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7 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
8 **COUNTY OF LOS ANGELES**

9 NINA JACKSON, individually and on
10 behalf of all others similarly situated,

11 Plaintiff,

12 vs.

13 QUANTUM BEHAVIORAL
14 SOLUTIONS, INC., a California
corporation; GEVORK G.
15 GEVOJANYAN, an individual; and
DOES 1 through 20, inclusive,

16 Defendants.
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Case No. 21STCV12389

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL OF
CLASS AND PAGA ACTION SETTLEMENT**

Date: July 2, 2024

Time: 10:30 a.m.

Dept.: 12, Spring Street Courthouse

Judge: Hon. Carolyn B. Kuhl

[Assigned for all purposes]

Action Filed: April 1, 2021

Trial Date: None Set

*[Declarations of Keith Custis, Nina Jackson and Lisa
Mullins filed and [Proposed] Order lodged
concurrently]*

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

PLEASE TAKE NOTICE that on July 2, 2024, at 10:30 a.m., or as soon thereafter as the matter may be heard, in Department 12 of the above-captioned court located at 312 N. Spring St, Los Angeles, CA 90012, Plaintiff Nina Jackson, individually and on behalf of a similarly situated class of individuals, will and hereby does move this Court pursuant to Code of Civil Procedure Section 382 and Rule 3.769(c) of the California Rules of Court to enter an Order to:

1. Preliminarily approve the proposed class and PAGA action settlement set forth in the Class and PAGA Action Settlement Agreement (“Settlement Agreement” or “SA”), attached as **Exhibit A** to the Declaration of Keith Custis, which is submitted concurrently in support of the Motion;

2. Preliminarily certify the Class defined as: All current and former non-exempt employees who worked for defendant Quantum Behavioral Solutions, Inc. within the State of California at any time during the period beginning on April 1, 2017 and ending on February 9, 2024. (SA, ¶¶ 4, 7);

3. Preliminarily appoint Plaintiff Nina Jackson as the Class Representative;

4. Preliminarily appoint Custis Law, P.C. and its attorney Keith A. Custis as Class Counsel;

5. Appoint IYLM Group, Inc. as the Settlement Administrator;

6. Approve as to form and content the Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval, attached as **Exhibit 1** to the Settlement Agreement, and direct its distribution to members of the Class; and

7. Set a hearing date, time and place to conduct the Final Approval Hearing on Plaintiff’s Motion for Order Granting Final Approval of Class and Representative Action Settlement, as well as Plaintiff’s Motion for an Award of Attorneys’ Fees and Costs, Class Representative Service Award and Settlement Administration Costs.

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 and PAGA Action Settlement; (3) the Declarations of Keith A. Custis, Nina Jackson, and Lisa Mullins; (4) the Class

1 and PAGA Action Settlement Agreement; (5) the Court Approved Notice of Class Action Settlement
2 and Hearing Date for Final Court Approval; (6) the concurrently-lodged [Proposed] Order Granting
3 Preliminary Approval of Class and PAGA Action Settlement; (7) the records, pleadings, and papers
4 filed in this action; and (8) such other documentary and oral evidence or argument as may be
5 presented to the Court at or prior to the hearing of this Motion.

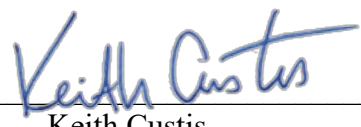
6 As this Motion is unopposed, Plaintiff respectfully request relief from the page limit
7 requirement set by California Rules of Court 3.1113(d).

8 Pursuant to Labor Code Section 2699(l)(2), a copy of the Class and PAGA Action Settlement
9 Agreement along with a copy of this Motion were e-filed with the LWDA on May 31, 2024.
10 Declaration of Keith Custis, ¶ 6, Exs. B & C.

11 Respectfully submitted,

12 **CUSTIS LAW, P.C.**

13 Dated: May 31, 2024

14 By: 
Keith Custis

15 Attorneys for Plaintiff Nina Jackson and the Class
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1 **I. INTRODUCTION**

2 Plaintiff Nina Jackson respectfully seeks preliminary approval of a non-reversionary, “no
3 claim form required” class and PAGA action settlement in this wage and hour action. If approved,
4 the Settlement will provide valuable monetary relief for 668 current and former employees of
5 Defendants Quantum Behavioral Solutions, Inc. (“Quantum”) and its owner Gevork Gevojanian
6 (collectively, “Defendants”).

7 Subject to Court approval, Defendants have agreed to settle this action by paying a non-
8 reversionary Gross Settlement Amount of \$595,000, exclusive of the employer’s share of payroll
9 taxes that will be paid separately by Defendants. The relief offered by the Settlement is particularly
10 impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour
11 cases. The Parties negotiated the Settlement at arm’s-length after participating in two mediations in
12 2022 and 2023, with two highly respected wage and hour class action mediators, the Hon. Rita Miller
13 (Ret.) and Ann Kotlarski, Esq. If approved, all Participating Class Members and PAGA Members
14 will have a check mailed to them after the Settlement becomes final without the need to submit a
15 claim form.

16 As detailed below, the proposed Settlement satisfies all criteria for preliminary approval.
17 Accordingly, Plaintiff requests that the Court grant this Motion, enter the proposed Preliminarily
18 Approval Order, and set a date for the Final Approval Hearing.

19 **II. BACKGROUND**

20 **A. The Parties and Defendant Quantum’s Business**

21 Defendants operate a company that provides therapeutic services to children with autism and
22 other developmental disorders. Quantum’s revenue is generated principally from reimbursements
23 from Medicare, Medi-Cal, and private insurance. Plaintiff worked as a non-exempt employee for
24 Defendants from October 2019 until approximately July 2021. Declaration of Nina Jackson
25 (“Jackson Decl.”), ¶ 3. Plaintiff and other Class Members provided therapeutic services to children
26 with autism and other developmental disorders, either at the children’s residence or, during the
27 pandemic, remotely through Zoom. Plaintiff and other Class Members generally worked a part-time
28 schedule, attending on average approximately four appointments each work day.

B. Plaintiff's PAGA Notices, Complaints, Claims

On March 30, 2021, Class Counsel provided pre-filing written notice to the LWDA and by certified mail to Defendants of the alleged Labor Code violations on behalf of Plaintiff and similarly situated aggrieved employees in accord with the PAGA, Labor Code section 2699.3(a). Declaration of Keith Custis ("Custis Decl."), Ex. D (copy of March 30, 2021 PAGA Notice).

On April 1, 2021, Plaintiff initiated this Action by filing her initial complaint in Court.

On May 12, 2021, Class Counsel provided an amended PAGA Notice to the LWDA and by certified mail to Defendants of additional allegations on behalf of Plaintiff and similarly situated aggrieved employees in accord with the PAGA, Labor Code section 2699.3(a). Custis Decl., Ex. E (copy of May 12, 2021 PAGA Notice).

On July 16, 2021, Plaintiff filed her First Amended Complaint.

On October 7, 2021, the Court denied Defendant's Motion to Compel Arbitration and Stay Litigation. In the Court's October 7, 2021 Minute Order, the Court concluded that "Defendants Fail to Demonstrate the Existence of an Agreement to Arbitrate." Class Counsel understands that, following the Court's October 7, 2021 denial of Defendant's Motion to Compel Arbitration and Stay Litigation, Defendants began to require all Class Members who were then employed or who were hired after October 7, 2021 to enter into valid and enforceable arbitration agreements. Custis Decl., ¶ 28.

On February 7, 2023, Plaintiff filed the operative Second Amended Complaint, asserting the following causes of action against Defendants: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide rest periods; (4) failure to provide meal periods; (5) failure to reimburse business expenses; (6) failure to provide accurate wage statements; (7) failure to pay wages timely during employment; (8) failure to pay wages timely at separation; (9) violation of Business and Professions Code § 17200; and (10) for civil penalties under the Private Attorneys General Act of 2004 ("PAGA").

Defendants deny all material allegations and all liability, and contend that they have consistently compensated employees in accordance with all applicable laws.

1 **C. Investigation and Discovery**

2 The Parties engaged in extensive formal and informal discovery and investigation. Plaintiff
3 propounded a total of seventy-five (75) special interrogatories, one hundred and twenty-nine (129)
4 requests for production, eight (8) requests for admissions and general form interrogatories, all of
5 which were responded to by Defendants. Custis Decl., ¶ 31. Defendants produced 995 pages of
6 documents as well as multiple copies of the putative class members' punch data. *Id.* In addition,
7 during the litigation, Defendants also produced all written wage and hour policies, the time and pay
8 records for Plaintiff, and exemplars of wage statements for other putative class members.

9 Prior to each of the two mediations, Defendants provided Class Counsel with (1) the total
10 number of putative Class Members; (2) the total number of putative Class Members who separated
11 during the PAGA period; (3) the total number of aggregate workweeks and PAGA Pay Periods; and
12 (4) the average hourly rate paid to Class Members (the "Class Data"). Custis Decl., ¶ 32. Class
13 Counsel's investigation also included: (1) multiple telephonic conferences with Plaintiff; (2)
14 interviews with putative class members in addition to Plaintiff; (3) investigation into the viability of
15 class treatment of the claims; (4) assembling data for calculating damages and analysis of potential
16 class-wide damages; (5) and engaging an expert to determine violation rates across the Class. *Id.*, ¶
17 33.

18 Defendant also produced a sampling of 317 Class Members' time records prior to the
19 December 2023 mediation, which were analyzed by Class Counsel's expert. Custis Decl., ¶ 34. The
20 sampling of 317 Class Members' records is statistically reliable here because the sampling was both
21 random and large, comprised of approximately 47.4% of the entire Class. *Duran v. U.S. Bank*
22 *National Assn.* (2014) 59 Cal.4th 1, 22 ("To be reliable, the sample must be sufficiently large . . .");
23 *see also id.* at 43 ("A sample must be randomly selected for its results to be fairly extrapolated to the
24 entire class . . . A 'random sample' is one in which each member of the population has an equal
25 probability of being selected for inclusion in the sample.").

26 Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in
27 *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail,*
28 *Inc.* (2008) 168 Cal.App.4th 116, 129-130.

D. The Parties Settled After Two Mediation Sessions

On July 7, 2022, the parties participated in a private mediation with mediator the Hon. Rita Miller (Ret.). The settlement discussions were conducted at arm's length. However, the mediation was unsuccessful. On December 11, 2023, the Parties participated in a second, private mediation with mediator Ann Kotlarski. The settlement discussions were conducted at arm's length. Following the December 2023 mediation session, the Parties accepted the mediator's proposal to resolve the action. The Parties continued to engage in extensive post-mediation settlement negotiations regarding settlement terms over several months. The Parties also exchanged drafts of the settlement documents before agreeing on the final form of the Settlement Agreement. The negotiations were at all times adversarial and at arm's length. Custis Decl., ¶ 36.

E. Overview of the Settlement

The comprehensive terms of the Settlement are set forth in the Class and PAGA Action Settlement Agreement, attached to the Custis Declaration as **Exhibit A**.

1. Settlement Class Definition

The Class is defined as: All current and former non-exempt employees who worked for Defendant Quantum Behavioral Solutions, Inc. within the State of California at any time during the period beginning on April 1, 2017 and ending on February 9, 2024. SA, ¶¶ 1.6, 1.11.

2. Monetary Terms

Defendants have agreed to pay a Gross Settlement Amount of \$595,000 ("GSA") to settle this action. SA, ¶ 1.21, 12.1. The GSA will be used to pay: (1) all Settlement Payments; (2) Attorneys' Fees and Costs (with the fee portion not to exceed 33.33% of the Gross Settlement Amount (i.e., up to \$198,313.50), and costs not to exceed \$30,000; (3) the Class Representative's Service Payment (in an amount up to Ten Thousand Dollars (\$10,000)) for the Plaintiff for her service to the Class and general release of all claims; (4) the PAGA Payment (\$25,000 of the GSA to be allocated towards settlement of the PAGA claim, with 75% (i.e., \$18,750.00) payable to the LWDA, and 25% (i.e., \$6,250.00) to be distributed to the PAGA Members; and (5) the Settlement Administration Costs (not to exceed Seventeen-Thousand Dollars (\$17,000)). SA, ¶ 12.2-12.6. Defendants will pay the employers' share of payroll taxes on the settlement amounts allocated to wages in addition to the

1 GSA. *Id.* at ¶¶ 12.1, 12.8.

2 Defendants shall fund fifty percent (50%) of the GSA and fifty-percent (50%) of the
3 Employers' Share of Payroll Taxes within thirty (30) calendar days after the Effective Date, and the
4 remaining fifty percent (50%) of the GSA and other fifty-percent (50%) of the Employers' Share of
5 Payroll Taxes six (6) months after the Effective Date. SA, ¶ 12.8.

6 The Parties estimate the Net Settlement Amount ("NSA") as follows:

7	Maximum Settlement Amount:	\$595,000.00
8	PAGA Payment	-\$25,000.00
	Class Representative Enhancement Awards (estimated)	-\$10,000.00
9	Settlement Administration Costs (estimated)	-\$17,000.00
	Class Counsel's Attorneys' Fees (estimated)	-\$198,313.50
10	<u>Class Counsel Litigation Costs (estimated)</u>	<u>-\$30,000.00</u>
11	Net Settlement Amount (estimated)	\$314,686.50

12 There are 668 Class Members, resulting in an average net settlement payment of approximately
13 \$471.09 per Class Member. In addition, 25% of the PAGA Payment, or \$6,250, will be distributed
14 to PAGA Members. As further discussed below, these are substantial payments for claims of the
15 nature alleged and associated risks.

16 **3. Individual Settlement Payments**

17 To calculate Individual Class Payments, the Settlement Administrator will first calculate the
18 aggregate number of Workweeks that all Class Members worked during the Class Period. SA, ¶ 12.7.
19 The value of each Workweek will be determined by dividing the NSA by the aggregate number of
20 Workweeks worked by all Class Members ("Workweek Value"). *Id.* Each Class Member's payment
21 will then be calculated by multiplying the total number of his or her workweeks by the Workweek
22 Value. *Id.*

23 To calculate a PAGA Member's individual PAGA payment, the Settlement Administrator
24 will calculate the total number of PAGA Pay Periods worked by each PAGA Member during the
25 PAGA Period and the aggregate total number of PAGA Pay Periods worked by all PAGA Members
26 during the PAGA Period. SA, ¶ 12.6. The Settlement Administrator will use the following formula
27 to calculate each PAGA Member's individual PAGA payment: The \$6,250 amount, or other amount
28 approved by the Court that is 25% of the PAGA Payment, will be divided by the aggregate total

number of PAGA Pay Periods of all PAGA Members worked during the PAGA Period, resulting in the “PAGA Pay Period Value.” *Id.* Each PAGA Member’s individual PAGA payment will be calculated by multiplying each individual PAGA Member’s total number of PAGA Pay Periods worked during the PAGA Period by the PAGA Pay Period Value.

The Settlement Administrator will determine each Participating Class Member’s and/or PAGA Member’s Individual Settlement Payment by adding, as applicable, each Participating Class Member’s and/or PAGA Member’s Individual Class Payment and/or individual PAGA payment. SA, ¶¶ 1.22, 1.23, 4.

For tax reporting purposes, the Settlement provides that ten percent (10%) of each Individual Class Payment will be considered taxable wages and will be reported as such to each Settlement Class Member on an IRS Form W-2. SA, ¶ 12.9. The Parties agree that ninety percent (90%) of each Individual Class Payment will be considered interest and penalties and will be reported as such to each Settlement Class Member on an IRS Form 1099 (if required). *Id.* The Parties agree that one hundred percent (100%) of each individual PAGA payment will be considered penalties and will be reported as such to each PAGA Member on an IRS Form 1099 (if required). *Id.*

Because no claim forms are required, checks will be mailed to all Participating Class Members and/or PAGA Members. Because the GSA is non-reversionary, the entire NSA will be disbursed to Participating Class Members and/or PAGA Members. *See* SA, ¶ 12.1.

4. Requests for Exclusion and Objection Procedure

Class Members will have forty-five (45) days from the mailing of the Class Notice (the “Response Deadline”) to mail a dispute, Request for Exclusion, or Notice of Objection to the Settlement back to the Settlement Administrator. SA, ¶¶ 1.39, 1.40, 6, 7, 8, 9; *see also id.* at ¶¶ 1.40, 6 (extending Response Deadline by 15 days for any Class Member whose Class Notice is returned as undeliverable and mailed again by the Administrator to an updated address). Class Members shall have no right to opt-out of the PAGA component of the Settlement. SA, ¶ 5. The Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval (“Class Notice”) explains to Class Members that they may not exclude themselves from the PAGA component of the Settlement. SA, Ex. 1 at p.2.

Class Members who wish to opt-out must submit their Request for Exclusion in writing by the Response Deadline, but must sign and date their request and must include their name, address, telephone number, and a statement that they wish to be excluded from the Settlement. SA, ¶ 8.

Any Class Member who has not timely sought exclusion from the Class may object to the Settlement by submitting a valid written objection by the Response Deadline and/or by appearing at the Final Approval Hearing to object in person. SA, ¶ 7.

5. The Releases

As of the Effective Date, each Participating Class Member shall release the Released Parties from the Participating Class Members' Released Claims for the Class Period, and all PAGA Members shall release the Released Parties from the PAGA Members' Released Claims only for the PAGA Period. SA, ¶¶ 3.1, 3.2.

The Participating Class Members' Released Claims are defined as follows:

all debts, liabilities, demands, actions, causes of action and/or claims that were alleged or that reasonably could have been alleged based on the facts asserted in the Second Amended Class Action Complaint filed by Plaintiff in the Action arising at any time during the Class Period including, but not limited to claims for: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to authorize and permit rest periods or pay all rest period premium pay at the proper rate; (4) failure to authorize and permit meal periods or pay all meal period premium pay at the proper rate; (5) failure to reimburse all necessary business expenses (including, but not limited to, data, internet, cell phone, mileage, gas, and vehicle expenses); (6) failure to provide accurate, itemized wage statements, including statutory wage statement penalties; (7) failure to pay wages timely during employment; (8) failure to pay final wages timely due at separation, including statutory waiting time penalties; (9) claims brought under Business & Professions Code section 17200, et seq., including, but not limited to all claims for unfair, unlawful and harmful conduct to class members, the general public, and Defendants' competitors, and claims of unlawfully gaining an unfair advantage over other businesses; and (10) any claims for statutory penalties, interest and attorneys' fees; and costs arising out of the facts asserted in the Second Amended Class Action Complaint and the aforementioned causes of action.

SA, ¶ 3.1; *see also id.* ¶ 1.38 (defining Released Parties).

The PAGA Members' Released Claims are defined as

[A]ll liability, causes of action and and/or claims for civil penalties

arising or accruing under PAGA during the PAGA Period that were alleged or reasonably could have been alleged based on the facts and legal theories alleged in Plaintiff's March 30, 2021 PAGA Notice, Plaintiff's May 12, 2021 amended PAGA Notice, and the Second Amended Class Action Complaint, including, but not limited to, alleged violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1102.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198.1, 1198, 1198.5, 2699 et seq., and 2802; and shall further release the Released Parties from any claims and/or liability for interest and all attorneys' fees and costs available under PAGA arising out of the facts asserted in the Second Amended Class Action Complaint for the aforementioned Labor Code violations.

SA, ¶ 3.2; *see also id.* ¶ 1.38 (defining Released Parties). Only the Plaintiff will provide a general release and waiver of Civil Code Section 1542. SA, ¶ 3.3. All releases provided for by the Settlement become effective on the Effective Date, and will be subject to Defendants' payment of the Settlement Amount. SA, ¶¶ 3.1-3.3.

6. Treatment of Uncashed Settlement Checks

Settlement checks will be negotiable for 180 days. The Settlement Administrator will transmit the sum of uncashed settlement payments, if any, to the Controller of the State of California to be held pursuant to the Unclaimed Property Law in the names of those Participating Class Members and/or PAGA Members who did not cash their settlement checks until such time they claim their property. *See* Civ. Proc. Code § 1500, *et seq.* SA, ¶ 12.8(d). This disposition results in no "unpaid residue" under Civil Procedure Code Section 384 because the entire NSA will be paid out to Participating Class Members and/or PAGA Members, whether or not they all cash their settlement checks. *See id.*

III. THE CLASS SHOULD BE CONDITIONALLY CERTIFIED

Certification is appropriate when there exists "an ascertainable and sufficiently numerous class, a well-defined community of interest, and substantial benefits from certification that render proceeding as a class superior to alternatives." *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1021. As the Supreme Court has noted, "[c]laims alleging a uniform policy consistently applied to a group of employees in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for class treatment." *Id.* at 1033. This is exactly such a case.

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1 **A. The Class is Ascertainable**

2 A class is “ascertainable when it is defined ‘in terms of objective characteristics and common
3 transactional facts’ that make ‘the ultimate identification of Class Members possible when that
4 identification becomes necessary.’” *Noel v. Thrifty Payless, Inc.* (2019) 7 Cal. 5th 955, 974 (citation
5 omitted). The ascertainability requirement is met where Class Members “may be readily identified
6 without unreasonable expense or time by reference to official records.” *Id.* (citing *Rose v. City of*
7 *Hayward* (1981) 126 Cal. App. 3d 926, 932). Here, the Class Members can be ascertained from
8 Defendants’ payroll, time, and other similar employment records. Ascertainability is satisfied.

9 **B. The Class is Numerous**

10 The numerosity requirement is satisfied where it would be impracticable to bring all of the
11 potential Class Members before the Court. *See, e.g., Hebbard v. Colgrove* (1972) 28 Cal. App. 3d
12 1017, 1030 (holding that twenty-eight members sufficient to maintain class action). Here, the
13 proposed Class consists of approximately 668 Class Members. Numerosity is satisfied.

14 **C. The Community of Interest Requirements Are Met**

15 The community of interest requirement has three essential elements: “(1) predominant
16 common questions of law or fact; (2) class representatives with claims or defenses typical of the
17 class; and (3) class representatives who can adequately represent the class.” *Brinker*, 53 Cal. 4th at
18 1021. Each of these criteria is met here.

19 **1. Predominant Questions of Law and Fact Exist**

20 The predominance requirement is satisfied when questions of law or fact common to the class
21 predominate over individual questions. *Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 435. While
22 the predominance element is extremely important in a disputed class certification motion, courts
23 apply a “lesser standard of scrutiny for settlement cases” where the court does not need to consider
24 whether the lawsuit is manageable for trial. *See Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th
25 1794, 1807 n.19. Here, the predominance factor is met because each claim challenges an alleged
26 common policy or practice that Plaintiff contends is illegal as to Plaintiff and all Class Members. *See*
27 *generally* SAC. These sorts of claims are commonly held to be proper for class certification. *See,*
28 *e.g., Williams v. Superior Court* (2013) 221 Cal. App. 4th 1353, 1371 (certifying class based on

uncompensated work time).

2. Typicality Is Satisfied

Typicality “requires a showing that the class representative has claims or defenses typical of the class.” *See, e.g., Fireside Bank v. Superior Court* (2007) 40 Cal. 4th 1069, 1089. Typicality is satisfied where the plaintiff’s claims are “reasonably co-extensive” with absent Class Members’ claims. *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1020. “[I]t has never been the law in California that the class representative must have identical interests with the class members.” *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46. Here, Plaintiff’s claims are typical of those held by the other Class Members. Defendants employed Plaintiff and other Class Members as non-exempt employees, and subjected Plaintiff and other Class Members to the same wage and hour policies. Plaintiff’s claims and alleged injuries arise from the same facts and legal theories as the Class Members’ claims. Typicality is satisfied.

3. Adequacy Is Satisfied

The adequacy requirement examines conflicts of interest between named parties and the class they seek to represent. *See Capital People First v. State Dept. of Developmental Services* (2007) 155 Cal. App. 4th 676, 697. Here, Plaintiff and Plaintiff’s counsel will adequately represent the Class Members, and there are no conflicts between Plaintiff and the Class. Custis Decl., ¶ 22; Jackson Decl., ¶¶ 11-17. Plaintiff’s counsel have extensive experience litigating complex class actions, including wage and hour class actions. Custis Decl., ¶¶ 7-22; *see also McGhee v. Bank of America* (1976) 60 Cal. App. 3d 442, 450 (finding adequacy satisfied where there was no indication that plaintiff’s counsel was not qualified and the named plaintiff had no interests antagonistic to those of the proposed class).

D. Superiority Is Satisfied

A class action is superior to a multitude of individual lawsuits. Given the size and amount of each individual Class Member’s claim, Class Members likely have little incentive to litigate their claims on an individual basis because the out-of-pocket expense necessary to litigate each claim outweighs any potential recovery. *See also Martinez v. Joe’s Crab Shack Holdings* (2014) 231 Cal. App. 4th 362, 367 (“Litigation by class action has long been recognized as a superior method of

1 resolving wage and hour claims in California.”).

2 **IV. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**

3 **A. Standard for Preliminary Approval of Settlement**

4 A class action may not be dismissed, compromised, or settled without approval of the Court.
5 Cal. R. Ct. 3.769. The Court’s role in evaluating a proposed settlement is limited to ensuring that the
6 agreement taken as a whole is fair and is within the range of reasonableness. *See Hanlon*, 150 F.3d
7 at 1027; *see also Moniz v. Adecco USA Inc.*, (2021) 72 Cal.App.5th 56, 77 (“a trial court should
8 evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of
9 PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize
10 enforcement of state labor laws”). All the criteria for preliminary approval are satisfied here.

11 **B. The Settlement Is Entitled To A Presumption of Fairness**

12 A presumption of fairness exists where: (1) the settlement is reached through arm’s-length
13 negotiations; (2) investigation and discovery are sufficient to allow counsel and the court to act
14 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
15 small. *Dunk*, 48 Cal. App. 4th at 1802. The first three of these factors apply at the preliminary
16 approval stage.

17 **1. The Settlement is the Product of Arm’s-Length Negotiations**

18 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a
19 proposed settlement’s fairness.” *State v. Levi Strauss & Co.* (1986) 41 Cal. 3d 460, 482. Courts
20 presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the
21 contrary is offered; thus, there is a presumption that settlement negotiations are conducted in good
22 faith. *Newberg on Class Actions* § 11.51 (“Newberg”) (5th ed. 2011).

23 Here, as detailed above and in the Custis Declaration, the Settlement is the product of
24 extensive arm’s-length negotiations carried out in an adversarial context. Custis Decl., ¶ 36. In July
25 2022, the Parties participated in a mediation with Hon. Rita Miller (Ret.). *Id.* However, that mediation
26 was unsuccessful. In December 2023, the Parties participated in second mediation with Ann
27 Kotlarski, Esq., who is also a skilled and experienced mediator of employment cases including wage
28 and hour class actions. *Id.*; *see also Satchell v. Fed. Express Corp.* (N.D. Cal. Apr. 13, 2007), Nos.

C03-2659 SI, 2007 WL 1114010, at *4 (“The assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive.”); *In re Bluetooth Headset Prods. Liab. Litig.* (9th Cir. 2011) 654 F.3d 935, 948 (presence of a neutral mediator is a factor weighing in favor of a finding of non-collusiveness). Following the December 2023 mediation session, the Parties accepted the mediator’s proposal to resolve the action. The Parties continued to engage in extensive post-mediation settlement negotiations regarding settlement terms over several months. The Parties also exchanged drafts of the settlement documents before agreeing on the final form of the Settlement Agreement. The negotiations were at all times adversarial and at arm’s length. *Id.*

2. Investigation and Discovery Were Sufficient To Evaluate Risks

As detailed above and in the Custis Declaration, the investigation and discovery were sufficient to permit counsel and the Court to evaluate risk intelligently. Custis Decl., ¶¶ 30-35.

3. Plaintiff’s Counsel Is Experienced In Similar Litigation

Plaintiff’s counsel has substantial experience litigating wage and hour class actions and representative actions. Custis Decl., ¶¶ 7-22.

C. The Proposed Settlement is Fair, Adequate and Reasonable

When determining a settlement’s fairness at preliminary approval, courts consider: “the strength of Plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and views of counsel . . .” *Dunk*, 48 Cal. App. 4th at 1801. “The list of factors is not exclusive and the Court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 245. Application of the *Dunk* factors here demonstrates the proposed settlement is fair, adequate and reasonable.

1. The Strength of Plaintiff’s Case

Although Plaintiff maintains that her claims are meritorious, Plaintiff acknowledges there are substantial risks and uncertainty in proceeding with class certification and eventual trial on the merits. Custis Decl., ¶ 39. As described below, Defendants could present multiple defenses to Plaintiff’s claims, both on the merits and to class certification. *Id.* Given those issues, Plaintiff and Class

Counsel concluded that the non-reversionary Settlement of \$595,000 was fair, reasonable and adequate, and ensured that the Class was left with a substantial recovery. Custis Decl., ¶ 39, Jackson Decl. ¶ 14. Thus, while Plaintiff was prepared to litigate the claims through class certification and ultimately trial, success was far from certain. *Id.*

2. Risk, Expense, Complexity and Duration of Further Litigation

If the case had not settled, Plaintiff would anticipate two to three years of additional litigation, including Plaintiff's motion for class certification. Custis Decl., ¶ 40. Both Parties would also engage in extensive formal discovery including depositions of Plaintiff, Defendants' persons most knowledgeable and each Party's experts. *Id.* If Plaintiff's certification motion were granted, the Parties would incur more attorneys' fees and costs through a possible decertification motion, trial, and possible appeals. *Id.* This settlement avoids those risks and the accompanying expense.

3. Risk of Maintaining Class Action Status

Plaintiff has not yet moved for class certification. While Plaintiff maintains that the requirements of class certification are met, Defendants invariably will proffer various arguments why class treatment is not appropriate, including, but not limited to, that individualized issues among Class Members predominate over common ones. As detailed in the Custis Declaration, Defendants also would have challenged class certification on the basis that Class Members, or a large percentage of Class Members, had entered into valid and enforceable arbitration agreements that contain class action waivers following this Court's denial of Defendants' motion to compel arbitration on October 7, 2021. Custis Decl., ¶ 41; *see also id.* ¶¶ 27-28. Absent settlement, there was a risk that Plaintiff could not certify a class before trial, or if a class were certified, that it would consist of a substantially smaller group of employees than the proposed Class, and the expected recovery would be significantly reduced. Custis Decl., ¶ 41. If Defendants defeated Plaintiff's certification motion, there would be no class wide relief whatsoever. *Id.* Thus, this factor supports preliminary approval.

4. Amount Offered in Settlement Given the Realistic Value of the Claims

"The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 130. In connection with mediation, Plaintiff conducted an exposure analysis, which is

1 detailed below. Custis Decl., ¶¶ 42-60. Based on that analysis, Plaintiff predicted the realistic total
2 class-wide recovery on the Class and PAGA claims would be in the aggregate \$2,540,814, as follows:

3 **Minimum Wage Claim:** Plaintiff alleges that Defendants required Class Members to work
4 off-the-clock by conducting charting and other work-related activities and business related
5 communications off the clock, by driving between appointments with clients, as well as by attending
6 training programs off the clock. Custis Decl., ¶ 43. Based on Class Counsel’s investigation and
7 interviews with Plaintiff and putative Class Members, Plaintiff estimated that, on average, Class
8 Members spent: (a) 45 minutes each shift/work day conducting charting and other work-related
9 activities and business related communications off the clock; and (b) 30 minutes each shift/work day
10 driving between appointments while off-the-clock. Plaintiff also estimated that each Class Member
11 worked 40 hours off-the-clock to complete required training programs. Plaintiff further calculated
12 the average minimum wage during the Class Period as \$13.00. Class Counsel calculated the potential
13 maximum exposure on the minimum wage claim as \$6,082,214, arrived at as follows: \$13.00/hour *
14 233,931.3 off the clock hours = \$3,041,107, plus \$3,041,107 in liquidated damages. Custis Decl., ¶
15 43. That is full value.

16 Defendants would make several arguments to defeat the minimum wage claim. First,
17 Defendants would argue that any claim for unpaid minimum wages based on off-the-clock work
18 could not be certified because individual issues will predominate, requiring an employee-by-
19 employee inquiry of who worked off the clock, how long they worked, and whether Defendants knew
20 or should have known of the off-the-clock work. Defendants maintained there was variation in the
21 circumstances that could allegedly cause employees to perform work off the clock, which would
22 require an unmanageable series of mini-trials to determine how much time was spent by each Class
23 Member off the clock, if any. Second, Defendants would contend that Class Members were
24 compensated for “drive time” throughout the Class Period and that no class-wide method exists to
25 determine how much, if any, uncompensated drive time any particular Class Member may have had.
26 Custis Decl., ¶ 44.

27 Third, Defendants would also defend against the unpaid minimum wage claim by relying on
28 policies that prohibited Class Members from engaging in off-the-clock work. Finally, Defendants

1 also contend that Plaintiff would face significant hurdles to certification given that, after this Court
2 denied Defendants' motion to compel Plaintiff's claims to arbitration on October 7, 2021, all Class
3 Members then or thereafter employed signed arbitration agreements with class action waivers as a
4 condition of their employment, which if enforceable could convert a putative class action (with the
5 potential for class-wide damages) into hundreds of individual disputes and actions—effectively
6 forcing Class Members to retain their own counsel and proceed on the basis of individual claims
7 only. Plaintiff discounted the maximum exposure by 75% for a risk of non-certification, and an
8 additional 50% for a risk of being unsuccessful on the merits, to arrive at an estimated realistic
9 recovery of \$760,277. Custis Decl., ¶ 45.

10 **Overtime Claim:** Plaintiff's overtime claim is based on the same off-the-clock work
11 allegations underlying the minimum wage claim. However, based on Class Counsel's expert's
12 analysis of the sampling of Class Members' time records, only 8.7% of the shifts worked by Class
13 Members were eight or more hours in length. Because Class Members had so few overtime
14 violations, Plaintiff concluded that the overtime class could not be certified because individual issues
15 predominated. As a result, Plaintiff estimated that the estimated realistic recovery for the overtime
16 claim was zero. Custis Decl., ¶ 46.

17 **Rest Period Premium Wages:** Plaintiff alleges that Defendants failed to authorize and
18 permit all legally-compliant rest periods throughout the Class Period because Class Members were
19 unable to take off-duty rest periods when they were working with clients and Class Members had to
20 complete charting and/or drive during the time between appointments. Custis Decl., ¶ 47. According
21 to Defendants, the average hourly rate for Class Members for the Class Period was \$23.44. *Id.* Based
22 on Class Counsel's expert's analysis of the sampling of Class Members' time records, Plaintiff
23 estimates that there were approximately 115,951 non-compliant rest periods during the Class Period.
24 *Id.* Therefore, Plaintiff calculated Defendants' maximum exposure on this claim at \$2,821,088
25 (115,951 non-compliant rest periods * \$24.33 rest period premium). *Id.* That is full value. However,
26 Defendants assert that they maintained compliant rest period policies throughout the Class Period,
27 and authorized and permitted all rest periods to Class Members. *Id.* Further, Defendants contend that
28 this claim is not amenable to class treatment because individualized inquiries would be required to

determine which employees failed to take rest periods, and the reasons why each employee failed to take a rest period on a particular shift. *Id.* To account for Defendants’ defenses that could reduce damages or preclude certification of this claim, Plaintiff discounted Defendants’ maximum exposure by 75% to account for the risk of non-certification, and an additional 50% to account for Defendants’ defenses on the merits, to arrive at an estimated realistic recovery of \$528,924. *Id.*

Meal Period Premium Wages: Like the rest period claim, Plaintiff alleges that Defendants failed to authorize and permit all legally-compliant meal periods throughout the Class Period because Class Members were unable to take off-duty meal periods when they were working with clients and Class Members had to complete charting and/or drive during the time between appointments. Based on Class Counsel’s expert’s analysis of the sampling of Class Members’ time records, Plaintiff estimate that there were approximately 71,884 non-compliant meal periods during the Class Period. Custis Decl., ¶ 48. Therefore, Plaintiff calculated Defendants’ maximum exposure under this theory of liability at \$1,748,938 (71,884 non-compliant meal periods * \$24.33 meal period premium). *Id.*

However, Defendants claim that they maintained legally-compliant meal period policies throughout the Class Period. Custis Decl., ¶ 49. Defendants also contend that this claim would not be certified due to the lack of any common evidence tying together the reason that Class Members experienced a meal period violation. *Id.* Lastly, Defendants would likely assert that, if meal periods were late, missed or short, individual issues predominate precluding class certification because Class Members may have voluntarily skipped a meal period and/or taken a late or short meal period. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040 (holding that “the employer is not obligated to police meal breaks and ensure no work thereafter is performed”). Defendants contend that the issue of voluntary waiver would necessarily devolve into a series of individualized mini-trials, precluding class certification. *See Duran*, 59 Cal.4th at 25 (holding that the defendant must be provided an opportunity to litigate affirmative defenses, even when they turn on individual questions). In light of these defenses and arguments, Plaintiff discounted Defendants’ maximum exposure by 75% for the risk of non-certification, and an additional 50% to account for Defendants’ defenses on the merits, to arrive at an estimated realistic recovery of \$218,617. Custis Decl., ¶ 49.

1 **Unpaid Reimbursements:** Plaintiff alleges that Defendants required Class Members use
2 their own computers and/or personal Internet data plans, and their own vehicles for work purposes,
3 but failed to reimburse them for the use of their personal computers, personal Internet data plan, and
4 personal vehicles. Based on interviews with Plaintiff and putative Class Members, Plaintiff estimates
5 that Class Members incurred on average \$17.31 in unreimbursed business expenses each workweek.
6 Class Counsel calculated the total potential exposure for unreimbursed business expenses as
7 \$697,558 (40,298 workweeks * \$17.31 average unreimbursed expenses). Custis Decl., ¶ 50. That is
8 full value.

9 Among other defenses, Defendants contend that Class Members were not required to use their
10 own computers or personal internet data plans because Defendants provided Class Members with
11 their company tablets and Class Members could use the internet plans at the homes of their clients.
12 Defendants also contend that Defendants implemented a policy to reimburse employees for the use
13 of their personal vehicles prior to June 2021, and, thus, that the relevant period for violations, if any,
14 was substantially less than the Class Period. Custis Decl., ¶ 51. Defendants also contend that the
15 Labor Code only requires reimbursement of “necessary” expenses—as opposed to any expense that
16 is incurred in the course of performing work—and argue that distinguishing a necessary expense
17 from an unnecessary one would require individualized inquiry. Defendants also maintained that
18 given the wide variety of telephone plans, providers and costs creates evidentiary complexities on an
19 individual basis, let alone class-wide. Furthermore, whether or not an expense was necessary, would
20 depend, in part, on the reasonableness of the employee’s choice, and whether or not an expense was
21 incurred, would have to be established by way of extensive individual factual inquiry and/or
22 statistical evidence. To account for Defendants’ defenses that could reduce damages or preclude
23 certification of this claim, Plaintiff reduced this damage exposure by 75% resulting in an estimated
24 realistic recovery of \$174,390. Custis Decl., ¶ 51.

25 **Accurate Wage Statements:** Plaintiff contends that, as a result of the foregoing Labor Code
26 violations, Defendants issued inaccurate wage statements. Custis Decl., ¶ 52. Plaintiff’s analysis
27 reveals there were approximately 10,782 wage statements issued to 403 Class Members during the
28 liability period. *Id.* Therefore, Plaintiff calculates Defendants’ maximum exposure for this claim at

1 \$1,058,050, arrived at as follows: (403 initial violations * \$50 for initial penalty = \$20,150) + (10,379
2 subsequent violations * \$100 subsequent violation penalty = \$1,037,900) = \$1,058,050. *Id.*; *see also*
3 Labor Code § 226(e) (providing for \$50 penalty for “initial” violations and \$100 for subsequent
4 violations). That is full value.

5 Based on Defendants’ arguments that: (i) no violations occurred; (ii) any alleged violations
6 were not “knowing and intentional” as required by Labor Code § 226(e); (iii) no actual injury was
7 suffered; and (iv) that its wage statements always accurately reflected hours worked and amounts
8 paid to employees, *see Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, 1336-37
9 (agreeing with employer’s “commonsense position that the pay stubs were accurate in that they
10 correctly reflected the hours worked and the pay received), Plaintiff discounted the calculated
11 maximum exposure by 75% for a risk of non-certification, and an additional 50% for a risk of being
12 unsuccessful on the merits, to arrive at an estimated realistic recovery of \$132,256. Custis Decl., ¶
13 53.

14 **Waiting Time Penalties:** Plaintiff contends that all Class Members whose employment with
15 Defendants ended between April 1, 2020 and the end of the Class Period are entitled to a derivative
16 “waiting time” penalty under Labor Code Section 203 as a result of Defendants’ failure to pay all
17 wages due and owing at the end of employment. The average hourly rate for those Class Members
18 was \$24.33. Custis Decl., ¶ 54. Based on the Class Data provided by Defendants and Class Counsel’s
19 extrapolation through the end of the Class Period, there are approximately 450 Class Members whose
20 employment with Defendants ended during the Class Period. Class Counsel’s expert also concluded
21 that the average length of the Class Member’s shifts each work day was 4.56 hours. Plaintiff’s
22 counsel calculated the total potential exposure for waiting time penalties as \$1,497,755, arrived at as
23 follows: 450 employees * \$24.33/hour * 4.56 hours * 30 days. That’s full value. However,
24 Defendants argued that Class Members could only recover waiting time penalties if they was able to
25 establish an entitlement to the underlying wages. Defendants also argued that they attempted to pay
26 employees all final wages owed in good faith upon their separation, therefore precluding the finding
27 of willfulness necessary to obtain waiting time penalties. *See* Cal. Code Regs. tit. 8, § 13520. Plaintiff
28 discounted the calculated maximum exposure by 75% for a risk of non-certification, and an

1 additional 50% for a risk of being unsuccessful on the merits, to arrive at an estimated realistic
2 recovery of \$187,219. *Id.*

3 **PAGA Claim:** The success of Plaintiff’s PAGA claim is wholly dependent upon the success
4 of their underlying claims occurring within the statute of limitations period applicable to the PAGA.
5 Defendants maintained and continue to maintain that they had legally compliant employment policies
6 and practices throughout the statutory period. Custis Decl., ¶ 55. Defendants denied and continue to
7 deny that they ever violated any provision of the Labor Code and argued that, even assuming such
8 violations occurred, Defendants will not be treated as having engaged in subsequent violations giving
9 rise to heightened penalties. In other words, Defendants argued that heightened civil penalties for
10 subsequent violations would not be assessed unless it could be shown that Defendants had notice that
11 they were violating the law, *e.g.*, they had been cited by a labor agency or adjudged by a court to
12 have done so. *See, e.g., Amaral v. Cintas Corp.* (2008) 163 Cal.4th 1157, 1209. Thus, Defendants
13 contended that, at best, even if a violation giving rise to a penalty was shown for each pay period,
14 only the lower civil penalty associated with initial violations would apply. *Id.*

15 There are 10,782 pay periods at issue in the relevant PAGA period, according to the Class
16 Data. Assuming that each pay period triggers PAGA penalties, and that PAGA penalties for the
17 minimum wage, meal period, rest period, wage statement, and unreimbursed business expenses
18 claims may be “stacked,” the maximum potential exposure was estimated to be approximately
19 \$5,391,000, arrived at by multiplying 10,782 pay periods by the \$100 default civil penalty by five
20 Labor Code violations. Custis Decl., ¶ 56. That amount, however, assumes 100% liability throughout
21 the PAGA Period. Defendants would have presented a number of defenses to the PAGA claim. As
22 with the other claims, Defendants would argue that Plaintiff would not be able to establish the
23 underlying Labor Code violations, and therefore would not be able to recover any PAGA civil
24 penalties. Defendants would also assert that, before a PAGA claim could be tried, the Court would
25 have to be satisfied that the adjudication of the PAGA claim, based on a theory of uniform wage and
26 hour practices relating to a large group of aggrieved employees, is sufficiently “manageable” so as
27 not to interfere with Defendants’ right to due process. Defendants also would contend that
28 employees’ job duties and work hours varied. Defendants also would argue that there was variation

as to employees’ job duties, work hours, and the circumstances that could allegedly cause employees to work off the clock or to be deprived of the opportunity to take legally compliant, duty-free meal and/or rest breaks. Defendants would also argue that it is inappropriate to stack the civil penalties for the minimum wage, meal period, rest period, and wage statement claims because those claims all derive from the similar wrong of allegedly requiring Class Members to work off the clock.

Defendants would further argue that, even if Plaintiff was able to establish the underlying Labor Code violations, the Court possesses the ability to significantly reduce any PAGA civil penalties that may be awarded. Custis Decl., ¶ 57; *see also* Labor Code §2699(e)(2) (the Court may “award a lesser amount than the maximum civil penalty amount [authorized by PAGA] if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal. App. 4th 1112, 1135 (affirming reduction of PAGA penalties).

Further, aggrieved employees would only be entitled to 25% of any resulting award in the highly unlikely event that Plaintiff could successfully obtain a judgment for Defendants’ total estimated exposure. After taking these factors into consideration, Class Counsel applied discounts for the risks in establishing manageability and possible bifurcation of discovery and/or trial, the risks regarding success on the merits and establishing liability, and the risks with proving the extent of penalties that are warranted and possible discretionary reduction of penalties by the Court. In total, Class Counsel discounted the PAGA claim by 90%, resulting in an estimated realistic recovery of \$539,100. Custis Decl., ¶ 58.

The proposed settlement of \$595,500 thus represents approximately 23.4% of the predicted realistic total class-wide recovery of \$2,540,814, which is a very good result in light of the cumulative risks discussed in detail above. Custis Decl., ¶ 59.

Preliminary approval is appropriate since the actual settlement value of \$595,000 falls well within the range of reasonableness, and is thus fair, adequate and reasonable, especially in light of the risks highlighted above regarding Defendants’ post-October 7, 2021 arbitration agreements, and the likelihood that Plaintiff and the Class could be left with zero recovery. “The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean

that the proposed settlement is grossly inadequate and should be disapproved.” *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 (internal quotations omitted); *see, e.g., Altamirano v. Shaw Industries, Inc.* (N.D. Cal. 2015) 2015 WL 4512372, at *9 (preliminarily approving wage and hour class action settlement stating, “[a]lthough 15% represents a modest fraction of the hypothetical maximum recovery estimated by Plaintiff, that figure is sufficient for the Court to grant preliminary approval given the merits of Plaintiff’s claims.”). Taking into account the risk of non-certification, failure to prevail on the merits, and the Court’s power to reduce the civil penalties, the proposed settlement falls within the realm of being fair, reasonable, and adequate.

5. Discovery Completed and the Status of Proceedings

As detailed above and in the Custis Declaration, Plaintiff’s counsel engaged in extensive investigation and discovery before and after mediation. Custis Decl., ¶¶ 30-35.

6. The Experience and Views of Counsel

“Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Plaintiff is represented by competent and experienced counsel who pressed Plaintiff’s claims forward against reputable defense counsel well versed in class actions and employment litigation. Plaintiff’s counsel possesses extensive experience litigating wage and hour class actions and representative actions. Custis Decl., ¶¶ 7-22. Based on that experience, Plaintiff’s counsel believes that the settlement is fair, reasonable and adequate. Custis Decl., ¶ 38.

For all of these reasons, application of the *Dunk* factors weighs heavily in favor of granting preliminary approval to the Settlement.

D. The Court Should Preliminarily Approve The Class Representative’s Service Payment

Service payments “are fairly typical in class action cases.” *In re Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393-94. Service payments “are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private

1 attorney general.” *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958–959.

2 The Settlement provides that the Plaintiff may apply for a service payment to be paid from
3 the GSA in the amount of \$10,000. SA, ¶ 12.3. The request for this payment is disclosed in the
4 proposed Class Notice. As will be fully briefed before the Final Approval Hearing, the requested
5 service award is fair and reasonable compensation for the Plaintiff’s efforts in representing the
6 putative Class and the interests of the State of California, assisting counsel with the litigation and
7 settlement, attending in-person and telephonic meetings with Plaintiff’s counsel to discuss the claims
8 and theories at issue in the litigation, identifying potential witnesses, assisting Plaintiff’s counsel in
9 defending Defendants’ arbitration motion, reviewing drafts of the original complaint, the FAC, the
10 SAC, and Settlement Agreement, and regularly communicating with counsel about the status of the
11 case. Jackson Decl., ¶¶ 3-17. The requested service award is fair and reasonable compensation for
12 the Plaintiff’s efforts because, after this action was filed, Plaintiff believes that Defendants retaliated
13 against her by removing her from the schedule, which constituted a *de facto* and/or constructive
14 termination and required Plaintiff to apply for and receive unemployment benefits. *Id.* at ¶ 16; *see*
15 *also Equal Employment Opportunity Com’n v. Swissport Fueling, Inc.* (D. Ariz. 2013) 916 F.Supp.2d
16 1005, 1030 (“A reduction in hours constitutes an adverse employment action.”).

17 Based on the foregoing, Plaintiff submits that the requested service payment is reasonable
18 and should be preliminarily approved, subject to Court approval at the Final Approval Hearing.

19 **E. The Court Should Preliminarily Approve Class Counsel’s Attorneys’ Fees And**
20 **Costs**

21 The purpose of an attorneys’ fee award in class action litigation is to reward counsel who
22 took the risk of non-payment and invested in a case that achieved a substantial positive result for the
23 Class. California courts routinely award attorneys’ fees equaling one-third or more of the potential
24 value of the common fund. *See classe v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66 n.11 (“Empirical
25 studies show that, regardless whether the percentage method or the lodestar method is used, fee
26 awards in class actions average around one-third of the recovery.”).

27 Here, the Settlement provides that Class Counsel may apply for an award of attorneys’ fees
28 in an amount not to exceed 33.33% of the GSA, or \$193,313.50, and costs not to exceed \$30,000.

SA, ¶¶ 1.5, 12.4. The amount of requested fees and costs is set forth in the proposed Class Notice. In connection with Plaintiff’s Motion for an Award of Attorneys’ Fees and Costs, counsel will address the many reasons why this settlement justifies the requested fees and costs, and will provide additional information so that the Court can conduct a lodestar analysis. Based on the foregoing, Plaintiff submits that the requested attorneys’ fees and costs are reasonable and should be preliminarily approved, subject to Court approval at the Final Approval Hearing.

F. The Court Should Preliminarily Approve the PAGA Penalties

Pursuant to the Settlement, \$25,000 from the GSA shall be allocated to the resolution of the PAGA claim, of which 75% (\$18,750) will be paid directly to the LWDA, and the remaining 25% (\$6,250) will be distributed to PAGA Members. SA, ¶¶ 1.28, 1.31, 12.6. This result was reached after good-faith negotiation between the Parties with input from the mediator. Where PAGA penalties are negotiated in good faith and “there is no indication that [the] amount was the result of self-interest at the expense of other Class Members,” such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) No. CV-08-0844 EDL, 2009 WL 928133, at *9; *see also Nordstrom Com. Cases* (2010) 186 Cal. App. 4th 576, 579 (“[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims.”).

In addition, the amount of the Settlement allocated to PAGA Penalties is also reasonable and fair to those affected because the Settlement provides monetary relief to Participating Class Members. *O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F. Supp. 3d 1110, 1134 (holding that “the purposes of PAGA may be concurrently fulfilled” by a settlement providing substantial monetary relief for the class because “a settlement not only vindicates the rights of the class members as employees, but may have a deterrent effect upon the defendant employer and other employers, an objective of PAGA.”); *Shahbazian v. Fast Auto Loans, Inc.* (C.D. Cal., June 20, 2019, No. 218CV03076ODWKSX) 2019 WL 8955420, at *8 (“[W]here a settlement for a Rule 23 class is robust, the statutory purposes of PAGA may be fulfilled even with a relatively small award on the PAGA claim itself.”). This Settlement is also reasonable and fair to those affected because the entire Settlement of \$595,000, viewed in its totality, furthers “PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.” *See Moniz*, 72

Cal.App.5th at 77. Pursuant to Labor Code § 2699(1)(2), Plaintiff submitted the Settlement along with this Motion to the LWDA on May 31, 2024, and will inform the Court if the LWDA objects to the amount allocated to PAGA penalties. Custis Decl., ¶ 6, Exs. B & C.

G. The Court Should Appoint ILYM Group, Inc. As The Settlement Administrator And Preliminarily Approve The Settlement Administration Costs.

The Parties have agreed to use ILYM Group, Inc. (“ILYM”) to administer the settlement. SA, ¶¶ 1.2, 4.1. ILYM is a reputable class action administrator that has successfully administered class action settlements for more than 14 years. Declaration of Lisa Mullins, ¶ 2, Ex. A. The Settlement provides that the Court will approve the Settlement Administration Costs at the Final Approval Hearing. At this stage, Plaintiff requests that the Court appoint ILYM as the Settlement Administrator and submits that Settlement Administration Costs in the amount of no greater than \$17,000 are reasonable, particularly because this Settlement provides for two distributions of settlement payments to Participating Class Members and PAGA Members. The Settlement Administration Costs in the amount of no greater than \$17,000 should be preliminarily approved, subject to Court approval at the Final Approval Hearing.

V. THE COURT SHOULD ORDER DISTRIBUTION OF THE CLASS NOTICE

The Court should order distribution of the proposed Class Notice to the Class by first-class mail, postage prepaid, using the last known mailing address information provided by Defendants. This manner of providing notice satisfies California law because the notice has “a reasonable chance of reaching a substantial percentage of the Class Members.” *Noel*, 7 Cal. 5th at 984 (citation omitted); *see also* Cal. R. Ct. 3.769(f). Defendants will provide the Class List and Data to the Administrator within 21 calendar days after the Preliminary Approval Date. SA, ¶ 6. The Settlement Administrator will mail the Class Notices to Class Members within 15 days after receiving the Class List. *Id.*, ¶ 6. To the extent any Class Notices are returned as undeliverable, ILYM will run those addresses through the National Change of Address database and/or conduct skip traces to obtain current address information. *Id.* Providing notice in this manner satisfies Rule 3.766(e) as the most reliable, cost-effective method of reaching Class Members.

The content of the proposed Class Notice satisfies Rule 3.766(d) because it advises putative

Class Members of the nature of the claims, basic contentions and denials of the Parties, the key terms of the Settlement, the uniform 45-day deadline to opt-out or object to the Settlement and the procedure by which to do so, explains the formula for calculating Individual Settlement Payments, provides the estimated Individual Settlement Payment for each Class Member, and advises them that they will be bound by the terms of the class settlement if they do not request exclusion. *See* Custis Decl., Ex. 1 to Ex. A (Proposed Class Notice). The proposed Class Notice will also notify Class Members of the Final Approval Hearing date, provide the Class with Class Counsel’s contact information, and advise Class Members that they may enter an appearance through counsel if they wish at the Final Approval Hearing. *Id.* Finally, the proposed Class Notice will be provided to the Class in English, based on Defendants’ representation that all Class Members speak and understand English. Custis Decl., ¶ 68.

To further ensure that Class Members are well informed concerning the Settlement, the Settlement Administrator will also establish a toll-free telephone number through which Class Members may obtain information about the action and the Settlement. SA, ¶ 4.1.2. The Settlement Administrator will also establish both a Settlement website that will inform Class Members of the terms of the Settlement, their rights, dates, deadlines with respect to the Settlement and related information. *Id.* Provided the Court finally approves the Settlement, the Court’s Final Approval Order and Judgment will be posted on the Settlement website. *Id.*

VI. PROPOSED TIMELINE FOR SETTLEMENT

If preliminary approved, the Settlement provides for the following schedule:

Event	Timing
Last day for Defendants to produce the Class List to the Settlement Administrator.	21 calendar days after the Preliminary Approval Date
Last day for the Settlement Administrator to mail Class Notice to Class Members (“Notice Date”).	36 calendar days after the Preliminary Approval Date (or 15 days after receipt of the Class List and Data)
Last day for Class Members to submit Requests for Exclusion or Objections to the Settlement (“Response Deadline”)	45 calendar days after Notice Date
Last day for Settlement Administrator to provide Counsel with Declaration of Due Diligence and Proof of Mailing	21 calendar days before Final Approval Hearing

Event	Timing
Last day for Class Counsel to file the Motion for Final Approval of Class Action Settlement	16 court days before Final Approval Hearing or to be determined by the Court
Last day for Class Counsel to file the Motion for Attorneys' Fees, Costs, and Class Representative Service Award.	16 court days before Final Approval Hearing or to be determined by the Court
Last day for Parties to respond to Notices of Objection, if any	16 court days before Final Approval Hearing or to be determined by the Court
Final Approval Hearing	_____, 202__ at _____ a.m./p.m

VII. CONCLUSION

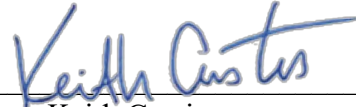
For the foregoing reasons, Plaintiff respectfully requests that the Court grant this Motion, enter the proposed Preliminary Approval Order and set a date for Final Approval Hearing.

Respectfully submitted,

CUSTIS LAW, P.C.

Dated: May 31, 2024

By: _____


Keith Custis

Attorneys for Plaintiff Nina Jackson and the Class

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California; I am over the age of 18 years and not a party to the within action; my business address is 1999 Avenue of the Stars, Suite 110, Los Angeles, California 90067.

On May 31, 2024, I served the foregoing document(s) described as:

**PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL
OF CLASS AND PAGA ACTION SETTLEMENT**

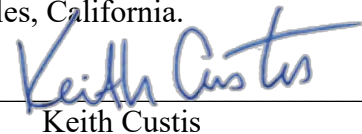
on the interested parties in this action,

Michael Campbell
Greg S. Labate
Bernice Diaz
Sheppard, Mullin, Richter & Hampton LLP
650 Town Center Drive, 10th Floor
Costa Mesa, CA 92626-1993

by sending a true copy thereof to the other interested parties as follows:

- ☐ **(BY PERSONAL SERVICE)** By causing to be delivered the document(s) listed above to the person(s) at the address(es) set forth above.
- ☒ **(BY ELECTRONIC TRANSMISSION THROUGH CASE ANYWHERE):** I caused the foregoing document(s) to be sent to the parties listed on the Electronic Service List maintained by Case Anywhere.
- ☐ **(BY EMAIL)** By electronically mailing a true and correct copy through Custis Law, P.C.'s electronic mail system from kcustis@custislawpc.com to the email addresses set forth above pursuant to Rule 12 of the Judicial Council Emergency Rules and an agreement reached between the parties pursuant to Code of Civil Procedure § 1010.6.
- ☐ **BY OVERNIGHT DELIVERY:** I am readily familiar with the practice of Custis Law, P.C. for collection and processing of correspondence for overnight delivery and know that the document described herein will be deposited in a box or other facility regularly maintained by Federal Express for overnight delivery.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 31, 2024 in Los Angeles, California.


Keith Custis