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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF ALAMEDA**

10 BRITNEY GUEDON, on behalf of herself and all  
11 others similarly situated;

12 Plaintiffs,

13 v.

14 NEOGREEN SOLUTIONS, INC., a California  
15 Corporation doing business as NEOGEN CARE,  
16 ANJU SATHEESH, an individual, and DOES 2  
through 10, inclusive,

17 Defendants.

Case No.: RG21102962

**CLASS ACTION**

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

**Reservation No.: 862413327604**

Date: March 4, 2025  
Time: 10:00 a.m.  
Location: Dept. 23  
Judge: Hon. Michael Markman

1       **PLEASE TAKE NOTICE** that pursuant to Rule 3.769 of the California Rules of Court, on  
2 March 4, 2025 at 10:00 a.m. or as soon thereafter as the matter may be heard in Department 23 of the  
3 above-entitled Court, located at 1221 Oak Street, 4<sup>th</sup> Floor, Oakland, CA 94612, Plaintiff Britney  
4 Guedon (“Plaintiff”) will and hereby does move this Court for:

- 5       1) Preliminary approval of the proposed Joint Stipulation for Class and PAGA Representative  
6       Action Settlement and Release of Claims (the “Settlement”) between Plaintiff and  
7       Defendants Neogreen Solutions, Inc. dba Neogen Care (“Defendant Neogen”) and Anju  
8       Satheesh, an individual (“Defendant Satheesh”) (Defendant Neogen and Defendant  
9       Satheesh collectively “Defendants”);
- 10      2) Provisional certification, pursuant to section 382 of the California Code of Civil Procedure,  
11      for settlement purposes only, of the proposed Settlement Class defined as follows: Current  
12      and former employees of Defendant Neogen who worked for Defendant Neogen in  
13      California as a registered nurse during the period of June 23, 2017 to April 2, 2024;
- 14      3) Preliminary appointment of Britney Guedon as Class Representative;
- 15      4) Preliminary appointment of Hunter Pyle and Katie Fiester of Hunter Pyle Law as Class  
16      Counsel;
- 17      5) The scheduling of a final approval hearing date to consider whether the Settlement should  
18      be finally approved and to award an amount for a service payment to Plaintiff, and  
19      attorneys’ fees and costs to Plaintiff’s counsel;
- 20      6) Appointment of Simpluris, Inc. as the third-party Settlement Administrator; and
- 21      7) Approval of the proposed Class Notice, and an order that it be disseminated to the proposed  
22      Settlement Class as provided in the Settlement.

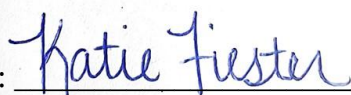
23       This motion is based on this notice of motion; the attached memorandum of points and  
24 authorities; the declaration of Hunter Pyle in Support of Plaintiff’s Motion for Preliminary Approval  
25 of Class and Representative Action; the declaration of Katie Fiester in Support of Plaintiff’s Motion  
26 for Preliminary Approval of Class and Representative Action and exhibits attached thereto; the  
27 declaration of Britney Guedon in Support of Plaintiff’s Motion for Preliminary Approval of Class and  
28

1 Representative Action; the declaration of Eric Springer on behalf of Simpluris, Inc. (Proposed  
2 Settlement Administrator); the pleadings and other papers filed in this action; and any further oral or  
3 documentary evidence or argument presented at the time of hearing.

4 Respectfully Submitted,

5 Dated: February 6, 2025

HUNTER PYLE LAW

6  
7 By:   
8 Hunter Pyle  
9 Katie Fiester

10 Attorneys for Plaintiff and the Putative Class  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to Rule 3.769 of the California Rules of Court, Plaintiff Britney Guedon (“Plaintiff”),  
4 respectfully requests that this Court grant preliminary approval of the Joint Stipulation for Class and  
5 PAGA Representative Action Settlement and Release of Claims (the “Settlement” or “Settlement  
6 Agreement”) agreed to by Plaintiff and Defendants Neogreen Solutions, Inc. dba Neogen Care  
7 (“Defendant Neogen”) and Anju Satheesh, an individual (“Defendant Satheesh”) (Defendant Neogen  
8 and Defendant Satheesh, collectively “Defendants”). Plaintiff and Defendants are collectively referred  
9 to herein as the “Parties.”

10 Plaintiff and the other 161 Settlement Class Members she seeks to represent, are registered  
11 nurses who worked for Defendant Neogen in California and provided medical care to patients in their  
12 homes. (See Declaration of Katie Fiester in Support of Plaintiff’s Motion for Preliminary Approval  
13 (“Fiester Decl.”), ¶ 9.)

14 The Settlement, which is attached as Exhibit 1 to the Fiester Decl., is not a claims-made  
15 settlement. (Fiester Decl., ¶ 3 & Exhibit 1 (“Settlement”).) It includes the following essential terms:

16 1) A Settlement Class<sup>1</sup> comprised of current and former employees of Defendant Neogen  
17 who worked for Defendant Neogen in California as a registered nurse during the period of  
18 June 23, 2017 to April 2, 2024. (Settlement, ¶ 26.)

19 2) A non-reversionary Gross Settlement Amount of \$650,000, that includes the Net  
20 Settlement Payments to Participating Class Members, the PAGA Settlement,  
21 Administrative Costs, a service payment to the Plaintiff, and Plaintiff’s counsel’s attorneys’  
22 fees and litigation costs, pending this Court’s approval. (Settlement, ¶¶ 12, 61.) These  
23 amounts, pending Court approval, are as follows:

24 a. A PAGA Settlement payment totaling \$25,000, with 75% or \$18,750 paid to the  
25 California Labor and Workforce Development Agency (“LWDA”) and the  
26 remaining 25% or \$6,250 paid to the PAGA Members. (Settlement, ¶¶ 25, 59(b).)

27 \_\_\_\_\_  
28 <sup>1</sup> Unless otherwise defined herein, all capitalized terms herein have the same meanings as those in  
the Settlement Agreement.

- b. Administrative Costs of up to \$7,500. (Settlement, ¶¶ 1, 46.)
- c. A service payment of up to \$10,000 to Plaintiff. (Settlement, ¶ 65.)
- d. An award of up to one-third of the Gross Settlement Amount (currently \$216,666.67) in attorneys' fees and up to \$35,000.00 in reimbursement of litigation costs to Plaintiff's counsel. (Settlement, ¶ 62.)

3) The Net Settlement Amount is the Gross Settlement Amount minus the PAGA Settlement, Administrative Costs, service payment to Plaintiff, and Plaintiff's counsel's attorneys' fees and costs, pending this Court's approval. Upon approval of the Court, the Net Settlement Amount of approximately \$355,833 will be allocated to approximately 162 Settlement Class Members on a pro rata basis according to the number of days each Settlement Class Member actually worked during the Settlement Class Period. (Settlement, ¶ 59(a); *see also* Fiester Decl., ¶ 36.) The PAGA Settlement allocated to PAGA Members is currently projected to be an additional \$6,250. (Settlement, ¶ 59(b); *see also* Fiester Decl., ¶ 36.)

As discussed below, the Settlement satisfies all criteria for preliminary approval under California law and falls well within the range of reasonableness. The Settlement was reached through informed, arms-length bargaining at and after mediation between experienced attorneys. Accordingly, the Parties respectfully request that the Court enter an Order (1) preliminarily approving the proposed Settlement; (2) provisionally certifying the Settlement Class; (3) provisionally approving the appointment of Britney Guedon as Class Representative; (4) provisionally approving the appointment of Hunter Pyle Law as Class Counsel; (5) setting a final fairness and approval hearing; (7) appointing Simpluris, Inc. ("Simpluris") as the third-party Settlement Administrator; and (8) approving and directing distribution of a Notice of Settlement of Class Action ("Class Notice") to the Settlement Class (attached as Exhibit A to the Settlement Agreement).

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1 **II. SUMMARY OF THE LITIGATION**

2 **A. FACTUAL AND PROCEDURAL BACKGROUND**

3 Defendants are in the healthcare business and provide in-home medical care and support to  
4 patients. (Fiester Decl., ¶ 9.) Plaintiff and Settlement Class Members are Registered Nurses who work  
5 to provide patients with essential medical care. (*Ibid.*)

6 On June 23, 2021, Plaintiff commenced the Litigation by filing a complaint in Alameda County  
7 Superior Court alleging the following wage and hour violations: 1) failure to pay minimum wages; 2)  
8 failure to pay overtime wages; 3) failure to provide off-duty meal periods; 4) failure to authorize and  
9 permit rest periods; 5) failure to reimburse business expenses; 6) failure to furnish adequate wage  
10 statements; 7) failure to pay all wages due upon separation of employment; and 8) unfair business  
11 practices in violation of Business and Professions Code §§ 17200, *et seq.* (Fiester Decl., ¶ 10.)

12 On July 2, 2021, Plaintiff notified the Labor and Workforce Development Agency (“LWDA”) of  
13 Defendant Neogen’s alleged violations of the Private Attorneys General Act (“PAGA”), Labor  
14 Code section 2698, *et seq.* (Fiester Decl., ¶ 11.)

15 On October 26, 2021, after more than sixty-five days had passed without the LWDA taking  
16 any action, Plaintiff filed a First Amended Complaint that added a representative cause of action  
17 seeking civil penalties for Labor Code violations pursuant to PAGA. (Fiester Decl., ¶ 12.)

18 On July 29, 2022, Plaintiff filed an amended PAGA notice with the LWDA. (Fiester Decl., ¶  
19 13.)

20 Defendant Neogen filed a Motion to Compel Arbitration in November 2022. The Court denied  
21 Defendant Neogen’s Motion in December 2022. (Fiester Decl., ¶ 14.) Defendant Neogen appealed the  
22 Court’s order, but subsequently dismissed the appeal. (*Ibid.*)

23 On January 3, 2023, Plaintiff filed the operative Second Amended Complaint naming  
24 Defendant Satheesh, an individual, as an additional defendant in the Litigation. (Fiester Decl., ¶ 15.)  
25 Ms. Satheesh is Defendant Neogen’s Chief Executive Officer, Secretary, and Chief Financial Officer.  
26 (*Ibid.*)  
27  
28

1           **B.       INVESTIGATION AND SETTLEMENT**

2           Plaintiff's counsel have conducted a thorough investigation into the facts relevant to the  
3 Litigation and have diligently pursued an investigation of Settlement Class Members' claims against  
4 Defendants. Among other things, Plaintiff's counsel have reviewed a large volume of information and  
5 data regarding the claims asserted in the Litigation, the defenses available to Defendants, and  
6 Defendant Neogen's financial condition. (Fiester Decl., ¶ 16.)

7           For example, Plaintiff's counsel reviewed and analyzed, relevant wage and hour policies  
8 including meal period and rest break policies, an employee handbook, and a sample of time and payroll  
9 records for sixty-three (63) Settlement Class Members, piece rate records, wage statements, an offer  
10 letter exemplar, a revised arbitration agreement exemplar, and hire and termination dates for 162  
11 Settlement Class Members. (Fiester Decl., ¶ 17.)

12           Defendants have contended that Defendant Neogen is in dire financial circumstances due to  
13 the recent reduction of referrals from a major client. Defendants contend that this will have a  
14 significant impact on Defendants' ability to pay any settlement or judgment. (Fiester Decl., ¶ 18.)

15           In response, Plaintiff's counsel requested, and Defendants produced, documents relevant to  
16 their financial circumstances including documents substantiating the reduction of referrals from a  
17 major client, and Defendant Neogen's tax returns, balance sheets, and profit and loss statements.  
18 (Fiester Decl., ¶ 19.) Plaintiff's counsel reviewed these financial documents and considered them in  
19 their assessment of the case. (*Ibid.*)

20           Defendants have also contended that some Settlement Class Members have signed revised  
21 arbitration agreements. (Fiester Decl., ¶ 20.) Defendants argued that those arbitration agreements  
22 would present a challenge to class certification. (*Ibid.*) Defendants produced a revised arbitration  
23 agreement exemplar to Plaintiff. (*Ibid.*)

24           The Parties attended two separate full-day mediations in this case with two reputable  
25 mediators. Prior to the mediations, the Parties met and conferred and agreed that Defendants would  
26 produce informal discovery that would allow them to productively move forward with informal  
27  
28

1 settlement discussions. (Fiester Decl., ¶ 21.) Based on this informal discovery, Plaintiff's counsel  
2 determined under what circumstances a potential violation of law could be identified.

3 Prior to engaging in settlement discussions, Plaintiff retained an expert, David Breshears, to  
4 conduct a damages analysis. (Fiester Decl., ¶ 22.) Mr. Breshears reviewed the documents and data  
5 produced by Defendants and provided a damages model for 63 Settlement Class Members for the  
6 Parties' first mediation. For the second mediation, Plaintiff's counsel extrapolated from Mr. Breshears  
7 damages model to conduct a damages analysis for 162 Settlement Class Members. (*Ibid.*)

8 Plaintiff provided the mediators with a detailed analysis of Defendants' liability and damages.  
9 (Fiester Decl., ¶ 23.) Defendants responded with detailed briefs setting forth their arguments regarding  
10 Plaintiff's claims. (*Ibid.*)

11 On June 15, 2022, the Parties attended the first all-day mediation with mediator Hon. Ronald  
12 M. Sabraw (Ret.). (Fiester Decl., ¶ 24.) The Parties did not resolve the matter at mediation. (*Ibid.*)

13 On April 2, 2024, the Parties attended a second, all-day mediation with mediator Mark Peters.  
14 (Fiester Decl., ¶ 25.) The Parties did not resolve the matter at mediation but continued to engage in  
15 arms-length negotiations with the assistance of Mr. Peters. (*Ibid.*) Ultimately, the Parties reached a  
16 settlement in principle based on a mediator's proposal. The terms of the Parties' agreement were  
17 outlined in a Memorandum of Understanding. (*Ibid.*) The Parties thereafter negotiated the terms of the  
18 Settlement Agreement. (*Ibid.*)

### 19 C. REASONS FOR THE PARTIES' SETTLEMENT

20 Plaintiff recognizes the expense and length of protracted proceedings necessary to continue the  
21 Litigation against Defendants through trial and through any possible appeals. (Fiester Decl., ¶ 27.)  
22 Plaintiff also gave appropriate weight to Defendants' assertions that Defendant Neogen is in dire  
23 financial circumstances which will significantly impact Defendants' ability to pay any settlement or  
24 judgment, and to the revised arbitration agreements. (*Ibid.*)

25 Plaintiff has also taken into account the uncertainty and risk of further litigation, including the  
26 risk of significant delay, the risk that if the matter is litigated a class may not be certified by the Court  
27 or that it may later be decertified, and potential appellate issues. (Fiester Decl., ¶ 28.) Plaintiff is also  
28

1 aware of the burdens of proof necessary to establish liability for the claims asserted in the Litigation,  
2 Defendants’ defenses thereto, and the difficulties in establishing damages. (*Ibid.*)

3 **III. THE PROPOSED SETTLEMENT**

4 **A. ESSENTIAL TERMS OF THE SETTLEMENT**

5 The Settlement Agreement provides that Defendants shall pay the Gross Settlement Amount  
6 of \$650,000 to resolve the claims alleged in the Litigation. (Settlement, ¶ 12.) The essential terms of  
7 the Settlement are as follows:

8 **1. Settlement Class Definition**

9 The Settlement Class is defined as: Current and former employees of Defendant Neogen who  
10 worked for Defendant Neogen in California as a registered nurse during the period of June 23, 2017  
11 to April 2, 2024. (Settlement, ¶ 26.) Defendants represent that there are 162 Settlement Class  
12 Members. (*Id.* at ¶ 58.)

13 **2. Settlement Amount**

14 The Gross Settlement Amount of \$650,000<sup>2</sup> that Defendants agree to pay to settle this  
15 Litigation shall include all Net Settlement Payments to Participating Class Members, the PAGA  
16 Settlement, Administrative Costs, a service payment to the Plaintiff, and Plaintiff’s counsel’s  
17 attorneys’ fees and litigation costs, pending this Court’s approval. (Settlement, ¶ 12.) All payroll taxes  
18 will be paid by Defendants separate from and in addition to the Gross Settlement Amount. (*Id.* at ¶  
19 67.)

20 Defendants required a payment plan to fund the Settlement given Defendant Neogen’s dire  
21 financial position, including the recent reduction of referrals from a major client. (Fiester Decl., ¶ 31.)  
22 Plaintiff negotiated the payment plan with Defendants to conclude payments as early as possible.  
23 (*Ibid.*)

24  
25 \_\_\_\_\_  
26 <sup>2</sup> The Gross Settlement Amount is conditioned on representations made concerning the number of  
27 employees that were employed within the Settlement Period. (Settlement, ¶ 58.) Specifically,  
28 Defendants have represented that there are 162 Settlement Class Members. (*Ibid.*) In the event this  
figures changes and the number of Participating Class Members increases by more than ten percent  
(10%), the Gross Settlement Amount will increase pro rata per additional Participating Class  
Member. (*Ibid.*)

Pursuant to the Settlement, Defendants shall fund the Gross Settlement Amount by the later of the following: (1) within 14 days of “Final Judgment” or (2) November 1, 2025. (Settlement, ¶ 57.)

The Settlement Agreement provides that any and all claims for PAGA penalties alleged in the Litigation have been settled for the amount of \$25,000, which shall be allocated as follows: 75% (\$18,750) shall be paid to the California Labor and Workforce Development Agency (“LWDA”) and 25% (\$6,250) shall be distributed to PAGA Members. (Settlement, ¶¶ 20, 59(b).)

The Administrative Costs shall not exceed \$7,500 and will be deducted from the Gross Settlement Amount, upon approval by the Court. (Settlement, ¶¶ 1, 12, 14.)

Plaintiff’s counsel will apply to the Court for an award of \$10,000 to be paid to Plaintiff as a service payment in recognition of her service to the Settlement Class. (Settlement, ¶ 65; Fiester Decl., ¶ 34; see also Declaration of Britney Guedon in Support of Plaintiff’s Motion for Preliminary Approval of Class and Representative Action (“Guedon Decl.”).)

The Settlement Agreement permits Plaintiff’s counsel to apply to the Court for an award of attorneys’ fees not to exceed one-third the Gross Settlement Amount, or \$216,666.67, plus actual litigation costs not to exceed \$35,000. (Settlement, ¶ 62; *see also* Fiester Decl., ¶ 35.)

The Net Settlement Amount is the Gross Settlement Amount minus the PAGA Settlement, Administrative Costs, a service payment to Plaintiff, and Plaintiff’s counsel’s attorneys’ fees and expenses, pending this Court’s approval. (Settlement, ¶ 14.) The Net Settlement Amount is currently estimated to be \$355,833 and the PAGA Settlement allocated to PAGA Members is currently projected to be an additional \$6,250 as follows:

|                                |                      |
|--------------------------------|----------------------|
| <b>Gross Settlement Fund:</b>  | <b>\$ 650,000.00</b> |
| Less PAGA Settlement           | -\$ 25,000.00        |
| Less Administration Costs      | -\$ 7,500.00         |
| Less Service Payment           | -\$ 10,000.00        |
| Less Attorneys’ Fees           | -\$ 216,666.67       |
| <u>Less Litigation Costs</u>   | <u>-\$ 35,000.00</u> |
| <b>NET SETTLEMENT AMOUNT</b>   | <b>\$ 355,833.00</b> |
| <br>                           |                      |
| <b>PAGA Settlement:</b>        | <b>\$ 25,000.00</b>  |
| <u>Less Payment to LWDA</u>    | <u>-\$ 18,750.00</u> |
| <b>PAYMENT TO PAGA MEMBERS</b> | <b>\$ 6,250.00</b>   |

1 (Fiester Decl., ¶ 36.)

2 **3. The Settlement Is Neither Claims-Made Nor Reversionary**

3 This is not a claims-made Settlement. (Settlement, ¶¶ 21, 56.) Participating Class Members  
4 will receive a portion of the Net Settlement Amount as long as they do not opt-out of the Settlement.  
5 (*Ibid.*) All PAGA Members will receive their portion of the PAGA Settlement. (*Id.* at ¶ 55.)

6 The Settlement is also non-reversionary. (Settlement, ¶ 61.) Under no circumstances will the  
7 Gross Settlement Amount or any portion thereof revert back to Defendants. (*Ibid.*; see also Fiester  
8 Decl., ¶ 38.)

9 **4. Settlement Administrator**

10 The Parties have agreed that Simpluris will serve as the Settlement Administrator.  
11 (Settlement, ¶ 25; Fiester Decl., ¶ 41.) Simpluris has successfully administered a large number of  
12 wage and hour class action settlements in an efficient and effective manner. (Declaration of Eric  
13 Springer on behalf of Simpluris, Inc. (Proposed Settlement Administrator) (“Springer Decl.”), ¶¶ 5-  
14 6, Exh. A; Fiester Decl., ¶ 41.) Simpluris has provided a bid of \$7,000 for the proposed  
15 administrative work. (Spring Decl., ¶ 13, Exh. C.) Plaintiff’s counsel considered two other bids  
16 before choosing Simpluris, which had the lowest bid. (Fiester Decl., ¶ 41.)

17 **5. Class Notice, Opt-Out and Objections**

18 The Settlement Administrator shall mail a Class Notice, including a computation of the amount  
19 of each Settlement Class Member’s share of the Net Settlement Payment and Individual PAGA  
20 Settlement, to all Settlement Class Members, whose names and addresses Defendants will provide to  
21 the Settlement Administrator. (Settlement, ¶¶ 47-48.) The Class Notice is attached as Exhibit A to the  
22 Settlement Agreement. (*Id.* at Exh. A.)

23 The Class Notice informs each Settlement Class Member of their right to object to and opt-out  
24 of the Settlement. (Settlement, ¶¶ 4, 48, Exh. A.) The Class Notice provides instructions for  
25 Settlement Class Members to object to the Settlement, to opt-out of the Settlement or to dispute the  
26 computation of the Settlement Class Members’ share of the Net Settlement Amount and PAGA  
27 Settlement. (*Ibid.*)

1 Settlement Class Members will have 60 days in which to postmark objections, disputes, and  
2 requests for exclusion. (Settlement, ¶¶ 51-52, 54.) Individuals who do not submit valid and timely  
3 requests for exclusion shall be deemed Participating Class Members. (*Id.* at ¶ 56.)

4 Settlement Class Members who submit valid and timely requests for exclusion will not be  
5 Participating Class Members and will not be bound by the terms of the Settlement. (Settlement, ¶ 55.)  
6 However, Settlement Class Members that worked during the PAGA Settlement Period cannot opt-out  
7 of the PAGA Settlement. (*Ibid.*; *See also Robinson v. Southern Counties Oil Company* (2020) 53  
8 Cal.App.5th 476, *review denied* (Nov. 24, 2020).)

9 **6. Calculation of Payments and Distribution to Settlement Class Members**

10 Each Participating Class Member will receive a share of the Net Settlement Amount and  
11 PAGA Settlement based on the actual number of days worked during the Settlement Class Period and  
12 actual pay periods worked during the PAGA Settlement Period. (Settlement, ¶ 59(a).)

13 Simpluris shall calculate each Settlement Class Member's Net Settlement Payment as follows:  
14 Each Participating Class Member shall receive a proportionate share that is equal to (i) the number of  
15 days they actually worked for Defendant Neogen as a registered nurse during the Settlement Class  
16 Period; divided by (ii) the total number of days actually worked for Defendant Neogen as a registered  
17 nurse by all Participating Class Members during the Settlement Class Period. (Settlement, ¶ 59(a).)

18 Simpluris shall calculate each PAGA Member's Individual PAGA Payment as follows: From  
19 the \$25,000 allocated to PAGA penalties, one-quarter (25%) (\$6,250) shall be distributed to the PAGA  
20 Members, which shall consist of all Settlement Class Members who were employed at any time during  
21 the time period from July 2, 2020 to April 2, 2024. Each PAGA Member will receive a proportionate  
22 share of money allocated to the PAGA Members that is equal to (i) the number of pay periods they  
23 actually worked for Defendant Neogen as a registered nurse during the PAGA Settlement Period  
24 divided by (ii) the total number of pay periods actually worked for Defendant Neogen as a registered  
25 nurse by all PAGA Members during the PAGA Settlement Period. The remaining three-quarters (75%)  
26 (\$18,750) of the PAGA Settlement shall be distributed to the LWDA. (Settlement, ¶ 59(b).)

1 For tax reporting, the Net Settlement Payments to the Participating Class Members will be  
2 characterized as twenty percent (20%) wages, seventy percent (80%) restitution, reimbursement,  
3 damages, penalties, and interest. (Settlement, ¶ 68(i)-(ii).) Payments from the PAGA Settlement will  
4 be characterized as one hundred percent (100%) penalties. (*Id.* at ¶ 69 (i).) All payroll taxes will be  
5 paid by Defendants separate from and in addition to the Gross Settlement Amount. (*Id.* at ¶ 67.)

#### 6 7. Mailing of Checks

7 Within 15 calendar days after Defendants fully fund the Settlement, the Settlement  
8 Administrator will make all disbursements under the Settlement Agreement. (Settlement, ¶ 60.) The  
9 checks will remain negotiable for 180 days from the date of mailing. (*Id.* at ¶ 61.)

10 The Parties propose that the Court designate Legal Aid at Work as the *cy pres* beneficiary.  
11 (Settlement, ¶ 61.) In support of Plaintiff’s motion for final approval, she will submit declarations  
12 establishing that Legal Aid at Work is a qualified *cy pres* designee under section 384 because it is a  
13 “nonprofit organization[] providing civil legal services to the indigent.” (Fiester Decl., ¶ 51.)  
14 Plaintiff’s counsel has no involvement in the governance of Legal Aid at Work. (*Ibid.*)

### 15 IV. THE COURT SHOULD APPROVE THE PROPOSED SETTLEMENT

#### 16 A. THE PROPOSED SETTLEMENT MEETS THE STANDARDS FOR 17 PRELIMINARY APPROVAL

18 California Rule of Court 3.769 conditions settlement of a class action on court approval, which  
19 is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of  
20 Civil Procedure. (*See Reed v. United Teachers Los Angeles* (2012) 208 Cal. App. 4th 322, 337 (Rule  
21 3.769 requires the trial court to determine “that the settlement is fair, reasonable and adequate to all  
22 concerned”); *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026 (Rule 23(e) requires court  
23 to determine “whether a proposed settlement is fundamentally fair, adequate, and reasonable”).)

24 Settlement is the preferred means of resolution, particularly in complex class action litigation.  
25 (*See In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101.) The Court’s role in evaluating a  
26 proposed settlement is to ensure that the agreement taken as a whole is fair and is within the range of  
27 reasonableness. (*See, e.g., Hanlon*, 150 F.3d at 1027.) There is an initial presumption of fairness when  
28

1 the settlement agreement was negotiated at arm's-length by plaintiff's counsel. (*See, e.g., Kullar v.*  
2 *Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 130.)

### 3 **1. Standard for Preliminary Approval**

4 To make a fairness determination, the Court should consider several factors, including "the  
5 strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the  
6 risk of maintaining class action status through trial, the amount offered in settlement, the extent of  
7 discovery completed and the stage of the proceedings, [and] the experience and views of counsel."  
8 (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 245.) "The list of factors is not  
9 exclusive and the Court is free to engage in a balancing and weighing of the factors depending on the  
10 circumstances of each case." (*Ibid.*)

11 For the reasons set forth below, the Court should find that the Settlement is fair, reasonable  
12 and adequate.

### 13 **2. The Settlement is Within the Range of Reasonableness**

14 The Settlement results in a substantial benefit to all Settlement Class Members. (Fiester Decl.,  
15 ¶ 52.) Participating Class Members will receive an award based on their total number of days actually  
16 worked during the Settlement Period. (Settlement, ¶ 59(a).) Based on the Net Settlement Amount,  
17 subject to Court approval, the average anticipated award will be \$2,196.50 for each Participating Class  
18 Member. Accordingly, the Settlement provides meaningful relief for the disputed Labor Code  
19 violations, will result in substantial benefit to all Settlement Class members, and is well within the  
20 range of reasonableness. (*Ibid.*)

### 21 **3. The Settlement is Reasonable in Light of Significant Litigation Risks**

22 The Court must make an "independent assessment of the reasonableness of the terms of the  
23 settlement" prior to granting preliminary and final approval. (*Clark v. American Residential Services*  
24 *LLC* (2009) 175 Cal. App. 4th 785, 799; *Kullar*, 168 Cal. App. 4th at 127-128, 130, 133.) To do so  
25 requires the Parties to submit "basic information about the nature and magnitude of the claims in  
26 question and the basis for concluding that the consideration being paid for the release of those claims  
27 represents a reasonable compromise." (*Clark*, 175 Cal. App. 4th at 800.) However, the Court should  
28

1 not “attempt to decide the merits of the case or to substitute its evaluation of the most appropriate  
2 settlement for that of the attorneys.” (*Kullar*, 168 Cal. App. 4th at 133.)

3 While Plaintiff and her counsel believe that this is a strong case, the significant risks and  
4 expenses associated with class certification and liability proceedings must be taken into account.  
5 (*Fiester Decl.*, ¶ 53.) The value of the Settlement recognizes the risks of obtaining class certification,  
6 maintaining class certification throughout trial, proving liability, obtaining a judgment, and surviving  
7 appeals. (*Ibid.*)

8 Prior to engaging in settlement discussions, Plaintiff retained an expert, David Breshears, to  
9 conduct a damages analysis for the first mediation. (*Fiester Decl.*, ¶ 54.) Mr. Breshears reviewed the  
10 documents and data produced by Defendants and provided a damages model for 63 Settlement Class  
11 Members for the Parties’ first mediation. Plaintiff’s counsel then extrapolated from that damages  
12 model (based on records for over 35% of the Settlement Class Members) to account for the 162 total  
13 Settlement Class Members for the second mediation. Plaintiff’s counsel calculated Defendants’  
14 maximum potential exposure was \$3,805,912. (*Ibid.*)

15 However, Defendants have contended throughout this Litigation that Defendant Neogen is in  
16 dire financial circumstances due to the recent reduction of referrals from a major client. (*Fiester Decl.*,  
17 ¶ 55.) Defendants have indicated that the loss of those referrals will have a significant impact on their  
18 ability to pay any settlement or judgment. (*Ibid.*) Moreover, at mediation, Defendants’ data showed  
19 that 153 out of 162 Settlement Class Members had separated from employment. In order to verify  
20 Defendants’ financial contentions, Plaintiff requested, and Defendants produced documents  
21 substantiating the reduction of referrals from a major client, and Defendant Neogen’s tax returns,  
22 balance sheets, and profit and loss statements.

23 Given these considerations, as set forth below, Plaintiff’s counsel assigned a reasonable  
24 settlement value to each of the claims asserted on behalf of the Settlement Class Members. (*Fiester*  
25 *Decl.*, ¶ 56.) Plaintiff’s counsel estimates the total reasonable settlement value of those claims to be  
26 \$643,623. (*Ibid.*) The Gross Settlement Amount therefore exceeds the reasonable settlement value of  
27 the Settlement Class Members’ claims. (*Ibid.*)

1 Plaintiff's counsel's analysis of the reasonable value of each of the claims made in the  
2 Litigation is as follows:

3 **i. Failure to Pay All Wages Due**

4 Plaintiff alleges that Defendants failed to pay all wages due resulting in unpaid minimum,  
5 overtime, and double time wages. (Fiester Decl., ¶ 58.) Specifically, Plaintiff alleges that Defendants  
6 (1) failed to compensate Settlement Class Members the minimum wage for all hours worked and the  
7 proper regular rate of pay for overtime and double time purposes by failing to track all hours  
8 Settlement Class Members worked; and (2) failed to separately pay Settlement Class Members for rest  
9 and recovery time. Plaintiff also alleges a claim for liquidated damages for all instances where  
10 Defendants did not pay Settlement Class Members the minimum wage. (*Ibid.*) Plaintiff alleges that  
11 these violations have resulted in violations of Labor Code sections 226.2, 510, 1182.11-1182.13, 1194,  
12 1194.2, 1197, 1198 and Wage Order 4. (*Ibid.*)

13 At the time of mediation, Plaintiff's counsel calculated the maximum value of the Settlement  
14 Class Members' damages for failure to pay all wages due and related liquidated damages to be  
15 \$970,912. (Fiester Decl., ¶ 59.) This valuation was based on the following assumptions: (1) Defendants  
16 paid Settlement Class Members on a piece-rate basis, or one lump sum per patient visit, and failed to  
17 track all hours worked by Settlement Class Members in order to ensure that Settlement Class Members  
18 were paid at least the minimum wage for all hours worked, and overtime and double time at their  
19 proper regular rate of pay; and (2) Defendants did not pay Settlement Class Members separately for  
20 rest period wages at the Settlement Class Members' appropriate rate of pay. (*Ibid.*) Thus, Plaintiff  
21 added one hour and fifteen minutes to each patient visit to account for the estimated time that  
22 Settlement Class Members worked that Plaintiff alleges Defendants did not track. Plaintiff calculated  
23 wages for unpaid rest periods at the Settlement Class Members' appropriate rate of pay.

24 **a. The Reasonable Settlement Value of the Failure to Pay All Wages**  
25 **Due Claim**

26 However, Defendants have raised numerous defenses to Plaintiff's claims for failure to pay all  
27 wages due. (Fiester Decl., ¶ 60.) Defendants contend that patient visits rarely exceeded one to two  
28 hours, and that Settlement Class Members were compensated properly for all hours worked.

Defendants further contend that while it would be inaccurate to add any time to patient visits, adding an hour and fifteen minutes is erroneous because patient visits and times varied. (*Ibid.*)

Thus, Plaintiff anticipates that Defendants will oppose class certification by arguing that proving liability for the failure to pay wages claim is unmanageable because it will entail individualized inquiries to determine whether employees worked additional time at any given patient visit, and if so, how much. (Fiester Decl., ¶ 61.) Plaintiff further anticipates that Defendants will rely on their revised arbitration agreements to challenge class certification for the unpaid wages claim.

Plaintiff contends that adding an additional hour and fifteen minutes to each visit is justified to account for Settlement Class Members' time worked for each patient visit. (Fiester Decl., ¶ 62.) However, should a court find that Settlement Class Members worked less than an additional hour and fifteen minutes per patient visit, this holding would greatly reduce the value of Settlement Class Members' claims for unpaid wage and for failure to pay separately for rest periods. (*Ibid.*)

Given these circumstances, it is reasonable to discount the claims for failure to pay all wages due by thirty percent (multiplying by .70) to account for the risks involved in certifying a class and maintaining certification through trial, an additional thirty percent (multiplying by .70) to account for the risks that Defendants will prevail on their defenses at trial with regard to Plaintiff's unpaid minimum wage, overtime and double-time claims that resulted from alleged untracked time<sup>3</sup>, and an additional sixty-five percent (multiplying by .35) to account for Defendants' financial circumstances. (Fiester Decl., ¶ 63.) Accordingly, Plaintiff determined that the reasonable settlement value of this claim was **\$176,363.86**. (*Ibid.*)

## **ii. The Meal Period Claim**

Plaintiff alleges that Defendants failed to satisfy California's meal period laws, which require that an employee: "(1) has at least 30 minutes uninterrupted, (2) is free to leave the premises, and (3) is relieved of all duty for the entire period." (*Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal. 4th 1004, 1036; Lab. Code § 512, Wage Order 4; *see also* Fiester Decl., ¶ 64.) Settlement Class Members

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<sup>3</sup> Given the strength of Plaintiff's claim that Defendants failed to pay Settlement Class Members separately for rest period wages at the Settlement Class Members' appropriate rate of pay, Plaintiff did not discount this claim based on Defendants' defenses. (Fiester Decl., ¶ 63, fn. 2.)

1 are entitled to one additional hour of pay at their regular rate of compensation for each meal period  
2 violation. (See Labor Code § 226.7.)

3 Plaintiff contends that Defendants did not provide Settlement Class Members with legally  
4 compliant meal periods pursuant to California law. (Fiester Decl., ¶ 65.) Plaintiff calculated the  
5 maximum value of the damages for missed meal periods to be approximately \$303,463. (*Ibid.*) That  
6 figure is based on an analysis of a significant sample of Settlement Class Members' time and pay  
7 records, adding an hour and fifteen minutes to each patient visit, and ascertaining whether a Settlement  
8 Class Member received a 30-minute uninterrupted meal period. (*Ibid.*)

9 **a. The Reasonable Settlement Value of the Meal Period Claim**

10 Defendants contend that Settlement Class Members were subject to a lawful meal period policy  
11 that provides Settlement Class Members with the opportunity to take uninterrupted, off-duty meal  
12 breaks, and that Settlement Class Members were not required to work through their meal periods.  
13 (Fiester Decl., ¶ 66.) Defendants note that the law does not require them to police meal periods.  
14 (*Brinker*, 53 Cal. 4th 1004, 1040–41 (2012).)

15 Defendants further argue that Settlement Class Members had flexibility in scheduling and  
16 therefore, could take meal periods each day they worked. (Fiester Decl., ¶ 67.) Plaintiff further  
17 anticipates that Defendants will rely on their revised arbitration agreements to challenge class  
18 certification for the meal period claim. (*Ibid.*)

19 Plaintiff disputes Defendants' arguments. (Fiester Decl., ¶ 68.) However, under these  
20 circumstances, it is reasonable to discount Plaintiff's meal period claim by twenty-five percent  
21 (multiplying by .75) to account for the risks involved in certifying a class and maintaining certification  
22 through trial, and by an additional thirty percent (multiplying by .70) to account for the risks that  
23 Defendants will prevail on their defenses at trial, and an additional sixty-five percent (multiplying by  
24 .35) to account for Defendants' financial circumstances. (*Ibid.*) Accordingly, Plaintiff determined that  
25 the reasonable settlement value of this claim was **\$55,761.33**. (*Ibid.*)

26 //

27 //

1                                   **iii.      The Rest Period Claim**

2           Plaintiff alleges that Defendants have failed to comply with California law with respect to  
3 authorizing and permitting rest breaks. (Lab. Code § 226.2, Wage Order 4; Fiester Decl., ¶ 69.).  
4 Specifically, Plaintiff alleges that Defendants did not authorize and permit Settlement Class Members  
5 to take a rest period of at least ten (10) minutes for every four (4) hours worked, or major fraction  
6 thereof, and to pay one (1) additional hour of pay at the regular rate of compensation for each workday  
7 that a proper rest period was not provided. (See Labor Code § 226.7.) Plaintiff contends that she was  
8 regularly required to work through her rest periods. (Fiester Decl., ¶ 69.)

9           Plaintiff calculated the maximum value of the Settlement Class Members' claims for missed  
10 rest periods under Labor Code section 226.7 to be \$369,836. (Fiester Decl., ¶ 70.) Given Settlement  
11 Class Members were not paid separately for their rest periods, Plaintiff assumed a missed rest period  
12 violation for each day a Settlement Class Member worked more than 3.5 hours. (*Ibid.*)

13                                   **a.   The Reasonable Settlement Value of the Rest Period Claim**

14           As with meal periods, Defendants contend that Settlement Class Members were subject to a  
15 lawful rest period policy. (Fiester Decl., ¶ 71.) Defendants state that Settlement Class Members were  
16 authorized to take rest breaks, were unsupervised during their workday, and had flexibility in their  
17 scheduling. (*Ibid.*) Therefore, Defendants contend, if Settlement Class Members did not take rest  
18 breaks, it was because they chose not to do so. (*Ibid.*) Plaintiff further anticipates that Defendants will  
19 rely on their revised arbitration agreements to challenge class certification for the rest period claim.  
20 (*Ibid.*)

21           Plaintiff disputes Defendants' arguments. (Fiester Decl., ¶ 72.) However, given these defenses,  
22 it is reasonable to discount Plaintiff's rest period claim by forty percent (multiplying by .60) to account  
23 for the risks that Defendants will prevail on their defenses, and by an additional thirty percent  
24 (multiplying by .70) to account for the risk of Defendants prevailing to account for the risks involved  
25 in certifying a class and maintaining certification through trial, and an additional sixty-five percent  
26 (multiplying by .35) to account for Defendants' financial circumstances. (*Ibid.*) Accordingly, Plaintiff  
27 determined that the reasonable settlement value of this claim was **\$54,365.89**. (*Ibid.*)

1                                    **iv.      The Unreimbursed Business Expenses Claim**

2            California law requires an employer to indemnify employees “for all necessary expenditures  
3 or losses incurred. . .in direct consequence of the discharge of his or her duties. . .” (Lab. Code § 2802.)  
4 Here, Plaintiff alleges that Defendants failed to properly compensate her for driving her personal  
5 vehicle to different patient visits and failed to reimburse her for using her personal cell phone device  
6 for work-related purposes. (Fiester Decl., ¶ 73.)

7            Accordingly, Plaintiff calculated that Defendants owe Settlement Class Members business  
8 expenses totaling approximately \$77,766. (Fiester Decl., ¶ 74.) Specifically, the mileage  
9 reimbursement was calculated by comparing a sample of Settlement Class Member’s time records  
10 which detailed the mileage Settlement Class Members drove, to their pay records, which paid them a  
11 flat rate of pay (\$5.00) for driving to each patient visit. Mileage reimbursement damages are incurred  
12 each time the mileage Settlement Class Members drove multiplied by the IRS reimbursement rate was  
13 in excess of the flat rate they were paid. Thus, Plaintiff calculated the mileage reimbursement claim  
14 to be \$35,466. At the time of mediation, Plaintiff calculated the cell phone reimbursement claim to be  
15 \$42,300 at a reimbursement rate of \$30. (*Ibid.*)

16                                    **a.   The Reasonable Settlement Value of the Unreimbursed Business**  
17                                    **Expenses Claim**

18            In response, Defendants contend that they offered Settlement Class Members tablets or smart  
19 phones to complete their work-related tasks. (Fiester Decl., ¶ 75.) Thus, Defendants contend that if  
20 Settlement Class Members used their own devices it was out of convenience rather than necessity.  
21 Plaintiff further anticipates that Defendants will rely on their revised arbitration agreements to  
22 challenge class certification for the reimbursement claim. (*Ibid.*)

23            Under these circumstances, it is reasonable to discount Plaintiff’s cell phone reimbursement  
24 claim by thirty percent (multiplying by .70) to account for the risks involved in certifying a class and  
25 maintaining certification through trial, by an additional thirty percent (multiplying by .70) with regard  
26 to Plaintiff’s cell phone reimbursement claim<sup>4</sup> to account for the risks that Defendants will prevail on

27 \_\_\_\_\_  
28 <sup>4</sup> Given the strength of Plaintiff’s mileage claim, Plaintiff did not discount this claim based on  
Defendants’ defenses. (Fiester Decl., ¶ 75, fn. 3.)

1 their defenses, and an additional sixty-five percent (multiplying by .35) to account for Defendants’  
2 financial circumstances. (Fiester Decl., ¶ 76.) Accordingly, Plaintiff determined that the reasonable  
3 settlement value of the reimbursement claim was \$15,943.62. (*Ibid.*)

4 **v. The Wage Statement Claim**

5 Pursuant to Labor Code section 226, 226.2, and 226.3, Defendants would be liable to  
6 Settlement Class Members for penalties at \$50 for the initial and \$100 for each subsequent violation  
7 per employee per pay period, up to \$4,000 per employee. (Fiester Decl., ¶ 77.) Wage statement  
8 penalties are only available to Settlement Class Members who were employed within one year of the  
9 filing of the original complaint, which Plaintiff valued at \$167,150. (*Ibid.*)

10 Plaintiff alleges that Defendants failed to provide Settlement Class Members with wage  
11 statements that set forth all hours worked, meal and rest period premiums, and rest and recovery  
12 periods and therefore gross and net wages were also incorrect, in violation of Labor Code sections  
13 226, 226.2, 226.3 and Wage Order 4. (Fiester Decl., ¶ 78.) The wage statement penalties were  
14 calculated using a 100% violation rate, by determining the amount of Settlement Class Members who  
15 worked for Defendants since , and calculating penalties at \$50 for the initial and \$100 for each  
16 subsequent violation per pay period, up to \$4,000 per employee. (*Ibid.*)

17 **a. The Reasonable Settlement Value of the Wage Statement Claim**

18 Labor Code section 226 provides for penalties only if Plaintiff proves that Defendants’  
19 violations were both knowing and intentional. (Fiester Decl., ¶ 79.) Here, Defendants contend that,  
20 to the extent that Plaintiff can prove they failed to provide adequate wage statements, any failure was  
21 not a “knowing and intentional failure” within the meaning of Labor Code section 226. (*Ibid.*)  
22 Rather, Defendants contend they had a good faith belief that they were not violating section 226.  
23 (*Naranjo v. Spectrum Security Services, Inc.* (2023) 88 Cal.App.5th 937, 949, affd. (2024) 15  
24 Cal.5th 1056 [“an employer’s good faith belief that it is not violating section 226 precludes a finding  
25 of a knowing and intentional violation.”])

26 Defendants also argue that Plaintiff cannot show that any Wage Statement Settlement Class  
27 Members were injured by any alleged deficiencies in the wage statements. (See Labor Code § 226  
28

(e.) Plaintiff anticipates that Defendants will oppose class certification by arguing that proving liability for wage statement claim is unmanageable because it will entail individualized inquiries to determine whether employees were injured. (Fiester Decl., ¶ 80.) Plaintiff further anticipates that Defendants will rely on their revised arbitration agreements to challenge class certification for the wage statement claim. (*Ibid.*)

It is therefore reasonable to discount Plaintiff's wage statement claim by thirty percent (multiplying by .70) to account for the risk of Defendants prevailing to account for the risks involved in certifying a class and maintaining certification through trial, and by an additional thirty percent (multiplying by .70) to account for the risks that Defendants will prevail on their defenses, and an additional sixty-five percent (multiplying by .35) to account for Defendants' financial circumstances. (Fiester Decl., ¶ 81.) Accordingly, Plaintiff determined that the reasonable settlement value of this claim was \$28,666.23. (*Ibid.*)

#### **vi. The Waiting Time Penalties Claim**

Plaintiff alleges that Defendants have had a policy and practice of failing to timely pay compensation and wages to its Settlement Class Members upon their termination or resignation from employment, as required by Labor Code sections 201 and 202. This claim is derivative of Plaintiff's wage claims. (Fiester Decl., ¶ 82.)

Plaintiff's counsel calculated the maximum waiting time penalties owed to Settlement Class Members whose employment terminated within three years prior to filing the Complaint to be \$1,696,285. (Fiester Decl., ¶ 83.) That figure reflects 30 days of pay for each of those Settlement Class Members who separated from their employment with Defendants using an average hourly rate, multiplied by 8 hours per day, multiplied by 30 days. (*Ibid.*) Defendants' data showed that 153 Settlement Class Members have separated from employment with Defendants. (*Ibid.*; see also Lab. Code § 203.)

#### **a. The Reasonable Settlement Value of the Waiting Time Penalties Claim**

In response, Defendants argue that Plaintiff cannot prove the "willful" prong needed to obtain waiting time penalties, and that there is a good faith dispute that any unpaid wages are due.

(Fiester Decl., ¶ 84; see also Labor Code § 203; 8 C.C.R. § 13520 [definition of “willful”]; see also *Naranjo*, *supra*, 88 Cal.App.5th 937, 944-49, *affd.* (2024) 15 Cal.5th 1056.)

Defendants also argue that the waiting time penalty claim is derivative of Plaintiff’s unpaid wages, meal, and rest claims, and reiterate their defenses to those claims. (Fiester Decl., ¶ 85.)

Under these circumstances, it is reasonable to discount Plaintiff’s waiting time penalty claim by thirty percent (multiplying by .70) to account for the risk of Defendants prevailing to account for the risks involved in certifying a class and maintaining certification through trial, and by an additional thirty percent (multiplying by .70) to account for the risks that Defendants will prevail on their defenses, and an additional sixty-five percent (multiplying by .35) to account for Defendants’ financial circumstances. (Fiester Decl., ¶ 86.) Accordingly, Plaintiff determined that the reasonable settlement value of this claim was **\$290,912.88**. (*Ibid.*)

#### **vii. The Unfair Competition Claim**

Plaintiff’s claim for violation of Business and Professions Code section 17200 (the “UCL”) is based on the same Labor Code violations described above. If the Court were to rule against Plaintiff on the predicate claims, the UCL claims would also fall. In addition, the damages for Plaintiff’s UCL claims are co-extensive with the damages for their other claims. (Fiester Decl., ¶ 87.) This claim therefore does not add to the settlement value. (*Ibid.*)

#### **viii. The PAGA Penalties**

The Parties agreed to allocate \$25,000 to the PAGA penalties in this case in light of Defendants’ possible defenses and financial circumstances, and the Court’s authority to reduce any award that is “unjust, arbitrary and oppressing, or confusing.” (Fiester Decl., ¶ 88; Labor Code § 2699 (e)(2); *see, e.g. Fleming v. Covidien, Inc.* (C.D. Cal. Aug. 12, 2011) No. 5:10-cv-01487-RGK-OP [reducing PAGA penalty by more than 80 percent to avoid injustice].)

Trial courts evaluating PAGA settlements, including those made in conjunction with a class settlement, must determine whether they are “fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize enforcement

1 of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77.) In so doing, courts  
2 should “evaluate the adequacy of compensation to the class as well as the adequacy of the settlement  
3 in view of the purposes and policies of PAGA.” (*O'Connor v. Uber Technologies, Inc.* (N.D. Cal.  
4 2016) 201 F.Supp.3d 1110, 1134, emphasis in original.) In conducting this evaluation, courts may  
5 apply a sliding scale. For example, if the settlement for the class is robust, the purposes of PAGA may  
6 be concurrently fulfilled. (*Ibid.*) “By providing fair compensation to the class members as employees  
7 and substantial monetary relief, a settlement not only vindicates the rights of the class members as  
8 employees, but may have a deterrent effect upon the defendant employer and other employers, an  
9 objective of PAGA.” (*Ibid.*)

10 Defendants have represented that there are 2205 PAGA pay periods in this case. (Fiester Decl.,  
11 ¶ 89.) Assuming that a violation occurred during each pay period at \$100 per pay period, the maximum  
12 exposure for the PAGA claim is \$220,500. (*Ibid.*)

13 **a. The Reasonable Settlement Value of the PAGA Penalties Claim.**

14 Courts have broad discretion to reduce penalty amounts under PAGA. (See Cal. Lab. Code §  
15 2699 (e)(2).) Courts typically reduce PAGA penalties where there is unsettled law during the  
16 pendency of the litigation, where the case presents a matter of first impression that the court had to  
17 rule upon, or where an employer demonstrates a serious attempt to comply with the law. (See  
18 *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112; *Cotter v. Lyft, Inc.*  
19 (N.D. Cal 2016) 176 F.Supp.3d 930, 941.)

20 Here, it is reasonable to discount Plaintiff’s PAGA claim by thirty percent (multiplying by .70)  
21 to account for the risks that Defendants will prevail on their defenses, by an additional sixty percent  
22 (multiplying by .40) to account for the discretionary nature of PAGA penalties, and an additional  
23 sixty-five percent (multiplying by .35) to account for Defendants’ financial circumstances. (Fiester  
24 Decl., ¶ 90.) The reasonable settlement value of Plaintiff’s PAGA claim was therefore **\$21,609**. (*Ibid.*)  
25 Thus, the PAGA Settlement of \$25,000 exceeds the settlement value of the PAGA claim and is  
26 therefore reasonable. (*Ibid.*)

1                                   **b. The LWDA has been Notified of the PAGA Settlement**

2           The LWDA has been notified of the PAGA aspects of the Settlement. Plaintiff will notify the  
3 Court if they receive any response from the LWDA regarding the Settlement. (Fiester Decl., ¶ 91.)

4                   **4. The Settlement is the Product of Non-Collusive, Arm’s-Length and Informed**  
5                   **Negotiations**

6           California courts recognize that “a presumption of fairness exists where...[a] settlement is  
7 reached through arm’s-length bargaining.” (*Wershba*, 91 Cal. App. 4th at 245.) In this case, the  
8 Settlement was reached after two mediations and arm’s-length negotiations between the Parties.  
9 (Fiester Decl., ¶¶ 24-25.)

10          In reaching the Settlement, counsel on both sides relied on their substantial litigation  
11 experience in similar employment class actions. (Fiester Decl., ¶ 26.) Information gleaned from  
12 investigation and informal discovery informed Plaintiff’s counsel’s assessment of the strengths and  
13 weaknesses of the case and the benefits of the Settlement. (*Ibid.*) Thus, the Settlement is the product  
14 of informed and non-collusive arm’s-length bargaining, and is entitled to a presumption of fairness.  
15 (*Ibid.*)

16                   **5. The Experience and Views of Plaintiff’s Counsel Favor Settlement Approval**

17          “The recommendations of plaintiffs’ counsel should be given a presumption of  
18 reasonableness.” (*In Re Omnivision Technologies, Inc.* (N.D. Cal. 2008) 559 F. Supp. 2d 1036, 1043  
19 [quotation marks and citation omitted].) “The court undoubtedly should give considerable weight to  
20 the competency and integrity of counsel...in assuring itself that a settlement agreement represents an  
21 arm’s-length transaction entered without self-dealing or other potential misconduct.” (*Kullar*, 168 Cal.  
22 App. 4th at 129.)

23          Plaintiff and Plaintiff’s counsel have vigorously prosecuted this case and will continue to do  
24 so. (Fiester Decl., ¶ 92.) Information gleaned from Plaintiff’s counsel’s investigation and discovery  
25 informed their assessment of the merits and risks of the case and the benefits of the Settlement. (*Ibid.*)  
26 Plaintiff’s counsel conducted a thorough investigation into the facts of the Litigation. (*Ibid.*) Based on  
27 an independent investigation and evaluation, Plaintiff’s counsel are of the opinion that the Settlement  
28 is fair, reasonable, and adequate, and is in the best interest of the Settlement Class Members in light

1 of all known facts and circumstances, including the risk of significant delay, the risk that Defendants  
2 will prevail on their defenses, and potential appellate issues. (*Ibid.*; see also Declaration of Hunter  
3 Pyle in Support of Plaintiff’s Motion for Preliminary Approval (“Pyle Decl.”), ¶ 17)

4 In addition to being thoroughly familiar with this case, Plaintiff’s counsel has expertise in  
5 handling wage and hour class actions such as this and, therefore, is well-qualified to represent the  
6 Plaintiff and the Settlement Class Members. (Fiester Decl., ¶¶ 4-8; Pyle Decl., ¶¶ 3-16.) Therefore,  
7 the recommendation of Plaintiff’s counsel also weighs in favor of Settlement approval.

#### 8 **6. The Proposed Release is Narrowly Tailored**

9 The release of claims in the Settlement is narrowly tailored. Paragraph 43 of the Settlement  
10 Agreement provides that Participating Class Members will release the following wage and hour claims  
11 against Defendants during the Settlement Class Period: (1) failure to pay minimum wages; (2) failure  
12 to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest  
13 breaks; (5) failure to reimburse business expenses; (6) failure to furnish adequate wage statements; (7)  
14 failure to pay all wages due upon separation of employment; and (8) unfair business practices.  
15 (Settlement, ¶ 43.)

16 The release is limited to claims, theories or primary rights that were asserted in the  
17 Complaint, First Amended Complaint, and Second Amended Complaint or which could have been  
18 asserted based on the facts, claims, theories or primary rights during the Settlement Class Period.  
19 (Settlement, ¶ 43.) Should Participating Class Members have claims that are not based on the facts,  
20 claims, theories, and primary rights Plaintiff asserted in the Complaint, First Amended Complaint,  
21 and Second Amended Complaint during the Settlement Class Period, they will not be released by  
22 this Settlement. (*Ibid.*; Fiester Decl., ¶ 39.)

23 The PAGA release is also narrowly tailored. Paragraph 44 of the Settlement provides that  
24 Plaintiff, acting in her capacity as private attorney general on behalf of the State of California, and on  
25 behalf of the Labor and Workforce Development Agency, agrees to release Defendants from PAGA  
26 violations for PAGA Members which occurred during the PAGA Settlement Period that were alleged  
27 in Plaintiff’s PAGA letter and Amended PAGA Letter. (Settlement, ¶ 44, Exh. B.)

1                   **7.       The Proposed Class Notice Satisfies the Rules of Court**

2           The form and content of class notice, and the method used to notify the class, are within the  
3 trial court’s discretion. (*See Wershba*, 91 Cal. App. 4th at 251.)

4           The Class Notice in this case satisfies the criteria under Rule of Court 3.769 and “fairly  
5 apprise(s) the class members of the terms of the proposed settlement and of the options open to  
6 dissenting class members.” The Class Notice informs Settlement Class Members about the Litigation,  
7 the terms of the Settlement, the scope of the release, the right to receive a payment, the right to opt-  
8 out of the Settlement, the right to object to the Settlement, how Net Settlement Payments and PAGA  
9 Payments are calculated, how to challenge the data used to calculate the Net Settlement Payments and  
10 Individual PAGA Payments, the maximum attorneys’ fees and costs requested, the maximum service  
11 payment awards requested, and the date, time and location of the final approval hearing. (Settlement,  
12 ¶¶ 4, 48, Exh. A.) The Class Notice is therefore crafted to ensure that Settlement Class Members are  
13 alerted to the terms of the settlement. (*Ibid.*; Fiester Decl., ¶ 43.)

14           The means of giving notice is reasonably calculated to reach a substantial percentage of Class  
15 Members and meets the requirements of Rule of Court 3.766, subdivision (e). (*See Wershba, supra*,  
16 91 Cal.App.4th at 251 [“[The] standard is whether the notice has a ‘reasonable chance of reaching a  
17 substantial percentage of the class members.’”].)

18           For these reasons, the proposed Class Notice is reasonable and should be approved by the  
19 Court.

20 **V.       THE COURT SHOULD PROVISIONALLY CERTIFY THE SETTLEMENT CLASS**

21           The proposed Settlement Class satisfies the criteria for certification of a settlement class under  
22 California law because: 1) the individuals in the Settlement Class are so numerous that joinder would  
23 be impractical; 2) common questions of law and fact predominate over individual questions such that  
24 class certification is the most efficient and desirable way to maintain this litigation; 3) Plaintiff’s  
25 claims are typical of the Settlement Class’ claims; and 4) Plaintiff and her counsel will fairly and  
26 adequately represent the interests of the absent Settlement Class members. (Code Civ. Proc. § 382.)  
27  
28

1                   **A. THE PROPOSED SETTLEMENT CLASS IS ASCERTAINABLE AND**  
2                   **NUMEROUS**

3                   A class is “ascertainable” where members “may be readily identified without unreason-able  
4                   expense or time by reference to official [or business] records.” (*See Sevidal v. Target Corp.* (2010)  
5                   189 Cal. App. 4th 905, 919 [alterations in original].) Here, the proposed Settlement Class is defined  
6                   as: current and former employees of Defendant Neogen who worked for Defendant Neogen in  
7                   California as a registered nurse during the period of June 23, 2017 to April 2, 2024. (Settlement, ¶ 26.)

8                   Settlement Class Members can easily be identified from Defendants’ personnel and  
9                   employment records. (Fiester Decl., ¶ 93.) Defendants represent that there are 162 Settlement Class  
10                  Members, rendering it impracticable to bring all Settlement Class Members before the Court.  
11                  (Settlement, ¶ 58.)

12                   **B. COMMON ISSUES OF LAW AND FACT PREDOMINATE**

13                  The focus on certification is on what types of questions, “common or individual,” are likely to  
14                  arise in the action. (*See Sav-On Drug Store, Inc. v. Sup. Ct.* (2004) 34 Cal. 4th 319, 327.) Plaintiff’s  
15                  claims are predicated on allegedly unlawful policies including Defendants’ compensation scheme, and  
16                  meal and rest period practices. (Fiester Decl., ¶ 94.) These claims are commonly held to be proper for  
17                  class certification. (*See, e.g., Alonzo v. Maximus, Inc.* (C.D. Cal. 2011) 275 F.R.D. 513, 521 [“Because  
18                  Plaintiffs allege that all putative class members’ overtime pay rate was governed by a common policy  
19                  to not incorporate bonus payments and Defendant does not dispute that it had such a common policy,  
20                  with regard to the Bonus/Overtime Claim, Plaintiffs have posed questions of law and fact that are  
21                  common to the class”]; *Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal. App. 4th 701  
22                  [certifying meal and rest period claims].)

23                   **C. THE CLAIMS OF THE PROPOSED CLASS REPRESENTATIVE ARE TYPICAL**

24                  Typicality is satisfied where class representatives have claims that are typical of those of the  
25                  class. (*B.W.I. Custom Kitchen v. Owens-Illinois* (1987) 191 Cal. App. 3d 1341, 1347.) Here, Plaintiff,  
26                  is seeking preliminary appointment as Class Representative. Plaintiff’s claims are typical of those held  
27                  by the Settlement Class Members. (Fiester Decl., ¶ 94.) Plaintiff was employed as a Registered Nurse  
28

1 during the Settlement Period and was subject to Defendants' relevant wage and hour policies, and was  
2 injured by the same challenged policies that injured the Settlement Class. (*Ibid.*)

3 **D. THE PROPOSED CLASS REPRESENTATIVE AND COUNSEL WILL**  
4 **ADEQUATELY REPRESENT THE CLASS**

5 The adequacy requirement examines conflicts of interest between named parties and the  
6 class(es) they seek to represent. (*Capital People First v. State Dept. of Developmental Svcs.* (2007)  
7 155 Cal. App. 4th 676, 697.) Plaintiff and her counsel will adequately represent the Settlement Class  
8 as there are no conflicts between Plaintiff and the Settlement Class she seeks to represent, and Plaintiff  
9 possess claims that are in line with those of the class. Plaintiff's counsel also have extensive experience  
10 in wage and hour class action litigation. (Fiester Decl., ¶ 95.)

11 Plaintiff has provided a declaration that demonstrates her participation in the Litigation thus  
12 far and shows she has diligently represented the Settlement Class. (*See generally* Guedon Decl.) In  
13 this declaration, Plaintiff describes the great personal and professional risks she faced in bringing this  
14 lawsuit. (*Ibid.*)

15 **VI. THE COURT SHOULD APPROVE THE CLASS NOTICE OF SETTLEMENT AND**  
16 **SET A FINAL APPROVAL HEARING**

17 In addition to requesting approval of the Settlement and provisional certification of the  
18 Settlement Class, the parties request that the Court approve the form, content, and distribution of the  
19 Class Notice, and set a date for a final approval hearing.

20 **VII. CONCLUSION**

21 The arm's-length settlement of this matter avoids significant litigation and financial risk and  
22 provides for a monetary distribution to all Settlement Class Members. For these reasons, the parties  
23 respectfully request that the Court enter an order:

24 1) Preliminarily approving the proposed Joint Stipulation for Class and Representative  
25 Action Settlement;

26 2) Provisionally certifying, pursuant to Section 382 of the California Code of Civil  
27 Procedure, for settlement purposes only, the proposed Settlement Class defined as follows: current  
28

1 and former employees of Defendant Neogen who worked for Defendant Neogen in California as a  
2 registered nurse during the period of June 23, 2017 to April 2, 2024;

- 3           3)     Appointing Britney Guedon as Class Representative;
- 4           4)     Appointing Hunter Pyle and Katie Fiester of Hunter Pyle Law as Class Counsel;
- 5           5)     Scheduling a final approval hearing to consider whether the Settlement should be  
6 finally approved and to award an amount for service payment to the Class Representative, and  
7 attorneys' fees and costs to Class Counsel;
- 8           6)     Appointing Simpluris as the third-party Settlement Administrator; and
- 9           7)     Approving the proposed Class Notice, and ordering that it be disseminated to the  
10 proposed Settlement Class as provided in the Settlement.

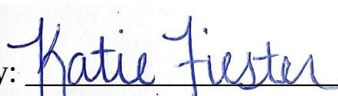
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12

13 Dated: February 6, 2025

Respectfully submitted,  
HUNTER PYLE LAW

14

15 By:  \_\_\_\_\_  
Hunter Pyle  
Katie Fiester

16

17 *Attorneys for Plaintiff and the Putative Class*

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# Superior Court of Alameda County Public Portal

## Make a Reservation

Gueden VS Neogreen Solutions, Inc., a California Corporation

Case Number: RG21102962 Case Type: Civil Unlimited Category: Other Employment Complaint Case

Date Filed: 2021-06-23 Location: Rene C. Davidson Courthouse - Department 23

### Reservation

Case Name:

Gueden VS Neogreen Solutions, Inc., a California Corporation

Case Number:

RG21102962

Type:

Motion re: (Motion for Preliminary Approval)

Status:

RESERVED

Filing Party:

Britney Guedon (Plaintiff)

Location:

Rene C. Davidson Courthouse - Department 23

Date/Time:

03/04/2025 10:00 AM

Number of Motions:

1

Reservation ID:

862413327604

Confirmation Code:

CR-QAPY5WMDNXEJZVHV3

### Fees

| Description                 | Fee  | Qty | Amount |
|-----------------------------|------|-----|--------|
| Motion re: (name extension) | 0.00 | 1   | 0.00   |
| Court Technology Fee        | 1.00 | 1   | 1.00   |
| TOTAL                       |      |     | \$1.00 |

### Payment

Amount:

\$1.00

Type:

Visa

Account Number:

XXXX5060

Authorization:

02325G

Payment Date:

n/a

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