superior Court*, 44 Cal. 2d 574, 578, 587 (1995); *Hebbard v. Colgrove*, 28 Cal. App. 3d 1017, 1030 (1972). Here, the estimated class size of 480 individuals meets the numerosity requirement. (Parker Decl., ¶ 20).

Finally, the question of whether class members are easily identifiable turns on whether a plaintiff can establish "the existence of an ascertainable class." *Daar v. Yellow Cab Co.*, 67 Cal. 2d 695, 706 (1967). The existence of an ascertainable class in this case has already been established through Defendant's records, and the class definition is sufficiently specific to enable the parties, potential class members, and the Court to determine who is a member of the Class.

B. <u>The Class Shares a Well-Defined Community of Interest.</u>

The community of interest requirement consists of three factors: (1) there must be predominant questions of law and fact; (2) the plaintiff must have claims or defenses typical of the class; and (3) the plaintiff and the plaintiff's counsel must adequately represent the class. *Dunk*, 48 Cal.App.4th at 1806. All three requirements are met in this matter.

1. Common Issues of Law and Fact Predominate

Commonality requires the existence of common questions of law or fact that predominate over individualized issues. *Daar*, 67 Cal.2d 695, 706. The existence of some individualized issues is not a bar to certification as long as they do not render class litigation unmanageable or do not predominate over the common issues. *See B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1354 (1987).

Here, Plaintiff's claims present sufficient common issues of law and fact that predominate and warrant class certification. Based on the documents and information obtained through informal discovery and exchange of information in the case, Plaintiff contended that Class Members were subject to the same or similar job duties and uniform operations and employment practices, policies, and procedures during the Class Period. (Parker Decl. ¶ 32). Plaintiff alleged that Defendant prohibited employees from taking compliant meal and rest periods, required Class Members to perform work off-the-clock, and required them to incur business expenses that were not reimbursed. (Parker Decl., ¶¶ 33-36). As a result of these uniform policies and practices, Plaintiff asserts that Defendant failed to properly pay overtime and minimum wages for all hours worked, failed to provide compliant meal and rest periods and associated premium pay, failed to timely pay wages during employment and upon termination of employment, failed to provide compliant wage statements, failed to keep requisite payroll records, and failed to reimburse necessary business-related expenses.

Plaintiff contends that the outcome of this litigation would be determined by Defendant's alleged uniform operations and employment policies and procedures that applied to all of its hourly-paid and/or non-exempt employees who worked in California during the Class Period. Thus, class treatment is appropriate.

2. Plaintiff's Claims are Typical of the Class

To satisfy the typicality requirement, California law does not require that the named plaintiff have claims identical to the other class members. Rather, the test of typicality for a class representative is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiff, and whether other class members have been injured by the same course of conduct. *Seastrom v. Neways, Inc.*, 149 Cal.App.4th 1496, 1502 (2007). The typicality requirement for a class representative refers to the nature of the claim or defense of the representative, and not to the specific facts from which it arose or the relief sought. *See Id*.

Here, Plaintiff alleges that her claims are based on the same legal theories, arise out of the same unlawful policies and practices, and seek the same relief as that sought for the other Class Members. Because Plaintiff's claims are based on the same alleged conduct and business practices as the claims of the other Class Members, the typicality requirement is satisfied.

3. Plaintiff and Her Counsel Will Fairly and Adequately Represent the Class

The question of adequacy of representation "depends on whether the plaintiff's attorney is qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the class." *McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976). Here, these considerations are satisfied. Class Counsel are well-experienced experienced in wage and hour class action litigation, and do not have any conflicts of interest which would impede their representation of the Class. (Parker Decl., ¶¶ 3-6, 54-56; Hosseini Decl., ¶¶ 2-7, 15). Furthermore, because Plaintiff's claims are typical of those of the other Class Members, and are not based on unique circumstances that might jeopardize the claims of the Class, there is no antagonism of interests between Plaintiff and the Class. Plaintiff is also fully aware of her duties as the class representative, and has and will continue to vigorously and adequately represent the interests of the Class. (Correa Decl., ¶¶ 5-10). Therefore, the adequacy requirement is satisfied.

C. <u>A Class Action is Superior to a Multiplicity of Litigation</u>

Under the circumstances, proceeding as a class action is a superior means of resolving this dispute. Class certification is the only realistic means to deter and redress the alleged violations. Prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications, and a class action is superior to other available means for the fair and efficient adjudication of the claims. *See Linder v. Thrifty Oil Co.*, 23 Cal.4th 429, 434 (2000) (relevant considerations include the probability that each class member will come forward to prove her or her separate claim and whether the class approach would actually serve to deter and redress the alleged wrongdoing). Further, individual actions arising out of the same operative facts would unduly burden the courts. Therefore, class action proceedings are superior to individual litigation.

VIII. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal, Inc.*, 82 Cal.App.4th 19, 41 (2000). California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Id*. at 47. In cases where class members present claims against a common fund and the defendant agrees to a percentage of the fund as part of the settlement, use of the percentage method is appropriate. *Id.* at 32.

Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. *Newberg on Class Actions,* § 14.03 (4th Ed.); *see also In re Ampicillin Antitrust Litig.,* 526 F.Supp. 494 (D.D.C. 1981) (awarding attorneys' fees in the amount of 45% of a $7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.*, 480 F.Supp. 1195 (S.D.N.Y. 1979) (awarding approximately 53% of the settlement as attorneys' fees). California courts routinely approve class action attorneys' fee awards averaging around one-third of the recovery. *In re Consumer Privacy Cases*, 175 Cal.App.4th 545, 558 at n.13 (2009); *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions.)

Here, the requested attorneys' fees of $507,500.00, which is 35% of the Gross Settlement Amount, is disclosed to Class Members in the proposed Notice of Class Action Settlement. (Settlement Agreement, Exh. A). The requested fee was freely negotiated, is common in the legal marketplace, and is not opposed by Defendant. The attorneys' fees provided for by the Settlement are commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members, State of California, and Aggrieved Employees, and (6) the other cases that Class Counsel had to turn down in order to devote their time and efforts to this matter.

The Motion for Final Approval will elaborate on the nature of the legal services provided and will also support Class Counsel's request for the reimbursement of litigation costs not to exceed $30,000.00. (Parker Decl., ¶ 56).

IX. THE PROPOSED ENHANCEMENT AWARD IS REASONABLE

Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as compensation "for the expense or risk they have incurred in conferring a benefit on other members of the class." *Munoz v. BCI Coca-Cola Bottling Co.*,186 Cal.App.4th 399, 412 (2010). Courts routinely grant approval of class action settlement agreements containing enhancements for the class representative, which provide an incentive for individuals to represent the class and are appropriate given the benefit the class representatives help to bring about for the class. *See, e.g., Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 299 (N.D. Cal. 1995) (approving $50,000.00 enhancement); *In re Online DVD Rental*, 779 F.3d 934, 947-948 (9th Cir. 2014) (approving incentive award 417 times larger than individual payments where incentive award made up a mere .17% of the settlement); *Gaudin v. Saxon Mortgage Servs., Inc.*, 2015 WL 7454183, at *10 (N.D. Cal. Nov. 23, 2015) (finding service award of $15,000 to be "fair and reasonable"); *Miller v. CEVA Logistics USA, Inc.,* 2015 WL 4730176, at * 9 (E.D. Cal. Aug. 10, 2015) (approving service award of $15,000 to each plaintiff); *Glass v. UBS Financial Services, Inc.*, 2007 WL 221862 at *16 (N.D. Cal. 2007) (approving payments of $25,000 to each named plaintiff); *In re Heritage Bond Litigation*, 2005 WL 1594403 at *18 (C.D. Cal. 2005) (awarding incentive payments between $5,000 and $18,000).

Plaintiff initiated this litigation on behalf of her former co-workers who can now collect monetary payment from the Settlement. Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations. (Correa Decl., ¶¶ 4-7; Parker Decl., ¶ 55). Plaintiff was available whenever her attorneys needed her and actively tried to obtain and provide information that would facilitate the pursuit of the Class and PAGA claims. (Correa Decl., ¶ 7; Parker Decl., ¶ 55). Further, the requested service payment is extremely reasonable given the benefit gained by other Class Members. The requested Class Representative Service Payment of $7,500.00 to Plaintiff is disclosed to Class Members in the Class Notice. (Settlement Agreement, Exh. A). For these reasons, Plaintiff requests that the Class Representative Service Payment of $7,500.00 be preliminarily approved by the Court. (Parker Decl., ¶ 55; Correa Decl., ¶ 11).

X. THE PROPOSED CLASS NOTICE, OPT-OUT, AND OBJECTION PROCEDURES SATISFY DUE PROCESS REQUIREMENTS

"The principal purpose of notice to the class is the protection of the integrity of the class action process." *Cartt v. Superior Court* , 50 Cal.App.3d 960, 970 (1975). The notice "'must fairly apprise the class members of the terms of the proposed compromise and of the options open to the dissenting class members.'" *Wershba v. Apple Computer, Inc.,* 91 Cal.App.4th 224, 251 (2001). Additionally, the notice given should have a reasonable chance of reaching a substantial percentage of the class members. *Cartt*, 50 Cal.App.3d at 974.

The Parties have selected Phoenix Settlement Administrators ("Phoenix") to administer the Settlement. (Parker Decl., ¶ 31; Settlement Agreement § 1.2). Phoenix has extensive experience in administering class action and PAGA settlements, and has procedures in place to protect the security of class data as well as adequate insurance for errors and omissions. (Declaration of Michael Moore on Behalf of Phoenix Class Action Settlement Administration in Support of Preliminary Approval ["Moore Decl."], ¶¶ 5, 11-13). The Parties and their counsel do not have any financial interest in Phoenix that would create a conflict of interest. (Parker Decl., ¶ 54; Hosseini Decl., ¶ 14; Lee Declaration, ¶ 2; Declaration of Wanda Williams in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement, ¶ 2; Moore Decl., ¶ 4).

The Parties have jointly drafted a Notice of Class Action Settlement ("Class Notice") which will be sent to Class Members in both English and Spanish. (Settlement Agreement § 1.12, Exh. A). The Class Notice describes the nature of the lawsuit, the key terms of the Settlement, the scope of the Released Class Claims and Released PAGA Claims, Class Members' estimated Individual Class Payments and Individual PAGA Payments, Class Members' total workweeks during the Class Period, and Aggrieved Employees' total workweeks during the PAGA Period. (Settlement Agreement, Exh. A.) The Class Notice also informs Class Members how to opt-out of the Settlement, object to the Settlement, and challenge their reported workweeks. (*Ibid.*) The Class Notice indicates that the Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable, and that a final determination of such issues will be made at the final approval hearing. (*Ibid.*) The Class Notice also includes instructions on how to obtain all relevant Settlement documents, the contact information for Class Counsel, the address for the website maintained by the Administrator containing key documents related to the Settlement, the website address to the Court's online public portal, and informs Class Members of their right to attend the final approval hearing. (*Ibid.*).

No later than 14 calendar days after the Court grants Preliminary Approval of the Settlement, Defendant shall provide the Settlement Administrator with the Class Data containing each Class Member's: (1) full name, (2) last-known mailing address, (3) last known telephone number, (4) Social Security number, (5) number of Class Period Workweeks and (6) number of PAGA Pay Periods. (Settlement Agreement, §§ 1.9, 4.2.) No later than 10 calendar days after receiving the Class Data from Defendant, the Administrator shall mail copies of the Class Notice to all Class Members via regular First Class U.S. Mail. (*Id.,* § 7.4.2) Before mailing the Class Notice to Class Members, the Administrator shall perform a search based on the National Change of Address Database to update and correct any known or identifiable address changes. (*Ibid.*)

If any Class Notice is returned as undeliverable, the Settlement Administrator shall promptly re-mail such returned Class Notices to the forwarding address provided by the USPS. (Settlement Agreement, § 7.4.3). If no forwarding address is provided, the Administrator shall perform a skip trace, and re-mail the Class Notice to the most current address obtained. (*Ibid.*) Class Members shall have 45 days after the mailing of the Class Notice to submit requests for exclusions, objections, or workweek disputes by mail. (*Id*., § 1.45.) The Response Deadline shall be extended by 14 calendar days for all Class Members whose Class Notices are re-mailed. (*Ibid*.)

Direct mail notice to Class Members' last known addresses is the best possible notice under the circumstances. *See Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306, 319 (1950); *Eisen v. Carlisle & Jacquelin,* 417 U.S. 156, 173-176 (1974). Furthermore, the Class Notice comports with the requirements of California Rules of Court, Rules 3.769 and 3.766. Pursuant to Rule 3.769(f), the class notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and arranging to appear at the hearing and state objections to the proposed settlement. Cal. Rules of Court, Rule 3.769(f). Rule 3.766 further requires that the class notice include: (1) a brief explanation of the case, including the basic contentions and denials of the parties; (2) a procedure for the class member to follow in requesting exclusion, and a statement that the Court will exclude the class member from the class if he or she so requests by the specified deadline; (3) a statement that the judgment, whether favorable or not, will bind all class members who do not request exclusion; and (4) a statement that any Class Member who does not request exclusion may, if the class member so desires, object and enter an appearance through counsel. The proposed Class Notice satisfies each of these requirements. (Settlement Agreement, Exh. A).

Accordingly, Plaintiff respectfully requests that the Court appoint Phoenix as the Settlement Administrator and direct the mailing of the Class Notice to the Class Members in the manner outlined and based on the proposed deadlines set forth in the Agreement.

XI. CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests that the Court: (1) preliminarily approve the Settlement Agreement; (2) certify the Class for settlement purposes; (3) preliminarily appoint Plaintiff Joselyn Correa as the Class Representative for settlement purposes; (4) preliminarily appoint Arby Aiwazian, Joanna Ghosh, and Yasmin Hosseini of Lawyers *for* Justice, PC and Jill J. Parker and S. Emi Minne of Parker & Minne, LLP as Class Counsel for settlement purposes; (5) approve the Class Notice and plan for distribution of the Class Notice; (6) approve the opt-out and objection procedures provided in the Settlement Agreement and set forth in the Class Notice; (7) direct Defendant to furnish the Class List to the Settlement Administrator no later than fourteen (14) calendar days after the Court grants preliminary approval of the Settlement; (8) approve the proposed deadlines for the settlement administration process; (9) approve Phoenix Settlement Administrators as the settlement administrator; and (10) schedule a hearing on Final Approval of the Settlement.

Dated: September 6, 2024 **PARKER & MINNE, LLP**

By: Jill J. Parker

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