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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

DEJA NAIR, on behalf of herself, all others similarly situated, the general public, and as an "aggrieved employee" on behalf of other "aggrieved employees" under the Labor Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

MEDLINE INDUSTRIES, INC., an Illinois corporation; MEDLINE INDUSTRIES HOLDINGS, L.P., a Delaware limited partnership; MEDLINE INDUSTRIES, LP, an Illinois limited partnership; and DOES 1–50, inclusive,

Defendant(s).

Case No. 2:22-CV-00331-DAD-JDP

PLAINTIFF DEJA NAIR'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Action filed:	12/22/2021
Hearing Date:	05/18/2026
Hearing Time:	1:30 p.m.
Hearing Court:	4, 15th floor, The Honorable Dale A. Drozd

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I. INTRODUCTION

Plaintiff Deja Nair ("Plaintiff") submits this memorandum of points and authorities in support of her unopposed motion for preliminary approval of the Class Action and PAGA Settlement Agreement and Class Notice (the "Settlement" or "Settlement Agreement")[2], which provides for a Gross Settlement Amount ("GSA") of $1,100,000.00 in compromise of all disputed claims on behalf of all persons employed by any Defendants in California and classified as a non-exempt warehouse employee who worked in one or more of the positions listed in Exhibit E (attached to the Settlement Agreement") during the Class Period of December 22, 2017 through the date the Court preliminarily approves this class action settlement. Through this Motion, Plaintiff respectfully requests for this Court to (1) provisionally certify the Class for settlement purposes only under Federal Rules of Civil Procedure § 23 ("Rule 23"); (2) preliminarily approve the Settlement; (3) preliminarily appoint Plaintiff as Class Representative; (4) appoint David Spivak of The Spivak Law Firm and Walter L. Haines of United Employees Law Group as Class Counsel; (5) approve the proposed notice procedures and related forms; and (6) schedule a final approval hearing.

This Court should grant Plaintiff's motion because: (1) for settlement purposes, the Settlement Class meets the requirements for class certification under Rule 23; (2) the Settlement warrants preliminary approval based on all indicia for fairness, reasonableness, and adequacy; (3) for settlement purposes, Plaintiff is adequate to serve as Class Representative; (4) Plaintiff's attorneys are adequate to serve as Class Counsel; (5) the proposed notice procedures, and related forms, fully comport with due process and adequately apprise Class Members of their rights; and (6) a final approval hearing must be scheduled to allow Settlement Class Members an opportunity to be heard regarding the Settlement and to give it finality. Accordingly, for the reasons detailed below, this Court should grant Plaintiff's Motion in its entirety and preliminarily approve the Settlement.

II. BACKGROUND

Defendants are or were healthcare manufacturers and distributers. Defendant Medline Industries Inc. employed Plaintiff in California as a warehouse operator from about June 29, 2021

[2] The Settlement is attached as Exhibit ("Ex.") 1 to the Declaration of David Spivak ("DS"), which is submitted herewith under a separate cover.

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until July 31, 2021. DS, ¶ 4.

A. The Claims and Procedural History

On October 29, 2021, Plaintiff notified Defendants and the California Labor and Workforce Development Agency ("LWDA"), pursuant to the California Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* ("PAGA"), of alleged Labor Code violations committed by Defendants. DS, ¶ 5, Ex. 2.

On December 22, 2021, Plaintiff filed a Class Action Complaint in the San Joaquin County Superior Court, Case No. STK-CV-UOE-2021-0011669, against Defendants on behalf of herself and others similarly situated, alleging causes of action on a class-wide basis for: (1) Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198); (2) Failure to Provide Rest Breaks (Lab. Code §§226.7 and 1198); (3) Failure to Provide Meal Periods (Lab. Code §§226.7, 512 and 1198); (4) Wage Statement Penalties (Lab. Code §§ 226 and 226.2); (5) Waiting Time Penalties (Lab. Code §§ 201-203); and (6) Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.). DS, ¶ 6, Ex. 3. On January 10, 2022, Plaintiff filed her First Amended Complaint adding a claim under PAGA. DS, ¶ 6, Ex. 4. On February 17, 2022, Defendants filed an answer to Plaintiff's First Amended Complaint. DS, ¶ 6, Ex. 5. On or about February 18, 2022, Defendants removed the case to this Court. Defendants deny all of Plaintiff's allegations and strongly contends that their wage and hour policies, practices and procedures are fully compliant with all applicable laws. DS, ¶ 6.

B. Sampling and Discovery

After conducting formal written discovery and taking several depositions, including Defendants' persons most knowledgeable, the Parties agreed to stay formal discovery and attend mediation. On April 1, 2025, Plaintiff requested that Defendants informally disclose further documents and data to enable Plaintiff to prepare for settlement discussions, including the number of putative class members and aggrieved employees, the number of paychecks and workweeks for the various limitations periods applicable to Plaintiff's claims. Plaintiff also requested a 25% randomly selected sample of Defendants' time, payroll, ProTrack (electronic activity records), and other related records. Finally, Plaintiff requested Defendants' written policies applicable to the claims at hand and asked Defendants identify any and all comparable claims against them. The Parties thereafter engaged in an informal, voluntary exchange of information in the context of privileged settlement discussions to facilitate an early mediation. Defendants produced the requested sample records for 1,459 employees, Plaintiff's entire personnel file, and copies of their

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relevant company written policies. DS, ¶ 7.

Defendants further disclosed the following comparable claims: pending against them: Frank Padilla v. Medline Industries, LP, No. 5:25-cv-02254 (E.D. Cal.), Sonia Arellano v. Medline Industries, LP, No. CIVSB2524854 (San Bernardino Cty. Sup. Ct.) and Nicole Fennoy v. Medline Industries, LP, Case No. STK-CVUWT-2024-0007060 (San Joaquin Cty. Sup. Ct.). DS, ¶ 8.

Plaintiff retained data analyst James Toney and economist Dr. Brian Kriegler and his team at EconOne to analyze the sample. Plaintiff also employed the Raosoft[3] Sample Size calculator (http://www.raosoft.com/samplesize.html) to determine if the sample size selected is statistically reliable. *Bell v. Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715 and *Duran v. U.S. Bank* (2014) 59 Cal.4th 1. The *Bell* court found a relative margin of error of 32.4 percent was unacceptable whereas the *Duran* court found a relative margin of error of 43.3 percent was unacceptable. Using a margin of error of 5, a confidence level of 95%, and a population size of 5,892, the Raosoft Sample Size Calculator recommended a sample of 361. DS, ¶ 9, **Exhibit 6** (Raosoft Sample Size Calculator results print-out). Thus, Plaintiff contends that the sample population that Plaintiff's data analyst evaluated is statistically reliable. *Id.*

C. Mediation

On July 14, 2025, following much of the foregoing formal and informal discovery and exchange of information, the Parties participated in a mediation session presided over by Mediator, the Honorable Ann I. Jones, an experienced class action mediator. During the mediation, the Parties had a full day of productive negotiations. The Parties did not reach a settlement at the mediation. However, they continued their settlement negotiated and Defendants produced additional records. Ultimately, with the help of the mediator, the Parties reached an agreement on a class-wide settlement by accepting the mediator's proposal. During the mediation and negotiation sessions, each side, represented by her / their respective counsel, recognized the

[3] Raosoft advertises, "Raosoft, Inc. produces EZSurvey for the Internet, InterForm, SurveyWin, EZReport and Rapid Report innovative survey software programs for information gathering and analysis. The family of survey software supports data collection and reporting for any form-based data. Support is for web-surveys and forms, email distribution, diskette, PDA, laptop or pen-based: all types of distribution." The Raosoft webpage advertises that is it "database web survey software for gathering information." http://www.raosoft.com/ . It also advertises, "The parameters of the sample size calculation are something that you choose." http://www.raosoft.com/suggestreading.html.

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risk of an adverse result in the Action and agreed to settle the Action and all other matters covered by this Agreement pursuant to the terms and conditions of this Agreement. DS, ¶ 10.

III. OVERVIEW OF THE SETTLEMENT

A. Settlement Class and Aggrieved Employees Definition

The Settlement defines the Class as all persons employed by any Defendants in California and classified as a non-exempt warehouse employee who worked in one or more of the positions listed in Exhibit E (as attached to the Settlement Agreement) during the Class Period. Settlement, ¶ 1.5. The Class Period is December 22, 2017 through preliminary Court-approval of the Settlement. Settlement, ¶ 1.12. The "Aggrieved Employees" are all persons employed by any Defendants in California and classified as a non-exempt warehouse employee who worked in one or more of the positions listed in Exhibit E (as attached to the Settlement Agreement)[4] during the PAGA Period. Settlement, ¶ 1.4. The "PAGA Period" is the period from October 29, 2020 through preliminary Court-approval of the Settlement. Settlement, ¶ 1.32.

B. Monetary Terms

Except as otherwise provided by Paragraph 9 below, Defendants promises to pay $1,100,000.00 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendants have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants. The Administrator will make and deduct the following payments from

---

[4] Those positions are: Ops-Warehouse Operator, Ops-Branch, Trainer, Ops-Warehouse Ld, Ops-Janitor, Ops-Inventory Coord, Ops-Maintenance Mechanic Ii, Ops-Warehouse Clerk, Ops-Maintenance Mechanic I, Ops-Inventory Coord Sr, Ops-Warehouse Operator Ost, Ops, Inventory Control Ld, Maintenance Tech Ii, Maintenance Tech I, Warehouse Ld, Ops-Maintenance Apprentice, Warehouse Clerk, Ops-Maintenance Mechanic Sr, Supply Chain Clerk Ld, Branch Office Clerk, Ops-Branch Trainer Ost, Ops-Warehouse Ld Ost' Admin Asst, Maintenance Ld., Janitor, Maintenance Mechanic, Ops-Packager, Maintenance Apprentice, Maintenance Mechanic Jr, Maintenance Mechanic Ld, Operations Support Spec Sr, Ops-Warehouse Receiving, Ops- Warehouse Shipping, Ops-Inventory Coord Ost, Warehouse Operator Operations, Warehouse Ld Operations, Trainer Branch, Janitor Operations, Inventory Coord Operations, Maintenance Tech Ii, Warehouse Clerk Operations, Inventory Coord Sr, Maintenance Tech I, Maintenance Ld, Inventory Control Ld Operations, Branch Office Clerk, Warehouse Operator Ost, Trainer Branch Ost Operations

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the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval (see Settlement, ¶ 3):

To Plaintiff: Plaintiff will request a Class Representative Service Payment in the amount of $20,000 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defense Counsel will not oppose a request for $20,000 or less. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. If the Court approves a Class Representative Service Payment greater than the amount requested, the additional amount shall be taken out of the Gross Settlement Amount and Defendants will not be required to pay any additional amounts to Plaintiff. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for taxes owed on the Class Representative Service Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of this Payment.

To Class Counsel: Class Counsel will request Class Counsel Fees Payment in the amount of $366,666.66 (or one third of the Gross Settlement Amount) and Class Counsel Litigation Expenses Payment of up to $50,000. Defense Counsel will not oppose requests for up to $366,666.66 in Class Counsel fees or up to $50,000.00 in Class Counsel litigation expenses, except that, if the Escalator Clause is triggered, Defendants will also not oppose a request for up to one-third (33 and 1/3%) of the increase in the Gross Settlement Amount in additional Class Counsel fees. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment greater than the amount requested, the additional amount shall be taken out of the Gross Settlement Amount and Defendants will not be required to pay any additional amounts to Class Counsel. Released Parties shall have no liability to Class Counsel or any other attorney arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendants

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harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments.

To the Administrator: The Court-approved Administration Expenses Payment, which is anticipated to be not more than $30,000. To the extent the Court approves an Administration Expenses Payment that is less than $30,000 or the Administrator charges less than $30,000, the Administrator will retain the remainder in the Net Settlement Amount. To the extent the Court approves an Administration Expenses Payment that exceeds $30,000, the additional amount will be taken out of the Gross Settlement Amount and Defendants will not be required to pay any additional amounts to the Administrator.

To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Class Work Weeks and (b) multiplying the result by each Participating Class Member's Class Work Weeks.

To the LWDA and Aggrieved Employees: The LWDA PAGA Payment to the LWDA, in the requested amount of $15,000, and the remaining 25% of the PAGA Penalties, in the requested amount of $5,000 to Aggrieved Employees as Individual PAGA Payments. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the total number of PAGA Period Pay Periods and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods.

C. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.

At the time of the July 14, 2025 mediation, Defendants estimated that there were 5,892 Class Members from December 22, 2017 to February 21, 2025. If the number of Class Members as of the date the Court approves the settlement exceeds 5,892 by more than 10%, the Gross Settlement Amount will increase proportionally according to the number of additional Class Members over 6,482 (*e.g.*, for every Class Member exceeding 6,482 Class Members, the Gross Settlement Amount shall increase by $186.69). If the Escalator Clause is triggered, Plaintiff will request up to one-third of (33 and 1/3%) the total increased Gross Settlement Amount as the Class Counsel Fees Payment. Settlement, ¶ 9.

D. Timing of Payments

Defendants will fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the Administrator no later than 28 days after the Effective Date. Settlement, ¶ 4.3. Within 14 days after Defendants fund the Gross Settlement Amount and provided that Plaintiff has provided all

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necessary tax forms, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. 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, ¶ 4.4.

<u>E.</u> <u>Calculation of Settlement Shares</u>

An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Class Work Weeks and (b) multiplying the result by each Participating Class Member's Class Work Weeks. Settlement, ¶ 3.2.4. An Individual PAGA Payment calculated by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the total number of PAGA Period Pay Periods and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Settlement, ¶ 3.2.5.1.

<u>F.</u> <u>Apportionment of Settlement Shares</u>

50.00% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The remaining 50.00% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment. Settlement, ¶ 3.2.4.1. 100% of each Aggrieved Employee's Individual PAGA Payment will be reported on IRS 1099 Forms. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

<u>G.</u> <u>The Releases</u>

As of the Effective Date, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows (Settlement, ¶ 6):

Plaintiff's Release. In addition to the Release by Participating Class Members and Release of PAGA Claim set forth below, Plaintiff and her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns hereby fully and without limitation releases and discharges the Released Parties from any and all claims, including

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but not limited to: any and all claims arising under the laws of the State of California; all claims raised or that could have been raised in the Actions; all other statutory, constitutional, contractual, and/or common law claims for wages, damages, restitution, unreimbursed expenses, equitable relief, penalties, liquidated damages, and/or punitive damages (including, without limitation, claims under any applicable Industrial Welfare Commission Wage Order, PAGA, or any other provision of the California Labor Code); and any and all claims under Title VII of the Civil Rights Act of 1964; 42 U.S.C. § 1981; the Age Discrimination In Employment Act; the Americans With Disabilities Act; Sections 503 and 504 of the Rehabilitation Act of 1973; the Family Medical Leave Act; the Fair Labor Standards Act; the Employee Retirement Income Security Act; the Occupational Safety and Health Act; the Worker Adjustment and Retraining Notification Act, as amended; the California Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 et seq.); the California Fair Employment and Housing Act; any state, civil, or statutory laws, including any and all human rights laws and laws against discrimination; any other federal, state, or local statutes, codes, or ordinances; any common law, contract law, or tort law cause of action; and any claims for interest, attorneys' fees, and/or costs. Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or law or Plaintiff's discovery of them. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

> A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known, by him or her, would have materially affected his or her settlement with the debtor or released party.

Plaintiff agrees and acknowledges that this waiver of rights under Section 1542 extends beyond the release and waiver provided above.

Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from any and all claims

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for damages and/or penalties that accrued during the Class Period, based on the facts and claims alleged in the Action, including but not limited to any and all claims arising under Cal. Labor Code §§ 201-203, 204, 226, 226.7, 510, 512, 558, 1194, 1197, 1198, the applicable IWC Wage Orders, and Cal. Bus. & Prof. Code §§ 17200, et seq. This release covers, without limitation, any and all claims for attorneys' fees, costs or disbursements incurred by Class Counsel or any other counsel representing Plaintiff or Settlement Class Members, or by Plaintiff or Settlement Class Members, or any of them, in connection with or related in any manner to the Action, the Settlement of the Action, the administration of such Settlement, and/or the released claims, except to the extent otherwise specified in the Agreement. Except as set forth in this Paragraph, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, or workers' compensation.

Release of PAGA Claim: All Aggrieved Employees, on behalf of themselves and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, assigns, and the State of California, release any and all claims for PAGA penalties arising from the facts and theories alleged in the Action or the PAGA Notice that accrued during the PAGA Period, based on the facts and claims alleged in the Action, including but not limited to claims arising under Cal. Labor Code §§ 201-203, 226, 226.7, 510, 512, 558, 1194, 1197, 1198, and 2698, *et seq.* This release covers, without limitation, any and all claims for attorneys' fees, costs or disbursements incurred by Class Counsel or any other counsel representing Plaintiff or Aggrieved Employees, or by Plaintiff or Aggrieved Employees, or any of them, in connection with or related in any manner to the Action, the Settlement of the Action, the administration of such Settlement, and/or the released claims, except to the extent otherwise specified in the Agreement.

H. Notice and Claims Process and Procedures

No later than 15 business days after the Court grants Preliminary Approval of the Settlement, Defendants will deliver the Class Data to the Administrator. Settlement, ¶ 4.2. No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, Aggrieved Employees, Class Work Weeks, and PAGA Pay Periods in the Class Data. Settlement, ¶ 8.4.1.

Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class

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Data, via first-class United States Postal Service ("USPS") mail, the Court-approved Notice Packet. The first page of the Class Notice shall estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Class Work Weeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Notice Packets, the Administrator shall update Class Member addresses using the National Change of Address database. Settlement, ¶ 8.4.2.

Not later than 3 business days after the Administrator's receipt of any Notice Packet returned by the USPS as undelivered, the Administrator shall re-mail the Notice Packet using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Notice Packet to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Notice Packet to Class Members whose Notice Packet is returned by the USPS a second time. Re-mailed Notice Packets shall inform Class Members of their extended Response Deadline. Settlement, ¶ 8.4.

1. Disputes

Each Class Member and Aggrieved Employee shall have until their Response Deadline to challenge the number of Class Work Weeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. This is also known as a dispute. A Work Week Dispute form, attached as Exhibit B, may be used for this purpose but is not required. Class Members and Aggrieved Employees may challenge their allocations by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member or Aggrieved Employee to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Class Work Weeks and PAGA Pay Periods contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Class Work Weeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to the allocation of Class Work Weeks and/or Pay Periods to Defense Counsel and Class Counsel, including any supporting documentation and the Administrator's determination of the challenges. Settlement, ¶ 8.6.

2. Opting Out

Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a timely signed written Request for Exclusion. A

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Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Class Member's Response Deadline. Settlement, ¶ 8.5.

3. Objecting

Only Participating Class Members may object to the class action components of the Settlement and/or this 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. Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, 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 by their Response Deadline. Settlement, ¶ 8.7.

I. Uncashed Checks

For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue." Settlement, ¶ 4.4.3.

IV. THE COURT SHOULD CONDITIONALLY CERTIFY THE SETTLEMENT CLASS

Purely for the Settlement presently before the Court, Plaintiff moves the Court to find that the Settlement meets the requirements for certifying a settlement under Federal Rule of Civil Procedure 23 ("Rule 23").[5]

A class action may be certified if all four prerequisites under Rule 23(a) are satisfied and at least one subsection under Rule 23(b) is met. *Doninger v. Pac. Nw. Bell, Inc.*, 564 F.2d 1304 (9th Cir. 1977). The requirements of Rule 23(a) are referred to as: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy. *United Steel, Paper & Forestry, Rubber, Mfg. Energy v. Conoco Phillips Co.*, 593 F.3d 802, 806 (9th Cir. 2010). As will be discussed below, these requirements are met here. In addition, the Parties agreed to certification of the Class under

[5] Although Defendants dispute Plaintiff's ability to satisfy Rule 23's certification requirements, Defendants do not oppose class certification for settlement purposes only.

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Rule 23(b)(3) which has the added requirement of "predominance." *Id.* The fundamental question "is not whether . . . plaintiff [has] stated a cause of action or will prevail on the merits, but rather whether the requirements of Rule 23 are met." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 178 (1974). Defendants do not oppose certification for the purpose of settlement only. As such, the Parties seek provisional certification of the Class. Should the Settlement not be approved or not become final for any reason, the Parties agree no class will be certified, and Defendants' agreement to certify a class conditionally for settlement purposes only will not be used in connection with any subsequent motion for class certification. As demonstrated below, Plaintiff contends that, for settlement purposes, this action meets all of the requirements for certification under Rule 23(a) and Rule 23(b)(3).

A. For Purposes Of Settlement, The Proposed Class Meets The Requirements of Rule 23(a).

1. Numerosity

Rule 23(a)(1) is typically referred to as "numerosity" in that it requires a class that is "so numerous that joinder of all members is impracticable." The term "impracticable" does not mean "impossible," and only refers to "the difficulty or inconvenience of joining all members of the class." *Advertising Specialty Nat'l Asso. v. Federal Trade Com.*, 238 F.2d 108, 119 (1st Cir. 1956).

Defendants estimated that there were approximately 5,892 Class Members through February 21, 2025. DS, ¶ 12. Plaintiff maintains that it would be impractical and economically inefficient to require each Class Member to separately maintain an individual action or be joined as a named plaintiff in this action. The California Supreme Court has upheld a class of as few as 10 individuals. *See Bowles v. Superior Court* (1955) 44 Cal.2d 574. In light of these considerations, the Settlement Class' membership is sufficiently numerous. *See Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695. Plaintiff maintains that the above-defined Class is ascertainable because its members may be identified by reference to Defendants' records and Defendants have agreed to share the relevant information from their records to facilitate the settlement process. DS, ¶ 11.

2. Commonality

Rule 23(a) requires that "there are questions of law or fact common to the class." However, "all questions of fact and law need not be common to satisfy the rule…[and] [t]he existence of shared legal issues with divergent factual predicates is sufficient, as is a common

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core of salient facts coupled with disparate legal remedies within the class. *Hanlon v. Chrysler Corp.*, 150 F. 3d 1011, 1019 (9th Cir. 1998). The Ninth Circuit has held that commonality exists "where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members." *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001). In light of the more lenient standard for certification of a settlement class, the Parties agree that for the purposes of the Settlement only, the claims of the Class Members all stem from the same sources.

In this case, Plaintiff asserts all Class Members were subject to the same or similar operations and employment policies, practices, and procedures. The claims arise from Defendants' alleged policy-driven failures, including alleged failure to pay wages, alleged failure to provide meal periods, alleged failure to authorize and permit rest periods, alleged failure to issue proper wage statements, alleged failure to timely pay wages, and related alleged labor law violations, all of which Plaintiff claims constitute unfair business practices and give rise to PAGA penalties. Plaintiff asserts that common questions include, but are not limited to: (1) Whether Defendants failed to pay all wages earned to Class Members for all hours worked at the correct rates of pay; (2) Whether Defendants failed to provide the class with all meal and rest periods in compliance with California law; (3) Whether Defendants failed to pay the class one additional hour of pay on workdays they failed to provide the class with one or more meal or rest periods in compliance with California law; (4) Whether Defendants knowingly and intentionally failed to provide the class with accurate wage statements; (5) Whether Defendants willfully failed to provide the class with timely final wages; and (6) Whether Defendants engaged in unfair competition within the meaning of Business and Professions Code section 17200, *et seq*., with respect to the class. DS, ¶ 13. Courts in the Ninth Circuit have found this sufficient to show commonality.[6]

<u>3.</u> <u>Typicality</u>

Rule 23(a) requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." This requirement is "permissive" and requires only that the representative's claims are reasonably related to those of the absent class members. *Rodriguez v. Hayes*, 591 F.3d 1105, 1124 (9th Cir. 2010).

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[6] See, *e.g.*, *Abdullah v. U.S. Sec. Assocs., Inc.*, 731 F.3d 952, 963 (9th Cir. 2013); *Cummings v. Starbucks Corp.*, No. CV 12-06345-MWF FFMX, 2014 WL 1379119, at *10 (C.D. Cal. Mar. 24, 2014); *Hopkins v. Stryker Sales Corp.*, No. 5:11-CV-02786-LHK, 2012 WL 1715091, at *5 (N.D. Cal. May 14, 2012) (citing cases).

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Plaintiff contends that her claims are typical for the purposes of certifying the Settlement Class. Plaintiff asserts that she, like absent Class Members was subject to the same relevant policies and procedures governing her compensation, hours of work and meal and rest periods. Because Plaintiff contends that she was subject to the same general course of conduct as absent Class Members, she further contends that resolving the common questions as they apply to Plaintiff would determine Defendants' *prima facie* liability to all Class Members. Moreover, Plaintiff's claims could potentially be subject to the same primary affirmative defenses as those of absent Class Members. Accordingly, Plaintiff's claims are typical of the Class. DS, ¶ 14.

4. Adequacy

Rule 23(a)(4) is satisfied if "the representative parties will fairly and adequately protect the interests of the class," Fed. R. Civ. P. 23(a)(4). "Resolution of two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Hanlon*, 150 F.3d at 1020.

First, Class Counsel have supplied the Court with declarations to show that they are adequate to represent the Settlement Class and that they have significant experience in employment litigation generally, and wage and hour and employment-related class action litigation specifically. *See* DS, ¶¶ 15-24; Declaration of Walter L. Haines ("Haines Decl.") ¶ 3. Thus, Plaintiff's counsel are adequate to serve as Class Counsel.

Second, Plaintiff contends that she is an adequate class representative. Plaintiff alleges that she and the Class Members have strong and co-extensive interests in this litigation because they all worked for Defendants during the relevant time period, allegedly suffered the same alleged injuries from the same alleged course of conduct, and there is no evidence of any conflict of interest between Plaintiff and the Class Members. DS, ¶ 16. Moreover, Plaintiff has demonstrated her commitment to the Settlement Class by, among other things, retaining experienced counsel, providing counsel with documents and extensively speaking with them to assist in identifying the claims asserted in this case, assisting them in identifying witnesses, as well as exposing herself to the risk of attorneys' fees and costs awards against her if this lawsuit had been unsuccessful. DS, ¶ 16. Thus, Plaintiff is adequate to serve as settlement class representative. Accordingly, this Court should find that Plaintiff and her counsel are adequate to represent the Settlement Class as required under Rule 23.

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B. For Purposes of Settlement, the Proposed Class Meets the Requirements of Rule 23(b)

1. Common Issues Predominate

In addition to the Rule 23(a) requirements, a court must find that common issues of law or fact "predominate over any questions affecting only individual members." Fed. R. Civ. P. 23(b)(3). With regard to the requirements of subsection (b), Rule 23(b)(3) allows class certification where common questions of law and fact predominate over individual questions and class treatment is superior to individual litigation. The predominance inquiry "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997). To determine whether common questions predominate, a court is to consider "the relationship between the common and individual issues." The proposed Class in this case is sufficiently cohesive to warrant adjudication by representation. Furthermore, because the "predominance" factor concerns liability, any variation in damages is insufficient to defeat class certification. *Leyva v. Medline Indus*., 716 F.3d 510, 514 (9th Cir. 2013). Plaintiff contends that all claims in this litigation are based on allegedly common, class-wide policies and procedures, and that liability could be determined on a class-wide basis. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1033 (2012). As noted above, the major issue of whether putative class members were able to take legally compliant meal and rest breaks, were properly paid for all hours worked at the correct rates of pay, and were reimbursed for business-related expenses, stem from purported policies and practices that Plaintiff alleges to have been applicable to the Class as a whole.

2. The Class Action Device Is Superior.

To certify a class, the Court must also determine "that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Fed. R. Civ. Proc. 23(b)(3). This requirement is met when certification will reduce litigation costs and promote greater efficiency. *See Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996) ("Where class-wide litigation of common issues will reduce litigation costs and promote greater efficiency, a class action may be superior").

Here, a class action is the superior mechanism because it will limit duplicative litigation and limit the burden on the Court for the settlement of the claims of over 5,000 employees. *See Lockwood Motors*, 162 F.R.D. at 582 ("Having concluded that common questions predominate,

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th[e] [superiority] requirement is readily satisfied in this case. Class prosecution of this action will limit duplicative litigation, limit the burden on this and other courts, and provide a uniform result for similarly situated parties.”).

Plaintiff further contends that a class action is also superior to other means of adjudicating the issues in this action because the predominance of the alleged common legal and factual questions shows that this Court could fairly adjudicate the claims of Class Members through a single class action. In view of the *theoretical* alternatives that proposed class members could potentially utilize—representative PAGA action (where there is less relief available), individual civil lawsuits or wage claims through the Division of Labor Standards Enforcement (where there would be relatively little money at stake, but the claims would be time-consuming to litigate)—a class action is plainly superior to all of them. Thus, this consideration supports conditional class action treatment for purposes of this Settlement only. DS, ¶ 25.

<u>V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT.</u>

When a proposed class-wide settlement is reached, the settlement must be submitted to the court for approval. Fed. R. Civ. P. 23(e). The overarching inquiry on a motion for preliminary approval of a proposed class action settlement is whether the proposed settlement is “within the range of possible approval.” *See Williams v. Costco Wholesale Corp.*, 2010 WL 761122, *5 (S.D. Cal. March 4, 2010) (“[A]t the preliminary approval stage, the Court need only review the parties’ proposed settlement to determine whether it is within the permissible ‘range of possible judicial approval.’”).

Preliminary approval does not require the trial court to answer the ultimate question of whether a proposed settlement is “fair, reasonable and adequate.” Rubenstein, 4 *Newberg on Class Actions* § 13:13 (“[T]he goal of preliminary approval is for a court to determine whether notice of the proposed settlement should be sent to the class, not make a final determination of the settlement’s fairness”). That determination is made only after notice of the settlement has been given to the members of the class and after the class members have been given an opportunity to voice their views of the settlement or to be excluded from the settlement class. *See Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. Jun 24, 2008) (“a full fairness analysis is unnecessary at this [preliminary] stage . . . The court, therefore, will simply conduct a cursory

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review of the terms of the parties' settlement for the purpose of resolving any glaring deficiencies before ordering the parties to send the proposal to class members.").

"At this stage, the court may grant preliminary approval of a settlement and direct notice to the class if the settlement: '(1) appears to be the product of serious, informed, non-collusive negotiations; (2) has no obvious deficiencies; (3) does not improperly grant preferential treatment to class representatives or segments of the class; and (4) falls within the range of possible approval.'" *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 319 (C.D. Cal. 2016); *Tinoco v. Hajoca Corp.*, 2019 WL 4239130, at *4 (C.D. Cal. June 18, 2019).

A. The Settlement Is The Product Of Serious, Informed, And Non-Collusive Negotiations.

The Settlement resulted from thorough, arms' length, negotiations between experienced counsel with the assistance of a respected mediator after sufficient discovery was exchanged to assess the relative strengths and weaknesses of their respective cases and Defendants' estimated exposure. DS, ¶ 26.

Based on the risks discussed below, Plaintiff's Counsel applied discounts to the maximum possible exposure to account for all other risks discussed below. While it is difficult to assign anything but crudely-determined percentages of risk to any of the claims, it is safe to say that these risks are substantial and would justifies a significant discount. A settlement for approximately 13% of the potential recovery is a proportion substantially in excess of recovery proportions sanctioned by existing case law.[7] DS, ¶¶ 27-28.

Plaintiff's initial estimates do not realistically account for the risks outlined below or the risk that a class will not be certified. *Id*. Therefore, Plaintiff believes a class settlement for $1,100,000.00 is fair and reasonable. *Id.*

Moreover, nothing about the settlement indicates collusion, with "subtle signs" of

[7] *See, e.g., In re Newbridge Networks Sec. Litig.*, 1998 WL 765724 at *2 (D.D.C. Oct. 23, 1998) ("[A]n agreement that secures roughly six to twelve percent of a total trial recovery . . . seems to be within the targeted range of reasonableness."); *Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.* 2019 WL 3943859 at *8 (E.D. Cal. Aug. 21, 2019) (granting preliminary approval where the proposed allocation to settle class claims was at least 9.53 percent); *Bravo v. Gale Triangle, Inc.*, 2017 WL 708766 at * 10 (C.D. Cal. Feb 16, 2017) ("a settlement for fourteen percent recovery of Plaintiffs' maximum recovery is reasonable"); *In re Omnivision Techs., Inc.*, 559 F.Supp.2d 1036, 1042 (N.D. Cal. 2008) (approving settlement amount that "is just over 9% of the maximum potential recovery asserted by either party.").

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collusion absent: Plaintiff's counsel do not stand to receive a disproportionate distribution of the settlement, there is no clear sailing provision on attorneys' fees, and there is no reversion of unawarded funds to Defendants. DS, ¶ 26. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011).

B. The Settlement Has No Obvious Deficiencies And Does Not Grant Any Improper Preferential Treatment.

The relief provided in the Settlement will benefit all Class Members proportionally. The NSA will be paid to each Settlement Class Member based on his or her total number of workweeks compared to other Settlement Class Members' workweeks. Settlement, ¶ 3.2.4. Because this method compensates Settlement Class Members based on the extent of their potential injuries, in that it is fair to assume that Settlement Class Members who worked for Defendants longer would have been subject to more alleged violations, it is fair, adequate, and reasonable. *See Harris v. Vector Mktg. Corp.*, 2011 WL 1627973, at *9 (N.D. Cal. Apr. 29, 2011) (no preferential treatment where settlement "provides equal relief to all class members" and "distributions to each class member—including Plaintiff—are calculated in the same way"); *see also Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56, 77 (2021), *disapproved of on other grounds by Turrieta v. Lyft, Inc.*, 16 Cal. 5th 664 (2024) ("[A] trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.").

The relief provided in the Settlement will not result in preferential treatment for the Class Representative. Plaintiff will apply to the Court for a Class Representative Service Payment in an amount not to exceed $20,000. DS, ¶ 48. Plaintiff participated in the investigation of the class-wide claims, actively assisted Class Counsel in identifying the alleged issues at the heart of litigation, and consulted with Class Counsel regarding the factual allegations and defenses in the case. *Id*. The Class Representative Service Payment is appropriate given Plaintiff's participation in the Action and general release of all known and unknown claims.[8]

[8] *See, e.g.*, *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 268 (N.D. Cal. 2015) (awarding $15,000 to class representative); *Miletak v. Allstate Ins. Co.*, 2012 WL 12921306, at *5 (N.D. Cal. July 12, 2012) (awarding $15,000 to class representative).

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C. The Settlement Falls Within The Range For Approval.

1. The Settlement Is Reasonable In The Experienced Views Of Counsel.

"Because the parties' counsel are the ones most familiar with the facts of the litigation, courts give 'great weight' to their recommendations." *Shannon*, 2020 WL 2394932, at *10 (quoting *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004)); *see also In re Pac. Enters. Secs. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995) ("Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation."). "Therefore, the plaintiffs' counsel's recommendations 'should be given a presumption of reasonableness.'" *Shannon*, 2020 WL 2394932, at *10 (quoting *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. 1979)).

Class Counsel believe that the Settlement is fair, reasonable, adequate, and in the best interest of the Class Members. DS, ¶¶ 25, 43; Declaration of Walter Haines ("Haines Decl."), ¶ 4. Class Counsel each have over twenty years of legal experience and have been appointed lead counsel in dozens of class actions, including numerous wage and hour class actions. DS, ¶¶ 18-23, Haines Decl. ¶ 3. Accordingly, the Settlement "should be given a presumption of reasonableness."[9]

2. The Settlement Is Reasonable In Light Of The Expected Recovery

The Settlement is reasonable in light of Plaintiff's and the Class Members' expected recovery if they prevailed at trial. In preparing for the mediation, Plaintiff's counsel prepared spreadsheets to determine Defendants' maximum exposure with the aid of data analysts. Plaintiff prepared "damages" estimates in advance of the mediation and revised the estimates after further discovery was completed after the mediation and before a Settlement was reached. DS, ¶ 27, Ex. 7. Before mediation, Plaintiff determined Defendants' maximum possible exposure for restitution and penalties to be approximately to be approximately $8,203,359.54 (consisting of $661,650.54 in unpaid wages, $661,650.54 in liquidated damages, $1,251,168.53 in missed meal period premium wages, $1,443,053.11 in missed rest break premium wages, $549,777.50 for wage statement penalties, $1,046,174.33 for waiting time penalties, and $2,589,885.00 for civil penalties under PAGA. Plaintiff calculated the damages based on the number of workweeks and

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[9] *Saenz v. Lowe's Home Centers, LLC*, 2019 WL 3456810, at *4 (C.D. Cal. July 31, 2019); *Palmer v. Pier 1 Imports, Inc.*, 2018 WL 6133692, at *9 (C.D. Cal. Jan. 9, 2018).

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pay periods provided by Defendants, Plaintiff's reports, and the sample data. *Id*.

The estimates are in essence "home run" projections that omit data points that will undoubtedly reduce the maximum possible damages award and do not factor in any of Defendants' defenses or the risks involved in litigating this Action. DS, ¶¶ 28-29. However, based on the difficulties of proof, the Defendants' defenses, and the other attendant risks Plaintiff identifies below, Plaintiff estimates the likely awards at trial should Plaintiff prevail to be the following amounts:

a. Unpaid wages and liquidated damages with interest in the amount of $198,495.16;

b. Meal period premium wages with interest in the amount of $187,675.28;

c. Rest period premium wages with interest in the amount of $216,457.97;

d. Statutory pay stub penalties in the amount of $54,977.75;

e. Waiting time penalties in the amount of $104,617.43; and

f. Civil penalties in the amount of $258,988.50.

The total of these amounts is $1,021,212.09. The Gross Settlement Amount of $1,100,000.00 is close to this amount. DS, ¶ 29. Further, a settlement for approximately 13% of the potential recovery is a proportion substantially in excess of recovery proportions sanctioned by existing case law. [10] *Id*.

3. <u>The Settlement Is Reasonable Given The Substantial Risks Of Continued Litigation.</u>

The Settlement is appropriate here due to the substantial risks faced by Plaintiff concerning class certification. *See Bee, Denning, Inc. v. Capital All. Grp.*, 2016 WL 3952153, at *8 (S.D. Cal. July 21, 2016) (granting preliminary approval based in part on likelihood of continued, expensive litigation and plaintiff's "substantial risk of being unsuccessful at trial").

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[10] *See, e.g., In re Newbridge Networks Sec. Litig.*, 1998 WL 765724 at *2 (D.D.C. Oct. 23, 1998) ("[A]n agreement that secures roughly six to twelve percent of a total trial recovery . . . seems to be within the targeted range of reasonableness."); *Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.* 2019 WL 3943859 at *8 (E.D. Cal. Aug. 21, 2019) (granting preliminary approval where the proposed allocation to settle class claims was at least 9.53 percent); *Bravo v. Gale Triangle, Inc.*, 2017 WL 708766 at * 10 (C.D. Cal. Feb 16, 2017) ("a settlement for fourteen percent recovery of Plaintiffs' maximum recovery is reasonable"); *In re Omnivision Techs., Inc.*, 559 F.Supp.2d 1036, 1042 (N.D. Cal. 2008) (approving settlement amount that "is just over 9% of the maximum potential recovery asserted by either party.").

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a. Risks Associated with the Meal Period Claims

There are risks to Plaintiff's meal period claim. DS, ¶ 33-34. Plaintiff claimed that due to Defendants' alleged deadlines and productivity standards and the employees' alleged workload, the employees had no choice but to delay or forgo their meal and rest break altogether. Defendants utilize the ProTrack warehouse management and labor management software. Plaintiff anticipated that a comparison of the ProTrack records with employee time punch records would show work taking place while employees were off the clock and that the employees had insufficient time for meal and rest periods. However, a closer review of the records by EconOne did not show what Plaintiff had anticipated. Defendants further contend that, to establish a violation for missed meal periods, a plaintiff must do more than show that a meal break was not taken. *Brinker*, 53 Cal. 4th at 1004. So long as an employer provides employees with a "reasonable opportunity" to take a duty-free meal period, it has no further duty to "police meal breaks and ensure no work thereafter is performed." *Id.* at 1040-41. *Id.* Instead, a plaintiff must show the employer impeded, discouraged, or prohibited the employee from taking a proper break, or otherwise failed to release the employee of all control. *Id*. "Thus, the crucial issue with regard to the meal break claim is the reason that a particular employee may have failed to take a meal break." *Washington v. Joe's Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. *Id.*

Defendants contend they did not impede or discourage Plaintiff, or any other employees, from taking their meal or rest periods. DS, ¶ 34. Defendants' policies mandate that employees take at least a 30-minute, uninterrupted meal periods and record the beginning and ending time of their meal breaks each day on their time records. *Id*. The time records that comprise the random sample Defendants produced to Plaintiff for purposes of mediation show that meal periods were taken the majority of the time. *Id*. Of the time records that show a late, short or no lunch, individualized evidence may be necessary to determine whether they occurred due to conduct of the Defendants or each of the employees concerned. Accordingly, there is a significant risk that the value of Plaintiff's meal period claim would be substantially reduced at trial. *Id*.

b. Risks Associated with the Rest Break Claims

There are risks to Plaintiff's rest period claim. DS, ¶ 35. Employers are not required to record rest periods and such periods are paid. *Id.* Defendants contend they provided non-exempt employees the opportunity to take rest periods in accordance with California law. Further, Defendants' written policies on meal and rest periods are consistent with the Wage Order. *Id.* Thus, unlike meal periods, where there are often records showing whether an employee clocked

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out or not, there is no such evidence to prove a missed rest period or that the employer refused to authorize and permit one. *Id.* Managing such claims at trial has become exceedingly difficult. *Id.* Plaintiff will depend on sample witness testimony and surveys to prove the claims. *Id.* While a victory with such evidence is certainly possible, relevant caselaw makes such claims risky from a trial management and due process perspective. *Id.*, *See Duran v. U.S. Bank National Assn.*, (2014) 59 Cal. 4th 1, 31 (explaining "[I]f sufficient common questions exist to support class certification, it may be possible to manage individual issues through the use of surveys and statistical sampling."); *Tyson Foods, Inc. v. Bouphakeo* (2015) 136 S.Ct. 382; *Comcast Corporation v. Behrend* (2013) 133 S.Ct. 1426.

c. Risks Associated with the Unpaid Wages Claim

There is a risk that Plaintiff's recovery for unpaid wages would be extremely limited at best, largely because Defendants' policies throughout the relevant time period prohibited off-the-clock work. Off-the-clock claims are difficult where a Defendants requires in its written policies that all work must take place while clocked in. *See Jong v. Kaiser Foundation Hospital* (2014) 226 Cal.App.4th 391 (employer must have notice of off-the-clock work for it to be compensable). *Id.* Moreover, while Defendants disputes that off-the-clock work occurred, they contend that any time spent off the clock was *de minimis*. The California Supreme Court in *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 835 suggested that irregular and minute periods of time may still be subject to a *de minimis* defense even if compensable (stating that "We do not decide whether there are circumstances where compensable time is so minute or irregular that it is unreasonable to expect the time to be recorded."). Following *Troester*, Defendants contended that the *de minimis* doctrine may apply here because the time spent off the clock were minute and insignificant. Accordingly, a large award of penalties seems unlikely with respect to this claim. *Id.*; DS, ¶ 31.

As stated above Plaintiff anticipated that a comparison of the ProTrack records with employee time punch records would show work taking place while employees were off the clock However, a closer review of the records by EconOne did not show what Plaintiff had anticipated. The difficulty inherent in proving that off-the-clock work occurred poses a significant hurdle to Plaintiff. Plaintiff would rely on declarations and witness statements to prove this claim. Generally, a court will not certify a class unless it can determine an appropriate classwide methodology. *See, e.g., Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1. Here, Plaintiff may rely heavily on anecdotal evidence to prove the off-the-clock work claim, especially given

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the lack of records indicating when such off-the-clock work may have taken place. Individualized inquiries would need to be conducted person-by-person, day-by-day, to determine if an individual in fact worked "minutes" off-the-clock on a "regular" basis. Accordingly, there is a significant risk that the Court would consider this evidentiary showing insufficient as a classwide methodology. DS, ¶ 32.

d. Risks Associated with the Wage Statement and Waiting Time Penalty Claims

Plaintiff also asserts claims for wage statement violations, untimely wage violations, and PAGA penalties. Under Labor Code section 226, wage statements must include various information, including the applicable rates of pay, corresponding hours worked, and gross pay. DS, ¶ 36.

Here, Plaintiff's wage statement and waiting time penalty claims have the same underlying risks as the above claims, as they are derivative of them. *Id*. On their face, the wage statements issued by Defendants comply with the requirements of Labor Code § 226. Further, without proof of willful behavior, Plaintiff will be unable to recover waiting time penalties. DS, ¶ 36.

e. Risks Associated With the PAGA Claim

Regarding PAGA, a court has discretion to award a lesser amount than the maximum penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). As set forth above, Defendants have posed valid defenses to the Labor Code claims underlying Plaintiff's PAGA allegations. Thus, the PAGA claims likewise face significant uncertainty. DS, ¶¶ 37-38. There is a risk that the Court would consider the maximum civil penalty available to be confiscatory.

This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and required a significant discount for settlement purposes. DS, ¶ 39. For mediation purposes, Plaintiff's counsel estimated a maximum possible exposure in civil penalties. This estimate did not take into account any of the risks discussed above and assumed a violation for every single pay period. *Id.* Plaintiff's counsel also assessed multiple penalties for the same pay period for the same alleged violations of different Labor Code provisions and derivative violations. *Id.* Although two federal district court decisions held that "stacking" PAGA penalties in this fashion may be appropriate to determine the amount in controversy for purposes of removal jurisdiction, Plaintiff's counsel is not aware of any state California courts awarding plaintiffs multiple PAGA penalties for the same

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violation for the same pay period under different Labor Code provisions. *Id.* This may be because the PAGA does not provide for what many employers characterize as claim splitting and not merely stacking. *Id.*

Plaintiff is aware of only two significant awards under the PAGA in a contested proceeding, both issued by federal district courts.[11] DS, ¶ 40. PAGA penalty awards are often small even for egregious, intentional violations of the Labor Code.[12] *Id*. For instance, on October 24, 2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff, represented by very experienced counsel, civil penalties totaling only $50.00. *Shields v. Security Paving Company*, Inc., LA Superior Court case no. BC492828. Further, in *Carrington v. Starbucks Corp*. (2018) 30 Cal.App.5th 504, 529, the Court of Appeal affirmed judgment which provided for a PAGA penalty of only $5 per pay period for the Defendants' meal period violations. A similar result could occur here. DS, ¶ 41.

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[11] In *Bernstein v. Virgin Am., Inc*, (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil penalties under the PAGA of $12,277,500.00 where total adjusted damages were $18,695,692.58. In this regard, the district court stated,

> The plain language of PAGA provides that "a court may award a lesser amount than the maximum civil penalty amount specified by this part if, *based on the facts and circumstances of the particular case*, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Cal. Lab. Code s 2699(e)(2) (emphasis added). The relationship between the amount of total damages and the amount of maximum PAGA penalties is certainly a "circumstance" of the case under the term's ordinary meaning. The weight given to that circumstance is greater in this case because Plaintiffs' PAGA penalties are based on PAGA claims that are all derivative of Plaintiffs' individual claims except for one. As a general matter, it would be excessively punitive for the penalty imposed as a consequence of a discrete injury or set of injuries to exceed the damages caused by that injury or set of injuries.

Id., ftnt. 9. The district court further stated, "Virgin "has not presented any evidence that the full penalty would be excessive in relation to its ability to pay," the weight of this factor is lessened." *Id.*

In *Robert Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F. Supp. 3d. 1058, the court awarded approximately $102 million in damages, primarily based on the Defendants' failures to comply with the requirements of California Labor Code section 226.

[12] In 2012, Plaintiff's Counsel tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court case number BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. The plaintiff sought in excess of $9 million in civil penalties under the PAGA. After a bench trial, the Honorable Judge Ronald M. Sohigian awarded approximately $325,000 in civil penalties under the PAGA.

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f. Risks Associated With A Pick-Up Stix Campaign

An employer enjoys the right to settle a putative class member's disputed wage claims individually, without the consent or involvement of class counsel. DS, ¶ 42. *See Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal. App. 4th 796. *Id.* As discussed above, Defendants may launch a "pick off" settlement campaign to pursue individual release agreements from the Class Members, thereby potentially narrowing the size of the Settlement Class until it is no longer numerous enough for class certification. *Id.* Plaintiff, then, may not have sufficient number of employees to represent. This led to a significant reduction of claim value in settlement negotiations. *Id.*

While the evidence gathered through Plaintiff's discovery supports the merits of the claims asserted in this lawsuit, Plaintiff and her counsel recognize that continued litigation presents significant risks that support a downward departure from Defendants' estimated liability exposure. DS, ¶ 43. In view of the risks, the Settlement reflects Plaintiff's estimate of the total amount of damages, monetary penalties or other relief that the Class could reasonably expect to be awarded at trial, taking into account the likelihood of prevailing and other attendant risks. *Id.* It also represents a fair, adequate, and reasonable compromise amount for these claims and warrants preliminary approval. *Id.*, *Torrisi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370, 1376 (the financial condition of Defendants predominated in assessing the reasonableness of settlement); *Spann v. J.C. Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty concerning Defendants' financial stability "strongly supports the reasonableness of the settlement"); *Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014 WL 2465049, * 3.

g. Risks Associated With the Arbitration Agreements

The arbitration agreements entered into between Defendants on the one hand, and the Class Members, on the other, present a significant risk to the success of Plaintiff's class action litigation. According to Defendants, the majority of the Class entered into arbitration agreements with Defendants. Although Plaintiff was successful in convincing this Court that the arbitration agreement she signed was not enforceable for her, it is possible that the Court could reach a different opinion with regards to other Class Members who were employed in positions other than the one assigned to Plaintiff and performed duties different from those performed by Plaintiff. This could significantly limit the class the Court could certify. As the arbitration agreements in question restrict potential litigants from bringing class actions against Defendants, Plaintiff would

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be effectively barred from pursuing claims on behalf of the Class in Court. *Id*. As such, by continuing to trial on class-wide claims, Plaintiff would run the high risk of suffering defeat due to the existence of the arbitration agreement. Moreover, the arbitration agreements would pose danger to any class certification motion brought by Plaintiff. Because different defenses would apply to some Class Members and not others – i.e., the existence of signed arbitration agreements – there is a risk that the Court could determine that Plaintiff's claims present too many individualized inquiries to justify class certification. DS ¶ 30.

4. Allocation of the PAGA Payment

The settlement of PAGA penalties in the sum of $20,000.00, of which 75% ($15,000.00) will be paid to the LWDA and 25% ($5,000.00) will be distributed to the Aggrieved Employees as Individual PAGA Payments, is reasonable and appropriate under the circumstances. DS, ¶ 44. The Parties negotiated a good faith amount for PAGA Penalties to be paid to the LWDA and to the Class. *Id.* The portion to be paid to the LWDA was not the result of self-interest at the expense of other Class Members. *Id.* Where settlements "negotiate[] a good faith amount" for PAGA penalties and "there is no indication that this amount was the result of self-interest at the expense of other Class Members," such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) No. CV-08-0844 EDL, 2009 WL 928133, at *9. Likewise, where the employer did not act willfully, and made good faith attempts to comply with wage and hour laws, a reduction or lesser penalty is warranted because imposing maximum PAGA penalty for each violation would have been unjust, arbitrary, and oppressive. *Id. Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 528-529 (affirming trial court's award of only 10% of maximum PAGA penalty for meal break violations). *Id.* The amount to be paid to the LWDA comports with PAGA settlement amounts approved by other courts. See, e.g., *Chu v. Wells Fargo Investments, LLC* (N.D. Cal., Feb. 16, 2011) 2011 WL 67245, 81 (approving PAGA payment of $7,500 to LWDA out of $6.9 million common fund); *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal., July 11, 2013) 2013 WL 3541217 (approving PAGA payment of $7,500 to LWDA out of $1.25 million common fund settlement); *Hopson v. Hanesbrands, Inc.* (N.D. Cal. Aug. 8, 2008) 2008 WL 3385452, at *1 (approving PAGA settlement of 0.3% or $1,500); see *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 589 (approving PAGA settlement and release that allocated $0 to PAGA claim). Courts have also approved settlements for $20,000 or less. See, e.g., *Hicks v. Toys 'R' Us–Delaware, Inc.*, (C.D. Cal. Sept. 2, 2014) 2014 WL 4703915, at *1

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(approving $5,000 PAGA payment in a case involving $4 million settlement); *Franco v. Ruiz Food Prods., Inc.* (E.D. Cal. Nov. 27, 2012) 2012 WL 5941801 at *14 (approving PAGA penalties of $10,000 as part of $2.5 million settlement); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at *3 (approving PAGA payment of $10,000 as part of $3.7 million common-fund settlement). *Id.*

<u>VI. THE SETTLEMENT FAIRLY, ADEQUATELY, AND REASONABLY COMPENSATE CLASS MEMBERS BECAUSE IT WILL PAY EACH CLASS MEMBER BASED ON THE POTENTIAL EXTENT OF HIS OR HER INJURY COMPARED TO OTHER CLASS MEMBERS</u>

The Individual Settlement Payments will be paid to each Class Member based on his or her eligible Work Weeks compared to the total Work Weeks. Because this method compensates Class Members based on the extent of their potential injuries, in that it is fair to assume that Class Members who worked for Defendants longer would have been subject to more alleged violations, it is fair, adequate, and reasonable.

Plaintiff estimates that there are 321,648 Work Weeks for the Class Period. So, each Work Week has a value of approximately $1.91 ($613,333.34 Net Settlement Amount / 321,648 Work Weeks = $1.91). Plaintiff had 5 Work Weeks during the Class Period. Based on this, it is anticipated that Plaintiff Deja Nair will receive an Individual Class Payment of approximately $9.53 as a Participating Class Member (5 Work Weeks x $1.91 = $9.53) while the average estimated Individual Class Payment to Participating Class Members will be approximately $104.10 ($613,333.34 Net Settlement Amount / 5,892 Class Members = $104.10). Some Class Members – those who worked more Work Weeks during the Class Period - will receive more, and some less. The highest possible Individual Class Payment to a Participating Class Member (i.e., to those who qualify for all Work Weeks in the Class Period) will be approximately $845.41. The lowest possible Individual Class Payment to a Participating Class Member (i.e., to those who qualify for only one Work Week in the Class Period) will be approximately $1.91. *See* DS, ¶ 61.

It is anticipated that the average Aggrieved Employee Individual PAGA Payment will be $1.13. *Id.* Plaintiff's Individual PAGA Payment, her individual share of 25% of the PAGA Penalties, will be less than that of some absent Aggrieved Employees. Under the Settlement, each of the 4,411 Aggrieved Employees will receive a *pro rata* distribution of 25% of the PAGA Penalties proportionate to the number of paychecks he or she had with Defendants during the PAGA Period, compared to the total of all paychecks of all Aggrieved Employees during the PAGA Period, as reflected by Defendants' records. Plaintiff estimates that there are 115,106

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Aggrieved Employee paychecks for the PAGA Period. So, each Aggrieved Employee paycheck from the PAGA Period has a value of approximately $0.04 (25% of $20,000.00 in PAGA Penalties / 115,106 Aggrieved Employee paychecks = $0.04). It is anticipated that Plaintiff Deja Nair will receive an Individual PAGA Payment of approximately $0.09 as an Aggrieved Employee (2 paychecks during the PAGA Period x $0.04 paycheck value = $0.09) while the average estimated Individual PAGA Payment to an Aggrieved Employee will be approximately $1.13 ($5,000.00, 25% of PAGA Penalties / 4,411 Aggrieved Employees during the PAGA Period = $1.13 Individual PAGA Payment). Some Aggrieved Employees – those who had more paychecks during the PAGA Period—will receive more, and some less. The highest possible Individual PAGA Payment to an Aggrieved Employee (i.e., to those who qualify for all paychecks in the PAGA Period) will be approximately $6.41. The lowest possible Individual PAGA Payment to an Aggrieved Employee (i.e., to those who qualify for only one paycheck in the PAGA Period) will be approximately $0.04. *See* DS, ¶ 63.

VII. ALLOCATION FOR CLASS COUNSEL'S FEE AWARD AND ATTORNEYS' FEES AND COSTS AWARD FOR LITIGATION EXPENSES IS APPROPRIATE

The Settlement states Class Counsel may seek attorneys' fees of $366,666.66 (or one-third of the GSA) and up to $50,000.00 for actual reasonable litigation costs and expenses incurred in prosecuting the Action. These amounts are reasonable, given the facts and circumstances of the case. DS, ¶¶ 45-46.

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal. App. 4th 19, 41. Indeed, it is long settled that the "experienced trial judge is the best judge of the value of professional services rendered in his court." *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1132. California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Laffitte v. Robert Half Intl, Inc.* (2016) 1 Cal. 5th 480, 503 (citing *Lealao, supra,* 82 Cal.App.4th at p. 48-49). The Supreme Court has recently approved fees equal to one-third (1/3) of the common fund. *Laffitte, supra*, 1 Cal. 5th 480. Many courts have similarly approved fee awards equal to or greater than the percentage requested here. *See, e.g., In re Pacific Enterprises* (9th Cir. 1995) 47 F.3d 373, 379 (award of 33% of the common fund); *In re Activision* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375 (32.8% of the common fund); *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494, 498 (45% of settlement fund).

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The amount of fees and costs requested are commensurate with (1) the risk Class Counsel took in bringing the case, (2) the extensive time, effort and expense dedicated to the case, (3) the skill and determination Class Counsel has shown, (4) the results Class Counsel achieved, (5) the value of the Class Counsel achieved for the class, and (6) the other cases Class Counsel turned down to devote time to this matter. DS, ¶ 46. Class Counsel interviewed and obtained information from putative class members, met and conferred with Defendants' counsel on numerous occasions, reviewed and analyzed hundreds of pages of data and documents provided by Defendants and obtained through other sources, researched applicable law, and provided estimates of "damages" for purposes of settlement discussions, among other tasks. *Id.*

Class Counsel have borne all the risks and costs of litigation and will receive no compensation until recovery is obtained. DS, ¶ 47. Class Counsel are well-experienced in wage-and-hour class action litigation and used that experience to obtain a fair result for the Class. *Id.* Considering the amount of the attorney fees requested, the work performed, and the risks incurred, the requested fees and costs are reasonable and should be awarded. *Id.* Should this Court grant preliminary approval, Class Counsel will provide their cost and lodestar reports for the Court's review.

VIII. THE CLASS REPRESENTATIVE SERVICE PAYMENT TO PLAINTIFF SHOULD BE PRELIMINARILY APPROVED BECAUSE IT IS FAIR, ADEQUATE, AND REASONABLE

Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation, often in much higher amounts than that sought here. *See, e.g.*, *Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726 (upholding "service payments" to named plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294 (approving $50,000 enhancement award). The Settlement provides that Plaintiff may seek a Class Representative Service Payment of up to $20,000.00. This amount is entirely reasonable given Plaintiff's efforts in this action and the risks she undertook on behalf of Class Members. DS, ¶ 48; Declaration of Deja Nair ("Plaintiff decl."), generally. Plaintiff began her investigation and retention of attorneys to pursue the claims at issue on approximately September 07, 2021. Plaintiff has devoted many hours advancing the interests of the Settlement Class. Plaintiff has done this by, among other things, retaining experienced counsel, providing them with information about her work history with Defendants and Defendants' policies and practices with respect to the wage and hour claims

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at issue, participating in mediation, and being actively involved in the settlement process to ensure a fair result for the Settlement Class as a whole. In doing this, Plaintiff has been exposed to significant risks, including the risk of an order to pay Defendants' attorneys' fees and costs if this action had been unsuccessful (*See* Labor Code §§ 218.5-218.6). The efforts and risks that Plaintiff undertook on behalf of the Settlement Class shows that the proposed Class Representative Service Payment is fair, adequate, and reasonable, and thus warrants preliminary approval. DS, ¶ 48-63; Plaintiff decl., generally.

IX. THE PROPOSED CLAIMS ADMINISTRATION COSTS ARE FAIR AND REASONABLE AND SHOULD BE PRELIMINARILY APPROVED.

With regard to the settlement administration costs ("Administration Expenses Payment") provision, it is reasonable. Before agreeing to ILYM Group, Inc. and its bid of $27,950.00, the Parties sought and reviewed bids from other reputable third-party administrators which provided higher bids. DS, ¶ 65-66, Exs. 14 to 17. Thus, the settlement administration costs provision should be given preliminary approval.

X. THE COURT SHOULD APPROVE THE PROPOSED NOTICE AND NOTICE PLAN.

Rule 23(c)(2)(B) requires that, in any case certified under Rule 23(b)(3), the court must direct that class members be given the "best notice that is practicable" under the circumstances. This does not require that each class member receive "actual notice." *Silber v. Mahon*, 18 F.3d 1449, 1454 (9th Cir. 1994). Rather, it suffices if the manner in which notice is disseminated to class members is "reasonably calculated, under all the circumstances, to apprise [them] of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co*., 339 U.S. 306, 314 (1950).

This Court should approve the proposed plans for giving notice to the Settlement Class and administering the Settlement. The notice process includes multiple measures to ensure that as many Class Members as practicable receive actual notice of the Settlement and have enough time to exercise their rights. The Settlement requires distribution of the Notice by First Class U.S. mail only. Settlement, ¶ 8.4.2. Although there are current employee Class Members, it is uncertain whether Defendants' records of their contact information include email addresses and Class Members, who perform all of their work away from a desk, are not in a position to check their emails. As such, notice by mail alone is fair, adequate, and reasonable. DS, ¶ 64.

With respect to its content, "[The] notice given to the class must fairly apprise the class

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members of the terms of the proposed compromise and of the options open to dissenting class members." *Trotsky v. Los Angeles Fed. Sav. & Loan Assn*. (1975) 48 Cal.App.3d 134, 151-152. The purpose of the notice in class settlement context is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. *Id.* The Class Notice (Exhibit A to the Settlement) provides Class Members with all pertinent information that they need to fully evaluate their options and exercise their rights under the Settlement. Specifically, it clearly and concisely explains, among other things: (1) what the Settlement is about; (2) who is a Settlement Class Member; (3) how Class Counsel will be paid; (4) how to submit an exclusion request not to be bound by the Settlement; (5) how to object to the Settlement; (6) how the Settlement will be allocated; (7) how payments to Class Members will be calculated; (8) how the disputes will be resolved; and (9) the individual Settlement Class Member's estimated payment. Additionally, the Class Notice will include the number of Work Weeks a Class Member had during the Class Period. Accordingly, the Notice should be approved because it describes the Settlement with sufficient clarity and specificity to explain to Class Members what this action is about, their rights under the Settlement, and how to exercise those rights. DS, ¶ 64.

XI. PRESENCE OF GOVERNMENTAL PARTICIPANT

As required under Labor Code section 2699(l)(2), Plaintiff will provide notice of this settlement to the LWDA with the filing and service of this motion. DS, ¶ 67, Ex. 18.

XII. THIS COURT SHOULD SCHEDULE A FINAL APPROVAL HEARING.

The last step in the settlement approval process is a fairness hearing, where Class Members who timely submit objections to the Settlement may be heard and this Court will make a final determination about the propriety of the Settlement. Based on the timetables for giving notice, requesting exclusion, and making objections to the Settlement, Plaintiff requests that the Final Approval Hearing in this case be scheduled 120 days after preliminary approval is granted.

XIII. CONCLUSION

For the reasons stated above, this Court should grant Plaintiff's Motion in its entirety and adopt the proposed order submitted concurrently herewith.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: April 13, 2026

By: /s/ David Spivak

DAVID G. SPIVAK, Attorneys for Plaintiff,
DEJA NAIR, and all others similarly situated

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