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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12
13 FOR THE COUNTY OF STANISLAUS

14 BRANDON HAWKINS and BRIAN
15 CANADY, individually and on behalf of all
16 others similarly situated; AMANDA OLVERA
17 and SABRINA MENDIOLA, individually, and
18 on behalf of other members of the general
19 public similarly situated and on behalf of other
20 aggrieved employees pursuant to the California
21 Private Attorneys General Act;

19 Plaintiff,

20 vs.

21 ONTEL SECURITY SERVICES, INC., a
22 California corporation; and DOES 1 through 50,
23 inclusive,

24 Defendants.

Case No. CV-20-005404
Consolidated with Case No. CV-21-002299

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

Date: November 22, 2024
Time: 8:30 a.m.
Dept.: 23

1 Arby Aiwazian (SBN 269827)
Joanna Ghosh (SBN 272479)
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1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on November 22, 2024, at 8:30 a.m., or as soon thereafter
3 as the matter may be heard, before the Honorable John D. Freeland, judge presiding, in
4 Department 23 of the above-referenced Court located at 801 10th Street, Modesto, CA 95354,
5 Plaintiffs Brian Canady ("Canady"), Brandon Hawkins ("Hawkins"), Amanda Olvera ("Olvera"),
6 and Sabrina Mendiola ("Mendiola") (collectively, "Plaintiffs") will seek an Order: (1)
7 preliminarily approving the Joint Stipulation of Class Action and PAGA Settlement and Release
8 of Claims (hereinafter "Stipulation of Settlement," or "Settlement Agreement") attached as
9 **Exhibit 1** to the Declaration of Elizabeth Parker-Fawley, filed herewith; (2) conditionally
10 certifying the following Class for settlement purposes only: "all current and former hourly-paid or
11 non-exempt employees who worked for Defendant in California at any time during the Class
12 Release Period (the time period from and including December 3, 2016, through August 4, 2024)";
13 (3) appointing Plaintiffs as the Class Representatives and William L. Marder of Polaris Law
14 Group, Dennis Hyun of Hyun Legal, APC, Arby Aiwazian, Joanna Ghosh, Elizabeth Parker-
15 Fawley and Ryan Slinger of Lawyers for Justice, P.C. as Class Counsel; (4) preliminarily
16 approving the Settlement and the Maximum Settlement Amount of \$750,000.00; (5) finding on a
17 preliminary basis that the Settlement Agreement appears to be within the range of reasonableness
18 of a settlement, including the Class Representative Service Awards, Class Counsel's fees and
19 costs, the settlement administration fees, and the allocation of Individual Settlement Payments to
20 Settlement Class Members, that could ultimately be given final approval by this Court; (6)
21 approving the Notice of Class and PAGA Action Settlement ("Class Notice" or "Notice of
22 Settlement") to be sent to Class Members, which is attached as an exhibit to the Settlement
23 Agreement; (7) approving the distribution of the Class Notice to Class Members substantially in
24 the manner and form set forth in the Settlement Agreement; (8) appointing Xpand Legal
25 Consulting as the Settlement Administrator; and (9) setting the matter for a Final Fairness and
26 Final Approval hearing.

27

1 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
2 provides for court approval of the settlement of a purported class action and allows the Court to
3 preliminarily certify a class for settlement purposes.

4 The basis for this Motion, filed without any opposition from Defendant Ontel Security
5 Services, Inc. ("Defendant"), is that the proposed settlement is fair, adequate, and reasonable and
6 the procedures proposed by the Parties are adequate to ensure the opportunity of class members to
7 participate in, opt-out of, or object to the settlement.

8 This Motion will be based on the attached Memorandum of Points and Authorities, the
9 Settlement Agreement, the proposed Notice to Class Members, and the supporting Declarations of
10 William L. Marder, Dennis S. Hyun, Elizabeth Parker-Fawley and Plaintiffs, and upon the oral
11 arguments of counsel (should there be any) and on the complete records and file herein.

12
13 DATED: October 14, 2024

POLARIS LAW GROUP

14
15 By: William L. Marder
16 William L. Marder
17 Attorneys for Plaintiffs and the Class
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On December 3, 2020, Plaintiff Brandon Hawkins (“Hawkins”) filed a complaint against
4 Defendant entitled, *Brandon Hawkins v. Ontel Security Services, Inc.*, Stanislaus Superior Court Case
5 No. CV-20-005404 (“*Hawkins* Action”) on behalf of himself and other non-exempt employees who
6 worked for Defendant in California for unpaid wages and penalties for alleged wage and hour violations
7 of the California Labor Code, penalties for wage and hour violations under the California Private
8 Attorneys General Act (“PAGA”), and claims under the Unfair Competition Law (the “UCL”),
9 California Business and Professions Code section 17200, *et seq.* On January 8, 2021, Hawkins filed a
10 First Amended Complaint (“FAC”), which added Brian Canady (“Canady”) as a plaintiff.

11 On April 29, 2021, Plaintiffs Olvera and Mendiola filed their Class Action Complaint against
12 Defendant in a case entitled, *Amanda Olvera, et al. v. Ontel Security Services, Inc.*, Stanislaus Superior
13 Court Case No. CV-21-002299 (“*Olvera* Action”). On June 24, 2021, Plaintiffs Olvera and Mendiola
14 filed a First Amended Complaint to bring Plaintiff Olvera’s claims for Enforcement Under the Private
15 Attorneys General Act, California Labor Code § 2698, Et Seq. against Defendant. On January 5, 2022,
16 Plaintiffs Olvera and Mendiola filed a Second Amended Complaint to bring Plaintiff Mendiola’s claims
17 for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq.
18 against Defendant.

19 On September 23, 2024, Plaintiffs filed a Joint Stipulation to Consolidate Case Numbers CV-20-
20 005404 and CV-21-002299, which the Court signed on the same date. Pursuant to Court’s Order to
21 Consolidate Case Numbers CV-20-005404 and CV-21-002299 which deemed Case Number CV-20-
22 005404 the lead case for case administration and filing purposes.

23 Defendant denies all claims and contentions alleged in the *Hawkins* Action and *Olvera* Action.
24 Defendant maintains that at all times relevant, it properly compensated employees and provided
25 employees with accurate and legally compliant wage statements and all other records as mandated by
26 law, and has otherwise complied with federal and California law in all aspects.

1 Since the filing of this case, the Parties conducted formal discovery, including written discovery
2 and document production. (Declaration of Dennis S. Hyun (“Hyun Decl.”) ¶ 7). On January 13, 2021,
3 Plaintiffs Hawkins and Canady served their First Set of Requests for Production of Documents and
4 Special Interrogatories. (*Id.*) On June 3, 2022, Plaintiffs Olvera and Mendiola each served Defendant
5 with Form Interrogatories--General, Requests for Admission, Requests for Document Production (Set
6 One), Special Interrogatories (Sets One & Two). On July 8, 2022, Defendant replied to the formal
7 discovery served by Plaintiffs Olvera and Mendiola. Additionally, on July 7, 2022, Defendant served
8 Form Interrogatories—General, Request for Document Production and Special Interrogatories Set One
9 on Plaintiffs Olvera and Mendiola. The Parties then engaged in informal discovery and investigation,
10 including the production of documents and class payroll data, from which Plaintiffs’ counsel conducted
11 a damage analysis. (*Id.*) Plaintiffs’ counsel retained an economic expert to review Defendant’s
12 financial condition as well. (*Id.*) Thereafter, the Parties completed private mediation with the Hon.
13 Daniel Buckley (ret.), on August 21, 2023. (*Id.*) However, notwithstanding a full day of negotiations,
14 the Parties could not settle. (*Id.*) The Parties engaged in weeks of continued negotiations through Judge
15 Buckley, at the conclusion of which the Parties accepted Judge Buckley’s proposal and entered into the
16 Joint Stipulation of Class Action and PAGA Settlement and Release of Claims (hereinafter “Stipulation
17 of Settlement,” or “Settlement Agreement”) attached as **Exhibit 1** to the Declaration of Elizabeth
18 Parker-Fawley, filed herewith.

19 The Maximum Settlement Amount is \$750,000.00 (Joint Stipulation of Class Action and PAGA
20 Settlement and Release of Claims (“Settlement Agreement” or “Stipulation”) ¶ I(W)). Class members
21 need not do anything to participate in the settlement and will be automatically included in the Settlement
22 unless he/she opts out of the Settlement. (*Id.* ¶ I(RR)).

23 Although Plaintiffs and their counsel have always believed that they can prevail on class
24 certification, as well as on the merits, they recognize the inherent risk in further drawn-out litigation and
25 the specific risks that a class might not be certified. Based on their own independent investigation and
26 evaluation, the Parties and their respective counsel are of the opinion that settlement for the
27 consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate

1 and is in the best interests of the Class in light of all known facts and circumstances and the expenses
2 and risks inherent in litigation.

3 Therefore, the Parties respectfully request that the Court grant this Motion for Preliminary
4 Approval of Class Action Settlement.

5 **II. DISCUSSION**

6 Any settlement of a class action lawsuit must be reviewed and approved by the Court. This is
7 done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after notice
8 has been distributed to the class members for their comment or objections. The Manual for Complex
9 Litigation (Third) § 30.41 states:

10 Approval of class action settlements involves a two-step process. First, counsel submits
11 the proposed terms of settlement and the court makes a preliminary fairness evaluation.
12 If the preliminary evaluation of the proposed settlement does not disclose grounds to
13 doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of
14 class representatives or of segments of the class, or excessive compensation for attorneys,
and appears to fall within the range of possible approval, the court should direct that
notice ... be given to the class members of a formal fairness hearing, at which arguments
and evidence may be presented in support of and in opposition to the settlement.

15 Thus, the preliminary approval by the trial court is simply a conditional finding that the
16 settlement appears to be within the range of acceptable settlements. As Professor Newberg comments,
17 “[t]he strength of the findings made by a judge at a preliminary hearing or conference concerning a
18 tentative settlement proposal may vary. The court may find that the settlement proposal contains some
19 merit, is within the range of reasonableness required for a settlement offer, or is presumptively valid
20 subject only to any objections that may be raised at a final hearing.” 4 Alba Conte & Herbert B.
21 Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002)

22 The procedures for the parties’ submission of a proposed settlement for preliminary approval by
23 the court also are discussed in 4 *Newberg on Class Actions*:

24 When the parties to an action reach a monetary settlement, they will usually prepare and
25 execute a joint stipulation of settlement, which is submitted to the court for preliminary
26 approval. The stipulation should set forth the central terms of the agreement, including
but not limited to, the amount of settlement, form of payment, manner of determining the
effective date of settlement and any recapture clause.

27 *Id.* at § 11.24.

1 Here, the Parties have reached such an agreement and have concurrently filed the Settlement
2 Agreement fully setting forth the agreement reached among the Parties. The Settlement Agreement sets
3 forth all terms of the agreement reached by the Parties, which include, among other things, the method
4 for calculating the Class Members' Individual Settlement Payments.

5 The parties also may, at the preliminary approval stage, request that the court provisionally
6 approve certification of the class – conditional upon final approval of the settlement. “[P]re-certification
7 settlements are routinely approved if found to be fair and reasonable.” *Wershba v. Apple Computer,*
8 *Inc.*, 91 Cal. App. 4th 224, 240 (2001). *Accord Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1803
9 (1996) (although the settlement was reached before any “adversary certification,” the court was satisfied
10 that it was “fair, adequate and reasonable”); *In re Baldwin-United Corp.*, 105 F.R.D. 475, 478 (S.D.N.Y.
11 1984) (“many courts have employed this practice in the name of judicial efficiency in order to facilitate
12 apparently beneficial settlement proposals”). As further explained by Professor Newberg:

13 The strength of the findings made by a judge at a preliminary hearing or conference
14 concerning a tentative settlement proposal. . . . may be set out in conditional orders
15 granting tentative approval to the various items submitted to the court. Three basic
16 rulings are often conditionally entered at this preliminary hearing. These conditional
17 rulings may approve a temporary settlement class, the proposed settlement, and the class
18 counsel's application for fees and expenses.

19 4 Newberg on Class Actions, at §11.26.

20 In addition to such terms as class identification, settlement amount and payment procedures, the
21 Settlement Agreement reached among the Parties contains a provision pursuant to which the Parties
22 stipulate to the Court's provisional certification of the Class, but do so for the purposes of this settlement
23 only.

24 **A. PROPOSED CLASS DEFINITION**

25 The current settlement is being settled on behalf of “all current and former hourly-paid or non-
26 exempt employees who worked for Defendant in California at any time during the Class Release Period.
27 (Settlement Agreement ¶ I(H)). “Class Release Period” means the time period from and including
28 December 3, 2016, through August 4, 2024.” (*Id.* ¶ I(I)).

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1 Plaintiff alleges that Defendant required its non-exempt California employees to work through
2 meal and rest periods, work off-the-clock, and failed to reimburse business expenses. Courts have held
3 that such claims are aptly suited for class certification. *Abdullah v. U.S. Sec. Assocs.*, 731 F.3d 952,
4 959-60 (9th Cir. 2013); *Faulkinbury v. Boyd & Associates, Inc.*, 216 Cal. App. 4th 220, 238 (2013).

5 Plaintiffs allege that they were subjected to the same alleged violations, such that their claims are
6 typical of Class Members. (Declaration of Brandon Hawkins ("Hawkins Decl.") ¶ 2); Declaration of
7 Brian Canady ("Canady Decl.") ¶ 2; Declaration of Sabrina Mendiola ("Mendiola Decl.") ¶ 2;
8 Declaration of Amanda Olvera ("Olvera Decl.") ¶ 2).

9 Plaintiffs do not have any interests adverse to the class, nor has any such issues been raised or
10 presented. (Hawkins Decl. ¶ 4; Canady Decl. ¶ 4; Mendiola Decl. ¶ 4; Olvera Decl. ¶ 4). Plaintiffs have
11 taken all necessary steps to represent the interests of the Class, by providing information and documents.
12 (Hawkins Decl. ¶¶ 3-5; Canady Decl. ¶¶ 3-5; Mendiola Decl. ¶¶ 3-5; Olvera Decl. ¶¶ 3-5). For such
13 reasons, Plaintiffs have adequately represented the class members and will continue to do so.

14 **2. Class Counsel Have Adequately Represented the Class and Has Experience**
15 **with Wage and Hour Class Actions**

16 From the inception of the case, Class Counsel have solely represented the interest of the class.
17 For example, the discovery exchanged by the parties was directed towards class issues. (Hyun Decl. ¶
18 7). Class counsel also engaged in numerous written and verbal communications with opposing counsel
19 to obtain sufficient class data in order to evaluate that class claims at issue. (*Id.*). The Parties then
20 engaged in informal discovery and investigation, including the production of documents and class
21 payroll data. From there, Plaintiffs' counsel conducted a damage/penalty analysis. (*Id.*) Thereafter, the
22 Parties completed private mediation with the Hon. Daniel Buckley (ret.), on August 21, 2023. (*Id.*)
23 However, notwithstanding a full day of negotiations, the Parties could not settle. (*Id.*) The Parties
24 engaged in weeks of continued negotiations through Judge Buckley, at the conclusion of which the
25 Parties accepted Judge Buckley's proposal and entered into this Settlement. (*Id.*)

1 Finally, Class counsel have been approved as class counsel on a number of prior cases and are
2 competent to represent the class, including in *Magadia*, which was reversed by the Ninth Circuit. (Hyun
3 Decl. ¶¶ 3-6).

4 E. SUPERIORITY

5 Class treatment is clearly superior to any other method of resolving Plaintiff's claims. (*Sav-on*
6 *Drug Stores, Inc.*, *supra*, 34 Cal. 4th 319 at p. 326.) In employment actions, class actions are in fact
7 encouraged. (*Jaimez v. DAIOWS USA, Inc.* (2010) 181 Cal. App. 4th 1286, 1308 ("In light of the
8 numerous common issues of fact and law that predominate in this lawsuit, we conclude that proceeding
9 by way of class action is the superior method of adjudication. Doing so would further judicial economy
10 by avoiding repetitious suits, would unify what would otherwise be a series of small claims so as to
11 enhance the class members' access to redress...").)

12 Here, Plaintiffs' claims are based on system-wide policies, procedures, and practices that apply
13 to all class members and can be most efficiently litigated on a class-wide basis. The alternative would
14 be the unrealistic filing of numerous individual claims. Since the putative class members are employees
15 with relatively modest individual claims and limited resources, there is a strong likelihood that
16 individual claims would never be brought. (*See Local Joint Exec. Bd. of Culinary/Bartender Trust Fund*
17 (9th Cir. 2001) 244 F.3d 1152, 1163; *see also Gentry v. Sup. Ct.* (2007) 42 Cal. 4th 443, 462.)

18 F. SUMMARY OF THE CASE, INVESTIGATION AND DISCOVERY AND 19 REASONABLE ESTIMATE OF THE NATURE AND AMOUNT OF RECOVERY

20 As explained by the Court of Appeal in *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th
21 116, 130, 133 (2008), a class action settlement should be approved when the plaintiff has conducted
22 sufficient investigation and the settlement is reasonable in light of the strengths of the plaintiff's claims.
23 As discussed herein, Plaintiff's counsel has conducted extensive investigation and, in light of the
24 strength and weaknesses of Plaintiff's claims, Plaintiff's attorneys submit that this settlement is fair
25 pursuant to *Kullar*.

26 Plaintiff engaged in formal and informal discovery, engaged in extensive communications
27 regarding the data and documents to be produced by Defendant for mediation, including a production of

1 the putative class members' payroll data consisting of rates of pay, number of class members and
2 workweeks. (Hyun Decl. ¶ 7). Plaintiffs' counsel calculated maximum exposure as follows:

- 3 • Minimum Wages: \$287,399.83
- 4 • Overtime: \$431,099.75
- 5 • Meal Periods: \$1,149,599.32
- 6 • Rest Periods: \$1,149,599.32
- 7 • Business Expenses: \$193,405.00
- 8 • 203 Penalties: \$1,537,118.40
- 9 • 226 Penalties: \$1,759,650.00
- 10 • Total: \$6,507,871.62

11 (*Id.*) However, Plaintiffs believe a 50% discount as to the minimum and overtime wage and meal and
12 rest period claims should be applied, as Defendant maintains lawful compensation and meal and rest
13 period policies. (*Id.*) Thus, the actual realistic exposure for these claims is \$1,508,849.11. (*Id.*)
14 Moreover, Labor Code §§ 203 and 226 penalties require a finding of willful and/or knowing and
15 intentional conduct. After reaching the settlement in principle, the California Supreme Court held that
16 an employer's good faith belief of its affirmative defenses may preclude a finding of knowing and
17 intentional conduct to support Section 226 penalties. *Naranjo v. Spectrum Security Serv.*, 15 Cal. 5th
18 1056 (2024). As such, Plaintiffs' counsel believe a 75% discount is warranted for these penalties, which
19 results in a realistic exposure of \$824,192.10. (Hyun Decl. ¶ 8).

20 Plaintiffs' counsel calculated total PAGA penalties at \$7,831,500.00. (*Id.*) Again, PAGA
21 penalties are also subject to defenses and reduction. Defendant would also argue for a reduction of any
22 PAGA penalties, as the Court has the discretion to reduce PAGA penalties to ensure that they are not
23 "unjust, arbitrary and oppressive, or confiscatory." *See* Lab. Code § 2699(e) ("...a court may award a
24 lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and
25 circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary
26 and oppressive, or confiscatory."); *see Cotter v. Lyft, Inc.*, 193 F.Supp.3d 1030, 1037 (N.D. Cal. 2016)
27 (Chhabria, J.) ("if the case went to judgment and if the drivers prevailed, the Court would very likely
28 reduce the award of PAGA penalties by a substantial amount.")

1 Even when plaintiffs have prevailed at trial on PAGA claims, courts have routinely exercised
2 their discretion to significantly reduce the amount of PAGA penalties awarded to as little as \$5.00 per
3 pay period. *See, e.g., Carrington v. Starbucks Corp., et al.*, San Diego County Superior Court, Case No.
4 37-2014-00018637-CU-OE-CTL (Apr. 3, 2017) (holding that the plaintiff was only entitled to collect
5 the reduced penalty amount of \$5.00 for each pay period in which a meal period violation occurred; the
6 plaintiff requested penalties in excess of \$70 million and the court reduced the award, stating that
7 awarding the maximum penalty would be unjust, arbitrary, and oppressive based on the Defendant's
8 good faith attempts to comply with the law; in fact, the trial court's reduced award of \$150,000 was
9 affirmed on appeal and reflected 0.2% of the total recoverable penalties sought).

10 Accordingly, Plaintiffs believe a 75% reduction in PAGA penalties is warranted for a realistic
11 exposure of \$1,957,875.00. (Hyun Decl. ¶ 8). Thus, the \$750,000.00 Maximum Settlement Amount
12 equates to about 17% of the realistic total exposure of \$4,290,916.21. (*Id.*)

13 Numerous courts have held that gross settlements approximating between only 8 and 25% of the
14 defendant's potential exposure are fair and reasonable. *See, e.g., In re Mego Fin. Corp. Secs. Litig.*, 213
15 F.3d 454, 459 (9th Cir.2000) (holding that class action settlement recovering 17% of potential exposure
16 was fair and reasonable; "[i]t is well-settled law that a cash settlement amounting to only a fraction of
17 the potential recovery does not per se render the settlement inadequate or unfair. Rather, the fairness
18 and the adequacy of the settlement should be assessed relative to risks of pursuing the litigation to
19 judgment"; noting that whether the settlement is fair and adequate depends on the "the difficulties in
20 proving the case"); *Bellinghausen v. Tractor Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at
21 *6 (N.D. Cal. Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of
22 the defendant's potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist. Ct. Case
23 No. 8:12-cv-02161 (C.D. Cal. 2014) (court granted preliminary approval of wage and hour class
24 settlement which obtained *only 9.1%* of projected damages, given the risks of continued litigation).

25 Accordingly, based on their own independent investigations and evaluations, the Parties and their
26 respective counsel are of the opinion that settlement for the consideration and on the terms set forth in
27 the Settlement Agreement is fair, reasonable, and adequate and is in the best interests of the Class and

1 Defendants in light of all known facts and circumstances and the expenses and risks inherent in
2 litigation. (Hyun Decl. ¶ 9).

3 **G. SETTLEMENT WAS NEGOTIATED AT ARMS-LENGTH AND IS NOT**
4 **COLLUSIVE**

5 Courts presume the absence of fraud or collusion in the negotiation of settlement unless evidence
6 to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars Steel Corp. v.*
7 *Continental Illinois Nat'l Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In re Chicken Antitrust*
8 *Litig.*, 560 F. Supp. 957, 962 (N.D. Ga. 1980). Courts do not substitute their judgment for that of the
9 proponents, particularly where, as here, settlement has been reached with the participation of
10 experienced counsel familiar with the litigation. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221
11 F.R.D. 523, 528 (C.D. Cal. 2004); *Hammon v. Barry*, 752 F. Supp. 1087 (D.D.C. 1990); *Steinberg v.*
12 *Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re Armored Car Antitrust Litig.*, 472 F. Supp. 1357 (N.D.
13 Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass'n*, 79 F.R.D. 571 (E.D. Pa. 1978).

14 While the recommendations of counsel proposing the settlement are not conclusive, the Court
15 can properly take them into account, particularly where, as here, they have been involved in formal and
16 informal discovery and negotiations for some period of time, appear to be competent, have experience
17 with this type of litigation, and have exchanged substantial evidence from the opposing party. *See*
18 *Newberg on Class Actions, supra*, at § 11.47; *Nat'l Rural Telecomms. Coop.*, 221 F.R.D. at 528 (quoting
19 *In re Paine Webber Ltd. P'ships Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y. 1997) (“[s]o long as the integrity
20 of the arm’s length negotiation process is preserved, however, a strong initial presumption of fairness
21 attaches to the proposed settlement . . . [citations] and ‘great weight’ is accorded to the
22 recommendations of counsel, who are most closely acquainted with the facts of the underlying
23 litigation”)).

24 Here, both Plaintiffs’ and Defendant’s counsel have a great deal of experience in wage and hour
25 class action litigation. Plaintiffs’ counsel has been approved as class counsel in a number of wage and
26 hour class actions and have extensive litigation experience. (Declaration of William L. Marder
27 (“Marder Decl.”) at ¶¶ 8-14; Hyun Decl. at ¶¶ 3-6; Declaration of Elizabeth Parker-Fawley (“Parker-

1 Fawley Decl.”) ¶¶ 2-6). As discussed above, Plaintiffs’ counsel conducted a thorough investigation of
2 the allegations involved in this case since the inception. Each side has apprised the other of their
3 respective factual contentions, legal theories and defenses, resulting in extensive arms’ length
4 negotiations taking place among the Parties.

5 The settlement for each Settlement Class Member is fair, reasonable and adequate, given the
6 inherent risks of litigation, including the substantial risks relative to class certification, and the costs of
7 pursuing such litigation. The settlement is the result of extensive arms’ length negotiations between the
8 Parties and their counsel.

9 Although Plaintiffs believe that a class can be certified, Plaintiffs also believe in the fairness of
10 the settlement that is based on factoring in the uncertainty and risks to Plaintiffs involved in not
11 prevailing on one or more of the causes of action or theories alleged in the Complaint, the possibility of
12 non-certification and potential for appeals. (Hyun Decl. ¶ 9).

13 Despite the asserted fairness of the settlement terms, as set forth in the Class Notice, should any
14 Class Member wish to pursue his or her own case for the claims being released herein, each Class
15 Member has the right to submit a request for exclusion (*i.e.*, Opt-Out) from the settlement. Moreover, as
16 set forth in the Class Notice, Class Members are advised of their right to attend the final approval
17 hearing and object to any of the terms contained in the proposed Settlement Agreement, provided that
18 they give proper notice to the Parties and the Court.

19 H. SETTLEMENT TERMS AND EVALUATION

20 1. Proposed Terms of the Settlement

21 This is a non-reversionary settlement wherein Class Members will be automatically paid out of
22 the settlement if he/she does not opt-out of the settlement. The key terms of the settlement are as
23 follows.

24 The Maximum Settlement Amount is \$750,000.00 (Joint Stipulation of Class Action and PAGA
25 Settlement and Release of Claims (“Settlement Agreement” or “Stipulation”) ¶ I(W)). Class members
26 need not do anything to participate in the settlement and will be automatically included in the Settlement
27 unless he/she opts out of the Settlement. (*Id.* ¶ I(RR)). The Agreement provides for attorneys’ fees of

up to 35% of the Maximum Settlement Amount (\$262,500.00), along with costs of up to \$60,000.00. (*Id.* at ¶ I(X)). Plaintiffs respectfully request \$10,000.00 for their Class Representative Enhancement Awards and Plaintiff Mendiola respectfully requests an additional \$10,000.00 for her General Release Payment. (*Id.* at ¶ III(L)(3)). The PAGA Payment is \$75,000.00 of the Maximum Settlement Amount, that is allocated to the settlement of claims for civil penalties under the PAGA, 25% (\$18,750) of which will be paid to the Aggrieved Employees and 75% (\$56,250) of which will be paid to the LWDA. (*Id.* at ¶ I(AA)). The Administrator will be paid up to \$10,000.00 for costs of administering this settlement. (*Id.* at ¶ III(L)(6)). After these deductions, the remainder will be distributed to the Class Members who do not timely request an opt-out. (*Id.* at ¶ I(X)).

2. Amount and Manner of Distribution of the Compensation to be Provided to Class Members Including the Amount, or an Estimate, of What Each Class Member Will Receive

The Net Settlement Amount (calculated after deduction of attorneys' fees, costs, the Class Representative Enhancement Awards, the LWDA's penalties and administration costs) shall be paid to all Settlement Class Members who do not opt out of the settlement. (Settlement Agreement ¶ I(RR)). The amount allocated to each Settlement Class Member will be based on each individual's number of Qualifying Class Workweeks during the Class Period. (*Id.* at ¶ III(L)(2)). The reason for such allocation is so that the Settlement Class Members who suffered greater damages will be allocated greater recovery. Settlement Class Members may opt-out of the Settlement if they so choose. Based on the Net Settlement Amount, on a pure raw average, each class member will receive approximately \$458.93. (Hyun Decl. ¶ 7). Such amounts for each person could increase or decrease depending on a number of factors, including the amount of wage statements received by each Settlement Class Member. The approximate amount each person will be entitled to will not be known until the class data is transferred to the Settlement Administrator for processing.

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1 Under California law, the award of attorneys' fees in common fund wage and hour class action
2 settlements should start with the percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480,
3 503 (Aug. 11, 2016) ("We join the overwhelming majority of federal and state courts in holding that
4 when class action litigation establishes a monetary fund for the benefit of the class members, and the
5 trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine
6 the amount of a reasonable fee by choosing an appropriate percentage of the fund created."). Under the
7 percentage of the fund method, the Court's objective remains to "mimic the market" in fixing a
8 reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (J. Posner) ("When a fee is set
9 by a court rather than by contract, the object is to set it at a level that will approximate what the market
10 will set... The judge, in other words, is trying to mimic the market in legal services.").

11 Moreover, in the *Laffitte* intermediate court decision, the court observed that "35 percent of the
12 common fund is consistent with, and in the range of, awards in other class action lawsuits." *Laffitte v.*
13 *Robert Half Int'l*, 231 Cal. App. 4th 860, 871 (2014).

14 Here, the fee award representing 35% of the fund clearly falls within that range, and is consistent
15 with other comprehensive surveys of class action settlements and fee awards. *See Fitzpatrick, An*
16 *Empirical Study of Class Action Settlements and Their Fee Award*, 7 J. Empirical Leg. Stud. 811, 833
17 (2010) (analyzing 444 cases between 2006-2007 and concluding that "[m]ost fee awards were between
18 25 percent and 35 percent, with almost no awards more than 35 percent."); Eisenberg & Miller, *Attorney*
19 *Fees in Class Action Settlements: An Empirical Study: 1993-2008*, 7 J. of Empirical Leg. Stud. 248, 262,
20 fn.16 (2010) (independent studies of class action litigation nationwide conclude that fees representing
21 one-third of the total recovery is consistent with market rates).

22 The results delivered by Plaintiff's Counsel also support the requested percentage of the fund.
23 Here, the Parties have agreed to a payment of a maximum of 35% of the settlement (\$262,500) for
24 payment to Class Counsel as attorneys' fees. (Settlement Agreement ¶ III(L)(4)). The Parties have
25 agreed to a payment of the foregoing attorney's fees and, thus, this payment should be presumed to be
26 fair.

Further, the parties have agreed to reimbursement of class counsel's litigation costs of up to \$60,000.00. (Settlement Agreement ¶ III(L)(4)). Class counsel have, at their own risk, expended costs, for example, to file this instant action, service of process, payment of mediation fees, expert witness fees and other litigation related costs and will be submitting detailed cost sheets for the respective costs incurred prior to the Motion for Final Approval. Based on the foregoing, the court should preliminarily approve the attorney's fees and costs being requested by the parties.

2. Proposed Payment to Class Representative

Plaintiffs request Class Representative Enhancement Awards of \$10,000.00, each. (Settlement Agreement ¶ III(L)(3)). Plaintiffs spent significant amounts of time discussing this matter with their attorneys on many occasions. (Hawkins Decl. ¶¶ 3-5; Canady Decl. ¶¶ 3-5; Mendiola Decl. ¶ 3; Olvera Decl. ¶ 3). Plaintiffs have always been available to answer questions, gather documents, review/execute the memorandum of understanding, review/execute the settlement agreement and pleadings. (Hawkins Decl. ¶¶ 3-5; Canady Decl. ¶¶ 3-5; Mendiola Decl. ¶¶ 3-5; Olvera Decl. ¶¶ 3-5). Additionally, Plaintiff Mendiola requests an additional \$10,000.00 as a General Release Payment for her broader release.

Given that future employers are much less likely to hire individuals who have filed suit against their prior employer, particularly cases of this nature, Plaintiffs may face prejudice in the future from other potential employers. Plaintiffs assumed these risks and the whole class benefited from these risks. Class members did not have to file individual lawsuits and bear the risks of payment of fees and costs if they did not prevail, nor did they have to face the potential for retaliation and not getting future employment had they filed a public lawsuit.

Notably, courts have routinely granted approval of representative enhancements for far greater amounts than the \$10,000.00 sought by Plaintiffs in this case. *See, e.g., Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of \$ 55,000, and three incentive awards of \$ 35,000); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) (\$50,000 awarded to each class

representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding \$25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming \$25,000 Incentive award to class representative in ERISA case).

Indeed, in *Cellphone Termination Fee Cases*, 186 Cal.App.4th 1380, 1394-95 (2010), the Court of Appeal affirmed the trial court's approval of \$10,000 enhancements to the named plaintiffs in a case involving alleged damages of only \$175 for an early termination fee. Here, Plaintiffs have suffered far greater damages, but yet they request modest enhancements of \$10,000.00, each, which is "presumptively reasonable" and consistent with case law.

3. Class Administration Fees

The parties have agreed to payment of a maximum of \$10,000.00 to the Settlement Administrator, Xpand, for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, distributing the Maximum Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. (Settlement Agreement ¶¶ III(J)). Xpand is a well-recognized class action settlement administrator. The parties believe that the administration fee is reasonable and should be approved.

III. PROPOSED SCHEDULE FOR CLASS NOTICE, OBJECTION, OPT OUT AND MOTION FOR APPROVAL, ATTORNEY'S FEES AND FINAL ACCOUNTING

Plaintiff requests that a final fairness/approval hearing be set for approximately 4 months after the hearing on Plaintiff's Motion for Preliminary Approval.

IV. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR PRELIMINARY APPROVAL

Here, the proposed settlement is fair, adequate, and reasonable. It will result in both substantial monetary benefits to class members; it is non-collusive; and it was achieved as the result of informed, extensive, and arms' length negotiations conducted by counsel for respective parties who are experienced in wage and hour class action litigation. For the foregoing reasons, Plaintiff respectfully request that the Court grant preliminary approval of the proposed settlement, sign the proposed Order,

1 approve and authorize mailing of the proposed Notice Packet, and set a date for a final approval hearing
2 on or after February 24, 2025.

3 Dated: October 14, 2024

POLARIS LAW GROUP

4
5 By: William L. Marder
6 William L. Marder
7 Attorneys for Plaintiffs and the Class
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PROOF OF SERVICE

(Code of Civil Procedure Sections 1013a, 2015.5)

STATE OF CALIFORNIA]
]ss.
COUNTY OF SAN BENITO]

I, Megan Tittle, am employed in the County of San Benito, State of California. I am over the age of 18 and not a party to the within action; my business address is 501 San Benito Street, Suite 200, Hollister, CA 95023.

On October 15, 2024, I served the following document(s) described as: **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** the interested parties in this action as follows:

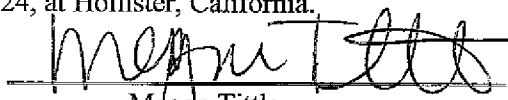
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 X BY ELECTRONIC SERVICE: Based on a court order I caused the above-entitled document(s) to be served through the Sayer eFileCA E-Filing System at the website www.efile.sayerlegal.com, addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the filing receipt/confirmation will be filed, deposited, or maintained with the original document(s) in this office.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on October 15, 2024, at Hollister, California.


Megan Tittle