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on behalf of herself and others similarly situated

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

11 NATALIE SANDOVAL, on behalf of herself
12 and others similarly situated,

13 PLAINTIFF,

14 vs.

15 RX RELIEF; PRIDESTAFF, INC.; and DOES 1
16 to 100, inclusive,

17 DEFENDANTS.

Case No.: 21STCV19591

CLASS ACTION

*[Assigned for all purposes to the Hon. Thomas D.
Long, Dept. 48]*

**PLAINTIFF NATALIE SANDOVAL’S
NOTICE OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES**

*[Filed concurrently with the Declaration of
Melissa A. Huether in Support; and [Proposed]
Order]*

Hearing Information:

Date: May 18, 2023

Time: 8:30 a.m.

Dept.: 48

Res ID: 460951818750

23 **TO THE HONORABLE COURT, ALL PARTIES, AND TO THEIR RESPECTIVE**
24 **ATTORNEYS OF RECORD:**

25 **NOTICE IS HEREBY GIVEN** that on May 18, 2023 at 8:30 a.m., or as soon thereafter as
26 the matter can be heard in Department 48 of the Los Angeles County Superior Court, Stanley Mosk
27 Courthouse, located at 111 N. Hill St., Los Angeles, California 90012, Plaintiff NATALIE
28

1 SANDOVAL (“Plaintiff”) will move for an order granting preliminary approval of the proposed
2 class action settlement on the terms and conditions set forth in the Class Action and PAGA
3 Settlement (“Settlement” or “Settlement Agreement”) between Plaintiff and RX RELIEF and
4 PRIDESTAFF, INC. (“Defendants”), a copy of which is attached to the Declaration of Melissa A.
5 Huether (“Huether Dec.”) as **Exhibit “1.”** Plaintiff will further move that the Order specifically
6 encompass the following:

- 7 1. Certify a class for settlement purposes only;
- 8 2. Appoint the Plaintiff as Class Representative for settlement purposes only;
- 9 3. Appoint Joseph Lavi, Esq. and Vincent C. Granberry, Esq. of Lavi & Ebrahimiian,
10 LLP and Sahag Majarian of Law Office of Sahag Majarian II as Class Counsel;
- 11 4. Approve the proposed Notice of Class Action Settlement in the form attached as
12 **Exhibit A** respectively to the Settlement;
- 13 5. Set a Final Approval and Settlement Fairness Hearing on a date that is approximately
14 140 days after the Court grants preliminary approval of the Settlement.

15 Dated: April 26, 2023

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

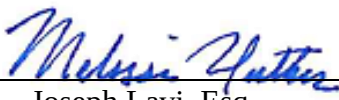
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18 By: 
19 Joseph Lavi, Esq.
20 Vincent C. Granberry, Esq.
21 Melissa A. Huether, Esq.
22 Attorneys for PLAINTIFF NATALIE
23 SANDOVAL on behalf of herself and others
24 similarly situated
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5	<i>Apple Computer, Inc. v. Superior Court</i>	
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff NATALIE SANDOVAL on behalf of herself and others similarly situated
4 (“Plaintiff”) respectfully submits this memorandum of points and authorities in support of her
5 motion for preliminary approval of the proposed class action settlement with RX RELIEF and
6 PRIDESTAFF, INC. (“Defendants”) (Plaintiff and Defendants are collectively hereinafter referred
7 to as “the Parties”). Plaintiff seeks entry of a proposed order granting preliminary approval of the
8 class settlement which: (1) preliminarily approves the proposed settlement of the class action; (2)
9 approves the form and method for providing notice and directs that notice be given to members of
10 the settlement class; (3) preliminarily certifies the settlement class for settlement purpose; and (4)
11 schedules a final approval hearing date.

12 As consideration for this Settlement, Defendants shall pay a sum equal to Five Hundred
13 Thousand Dollars (\$500,000) (the “Gross Settlement Amount”) to fund the non-reversionary, no
14 claims made settlement of this class action (Class Action and PAGA Settlement Agreement,
15 (“Settlement” or “Settlement Agreement”) attached as **Exhibit “1”** to Declaration of Melissa A.
16 Huether (“Huether Dec.”). The Gross Settlement Amount is inclusive of settlement payments to
17 participating Class Members, all attorneys’ fees and costs, the enhancement payment to Plaintiff for
18 her services as class representative, PAGA penalties, and settlement administration as provided by
19 this Settlement. Defendants agree to pay the Employer Paid Taxes separately and in addition to the
20 Gross Settlement Amount. (Settlement § 3.2).

21 **II. SUMMARY OF LITIGATION**

22 **A. The Parties**

23 Plaintiff NATALIE SANDOVAL worked as an hourly non-exempt employee of Defendants
24 from approximately August 15, 2017, to November 23, 2021. Plaintiff seeks to represent
25 approximately 1,400 individuals employed in California by Defendants as non-exempt employees
26 between May 24, 2020, to May 25, 2022 (hereinafter “Class Members” or “Class”).

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1 **B. The Complaint and Allegations**

2 On May 24, 2021, the action entitled *Sandoval, et al. v. RX Relief, et al.* was filed as Case
3 Number 21STCV19591 in Los Angeles County Superior Court as a putative wage and hour class
4 action. The original Complaint alleged claims for: (1) failure to pay wages for all hours worked at
5 minimum wage in violation of Labor Code sections 1194 and 1194; (2) failure to pay overtime
6 wages for overtime hours worked in violation of Labor Code sections 510, and 1194; (3) failure to
7 timely pay all earned wages and during employment in violation of Labor Code sections 204; (4)
8 failure to provide complete and accurate wage statements in violation of Labor Code section 226;
9 (5) failure to timely pay all earned wages and final paychecks due at time of separation of
10 employment in violation of Labor Code sections 201, 202, and 203; and (6) unfair business
11 practices in violation of Business and Professions Code sections 17200, *et seq.* (Huether Dec. ¶ 4.)

12 On August 4, 2021, pursuant to Plaintiff's request, the Court dismissed the class action
13 allegations from the complaint due to Defendants' arbitration agreement and the case was
14 reassigned to the above captioned court. (Huether Decl., ¶ 5.)

15 On March 10, 2022, the Parties participated in a mediation session with Jeff Krivis, Esq., an
16 experience and well-regarded mediator. As a result of the mediation, the Parties reached a class and
17 PAGA settlement. (Huether Decl., ¶ 6.)

18 On December 9, 2022, pursuant to the terms of the Settlement, Plaintiff filed a First
19 Amended Complaint adding an alleging the following causes of action: (1) failure to pay wages for
20 all hours worked at minimum wage in violation of Labor Code sections 1194 and 1194; (2) failure
21 to pay all hours worked at the minimum wage in violation of Fair Labor Standards Act, 29 U.S.C.
22 section 206; (3) failure to pay overtime wages for overtime hours worked in violation of Labor
23 Code sections 510, and 1194; (4) failure to pay overtime wages in violation of Fair Labor Standards
24 Act U.S.C. section 207; (5) failure to authorize or permit meal periods in violation of Labor Code
25 sections 512 and 226.7; (6) failure to authorize rest periods in violation of Labor Code section
26 226.7; (7) failure to indemnify employees for employment-related losses and expenditures in
27 violation of Labor Code section 2802; (8) unlawful deductions in violation of Labor Code section
28 221; (9) failure to timely pay earned wages during employment in violation of Labor Code section

204; (10) failure to provide complete and accurate wages statements in violation of Labor Code section 226; (11) failure to timely pay all earned wages and final paychecks due at time of separation of employment in violation of Labor Code sections 201, 202, and 203; (12) unfair business practices in violation of Business and Professions Code sections 17200, *et seq.*; (13) civil penalties pursuant to California’s Private Attorneys General Act, Labor Code Section 2698, *et seq.* (“PAGA”). (*Id.*) (Huether Decl., ¶ 7.)

Defendants maintained significant defenses to Plaintiff’s claims: with regard to Plaintiff’s claim for failure to pay for all hours worked at the minimum and/or overtime rate of pay, Defendants would likely argue that their “rounding” practices for time keeping and corresponding payment of wages were entirely lawful as they were neutral and do not result in a loss of wages overall to the employees. Regarding Plaintiff’s argument that Defendants failed to authorize or permit compliant meal and rest periods, Defendants would likely contend they always provided employees timely meal and rest periods and they have compliant policies to support such contentions. Further, Defendants could argue that the time records will show compliant meal periods were taken. Regarding Plaintiff’s claims that Defendants failed to indemnify employees for business expenses, Defendants would most likely argue that it did not require class members to use their personal cell phone and to the extent they did incur costs for these items, they did so voluntarily and unnecessarily. Based on the foregoing, Defendants likely would conclude, wage statements were not required to be provided to Plaintiff and Class Members and that at the time wages were paid out upon separation of employment, Defendants believed, in good faith, that they were properly paying all wages to separating employees. In other words, Defendants concluded, Plaintiff would not be able to establish the willful elements of their Labor Code sections 226 or 203 claims. For these reasons, Defendants concluded, Plaintiff would not likely prevail on her claims. Furthermore, Defendants would likely argue that with respect to the PAGA claim, the Court has the discretion to lower penalties give, that it appears unlikely a court would find that any violations were knowing or intentional. (Huether Dec. ¶21.)

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1 **C. The Exchange of Detailed Informal Discovery and Legal Analysis by the**
2 **Parties' Counsel**

3 On March 10, 2022, the Parties participated in a full-day mediation session with Jeffrey
4 Krivis, Esq., a highly experienced and well-regarded class action mediator. As a critical part of
5 settlement negotiations, the Parties engaged in extensive informal discovery exchange which
6 included a 20% sampling of time cards during the Class Period; as well as information regarding
7 number of current and former hourly non-exempt employees; number of workweeks; number of pay
8 periods; average rate of pay; and Plaintiff's counsel's analysis of both the aforementioned sample
9 data and documentation. Defendants also provided copies of their employee handbook and other
10 relevant policy documents. (Huether Dec. ¶5.)

11 Counsel for the Parties have investigated the law as applied to the facts discovered regarding
12 the alleged claims of Plaintiff and potential defenses thereto, and the potential damages claimed by
13 Plaintiff, and multiple conference calls and email exchanges between Plaintiff's counsel,
14 Defendant's counsel, and the mediator. (Huether Dec. ¶¶5-8.)

15 Plaintiff and Class Counsel recognize the expense and length of continued proceedings
16 necessary to litigate their disputes through trial and through any possible appeals. (*Id.*) Plaintiff has
17 also taken into account the uncertainty and risk of the outcome of further litigation, and the
18 difficulties and delays inherent in such litigation. (*Id.*) Plaintiff and Class Counsel are also aware of
19 the burdens of proof necessary to establish liability for the claims asserted in the Action, both
20 generally and in response to Defendant's compelling defenses thereto, and the difficulties in
21 establishing damages for the Class Members. (*Id.*) Based on the foregoing, Plaintiff and Class
22 Counsel have determined that the Settlement set forth in this Agreement is a fair, adequate and
23 reasonable settlement, and is in the best interests of the Class Members. (*Id.*)

24 Defendants deny and continue to deny the allegations in the lawsuit. (Stipulation, §2.1.)
25 Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the
26 laws identified in in the Operative Complaint and deny any and all liability for the causes of action
27 alleged. (*Id.*)

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III. THE SETTLEMENT

The settlement contemplates (i) entry of an Order preliminarily approving the settlement and approving certification of a provisional settlement class, contingent upon final approval of the settlement; and (ii) entry of an Order granting final approval of the settlement and judgment.

Subject to Court approval pursuant to Section 382 of the California Code of Civil Procedure and Rule 3.769 et seq. of the California Rules of Court, the Parties have agreed to settle the Lawsuit by agreement upon the terms and conditions and for the consideration set forth in the Settlement, a copy of which is attached to the Declaration of Melissa A. Huether as **Exhibit “1.”**

A summary of the key terms of the Settlement is as follows:

- A. "Class" means individuals employed in California by Defendants as non-exempt employees between May 24, 2020 through May 25, 2022. (Settlement, § 1.5.)
- B. "Class Member(s)" or "Settlement Class Member" means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee). (Settlement, § 1.9.)
- C. "Class Period" means the period from May 24, 2020 through May 25, 2022. (Settlement, § 1.12.)
- D. "Aggrieved Employee" means all individuals employed in California by Defendants as non-exempt employees between May 24, 2020 through May 25, 2022. (Settlement, § 1.4.)
- E. "PAGA Period" means the period from May 24, 2020 through May 25, 2022. (Settlement, § 1.32.)
- F. "Gross Settlement Amount" means five hundred thousand dollars (\$500,000), which is the total gross amount Defendants agree to pay under the Settlement. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment to the Administrator's Expenses, all interest payments, and all applicable Employee Paid Taxes. Defendants agree to pay the Employer Paid Taxes separately and in addition to the Gross Settlement Amount. (Settlement, § 1.23.)
- G. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees

1 Payment, Class Counsel Litigation Expenses Payment, and the Administration
2 Expenses Payment. The remainder is to be paid to Participating Class Members as
Individual Class Payments, including all Employee Paid Taxes. (Settlement, § 1.29.)

3 H. All Individual Class Payments will be allocated as follows: twenty percent (20%) to the
4 settlement of wage claims, subject to applicable withholdings, to be reported on a W-2
5 form and eighty percent (80%) to penalties and interest, not subject to withholdings and
6 reported on a 1099 form. (Settlement, § 3.2.4.1.). Individual PAGA Payments will be
entirely allocated as penalties and reported on a 1099 form. (Settlement, §§ 3.2.5,
3.2.5.1.)

7 I. Within thirty (30) calendar days after the Effective Date of the Settlement, Defendants
8 will fully fund the Gross Settlement Amount and the Employer Paid Taxes by
9 transmitting the funds to the Administrator. (Stipulation, § 4.3.). Within fourteen (14)
10 calendar days of the funding of the Gross Settlement Amount and the Employer Paid
11 Taxes, the Settlement Administrator will mail checks to individual Class Payments, all
12 Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses
13 Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
14 Payment, the Class Representative Service Payment, and the Employee Paid Taxes.
Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation
Expenses Payment and the Class Representative Service Payment shall not precede
disbursement of Individual Class Payments and Individual PAGA Payments.
(Settlement, §§ 4.3, 4.4.)

15 J. "Effective Date" means the date on which the Final Approval becomes final. Final
16 Approval "becomes final" only after the Court grants the Motion for Final Approval, the
17 Court enters Judgment, the Notice of Entry of Order and/or Judgment is served on
18 Defendants by Class Counsel, and upon the latter of: (i) if no appeal or other challenge
19 is filed, the sixty-first (61st) day following service of the Notice of Entry of the Court's
20 Order and/or Judgment; (ii) in the event of an appeal, the date of affirmance of the
21 Order Granting Final Approval and/or the date Judgment becomes final under the
California Rules of Court; (iii) the date of final dismissal of any appeal from the Order
Granting Final Approval and/or Judgment; or (iv) the final dismissal of any proceeding
on review of any court of appeal decision relating to the Order Granting Final Approval
and/or Judgment, and the issuance of remittitur. (Settlement, § 1.18.)

22 K. As of the date of Judgment, all Participating Class Members on behalf of themselves
23 and their respective former and present representatives, agents, attorneys, heirs,
24 administrators, successors, and assigns, shall fully and finally release the Released
25 Parties of the Class Released Claims. The Class Released Claims include all claims
26 asserted in the Action, arising from or related to the facts and claims alleged in the
27 Action, or that could have been raised in the Action based on the facts and claims
28 alleged, as amended. (Settlement, § 5.2.) The Class Released Claims include all claims
for unpaid wages, including, failure to pay minimum wages, straight time
compensation, overtime compensation, double-time compensation, and interest; the
calculation of the regular rate of pay; premiums/wages for missed/short/late/interrupted
meal periods and rest periods, including failure to pay premiums at the regular rate of

1 compensation; non-compliant meal periods and rest periods; payment for all hours
2 worked, including claims of unlawful rounding, time shaving, off-the-clock work and
3 related claims; wage statements; failure to keep accurate records; payment and
4 reimbursement for all necessary business expenses; unlawful deductions; failure to
5 timely pay wages; failure to regularly pay wages; unfair business practices related to the
6 Class Released Claims; penalties, including civil penalties, statutory penalties,
7 recordkeeping penalties, wage statement penalties, minimum-wage penalties, and
8 waiting-time penalties; and attorneys' fees and costs; all claims related to the Class
9 Released Claims arising under: the California Labor Code (including, but not limited to,
10 sections 200, 201, 201.1, 201.3, 201.5, 202, 203, 204, 205.5, 206, 210, 216, 218.6, 221,
11 222, 222.5, 223, 224, 225, 225.5, 226 et seq., 226.2, 226.3, 226.7, 256, 510, 511, 512,
12 516, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1,
13 1198, 1198.5, 1199, 2802 et seq.; and federal common law. This release excludes the
14 release of claims not permitted by law. (Settlement, § 5.2.)

15
16 L. "Released PAGA Claims" means claims for civil penalties under PAGA that were
17 alleged, or could have been alleged, in the Action, based on the allegations asserted in
18 the Operative Complaint, as amended, and/or in the PAGA Notices, including but not
19 limited to, claims for unpaid wages, including, failure to pay minimum wages, straight
20 time compensation, overtime compensation, double-time compensation, and interest;
21 the calculation of the regular rate of pay; premiums/wages for
22 missed/short/late/interrupted meal periods and rest periods, including failure to pay
23 premiums at the regular rate of compensation; non-compliant meal periods and rest
24 periods; payment for all hours worked, including claims of unlawful rounding, time
25 shaving, off-the-clock work and related claims; wage statements; failure to keep
26 accurate records; payment and reimbursement for all necessary business expenses;
27 unlawful deductions; failure to timely pay wages; failure to regularly pay wages;
28 including but not limited to alleged violations of the California Labor Code sections
200, 201, 201.1, 201.3, 201.5, 202, 203, 204, 205.5, 206, 210, 216, 218.5, 218.6, 221,
222, 222.5, 223, 224, 225, 225.5, 226 et seq., 226.2, 226.3, 226.7, 256, 510, 511, 512,
516, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1,
1198, 1198.5, 1199, 2698 et seq., 2802 et seq., 2926, and 2927.) This release excludes
the release of claims not permitted by law. (Settlement, § 5.3.)

21 M. "Released Parties" means Rx Relief, PrideStaff, Inc., and each of their past, present and
22 future agents, employees, servants, officers, directors, partners, trustees, representatives,
23 shareholders, stockholders, attorneys, parents, subsidiaries, equity shareholders, related
24 companies/corporations and/or partnerships, divisions, assigns, predecessors,
25 successors, insurers, consultants, service providers, joint venturers, clients, joint
26 employers, co-employers, dual employers, alleged joint employers, alleged co-
27 employers, alleged dual employers, affiliates, alter-egos, and affiliated organizations,
28 and all of their respective past, present and future employees, directors, officers, agents,
attorneys, stockholders, fiduciaries, parents subsidiaries, and assigns. (Settlement, §
1.42.)

N. "Administrator" means Phoenix Class Action Administration Solutions the third-party
administrator, as mutually selected by the Parties, to effectuate the processing and

1 payment of Settlement. (Settlement, § 7.1.)

- 2 O. "Class Counsel Fees Payment" and "Class Counsel Litigation Expenses Payment"
- 3 means the amounts awarded to the Plaintiff's Attorneys by the Court for reimbursement
- 4 of reasonable attorneys' fees and expenses, respectively. Class Counsel will request
- 5 attorneys' fees in the amount of \$166,666.67, or one third of the Gross Settlement
- 6 Amount as well as Class Counsel Litigation Expenses Payment of not more than
- 7 \$17,000.00. (Settlement, §§ 1.7 & 3.2.2.)
- 8 P. "Class Representative Service Payment" means the additional sum to be paid to Plaintiff
- 9 as compensation for her role as class representative. Plaintiff requests Court approval of
- 10 Class Representative Service Payment of Seven Thousand Five Hundred Dollars
- 11 (\$7,500.00). The Administrator will pay the Class Representative Service Payment
- 12 using IRS Form 1099 and Plaintiff assumes full responsibility and liability for taxes
- 13 owed on the Class Representative Service Payment. The Class Representative Service
- 14 Payment will be in addition to Plaintiff's Individual Settlement Payment paid pursuant
- 15 to the Settlement. (Settlement, §§ 1.14 & 3.2.1.)
- 16 Q. The Parties have agreed that Twenty Thousand Dollars and Zero Cents (\$20,000.00) of
- 17 the Gross Settlement Amount will be allocated to the resolution of any Class Members'
- 18 claims arising under PAGA ("PAGA Penalties"). Pursuant to PAGA, Seventy Five
- 19 Percent (75%), or Fifteen Thousand Dollars (\$15,000.00), of the PAGA Penalties will
- 20 be paid to the California Labor and Workforce Development Agency ("LWDA PAGA
- 21 Payment"), and Twenty Five Percent (25%), or Five Thousand Dollars (\$5,000.00), of
- 22 the PAGA Penalties will distributed to Aggrieved Employees on a pro rata basis based
- 23 on their PAGA Period Pay Periods during the PAGA Period ("Individual PAGA
- 24 Payments"). (Settlement, §§ 3.2.5 & 3.2.5.1.)
- 25 R. Any Class Member wishing to opt-out from the Class must sign and postmark fax, or
- 26 email a written request for exclusion to the Settlement Administrator within the
- 27 Response Deadline. A Request for Exclusion letter from a Class Member or his/her
- 28 representative must set forth a Class Member's name, present address, telephone
- number, and a simple statement electing to be excluded from the Settlement.
- (Stipulation, § 1.43.)
- S. Only Participating Class Members may object to the class action components of the
- Settlement and/or the Agreement, including contesting the fairness of the Settlement,
- and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation
- Expenses Payment and/or Class Representative Service Payment. (Stipulation, § 7.7.1.)
- Participating Class Members may send written objections to the Administrator, by fax,
- email, or mail. Alternatively, Participating Class Members may appear in Court (or hire
- an attorney to appear in Court) to present verbal objections at the Final Approval
- Hearing. A Participating Class Member who elects to send a written objection to the
- Administrator must do so not later than forty-five (45) days after the Administrator's
- mailing of the Class Notice (plus an additional fourteen (14) days for Class Members
- whose Class Notice was re-mailed). (Stipulation, § 7.7.2.)

1 T. "Response Deadline" means the date forty-five (45) Days from the date the Settlement
2 Administrator mails the Notice to Class Members and Aggrieved Employees, and shall
3 be the last date on which Class Members may: (a) fax, email, or mail Requests for
4 Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the
5 Settlement. Class Members to whom Notice Packets are resent after having been
6 returned undeliverable to the Administrator shall have an additional fourteen (14)
7 calendar days beyond the Response Deadline. (Stipulation, § 1.44.)

8 **IV. ANALYSIS**

9 **A. Class Action Settlements Are Subject To Review And Approval Under The** 10 **California Rules of Court**

11 Rule 3.769 of the California Rules of Court requires court approval for class action
12 settlements. "Before final approval, the court must conduct an inquiry into the fairness of the
13 proposed settlement." (Cal. Rules of Court, rule 3.769(g).) Courts act within their discretion in
14 approving settlements which are fair, not collusive, and take into account "all the normal perils of
15 litigation as well as the additional uncertainties inherent in complex class actions." (*In re Beef*
16 *Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179, *cert. den. sub nom. Iowa Beef*
17 *Processors, Inc. v. Meat Price Investigators Ass'n* (1981) 452 U.S. 905.)

18 **B. This Settlement Is Fair, Reasonable, And Adequate**

19 The purpose of the preliminary evaluation of class action settlements is to determine only
20 whether the proposed settlement is within the *range of reasonableness* and, therefore, whether
21 notice to the class and the scheduling of a formal fairness hearing are warranted. (*Wershba v. Apple*
22 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35; Newberg on Class Actions (4th Ed.) §11:25.)
23 Courts have broad powers to determine whether a proposed settlement is fair under the
24 circumstances of the case. (*Wershba, supra*, 91 Cal.App.4th at 234-35; *Mallick v. Superior Court*
25 (1979) 89 Cal.App.3d 434, 438.) In evaluating preliminary approval, courts must consider several
26 relevant factors, including "the strength of the plaintiff's case, the risk, expense, complexity and
27 likely duration of further litigation, the risk of maintaining class action status through trial, the
28 amount offered in settlement, the extent of discovery completed and the stage of the proceedings,
[and] the experience and views of counsel...." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th
1794, 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, supra*, 91 Cal.App.4th at 245.) Furthermore, courts must give “proper deference to the private consensual decision of the parties” because “the court’s intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027.)

A proposed class action settlement is presumed fair under the following circumstances: (1) the parties reached settlement after arm’s-length negotiations; (2) investigation and discovery were sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation, and (4) the percentage of objections is small. (*Dunk v. Ford Motor Co., supra*, 48 Cal.App.4th at 1802.) The Declaration of Class Counsel Melissa A. Huether demonstrates that the proposed settlement was the product of serious, informed, and non-collusive negotiations and demonstrates counsel’s extensive experience in both employment law as well as class action litigation.

1. The Settlement is the result of serious, informed, and non-collusive negotiations

The Settlement was reached as a result of arm’s-length negotiations facilitated by a highly regarded and experienced wage and hour mediator, Jeffrey Krivis, Esq. and analysis by Plaintiff’s counsel. (Huether Dec. ¶¶5-19.) While Plaintiff believes in the merits of her case, she also recognizes the inherent risks of litigation and understand the benefit of the Class receiving settlement funds immediately as opposed to risking an unfavorable decision on class certification, summary judgment, at trial and/or the damages awarded, on an appeal that can take several more years to litigate. (*Id.*)

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1 **2. The extent of the information provided through informal discovery and the**
2 **stage of the proceedings support the Settlement**

3 As described herein, the Parties investigated and evaluated the factual strengths and
4 weaknesses of this case before reaching the proposed Settlement and engaged in sufficient
5 investigation and discovery, as referenced above, to support the Settlement. (*Id.*) Accordingly, the
6 proposed Settlement was reached following probative factual evaluation of Defendants’ relevant
7 policies and procedures including a 20% sampling of Class Members’ time records; evaluation of
8 Defendants’ methods for tracking employees’ work hours, providing meal and rest periods, keeping
9 time and pay records, and providing final wage pay outs upon separation of employment; Defendant’s
10 method of communication regarding the aforementioned policies; as well as information obtained from
11 Plaintiff and Defendants. (*Id.*)

12 Thus, the Settlement came only after the case was fully investigated by counsel, as set forth
13 above. This litigation, therefore, has reached the stage where “the Parties certainly have a clear view
14 of the strengths and weaknesses of their cases” sufficient to support the Settlement. (*Boyd v. Bechtel*
15 *Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.)

16 **3. Plaintiff’s counsel are experienced in similar litigation**

17 Experienced counsel, operating at arm’s-length, have weighed the strengths of the case and
18 examined all of the issues and risks of litigation and endorse the proposed settlement. The view of
19 the attorneys actively conducting the litigation “is entitled to significant weight” in deciding
20 whether to approve the settlement. (*Fisher Bros. v. Cambridge Lee Industries, Inc.* (E.D. Pa. 1985)
21 630 F.Supp. 482, 488; *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *affd.*
22 661 F.2d 939 (9th Cir. 1981); *Boyd v. Bechtel Corp.*, *supra*, 485 F.Supp. at 617.)

23 Both Plaintiff’s and Defendants’ counsel are experienced in employment, wage and hour
24 and class action matters. Lavi & Ebrahimian LLP is a well-regarded firm that handles almost
25 exclusively employment matters. (Huether Dec. ¶23.) Joseph Lavi, of Lavi & Ebrahimian, LLP, has
26 been approved as class counsel in numerous actions and has been named a Southern California
27 Super Lawyer in the area of Plaintiff’s employment litigation - class action from 2011-2022. (*Id.*)
28 Defendants’ counsel, Richard J. Simmons and Nora K. Stilestein of Sheppard, Mullin, Richter &

Hampton, LLP are also highly regarded and respected as employment defense counsel. Counsel on both sides share the view – endorsed by an experienced wage and hour class action mediator – that this is a fair and reasonable settlement in light of the complexities of the case, the state of the law and uncertainties of class certification and litigation, and the benefit the settlement confers on the class. (Huether Dec. ¶¶8-22.) Given the risks inherent in litigation, in class certification proceedings, and in the defenses asserted, this settlement is fair, adequate, and reasonable and in the best interests of the class. (*Id.*)

4. The Settlement is fair and reasonable based on the strengths of Plaintiff’s case and the risks and costs of further litigation

Plaintiff and her counsel have concluded it was reasonable to enter into the proposed Settlement. Defendants have vigorously contested and continue to contest liability for the claims asserted in the action. Although Defendants believe that class certification would be unlikely on such claims, it nevertheless agreed to attempt resolution of the case through extensive informal discovery and mediation to avoid the expense, distraction and uncertainty of protracted litigation.

There are significant legal uncertainties associated with cases such as this as they can be factually complex and require protracted litigation to resolve. A settlement is not judged solely against what might have been recovered had plaintiff prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. (*Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F. 3d 1234, 1242; *Wershba*, 91 Cal.App.4th at 246 & 250; *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App. 3d 1117, 1139.) Instead, “[c]ompromise is inherent and necessary in the settlement process...even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation” (*Wershba*, 91 Cal.App.4th at 250.)

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5. The Proposed Settlement is a Reasonable Compromise of Claims

To evaluate a settlement, the trial court must receive “basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) However, the record need not contain an explicit statement of the maximum theoretical recovery:

“Greenwell misunderstands *Kullar*, apparently interpreting it to require the record in all cases to contain evidence in the form of an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims—a number which appears nowhere in the record of this case. But *Kullar* does not, as Greenwell claims, require any such explicit statement of value; it requires a record which allows “an understanding of the amount that is in controversy and the realistic ranges of outcomes of the litigation.”

(*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409.)

Based on the information informally produced by Defendants’ during the Class Period, Defendants employed approximately 1,400 Class Members (approximately 436 former employees and 963 current employees) over the course of approximately 38,650 workweeks with an average rate of pay of \$16.00/hour. (Huether Dec. ¶11.) Additionally, as employees of Defendants were paid weekly, the number of pay periods and aggrieved employees is the same during the PAGA Period. Based on our analysis, the maximum exposure for Plaintiff’s claims were as follows:

With regard to Plaintiff’s claims for Unpaid Wages under the California Labor Code and the Fair Labor Standards Act, Plaintiff alleges that Defendants failed to pay for time Class Members for all time worked due to Defendants’ practice of rounding or shaving time at Class Members’ clock in and clock out to the nearest hour which operated to the detriment of Plaintiff and the Class. Plaintiff alleged that she was required to write her scheduled shift times instead of the times she was actually working. Based on Plaintiff’s review of the sampling of time data, Plaintiff estimates on average and at a maximum, Plaintiff and the Class were shorted an hour per week as a result of Defendants’ rounding. Therefore, Plaintiff estimated there were approximately **\$618,400.00** in damages for unpaid wages [Calculated as follows: 38,650 workweeks x 1 hours off the clock work x \$16.00 avg. hourly rate = \$618,400.00.] (Huether Dec. ¶12.)

1 With regard to Plaintiff's Meal Break Claim, Plaintiff alleged that she and other Class
2 Members wrote down their scheduled meal period time even if that was not the exact time a meal
3 period was taken and therefore the times were rounded thereby resulting in short meal periods.
4 Further, Plaintiff alleged that on occasions where she and other Class Members worked more than
5 10 hours in a day, they were not permitted to take a second uninterrupted meal period. Based on
6 these allegations, Plaintiff estimates that on average Class Members suffered from 2 meal period
7 violations a week. Therefore, the maximum that Plaintiff could recover amounted to
8 approximately **\$1,236,800**. [Calculated as follows: 38,650 workweeks x \$16.00 average rate of
9 pay x 2 violations per week average = \$1,236,800.] (Huether Dec. ¶13.)

10 With regard to Plaintiff's Rest Break Claim, Plaintiff alleged that when she and other
11 Class Members worked shifts more than 10 hours in length, they were not permitted to take a
12 third uninterrupted and duty-free rest period. Plaintiff estimated that this occurred on average 2
13 times per week. Therefore, the maximum that Plaintiff could recover amounted to approximately
14 **\$1,236,800**. [Calculated as follows: 38,650 workweeks x \$16.00 average rate of pay x 2
15 violations per week average = \$1,236,800.] (Huether Dec. ¶14.)

16 With regard to Plaintiff's Reimbursement claim, the maximum that Plaintiff could recover
17 amounted to approximately **\$77,300** [Calculated as follows: \$2/week (for cell phone use) x 38,650
18 workweeks = \$77,300.] (Huether Dec. ¶15.)

19 With regards to Plaintiff's unlawful deductions claim, the statute provides that employees
20 who have their wages unlawfully deducted from are entitled to penalties in the amount of \$100 for
21 the initial pay period a violation occurs and \$200 for every subsequent violation. (See Cal. Lab.
22 Code § 225.5.) Therefore, Plaintiff estimates could recover amounted to approximately **\$140,000**.
23 [1,400 employees X \$100 initial penalty = \$140,000.] (Huether Dec. ¶16.)

24 With regard to Plaintiff's Wage Statement claim, the maximum that Plaintiff could recover
25 amounted to approximately **\$70,000**. [1,400 employees X \$50 initial penalty = \$70,000.] Plaintiff
26 alleged that derivative of the aforementioned violations, Defendants failed to provide employees
27 with wage statements which accurately stated the wages earned. However, Defendants could
28 argue that because this claim was derivative, the claim was subject to the below described

1 defenses. In addition, Defendants could likely argue that Plaintiff could not show that any
2 inaccuracy was based on a knowing and intentional failure—an element of a violation of Labor
3 Code section 226—or a violation of law in the manner required by Labor Code section 226.
4 (Huether Dec. ¶17.)

5 With regard to Plaintiff’s Waiting Time penalties claim, the maximum that Plaintiff could
6 recover amounted to approximately **\$1,674,240**. [436 former employees x 8 hours per workday x
7 \$16.00/hour average rate of pay x 30 days = \$1,674,240.] Defendants’ alleged violation of Labor
8 Code section 221 (i.e., unlawful deductions) also results in waiting time penalties for former
9 employees. Because this claim was derivative, Defendants would likely argue it was subject to the
10 aforementioned defenses that the employees received wages for the time they recorded and were
11 provided legally required meal and rest periods. In addition, Defendants could argue that Plaintiff
12 could not show that any failure to pay wages was willful—an element of Labor Code section
13 203—or a violation of law in the manner required by Labor Code sections 201 and 202. (Huether
14 Dec. ¶18.)

15 Regarding Plaintiff’s claims for the civil penalties associated with the foregoing alleged
16 violations of the Labor Code, Plaintiff’s maximum recovery amounted to approximately
17 \$7,730,000. [38,650 pay periods X \$200 penalty (no stacking)= \$7,730,000]. It is more realistic to
18 assume that Defendants will only be found liable for an initial violation in the amount of \$100 for
19 each aggrieved employee, bringing the likely maximum recovery to approximately \$3,865,000.
20 Defendants would likely argue that PAGA penalties would be limited in any event. As discussed
21 in detail below, Defendants deny any liability. Moreover, Defendants would argue that even if
22 Plaintiff prevailed, the recoverable penalties under PAGA are minimal. Indeed, courts to consider
23 the issue have refused to “stack” PAGA penalties. *See Carrington v. Starbucks Corporation* (Cal.
24 Ct. App. Nov. 27, 2018) No. D072392 (published Dec. 19, 2018) (approving PAGA penalty
25 reduction to \$5 per pay period). Thus, the Parties contend the value of the PAGA claim if the case
26 proceeded to trial is approximately **\$193,250** (applying a lesser penalty of \$5 per pay period).
27 (Huether Dec. ¶19.)
28

1 As such, Plaintiff's maximum potential recovery in this matter, inclusive of PAGA
2 penalties, would amount to approximately \$5,246,790. The settlement reached in this matter was
3 \$500,000 or approximately 10% of maximum potential damages. (Huether Dec. ¶20.)

4 As explained above, however, defenses to Plaintiff's claims were as follows: with regard to
5 Plaintiff's claim for failure to pay for all hours worked at the minimum and/or overtime rate of pay,
6 Defendants would likely argue that their "rounding" practices for time keeping and corresponding
7 payment of wages were entirely lawful as they were neutral and do not result in a loss of wages
8 overall to the employees. Regarding Plaintiff's argument that Defendants failed to authorize or
9 permit compliant meal and rest periods, Defendants would likely contend they always provided
10 employees timely meal and rest periods and they have compliant policies to support such
11 contentions. Further, Defendants could argue that the time records will show compliant meal
12 periods were taken. Regarding Plaintiff's claims that Defendants failed to indemnify employees for
13 business expenses, Defendants would most likely argue that it did not require class members to use
14 their personal cell phone and to the extent they did incur costs for these items, they did so
15 voluntarily and unnecessarily. Based on the foregoing, Defendants likely would conclude, wage
16 statements were not required to be provided to Plaintiff and Class Members and that at the time
17 wages were paid out upon separation of employment, Defendants believed, in good faith, that they
18 were properly paying all wages to separating employees. In other words, Defendants concluded,
19 Plaintiff would not be able to establish the willful elements of their Labor Code sections 226 or 203
20 claims. For these reasons, Defendants concluded, Plaintiff would not likely prevail on her claims.
21 Furthermore, Defendants would likely argue that with respect to the PAGA claim, the Court has the
22 discretion to lower penalties give, that it appears unlikely a court would find that any violations
23 were knowing or intentional. (Huether Dec. ¶20.)

24 If the Plaintiff continued litigating this matter, the class members could potentially receive
25 **nothing** if the court agreed with Defendants' position or if Defendants were able to defeat
26 certification based on the individual inquiries that would be required regarding Plaintiff's minimum
27 wage, overtime wage, and meal and rest claims. Furthermore, even if the Court agreed with
28 Plaintiff, Plaintiff still had to prove Defendants acted intentionally and *willfully* in order to receive

1 the additional penalties under Labor Code Section 203. As such, Plaintiff's decision to settle this
2 matter was in the best interest of the Class Members.

3 This is a fair and reasonable result. Other substantial benefits also include that it is a non-
4 reversionary, non-claims made settlement, which distributes the Net Settlement Amount to each
5 Settlement Class Member who does not exclude themselves from the Settlement. An Individual
6 Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of
7 Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying
8 the result by each Participating Class Member's Workweeks. (Settlement, § 3.2.4.). The
9 Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the
10 Aggrieved Employees' 25% share of PAGA Penalties (\$5,000.00) by the total number of PAGA
11 Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b)
12 multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. (Stipulation, §
13 3.2.5.1.). For any Class Member whose Individual Class Payment check or Individual PAGA
14 Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the
15 funds represented by such checks to the California Controller's Unclaimed Property Fund in the
16 name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of
17 California Code of Civil Procedure Section 384, subd. (b). (Stipulation, § 4.4.3.). (Huether Dec.
18 ¶22.)

19 The Gross Settlement Amount is reasonable in light of the risks involved in this case—
20 including the prospect of a potential adverse summary judgment ruling, class certification issues as
21 well as the uncertainty of class certification, defenses to the case, potential appeal, the elements of
22 willfulness and/or injury required for certain penalties.

23 Plaintiff's Counsel is convinced that the proposed Settlement is in the best interest of the class
24 based on the negotiations and a detailed knowledge of the issues present in this action. The
25 affirmative defenses asserted by Defendants, the prospect of a potential adverse summary judgment
26 ruling, preemption issues, class certification issues as well as the uncertainty of class certification,
27 the difficulties of complex litigation, the lengthy process of establishing specific damages and
28 various possible delays and appeals, were also carefully considered by Class Counsel in agreeing to

1 the proposed Settlement. In light of the above, the proposed Settlement is well within the “ballpark”
2 of reasonableness and should be granted preliminary approval.

3 **V. THE COURT SHOULD CERTIFY THE CLASS FOR SETTLEMENT PURPOSES**

4 The court may make an order approving certification of a provisional settlement class after
5 the preliminary settlement hearing. (California Rules of Court, Rule 3.769(d).) For settlement
6 purposes, courts use a less stringent standard for certification of classes. (*Global Minerals & Metals*
7 *Corp. v. Superior Court* (2003) 113 Cal.App.4th 836, 859.) “The reason for this is that no trial is
8 anticipated in a settlement class case, so the case management issues inherent in the ascertainable
9 class determination need not be confronted.” (*Id.*; see also *7-Eleven Owners for Fair Franchising v.*
10 *Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1161-1162 [affirming certification of class action
11 for settlement purposes only].) Accordingly, this Court has discretion to certify Plaintiff’s class for
12 settlement purposes only.

13 The requirements under California Code of Civil Procedure Section 382 are all met for the
14 purposes of certifying this case for settlement purposes:

15 • Numerosity: The settlement class consists of approximately 1,400 Class Members.
16 Thus, the requirement of numerosity is easily met because joinder of 1,400 individual plaintiffs into
17 a single case is otherwise impracticable in light of the circumstances of this case.

18 • Typicality: The claims of the class representatives are typical of the claims of the
19 class members as a whole. Plaintiff suffered the same alleged violations (e.g. failure to pay wages
20 for all hours worked at minimum wage; failure to pay proper overtime wages for daily overtime
21 worked; failure to authorize or permit meal periods; failure to authorize or permit rest periods;
22 failure to pay meal period premium wages for missed meal periods; failure to pay rest period
23 premium wages for missed rest periods; failure to indemnify for employment-related
24 losses/expenditures; unlawful deductions; failure to timely pay earned wages during employment;
25 failure to provide complete and accurate wage statements; failure to pay all wages due upon
26 separation of employment; and unfair business practices) as the class as a whole did and, thus, the
27 claims of the named Plaintiff fairly represents the claims of the class as a whole.
28

1 • Ascertainability: The proposed “Class” is easily ascertainable based on Defendant’s
2 own payroll records.

3 • Adequacy: Plaintiff has proven to be adequate class representatives. She has
4 conducted herself diligently and responsibly in representing the class in this litigation, she
5 understands her fiduciary obligations, and she has actively participated in the prosecution of this
6 case. (Huether Dec. ¶27.) Plaintiff has spent hours in meetings and conferences with counsel to get
7 a better understanding of their work environment and requirements. Plaintiff was readily available
8 during the full-day mediation of the matter and has continued to be actively engaged in the ongoing
9 settlement negotiations following mediation that were ultimately required to finalize settlement.
10 (*Id.*) Further, Plaintiff does not have any interest that is adverse to the interests of the other class
11 members. (*Id.*) Moreover, proposed class counsel is adequate to represent the class for settlement
12 purposes and has been appointed as class counsel before by this Court as well as both State and
13 Federal Courts. (Huether Dec. ¶23.)

14 • Commonality: Many common issues of law and fact unite the class. The common
15 questions of law and fact include, but are not limited to:

- 16 1) Whether Defendants failed to pay the Class Members for all hours worked at
17 minimum wage
- 18 2) Whether Defendants failed to pay the Class Members for overtime hours
19 worked at the proper overtime rate of pay;
- 20 3) Whether Defendants failed to provide the Class Members meal period
21 premium wages for missed meal periods;
- 22 4) Whether Defendants failed to provide the Class Members rest period
23 premium wages for missed rest periods;
- 24 5) Whether Defendants failed to indemnify Class Members for the costs of
25 necessary business expenditures;
- 26 6) Whether Defendants made unlawful deductions from Class Members’ pay;
- 27 7) Whether Defendants failed to timely pay Class Members’ earned wages
28 during employment;
- 8) Whether Defendants failed to provide the Class Members complete and
 accurate wage statements;
- 9) Whether Defendants failed to pay Class Members all wages due upon
 separation of employment; and
- 10) Whether Defendants violated Business and Professions Code section 17200.

1 • Superiority: A class action is superior to other available means for the fair and
2 efficient adjudication of this controversy. Joinder of all members of the proposed class is
3 impractical. Class treatment will permit a large number of similarly situated persons to prosecute
4 their common claims in a single forum simultaneously for settlement purposes without the
5 unnecessary duplication of effort and expense that numerous individual actions would engender.

6 **VI. THE PROPOSED CLASS NOTICE OF SETTLEMENT SHOULD BE APPROVED**

7 The proposed Notice of Class Action Settlement in the form attached to the Settlement
8 Agreement as Exhibit A should be approved for dissemination to the Class Members. These
9 documents inform the Class of the terms of the Settlement, of their right to receive their
10 proportional share of the Settlement and the manner in which to do so, an estimate of their estimates
11 shares, of their right to request exclusion or to comment upon or object to the Settlement by written
12 submission, and of their right to appear in person or by counsel at the final approval hearing and to
13 be heard regarding approval of the Settlement. Adequate periods of time are provided by each of
14 these procedures. Furthermore, the date and time of the Final Approval hearing will be inserted in
15 the Notice of Class Action Settlement and the Settlement Administrator will calculate the Class
16 Member's estimated settlement payments and PAGA payments as well as the insert Settlement
17 Administrator's contact information in the necessary locations amongst the notice documents.

18 **VII. THE PROPOSED ATTORNEYS' FEES AND COSTS ARE REASONABLE**

19 Plaintiff's Counsel seeks attorneys' fees and costs award of one third (1/3) of the Gross
20 Settlement Amount or One Hundred Sixty-Six Thousand Six Hundred Sixty-Six Dollars and Sixty-
21 Seven Cents (\$166,666.67) and Class Counsel's costs not to exceed Seventeen Thousand Dollars
22 (\$17,000), for the time spent litigating this matter as well as expenses incurred in the prosecution of
23 this Lawsuit thus far. Defendants will not object to an award of attorneys' fees and costs in these
24 amounts. The requested fees fall well within the historical range of attorneys' fee awards under the
25 common fund theory, which is generally from 20% to 50%. The requested fee is fair compensation
26 for undertaking complex, risky, expensive, and time-consuming litigation on a contingent fee basis,
27 especially in light of the substantial benefits achieved by Plaintiff's counsel for the Settlement
28 Class Members. Plaintiff's counsel diligently litigated and investigated this case.

1 California courts have recognized that an appropriate method for awarding attorney's fees in
2 class actions is to award a percentage of the "common fund" created as a result of the settlement.
3 (*City & County of San Francisco v. Sweet* (1995) 12 Cal. 4th 105, 110-11; *Quinn v. State* (1975) 15
4 Cal. 3d 162, 168; *see also Apple Computer, Inc. v. Superior Court* (2005) 126 Cal. App. 4th 1253,
5 1270; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal. App. 4th 19, 26.) The basis of the
6 common fund is fairness to the successful litigant, who might otherwise receive no benefit because
7 her recovery might be consumed by the expenses; correlative prevention of an unfair advantage to
8 others who are entitled to share in the fund and who should bear their share of the burden of its
9 recovery; encouragement of the attorney for the successful litigant, who will be more willing to
10 undertake and diligently prosecute proper litigation for the protection or recovery of the fund if she
11 is assured that she will be properly and directly compensated should her efforts be successful. (*City*
12 *& County of San Francisco v. Sweet, supra*, 12 Cal. 4th at 111.) In *Quinn*, the California Supreme
13 Court stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund from
14 which others derive benefits may require those passive beneficiaries to bear a fair share of the
15 litigation costs." (*Quinn v. State, supra*, 15 Cal. 3d at 167.) Similarly, in *Sweet*, the California
16 Supreme Court recognized that the common fund doctrine has been applied "consistently in
17 California when an action brought by one party creates a fund in which other persons are entitled to
18 share." (*City & County of San Francisco v. Sweet, supra*, 12 Cal. 4th at 110.)

19 Several courts have expressed frustration with the alternative "lodestar" approach for
20 deciding fee awards, which usually involves wading through voluminous and often indecipherable
21 time records. (*Lealao, supra*, 82 Cal. App. 4th at 31 n.5 [citing *In re Activision Sec. Litig.* (N.D.
22 Cal 1989)] 723 F. Supp. 1373, 1375[.]) The percentage approach is preferable to the lodestar
23 because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages
24 efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement;
25 and (3) it reduces the demands on judicial resources. (*In re Activision Sec. Litig.*, 723 F. Supp. at
26 1378-79.) The Ninth Circuit now routinely uses the percentage of the common fund approach to
27 determine the award of attorney's fees. (*Lealao*, 82 Cal. App. 4th at 30-31; *see e.g., In re Pacific*
28 *Enters. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 378-79 [approving attorney's fee of 33%].)

1 Plaintiff's counsel's request for fees equal to one third (1/3) of the Gross Settlement
2 Amount is within the range of reasonableness. Historically, courts have awarded percentage fees in
3 the range of 20% to 50%, depending on the circumstances of the case. (*See In re Activision Sec.*
4 *Litig., supra*, 723 F. Supp. at 1378.) According to Professor Newberg: "No general rule can be
5 articulated on what is a reasonable percentage of a common fund...Usually 50 percent of the fund
6 is the upper limit on a reasonable fee award from a common fund, in order to assure that fees do
7 not consume a disproportionate part of the recovery obtained for the class, though somewhat larger
8 percentages are not unprecedented." (Newberg, *supra*, §14.6.)

9 Class Counsel has borne, and continues to bear, the entire risk and cost of litigation
10 associated with this class action on a pure contingency basis. The factual and legal issues posed in
11 this case were highly disputed, and there were also risks as to whether or not a class would be
12 certified, leaving a large number of putative class members unlikely to receive any recovery.

13 Based on Class Counsel's past experience in class action wage and hour litigation, it is safe
14 to state that Class Counsel is very likely to be called upon, after the Class Notice has been sent, to
15 expend substantial amounts of additional time to help Class Members understand the terms of the
16 proposed Settlement and to assist Class Members in the preparation and documentation of their
17 Class Notice. It is also likely that, even after final approval of the Settlement has been granted,
18 Class Counsel will be called upon to expend additional amounts of time in the presentation and
19 resolution of contests and disputes relating to Class Members' allocation under the terms of the
20 proposed Settlement, as to the amounts of individual claims and perhaps other individual issues.

21 The Court should preliminarily approve the requested attorney's fees and costs, which are
22 justified by the results achieved, the complexity of the issues, the difficulty of the case, and the
23 great risk undertaken by Class Counsel. The requested attorneys' fees and costs will not be opposed
24 by Defendant, and are well within established guidelines. The Class Members will also be notified
25 of the requested amount and have an opportunity to object to the requested fees.

26 **VIII. THE REQUESTED REPRESENTATIVE SERVICE PAYMENT IS REASONABLE**

27 The named Plaintiff is entitled to enhancement awards for her service as a class
28 representative and the risks associated with her role as the Class Representative and named

1 Plaintiff in this Lawsuit. Plaintiff understood and continues to understand her role as the Class
2 Representative, she has protected the interests of Class Members during the pending of this matter
3 and will continue to do so. (Huether Dec. ¶27.) Plaintiff has spent hours in meetings and
4 conferences with counsel to get a better understanding of her work environment and requirements
5 and Plaintiff was readily available during full day mediation in this matter. (*Id.*) Even after
6 mediation, Plaintiff continued to be engaged with counsel for the months of the continued
7 negotiations that it took to ultimately finalize a settlement as well as understanding and discussing
8 the settlement agreement with her attorneys. (*Id.*) Further, Plaintiff does not have any interest that
9 is adverse to the interests of the other class members. (*Id.*) Defendants will not oppose the
10 application for an enhancement of \$7,500 to be paid from the Gross Settlement Amount to Plaintiff
11 for her services to the Class in this Lawsuit as well as providing the Defendants with a general
12 release of any and all of her rights and claims against the Defendants. Class Counsel can attest that
13 Plaintiff devoted a proportionate amount of time and work assisting counsel in the case,
14 communicating with counsel frequently, providing documents and information regarding their
15 employer and employment, which led to increase in the value and ultimate success of the
16 Settlement. (*Id.*)

17 **IX. PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS**

18 The Parties propose the following schedule for the fairness hearing and final proceedings:

- 19 1. No later than thirty (30) calendar days after the Court grants Preliminary
20 Approval of the Settlement, Defendants shall provide the Class Data in the form
21 of a Microsoft excel spreadsheet to the Settlement Administrator. (Stipulation, §
22 4.2.)
- 23 2. Within fourteen (14) calendar days after receiving the Class Data from
24 Defendants, the Settlement Administrator shall send to all Class Members
25 identified in the Class Dara, via first-class mail, the Class Notice. (Stipulation, §
26 7.4.2.)
- 27 3. Class Members who wish to object to the class action or exclude themselves
28 from participating in the class settlement must do so no later than forty-five (45)
days after the Administrator's mailing of the Class Notice (plus an additional
fourteen (14) days for Class Members whose Class Notice was re-mailed.)
(Stipulation, § 1.44.)

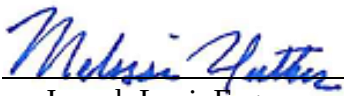
1 4. The Final Fairness and Approval Hearing date will be determined by Court. The
2 parties request that the Final Fairness and Approval Hearing be set approximately
3 one hundred forty (140) days following the Court's granting of preliminary
4 approval of the proposed Class Action Settlement. The Parties' respective
5 counsel will bring their calendars to the preliminary approval hearing for
6 purposes of scheduling the Final Fairness and Approval Hearing.

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X. CONCLUSION

 The proposed class action settlement is fair, adequate, and reasonable. It will result in fair and immediate payment 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, the parties respectfully request that the Court grant preliminary approval of the proposed Settlement, sign the proposed Order, approve and authorize mailing of the proposed notice packet and set a date for a final approval hearing.

Dated: April 26, 2023

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

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SANDOVAL on behalf of herself and others
similarly situated