

Kane Moon (SBN 249834)
H. Scott Leviant (SBN 200834)
Sandy Pham (SBN 352753)
MOON LAW GROUP, PC
725 S. Figueroa St., 31st Floor
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125
E-mail: kmoon@moonlawgroup.com
E-mail: hsleviant@moonlawgroup.com
E-mail: spham@moonlawgroup.com

Attorneys for Plaintiff, SHERIF FATHY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

SHERIF FATHY, individually, and on behalf of
all others similarly situated,

Plaintiff,

vs.

JAY NOLAN COMMUNITY SERVICES, INC.,
a California corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 21STCV38798

[Assigned to the Hon. Elaine Lu, Dept. 9]

CLASS AND REPRESENTATIVE ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS AND REPRESENTATIVE ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

Date: January 16, 2025

Time: 10:00 a.m.

Courtroom: 9

Judge: Hon. Elaine Lu

Action Filed: October 20, 2021

Trial Date: Not Set

1 **TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that on January 16, 2025, at 10:00 a.m., in Department 9 of the above-
3 captioned Court, Spring Street Courthouse, located at 312 North Spring Street, Los Angeles, CA 90012,
4 Plaintiff SHERIF FATHY (“Plaintiff”) will and hereby does move this Court for an order:

5 1. Granting class certification of the Class, solely for settlement purposes pursuant to
6 Code of Civil Procedure § 382;

7 2. Finally approving the CLASS ACTION AND PAGA SETTLEMENT
8 AGREEMENT AND CLASS NOTICE (“Settlement” or “Agreement”);

9 3. Appointing counsel for Plaintiff, Kane Moon, H. Scott Leviant, and Sandy Pham, of
10 Moon Law Group, PC, as Class Counsel;

11 4. Appointing Plaintiff as the Class Representative;

12 5. Approving the use of the proposed notice procedure and related notice form;

13 6. Approving PHOENIX SETTLEMENT ADMINISTRATORS as the third-party
14 administrator;

15 7. Directing that notice be mailed to the Class; and,

16 8. Scheduling a hearing date for motions for final approval of class action settlement
17 and awards of attorneys’ fees and costs.

18 Good cause exists to grant this Motion because: (1) the Class meets all of the requirements for
19 class certification for settlement purposes under Code of Civil Procedure § 382; (2) the Settlement
20 Agreement is a fair, adequate, and reasonable compromise of the disputed wage and hour claims asserted
21 by Plaintiff; (3) Plaintiff and Class Counsel are adequate to represent the Class; and, (4) the notice
22 procedures and related forms complied with California Rules of Court 3.766(d) and this Court’s Order
23 granting preliminary approval of the Settlement; and, (e) adequately apprised Class Members of their
24 rights and fully comport with due process.

25 This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court,
26 which require approval by the Court of a class action settlement and permit the Court to extend the page
27 limit for memoranda.

1 TENTATIVE RULINGS: As a general practice, Department 9 provides tentative rulings for the
2 following types of matters:

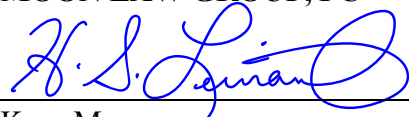
- 3 • In general, tentative rulings will only be issued for preliminary and final approval of
4 settlements.
- 5 • The Court may also issue a tentative ruling if the parties need to clarify certain issues for
6 the Court.

7 This Motion is based on this Notice of Motion and Motion, the attached Memorandum of
8 Points and Authorities, the Declarations of H. Scott Leviant, Plaintiff, and the Settlement Administrator
9 in support thereof, all papers and pleadings on file with the Court in this action, all matters judicially
10 noticeable, and on such oral and documentary evidence as may be presented in connection with the
11 hearing on the Motion.

12
13 Respectfully submitted,

14 Dated: December 13, 2024

MOON LAW GROUP, PC

15
16 By: 

Kane Moon
H. Scott Leviant
Sandy Pham

17
18 Attorneys for Plaintiff
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	iii
I. INTRODUCTION.....	1
II. THE NOTICE PROCESS IS UNDERWAY WITHOUT ISSUE	1
III. THE MAJOR TERMS OF SETTLEMENT	2
IV. FACTUAL AND PROCEDURAL BACKGROUND	6
A. Plaintiff’s Claims	6
B. Pre-Mediation Data Production and Analysis.....	6
C. Settlement.....	7
V. CLASS DEFINITION.....	8
VI. DISCUSSION.....	8
A. Consistent with the Court’s Findings at the Time of Preliminary Approval, the Court Should Certify the Class for Settlement Purposes.....	8
B. The Court Should Approve the Settlement Because It Is a Fair, Adequate, and Reasonable Compromise of Disputed Wage Claims.....	9
1. Class Action Settlements Are Subject to Review and Approval.	9
2. The Parties Reached the Settlement Through Arms’ Length Negotiations Between Experienced Counsel with the Assistance of a Highly Qualified Mediator After Sufficient Data Was Exchanged to Evaluate Settlement.	10
3. The Settlement Represents a Fair, Adequate, and Reasonable Compromise of Class Members’ Claims Based on Defendant’s Estimated Liability Exposure Given the Risks Continued Litigation Would Entail.	11
4. The Proposed Method for Allocating Settlement Funds Is Fair.	14
5. The Proposed Enhancement Award to Plaintiff Warrants Approval.	15
6. The Proposed Award of Attorneys’ Fees and Costs Is Also Fair, Adequate, and Reasonable and Merits Approval.	15

1	a)	Plaintiff’s Counsel Should be Awarded Fees Based on a Percentage of the	
2		Fund Recovered, Consistent with the Common Fund Method.....	15
3	b)	A Lodestar Cross Check Confirms that Class Counsel’s Requested	
4		Attorneys’ Fees Are Reasonable.....	16
5	c)	Class Counsel’s Costs Are Reasonable.....	18
6	7.	The Payment to the Administrator Is Fair and Reasonable.....	18
7	8.	The PAGA Allocation is Reasonable.....	18
8	VII.	CONCLUSION.....	20

TABLE OF AUTHORITIES

CALIFORNIA DECISIONAL AUTHORITY

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> , 85 Cal. App. 4th 1135 (2000)	10
<i>Amaral v. Cintas Corp.</i> , 163 Cal. App. 4th 1157 (2008)	19
<i>Chavez v. Netflix, Inc.</i> , 162 Cal. App. 4th 43 (2008).....	16
<i>City and County of San Francisco v. Sweet</i> , 12 Cal. 4th 105 (1995).....	16
<i>Clark v. Am. Residential Servs. LLC</i> , 175 Cal. App. 4th 785 (2009)	15
<i>Dunk v. Ford Motor Co.</i> 48 Cal. App. 4th 1794 (1996).....	9, 10, 16, 17
<i>Duran v. US Bank Nat’l Ass’n</i> , 59 Cal. 4th 1 (2014)	11
<i>In re Consumer Privacy Cases</i> , 175 Cal. App. 4th 545 (2009)	16
<i>Jaimez v. Daiohs USA, Inc.</i> 181 Cal. App. 4th 1286 (2010).....	9
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal. App. 4th 116 (2008).....	10
<i>Laffitte v. Robert Half Intern. Inc.</i> , 1 Cal. 5th 480 (2016).....	16
<i>Linderv. Thrifty Oil Co.</i> , 23 Cal. 4th 429 (2000).....	9
<i>Malibu Outrigger Bd. of Governors v. Superior Court</i> , 103 Cal. App. 3d 573 (1980).....	9
<i>MBNA American Bank, N.A. v. Gorman</i> , 147 Cal. App. 4th 1 (2006)	17
<i>Moniz v. Adecco USA, Inc.</i> , 72 Cal. App. 5th 56 (2021).....	18, 19
<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> , 186 Cal. App. 4th 399 (2010).....	10
<i>Nightengale v. Hyundai Motors America</i> , 31 Cal. App. 4th 99 (1994).....	17
<i>PLCM Group, Inc. v. Drexler</i> , 22 Cal. 4th 1084 (2000)	17
<i>Ramos v. Countrywide Home Loans, Inc.</i> , 82 Cal. App. 4th 615 (2000)	16, 17
<i>Sav-on Drug Stores, Inc. v. Superior Court</i> , 34 Cal. 4th 319 (2004).....	9
<i>Serrano v. Priest</i> , 20 Cal. 3d 25 (1977)	16, 17
<i>Stambaugh v. Superior Court</i> , 62 Cal. App. 3d 231 (1976).....	9
<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224 (2001)	11, 17

FEDERAL DECISIONAL AUTHORITY

<i>Ferrell v. Buckingham Property Mgmt.</i> (E.D. Cal. Jan. 21, 2020) Case No. 1:19-cv-00332-LJO-SAB, 2020 WL 291042	14
<i>Jordan v. Multnomah County</i> , 815 F.2d 1258 (9th Cir. 1987).....	17
<i>Miller v. CEVA Logistics U.S.A., Inc.</i> , 2015 WL 729638 (E.D. Cal. Feb. 19, 2015).....	14
<i>Moreno v. City of Sacramento</i> , 534 F.3d 1106 (9th Cir. 2008)	17
<i>O'Connor v. Uber Technologies, Inc.</i> , 201 F.Supp.3d 1110 (N.D. Cal. 2016).....	19
<i>Officers for Justice v. Civil Serv. Comm'n of San Francisco</i> , 688 F.2d 615 (9th Cir. 1982)	10
<i>Parkinson v. Hyundai Motor America</i> , 796 F.Supp.2d 1160 (C.D. Cal. 2010)	17
<i>Rodriguez v. West Publishing Corp.</i> , 563 F.3d 948 (9th Cir. 2000).....	14
<i>Thomas v. Cognizant Tech. Sols. U.S. Corp.</i> (C.D. Cal. June 24, 2013) No. SACV111123JSTANX, 2013 WL 12371622.....	14
<i>Willis v. Xerox Bus. Servs., LLC</i> , 2013 WL 6053831 (E.D. Cal. 2013)	19

STATUTES

Code of Civil Procedure § 382.....	8, 9, 20
------------------------------------	----------

RULES

Rules of Court, Rule 3.769	9
----------------------------------	---

OTHER AUTHORITIES

Class Certification in California: SECOND INTERIM REPORT FROM THE STUDY OF CALIFORNIA CLASS ACTION LITIGATION - FEBRUARY 2010.....	13
--	----

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to California Rules of Court, Rules 3.769, Plaintiff SHERIF FATHY (“Plaintiff”) requests that this Court finally approve the class and representative action settlement set forth in the CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE (“Settlement” or “Agreement”) with Defendant JAY NOLAN COMMUNITY SERVICES, INC. (“Defendant”).

After informal and formal discovery, the exchange of documents and data, and an arm’s-length mediation session with mediator Eve Wagner,, Plaintiff and Defendant (collectively referred to herein as the “Parties”) reached a proposed class action settlement with a gross settlement amount (“GSA”) of **\$275,000.00** in compromise of disputed claims asserted on behalf of the below-defined Class consisting of **319** Class Members who worked a total of **9,246** Workweeks and below-defined PAGA Group of **880** aggrieved employees (of which 116 are also Class Members) who worked **44,743** Pay Periods.¹ Plaintiff believes this settlement is a fair, adequate, and reasonable compromise of disputed claims for alleged wage and hour violations and penalties asserted in this case.

Plaintiff now submits this Motion for Final Approval of Class and Representative Action Settlement, along with the Settlement (attached to the Declaration of H. Scott Leviant [“Leviant Decl.”], Exhibit 1 thereto). For the Court’s convenience, below, in Part III, is a summary of the key provisions of the Settlement.

II. THE NOTICE PROCESS IS UNDERWAY WITHOUT ISSUE

Plaintiff and Defendant have thus far fulfilled the class notice procedures set forth in the Settlement. The Settlement Administrator, Phoenix Settlement Administrators (“Phoenix”), sent individual Notices to **319** Class Members on August 21, 2024. (Declaration of Kevin Lee [“Lee Decl.”], ¶ 5.) Twenty-six (26) Notices were returned, but new addresses were found for twenty-four (24) Notices after skip tracing, which were re-mailed. (*Id.*, at ¶ 6.) Two (2) Notices remained undeliverable. (*Id.*) Thus far, there has been zero (0) requests for exclusion, zero (0) objections, and zero (0) workweek

¹ At the time of Preliminary Approval, Defendant estimated that there were 337 Class Members who worked during the period from October 20, 2017 through February 8, 2023. However, the finalized class list included only 319 Class Members.

disputes received. (*Id.*, at ¶¶ 7-9.)

III. THE MAJOR TERMS OF SETTLEMENT

The provisions of the proposed Settlement include the following:

- Defendant agrees not to oppose certification for purposes of Settlement. (Settlement, ¶ 12.1);
- Class: All individuals who have worked for Defendant in California as hourly employees during the Class Period (the “Class Period” is the period from October 20, 2017, through the date that a preliminary approval order is entered in the Action). Excluded from the Class are those individuals who have entered into (i) arbitration agreements or (ii) agreements releasing the claims alleged by Plaintiff. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Class portion of the Settlement. (Settlement, ¶¶ 1.5, 1.9, 1.12, 1.34.);
- Settlement Amount: Defendant will pay a maximum of **\$275,000.00**, referred to as the Gross Settlement Amount (or GSA herein), resulting in an estimated average workweek value of **\$368.34**. (Settlement, ¶ 1.21; 3.1; Leviant Decl., ¶ 17; Lee Decl., ¶ 14);
- Funding of Gross Settlement Amount: Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant’s share of payroll taxes by transmitting the funds to the Administrator no later than 75 days after the Effective Date. If an appeal is filed, Defendant shall fund the settlement no later than 30 days after the date the judgment is affirmed, in whole or in material part, and the action is no longer subject to further appeal. (Settlement, ¶ 4.3);
- Class Size: **319** individuals who worked **9,246** workweeks.² (Settlement, ¶ 4.1);
- Class Period: October 20, 2017 to July 18, 2024. (Settlement, ¶ 1.12; Lee Decl., ¶ 2);

² At the time of Preliminary Approval, Defendant estimated that there were 337 Class Members who worked during the Class Period. However, the finalized class list included only 319 Class Members. (Lee Decl., ¶ 3).

- 1 • PAGA Group Size: **880** individuals who worked **44,743** Pay Periods.³ (Settlement, ¶ 4.1);
- 2 • PAGA Period: October 20, 2020 to June 19, 2023. (Settlement, ¶ 1.30; Lee Decl., ¶ 2);
- 3 • Escalator Clause: If it is determined that the total number of Class Members who worked
- 4 from October 20, 2017 through February 8, 2023 is more than 10% greater than 337⁴, then
- 5 Defendant will have the option to either (i) allow the Gross Settlement Amount to increase on
- 6 a pro rata basis above 10% to the extent the threshold is exceeded (e.g., if the threshold
- 7 referenced herein is exceeded by 11%, the GSA will increase by 1%), or (ii) shorten the Class
- 8 Period such that the threshold is not exceeded – i.e., such that there is not an increase in the
- 9 number of Class Members of more than 10%. In addition, if it is determined that the total
- 10 number of Aggrieved Employees who worked from October 20, 2020 through February 8,
- 11 2023 is more than 10% greater than 813, then Defendant will have the option to either (i)
- 12 allow the Gross Settlement Amount to increase on a pro rata basis above 10% to the extent
- 13 the threshold is exceeded (e.g., if the threshold referenced herein is exceeded by 11%, the
- 14 GSA will increase by 1%), or (ii) shorten the PAGA Period such that the threshold is not
- 15 exceeded – i.e., such that there is not an increase in the number of Aggrieved Employees of
- 16 more than 10%. (Settlement, ¶ 8). **The Escalator Clause was not triggered.** (Lee Decl.,
- 17 ¶12);
- 18 • Kullar/Munoz Analysis: Plaintiff addresses the claims analysis herein, at Part V.B.3, and in
- 19 the Declaration of Leviant, at Paragraph 18;
- 20 • No Reversion: The Settlement is a **non-reversionary** settlement. (Settlement, ¶ 3.1);
- 21 • Certification: Plaintiff addresses certification requisites herein, at Part VI.A. Certification
- 22 was addressed in much greater detail in the Motion for Preliminary Approval;
- 23 • No Claim Form: No claim form is required. (Settlement., ¶ 3.1);
- 24

25 ³ At the time of Preliminary Approval, Defendant estimated that there were 813 Aggrieved

26 Employees who worked during the PAGA Period. However, the finalized list of Aggrieved Employees

27 included 880 Aggrieved Employees. (Lee Decl., ¶ 3).

28 ⁴ At the time of Preliminary Approval, Defendant estimated that there were 337 Class Members who

worked during the period from October 20, 2017 through February 8, 2023. However, Defendant's class

list included only 319 Class Members.

- 1 • Class Release: All Participating Class Members release the Released Parties from all claims
2 that were alleged, or reasonably could have been alleged, based on the Operative Complaint.
3 (Settlement, ¶ 5.2);
- 4 • PAGA Release: All Class Members who are Aggrieved Employees release the Released
5 Parties from all claims for PAGA penalties that were alleged, or reasonably could have been
6 alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA
7 Notice. (Settlement, ¶ 5.3);
- 8 • Net Settlement Amount Available to the Class: After deducting Class Counsel’s attorneys’
9 fees and costs, service payment to Plaintiff, administration costs, and the PAGA penalty,
10 the remainder will be available for distribution to Class Members who do not opt out, with
11 each Class Member receiving a share based on the number of Workweeks each Class
12 Member worked for Defendant within the Class Period. (Settlement, ¶ 1.27). The Net
13 Settlement Amount is estimated to be **\$112,757.90**, resulting in an average **net** payment per
14 Class Member of at least **\$340.66**, before any tax withholdings, assuming all award are
15 issued as requested. The Net Settlement Amount will be higher if any requested awards are
16 reduced.
- 17 • Tax Allocation: The amounts distributed to Class Members will be characterized as 25%
18 alleged unpaid wages, 10% to interest, and 65% to penalties, and PAGA Settlement
19 Payments will be allocated as 100% penalties. (Settlement, ¶¶ 3.2.4.1, 3.2.5);
- 20 • Employer’s Portion of Payroll Taxes Paid Separately: Defendant’s portion of payroll taxes
21 (e.g., FICA, FUTA, etc.) owed on any settlement payments to Class Members that
22 constitute wages will be paid separate and apart from the GSA. (Settlement, ¶ 3.1);
- 23 • Settlement Administrator: The notice portion of the Settlement was administered by a
24 third-party Administrator, Phoenix Settlement Administrators. The administrator’s actual
25 costs for settlement administration are in the amount of **\$11,832.79**, which is below the
26 Court’s preliminarily approved amount of \$15,000.00. (Settlement, ¶ 3.2.3; Lee Decl., ¶ 17,
27 Exh. B);
28

- 1 • Notice: The Notice described how to dispute workweeks, submit an objection attorney, or
2 request exclusion. (Settlement, ¶¶ 7.5 – 7.7; Lee Decl., Exh. A);
- 3 • Notice Language: Notice was issued in English and Spanish. (Settlement, ¶¶ 1.11, 7.4.2;
4 Lee Decl., ¶ 5);
- 5 • PAGA Allocation: From the GSA, **\$29,000.00** will be allocated to settle claims brought
6 pursuant to the California Private Attorneys General Act, Labor Code § 2699 *et. seq.*
7 (“PAGA”), and seventy-five percent (75%), or **\$21,750.00**, will be paid to the California
8 Labor & Workforce Development Agency. (Settlement, ¶ 1.33; 3.2.5);
- 9 • Notice to LWDA: Notice of the Settlement was provided prior to the filing of this Motion.
10 Evidence is attached to the Leviant Declaration, Exh. 3;
- 11 • Enhancement/Service Award to Plaintiff: Defendant will not oppose the application for
12 Class Representative Service Payment of up to **\$7,500.00** for Plaintiff, to be paid from the
13 GSA. (Settlement, ¶ 3.2.1);
- 14 • Fees and Costs: Class Counsel is fees not to exceed 33.33% of the GSA (**\$91,666.67**), and
15 actual costs, in the amount of **\$19,075.43**, to be paid out of the GSA.⁵ (Settlement, ¶ 3.2.2);
- 16 • Check Void Period: Settlement checks will be valid for 180 days. (Settlement, ¶ 4.4.1);
- 17 • Uncashed Checks: Any settlement checks that are mailed to the Class Members and remain
18 uncashed after 180 days of the date of issuance will be cancelled, and the moneys will be
19 directed to the State Controller’s Office, Unclaimed Property Division in the name of the
20 Class Member thereby leaving no "unpaid residue" subject to the requirements of California
21 Code of Civil Procedure § 384(b). (Settlement, ¶ 4.4.3);
- 22 • Judgment Notice: Judgment will be posted on the Settlement Administrator’s website after
23 entry. (Settlement, ¶ 7.8.1);
- 24 • Confidentiality Provisions: The Settlement permits Class Counsel to discuss the Settlement
25 with Class Members. (Settlement ¶ 12.2).

26 (Leviant Decl., ¶¶ 11-12 and Exhibit 1 thereto.)

27
28 ⁵ Defendant retains the right to object to costs to the extent they exceed \$17,500.00.

1 **IV. FACTUAL AND PROCEDURAL BACKGROUND**

2 **A. Plaintiff's Claims**

3 Plaintiff worked for Defendant as a support staff member, assisting clients with disabilities.⁶
4 (Leviant Decl., ¶ 4.) On October 20, 2021, Plaintiff commenced this Action by filing a Complaint
5 alleging causes of action against Defendant for: Failure to Pay Minimum Wages, Failure to Pay Overtime
6 Compensation, Failure to Provide Meal Periods, Failure to Authorize and Permit Rest Breaks, Failure to
7 Indemnify Necessary Business Expenses, Failure to Timely Pay Final Wages at Termination, Failure to
8 Provide Accurate Itemized Wage Statements, and Unfair Business Practices. (*Id.*)

9 Plaintiff sent a letter to the Labor and Workforce Development Agency (“LWDA”), pursuant to
10 California Labor Code § 2699.3, providing notice of her intent to seek civil penalties under the Private
11 Attorneys General Act, California Labor Code § 2698, et seq. (“PAGA Letter”). (*Id.* at ¶ 5.) The
12 LWDA did not indicate that it intended to investigate the alleged violations referenced in the letter, and
13 the 65-day time period permitted for the LWDA to provide such a notification expired. (*Id.*) On
14 February 7, 2022, Plaintiff filed a First Amended Complaint alleging an additional cause of action
15 against Defendant for violation of the Private Attorneys General Act (“PAGA”). (*Id.*) On April 19,
16 2024, Plaintiff, by stipulation, filed a Second Amended Complaint, adding an additional cause of action
17 under the Fair Labor Standards Act (“FLSA”). (*Id.*) The Second Amended Complaint is the operative
18 complaint in the Action (the “Operative Complaint”). (*Id.*)

19 **B. Pre-Mediation Data Production and Analysis**

20 The Parties conducted informal and formal discovery and investigation of the facts and law.
21 (Leviant Decl., ¶ 6.) Such investigation included, inter alia, the exchange of extensive data and
22 discoverable information in preparation for the mediation sessions. (*Id.*) The Parties have analyzed time
23 clock, pay and other data pertaining to Plaintiff and the Class during the relevant Settlement Period,
24 including but not limited to the numbers of former and current members of the Class, average
25

26 ⁶ Defendant is a community services business that assists individuals with disabilities, including
27 individuals who are deaf and autistic, among other disabilities. In its own words, “The mission of Jay
28 Nolan Community Services, Inc. (JNCS) is to enable individuals with Autism Spectrum Disorder and
other Developmental Disabilities to live fulfilling lives as members of the community by providing
support services customized to their individual needs.”

workweeks and pay periods, and average rate of hourly pay. (*Id.*) In addition, Defendant also provided documents reflecting wage and hour policies and practices during the Settlement Period and information regarding the total number of current and former employees in the Class. (*Id.*) Sampling was used, and data for approximately 70 class members was provided to control costs. The margin of error calculation for the sample of the Class in this case is as follows:

$$1.645 \sqrt{\frac{0.5(1-0.5)}{70}} \sqrt{\frac{337-70}{337-1}} = \text{margin of error}^7 = 8.74\%$$

(*Id.*) With a sample of 70 employees, Class Counsel calculated that the margin of error, using the population adjustment factor, was no more than 8.74 percent.⁸ (*Id.*) In addition, Defendant also provided documents reflecting its wage and hour policies and practices during the Settlement Period and information regarding the total number of current and former employees in the Class. (*Id.*)

After reviewing documents regarding Defendant's wage and hour policies and practices and other information obtained during the exchange of discovery, Class Counsel were able to evaluate the probability of class certification, success on the merits, and the reasonably obtainable maximum monetary exposure for all claims. (*Id.* at 7). Class Counsel reviewed these records and prepared a damage analysis prior to mediation. Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.* at 7)

C. Settlement

On February 8, 2023, the Parties participated in an all-day mediation presided over by Eve

⁷ The term "1.645" is derived from a standard deviation table for a 90% confidence interval, known as a "z-table." It is not affected by sample or population size. The margin of error is an "overestimate" of because the variance is presumed to be at its highest value, using 0.5(1-0.5) to represent p*q in the variance equation of (p*q)/n.

⁸ The margin of error formula does not require an adjustment factor for extremely large populations. A poll of all potential voters in the United States, for example, does not require an adjustment for the population size, since the second radicand in the equation (the fraction in the second radical sign) is effectively equal to 1. This is because the square root of a fraction that is very close to 1 is even closer to 1. Consider a population of 200 million and a sample of 1,000 individuals from that population. The second radicand is the fraction of 200 million minus 1,000, all divided by 200 million minus 1. That is equal to 0.999995. The square root is 0.99999975, which is indistinguishable from 1 when talking about a margin of error percentage even to the nearest tenth of a percent. But when the population size is much smaller, the population size has a major impact on the margin of error for a given sample size.

1 Wagher, Esq., which led to this Agreement to settle the Action. (Leviant Decl., ¶ 8.) The Parties
2 discussed, at length, the burdens and risks of continuing with the litigation as well as the merits of claims
3 and defenses. (*Id.*) After the mediation, the Parties then signed a long form settlement agreement (the
4 “Agreement”). (*Id.*)

5 Plaintiff and Class Counsel are aware of the burdens of proof necessary to establish liability for
6 the claims asserted in the Action, both generally and in response to Defendant’s defenses thereto. (*Id.* at
7 ¶ 9.) Plaintiff and Class Counsel have also taken into account Defendant’s agreement to enter into a
8 Settlement that confers substantial relief upon the Class. (*Id.*)

9 Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement set forth
10 in this Agreement is a fair, adequate, and reasonable Settlement and is in the best interests of the Class.
11 (*Id.* at ¶ 10.) Solely for the purpose of settling this case, the parties agree that the requirements for
12 establishing class action certification with respect to this class have been met and are met. (*Id.*) If this
13 Settlement is not approved by the Court for any reason, Defendant reserves the right to contest class
14 certification. (*Id.*) This Settlement, if approved, will result in the termination of the litigation through the
15 entry of the Judgment and the release of all Released Claims for all Class Members, including all within
16 the class definition who have not elected to exclude themselves from the Class. (*Id.*)

17 **V. CLASS DEFINITION**

18 The Class is defined as follows:

19 All individuals who have worked for Defendant in California as hourly employees
20 during the Class Period (the “Class Period” is the period from October 20, 2017,
21 through the date that a preliminary approval order is entered in the Action). Excluded
22 from the Class are those individuals who have entered into (i) arbitration agreements or
23 (ii) agreements releasing the claims alleged by Plaintiff. “Participating Class Member”
24 means a Class Member who does not submit a valid and timely Request for Exclusion
25 from the Class portion of the Settlement. (Settlement, ¶¶ 1.5, 1.9, 1.12, 1.34.)

26 (Leviant Decl., ¶ 35 and Exhibit 1.)

27 **VI. DISCUSSION**

28 **A. Consistent with the Court’s Findings at the Time of Preliminary Approval, the Court Should Certify the Class for Settlement Purposes**

Under Code of Civil Procedure § 382, class certification is warranted so long as there is a
numerous and ascertainable class with a well-defined community of interest and that a “class action

proceeding is superior to other means for a fair and efficient adjudication of the litigation.” *See, e.g., Sav-on Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 326, 332 (2004). For purposes of this Settlement only, Defendant stipulates to conditional certification. (Settlement ¶ 12.1.)

“The certification question is ‘essentially a procedural one that does not ask whether an action is legally or factually meritorious.’” *Id.*, at 326, quoting *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2000). The certification question asks whether the theory of recovery advanced by the plaintiff is likely to prove amenable to class treatment. *See, e.g., Jaimez v. Daihatsu USA, Inc.*, 181 Cal. App. 4th 1286, 1298 (2010). As the court noted in *Dunk*, although certification requirements are intended “to protect the interests of the non-representative class members,” that concern is “protected by the trial court’s fairness review of the settlement.” *Dunk v. Ford Motor Co.* 48 Cal. App. 4th 1794, 1807 n. 19 (1996). In view of these standards, *as discussed more thoroughly as part of the preliminary approval motion*, the Settlement Class should be certified for settlement. Code Civ. Proc. § 382; Rules of Court, Rule 3.769(c).

B. The Court Should Approve the Settlement Because It Is a Fair, Adequate, and Reasonable Compromise of Disputed Wage Claims

California courts favor settlement. *See, e.g., Stambaugh v. Superior Court*, 62 Cal. App. 3d 231, 236 (1976). Unlike most settlements, class action settlements involve a court approval process that exists to prevent fraud, collusion, and unfairness to class members. *Malibu Outrigger Bd. of Governors v. Superior Court*, 103 Cal.App.3d 573, 578-579 (1980). This approval process consists of preliminary settlement approval, notice being given to class members, and a final fairness and approval hearing being held at which class members may be heard with respect to the settlement. *Id.* For the reasons discussed below, this Court should finally approve the Settlement and enter Judgment.

1. Class Action Settlements Are Subject to Review and Approval.

Any settlement of class litigation must be reviewed and approved by the presiding court. Rules of Court, Rule 3.769(a). Approval occurs in two steps: (1) an early (preliminary) review and (2) a subsequent (final) review after notice has been distributed to the class members. The Preliminary Approval Hearing and Final Approval Hearing coincide with these two steps. The present motion seeks *final approval* and the entry of a Judgment.

To evaluate a settlement, a court must receive “*basic*” information about the nature and magnitude

1 of the claims in question and the basis for concluding that the consideration being paid for the release of
2 those claims represents a reasonable compromise.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th
3 116, 133 (2008). But the record need **not** contain an explicit statement of the maximum theoretical
4 recovery. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 409 (2010).

5 **2. The Parties Reached the Settlement Through Arms’ Length Negotiations**
6 **Between Experienced Counsel with the Assistance of a Highly Qualified**
7 **Mediator After Sufficient Data Was Exchanged to Evaluate Settlement.**

8 A settlement is presumptively fair where it is reached through arms’ length bargaining, based on
9 sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is
10 experienced in similar litigation, and the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at 1802;
11 *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *7-Eleven Owners for Fair Franchising v.*
12 *Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000). In exercising these powers, the overriding concern
13 is to ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk*, at 1801, quoting
14 *Officers for Justice v. Civil Serv. Comm’n of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

15 Relevant factors in making this determination, include, but are not limited to:

16 [T]he complexity and likely duration of further litigation, the risk of maintaining class
17 action status through trial, the amount offered in settlement, the extent of discovery
18 completed and the state of the proceedings, the experience and views of counsel, the
presence of a governmental participant, and the reaction of the class members to the
proposed settlement.

19 *Id.* These factors require balancing, are non-exhaustive, and, trial courts should tailor the factors to each
20 case and give due regard to “what is otherwise a private consensual agreement between the parties.” *Id.*

21 Here, the Settlement resulted from thorough, arms’ length negotiations between experienced
22 counsel with the assistance of a highly regarded mediator, Eve Wagner, Esq. (Leviant Decl., ¶¶ 8-10.)
23 With respect to the claims at issue in this case, Plaintiff obtained data from Defendant and then carefully
24 reviewed that information. Counsel for Plaintiff also examined relevant policies and interviewed
25 witnesses in detail about their work experiences and Defendant’s practices.

26 Based on that review, Plaintiff estimated potential exposure and then estimated risk factors to
27 adjust the reasonable expected outcome. The investigation that Plaintiff’s counsel conducted was
28 sufficient to provide them with enough information to intelligently evaluate the estimated exposure for

1 purposes of negotiating the Settlement in view of the risks discussed below and was sufficient to allow
2 this Court to do the same. *See, e.g., Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 245 (2001).

3 **3. The Settlement Represents a Fair, Adequate, and Reasonable Compromise**
4 **of Class Members' Claims Based on Defendant's Estimated Liability**
5 **Exposure Given the Risks Continued Litigation Would Entail.**

6 A settlement is not judged against what might have been recovered had a plaintiff prevailed at
7 trial and does not have to provide 100% of damages sought to be fair and reasonable. "In the context of a
8 settlement agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the
9 complaint, but rather whether the settlement is reasonable under all of the circumstances." *Wershba*, 91
10 Cal. App. 4th at 250. Accordingly, because settlements involve compromise, even one that provides for
11 substantially narrower relief than would likely be obtained if the suit were successfully litigated can be
12 reasonable given that "the public interest may indeed be served by a voluntary settlement in which each
13 side gives ground in the interest of avoiding litigation." *Id.*

14 With respect to the claims asserted on behalf of the Class in this case, there are serious risks that
15 support this compromise amount. These risks include, but are not limited to: (i) the risk that Plaintiff
16 would be unable to establish liability for unpaid wages, *see Duran v. US Bank Nat'l Ass'n*, 59 Cal. 4th 1,
17 39 & n. 33 (2014) ("*Duran*"); (ii) the risk that Defendant's meal and rest period policies might not
18 ultimately support class certification or a class-wide liability finding; (iii) the risk that uncertainties about
19 the ultimate legality of Defendant's policies and practices could preclude class-wide awards of statutory
20 penalties; (iv) the risk that individual differences between Class Members could be construed as
21 pertaining to liability and not solely to damages; (v) the risk that any civil penalties award under PAGA
22 could be reduced by the Court in its discretion; (vi) the risk that lengthy trial or appellate litigation could
23 ensue; and, (vi) the risk that violation rate estimates could prove lower than expected. (Leviant Decl., ¶
24 16.) These risks are non-exhaustive.

25 In light of the uncertainties of protracted litigation, the settlement amount reflects a fair and
26 reasonable recovery for the Class Members. (Leviant Decl. ¶¶ 13-20.) The settlement amount is, of
27 course, a compromise figure. (*Id.* at ¶ 17.) By necessity it took into account risks related to liability,
28 damages, and the defenses asserted by Defendant. (*Id.*) Moreover, each Class Member will be given the

1 opportunity to opt-out of the Settlement, allowing those who feel they have claims that are greater than
2 the benefits they can receive under this Settlement to pursue their own claims. (*Id.*) For the **319** members
3 of the Class, the average recovery for each Class Member is approximately **\$340.66**.⁹ (*Id.*) Given that
4 Defendant could potentially defeat certification, this is a significant sum to have achieved in settlement.
5 (*Id.*) Moreover, a Class Member who worked a greater number of pay periods for Defendant will receive
6 a larger share of the Settlement than a Class Member who worked for a shorter amount of time during
7 the class period. (*Id.*)

8 After analyzing the claims in this matter, Plaintiff has concluded that the Gross Settlement
9 Amount of **\$275,000.00** is about 87% of the **\$315,817.60** estimate of *risk-adjusted* recovery (excluding
10 interest) at this stage in the litigation. (Leviant Decl., ¶ 18.) This assessment is based on a carefully
11 constructed model of the current fair value of the case, using estimated risks, average wage rates,
12 numbers of employees, and the amount of time covered by the class period. (*Id.*)

- 13 • A reasonably estimated exposure for unpaid off-the-clock wages was calculated, with the
14 assistance of an expert, to be approximately **\$58,260.20**. However, with the risk factor
15 discounts for certification and liability proof, the value of that claim is estimated by
16 Plaintiff's counsel to be approximately **\$6,991.22**, assuming certification probability of 40%
17 and merits success at 30%. The off-the-clock time resulted from (1) alleged pre- and post-
18 shift report preparation and (2) alleged time shaving by the use of scheduled time. Both of
19 these theories of recovery have a high degree of risk because they depend on Class Member
20 estimates of the frequency and are testimony dependent.
- 21 • A reasonably estimated exposure for unpaid wages due to regular rate errors was calculated,
22 with the assistance of an expert, to be approximately **\$1,142.00**. However, with the risk factor
23 discounts for certification and liability proof, the value of that claim is estimated by
24 Plaintiff's counsel to be approximately **\$479.64**, assuming certification probability of 70%
25 and merits success at 60%. While regular rate issues are usually potent claims due to the
26 associated penalties, this issue impacted less than 10% of the Class, rendering the impact
27 negligible.
- 28 • A reasonably estimated exposure for rest break violations over the class period was
calculated at **\$191,624.60**, but with chances of certification and proof of liability (20% and
20% respectively) for a risk-adjusted exposure of **\$7,644.98**. Plaintiff assumes that 100% of
the Class missed one rest break per week due to the demands of work assignments, an
aggressive assumption.
- A reasonably calculated exposure for meal break violations over the class period was
calculated at **\$145,753.75**, with chances of certification and liability risks (40% and 40%
respectively) resulting in a risk-adjusted exposure of **\$23,320.60**. This exposure is based
upon facial violations, offset by premiums. The use of facial violations is subject to

⁹ At the time of Preliminary Approval, Defendant estimated that there were 337 Class Members who worked during the Class Period. However, Defendant's class list included only 319 Class Members.

challenge because Defendant could potentially show that many Class Members made decisions about when and how to take meal periods that created the appearance of violations in the face of free choice.

- Risk-adjusted penalty recoveries for wage statement and Labor Code § 203 penalties were estimated to be approximately **\$22,275.00** and **\$30,206.16**, respectively, on maximum exposures of **\$185,625.00** and **\$251,718.00**, respectively (with certification and merits success chances of 40% and 30% respectively, based on the off-the-clock theory of unpaid wages).
- Performing risk-adjusted valuations for all claims yields a total value in the range of **\$90,937.61**, excluding PAGA.¹⁰
- PAGA penalties were calculated as having a maximum realistic exposure of **\$1,124,500.00**, but a risk adjusted value of **\$224,900.00**, after factoring in risks of reduction in penalties pursuant to Court discretion and the high risk of the inability to prove violations for all aggrieved employees.

The concurrently-filed Declaration of H. Scott Leviant sets forth claim valuation in additional detail. (See, Leviant Decl., ¶ 18.)

The \$275,000.00 settlement here is fully supportable. Many risks are eliminated through settlement. And, with respect to those risks, certification rates in California are lower than conventional wisdom holds. (Leviant Decl., ¶ 19.) The Judicial Council’s Class Certification in California: SECOND INTERIM REPORT FROM THE STUDY OF CALIFORNIA CLASS ACTION LITIGATION - FEBRUARY 2010 (“Second Interim Report”), at page 5, states that “less than a quarter of disposed cases in the study sample were certified, either through a litigated motion for certification or as part of a classwide settlement agreement.” See, Second Interim Report, at 5 (emphasis added).¹¹ That “*or*” is significant. The certification rates identified in the study of less than 25% includes **both** contested certifications and settlement certifications, which are the majority of certifications. In other words, one must assume in any wage and hour class action prior to certification that a contested certification motion will have a success rate of well under 25%, and probably closer to 10% as a starting point for risk

¹⁰ In a sense, it is nonsensical to assign specific percentages to future events, but it does provide a specific method for attempting to reduce the concept of “very high risk” or “high risk” to a quantifiable amount. Certification of a claim is typically a binary event. One does not obtain a 20% certification; a claim is either certified or it is not. But the current expected value is best quantified by applying a risk reduction, based on the total experience of counsel.

¹¹ The report is available at <https://www.courts.ca.gov/documents/classaction-certification.pdf> (last viewed March 12, 2024).

1 evaluation. (Leviant Decl., ¶ 19.) The facts of each case have significant bearing on these percentages.
2 But it cannot be disputed that certification is an exceptionally difficult procedural hurdle to successfully
3 overcome. Thus, it is not unreasonable to start from the proposition that a pre-certification settlement
4 that is 10% to 15% of the maximum plausible exposure is a valid starting point for valuation. (Leviant
5 Decl., ¶ 19.) If roughly 10% of class actions are certified on a contested basis, then, on average, 90% of
6 the time a class will not be certified and the result for the class is zero dollars. (*Id.*) The recovery is
7 roughly **14%** of the maximum plausible recovery (estimated to be approximately **\$1,958,623.55**,
8 including PAGA), which falls within the expected outcome under the likelihood of success metric.¹²
9 (*Id.*) It would also be appropriate to evaluate the result by examining only the premium wages at issue
10 (approximately \$396,780.55, with no risk reduction), excluding penalties and interest; the settlement is
11 about 69% of the premium wages (unpaid wages, meal period premiums, and rest break premiums) at
12 maximum realistic exposure value.¹³ This Settlement achieves the goals of the litigation and should be
13 approved.

14 **4. The Proposed Method for Allocating Settlement Funds Is Fair.**

15 The proposed method of allocating the Settlement Fund to Class Members also is fair and
16 reasonable. The Settlement Fund is to be allocated between all Class Members, based on time worked
17 by the Class Member during the Class Period, in relation to the total amount of time worked by all
18 participating Class Members. This proposed method is fair and reasonable because each Class
19 Member's actual potential damages vary based on the number of workweeks he or she worked (e.g., Lab.
20

21 ¹² See, e.g., *Ferrell v. Buckingham Property Mgmt.* (E.D. Cal. Jan. 21, 2020) Case No. 1:19-cv-
22 00332-LJO-SAB, 2020 WL 291042, *17-20 (granting preliminary approval of settlement that
23 represented 5.2% of the original valuation of the claims); *Thomas v. Cognizant Tech. Sols. U.S. Corp.*
24 (C.D. Cal. June 24, 2013) No. SACV111123JSTANX, 2013 WL 12371622, at *6 (granting final
approval of settlement that encompassed between 4.4% and 5% of the maximum estimated liability).

25 ¹³ The exclusion of interest and penalties from the fairness evaluation is proper because, first, PAGA
26 penalties are discretionary (*see* Lab. Code § 2699(e)(2) (the court in its discretion “may award a lesser
27 amount than the maximum civil penalty amount specified by this part...”), and, second, courts evaluate
28 the strength of a proposed settlement without taking potential penalties or interest into consideration. *See*
Rodriguez v. West Publishing Corp., 563 F.3d 948, 955 (9th Cir. 2000); *see also Miller v. CEVA*
Logistics U.S.A., Inc., 2015 WL 729638, at *7 (E.D. Cal. Feb. 19, 2015) (court utilized calculation of a
defendant's exposure exclusive of interest and penalties to determine whether the settlement fell within
the range of possible approval).

Code § 226.7 provides for an extra hour of pay at the employee’s regular rate of pay for each violation, resulting in a higher potential damage when a higher number of incidents occur). A Class Member who worked a greater number of work weeks will receive a larger payment under the Settlement than a Class Member who worked for a shorter amount of time. (Leviant Decl., ¶¶ 13, 17.)

5. The Proposed Enhancement Award to Plaintiff Warrants Approval.

The proposed enhancement of \$7,500 to Plaintiff is intended to recognize substantial initiative and significant efforts on behalf of the Class. 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. Factors considered when awarding an incentive include the actions the plaintiff has taken to protect the class, the degree to which the class has benefitted, the amount of time and effort the plaintiff expended in the litigation, the risk to the class representative in commencing suit (financial and otherwise), the notoriety and personal difficulties encountered, the duration of the litigation, and the personal benefit (or lack thereof) enjoyed by the plaintiff as a result of the litigation. *Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 804 (2009). Here, Plaintiff contributed time to the prosecution of this matter, including assistance prior to the mediation with information and substantial time conferring with counsel over the course of this litigation and before it was filed. (Declaration of Sherif Fathy [“Fathy Decl.”],. ¶¶ 5-21; Leviant Decl., ¶ 33.) The enhancement also recognizes risks Plaintiff took to be personally liable for costs regardless of the success of the litigation, as well as the personal risk of facing intrusive discovery and potential disclosure to future employers that Plaintiff sued an employer, making future employment less certain. Plaintiff’s Declaration supports the requested enhancement.

6. The Proposed Award of Attorneys’ Fees and Costs Is Also Fair, Adequate, and Reasonable and Merits Approval.

a) Plaintiff’s Counsel Should be Awarded Fees Based on a Percentage of the Fund Recovered, Consistent with the Common Fund Method

The request for attorneys’ fees as a percentage of the settlement fund is supported by the “common fund theory,” where “one who expends attorneys’ fees in winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the

litigation costs.” *Serrano v. Priest*, 20 Cal. 3d 25, 35 (1977). The common fund doctrine has been applied “consistently in California when an action brought by one party creates a fund in which other persons are entitled to share.” *City and County of San Francisco v. Sweet*, 12 Cal. 4th 105, 110 (1995). The lodestar may be cross-checked against the percentage-of-recovery. *See In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-58 (2009).

The California Supreme Court removed any lingering doubt about the use of the percentage of the fund method to award attorney’s fees in California Courts. *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016).¹⁴ Thus, this Court may and, as strongly encouraged by the California Supreme Court, *should* award attorney’s fees to Plaintiff’s counsel based upon the percentage methodology.

“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 47 n. 11 (2008). This is also consistent with Plaintiff’s counsel’s experience in these types of cases. Here, Plaintiff’s Counsel request attorneys’ fees of **\$91,666.67** (33 1/3% of the GSA), and costs of **\$19,075.43**, which includes payment for mediation, filing fees, and other expenses, including motion filing costs. (Leviant Decl., ¶ 32.) Given the efforts and risks, and the results, these amounts warrant *final approval*.

b) *A Lodestar Cross Check Confirms that Class Counsel’s Requested Attorneys’ Fees Are Reasonable*

Plaintiff’s fee application is also reasonable based on Class Counsel’s lodestar. Under the lodestar method, the court considers a compilation of the time spent and a reasonable hourly compensation of each attorney to evaluate the reasonableness of the fee. *Ramos v. Countrywide Home Loans, Inc.*, 82 Cal. App. 4th 615, 622 (2000). The moving party meets its burden by submitting “declarations evidencing the reasonable hourly rate for their services and establishing the number of hours spent working on the case” as “California case law permits fee awards in the absence of detailed

¹⁴ The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing doubt about the use of the percentage method: “The *Dunk* court, while finding the percentage method inapplicable to the settlement before it due to the lack of a readily valued common fund, did not purport to bar its usage generally in common fund cases.” *Laffitte*, 1 Cal. 5th at 501.

time sheets.” *Wershba*, 91 Cal. App. 4th at 254-55; *Dunk*, 48 Cal. App. 4th at 1810; *Nightengale v. Hyundai Motors America*, 31 Cal. App. 4th 99, 103 (1994). The hours spent and the reasonable hourly compensation are used to arrive at a “lodestar” figure which may then be augmented or diminished taking into account various “multiplier” factors. *See Ramos*, 82 Cal. App. 4th at 622 (citing *Serrano*, 20 Cal. 3d at 48-49).

Here, Class Counsel’s *total* lodestar is **\$100,277.50**, billed at the attorneys’ hourly rates (including about 10 hours of past and future time not billed by Mr. Leviant). (Leviant Decl., ¶ 32.) The billed lodestar to date is \$90,527.50, as reflected in Paragraph 32 of the Leviant Declaration. (Leviant Decl., ¶ 32.) The request for **\$91,666.67** in attorneys’ fees, which is **1.01** times the billed lodestar and **0.91** times the estimated total lodestar, is reasonable under the lodestar method.

(1) Class Counsel’s Hours Are Reasonable

In determining whether the number of hours was reasonable, the court must determine that “the time spent was reasonably necessary and that [] counsel made ‘a good faith effort to exclude from the fee request hours that are excessive, redundant, or otherwise unnecessary.’” *Jordan v. Multnomah County*, 815 F.2d 1258, 1263 n.8 (9th Cir. 1987). The court should defer to the lawyer’s judgment as to how much time he was required to spend on the case. *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008) (“[l]awyers are not likely to spend unnecessary time on contingency fee cases in the hope of inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee.”). Here, Counsel expended a prudent amount of time to achieve the excellent result. (Leviant Decl., ¶ 32.)

(2) Class Counsel’s Hourly Rates Are Reasonable

The reasonable hourly rate is that prevailing in the community for similar work. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000). “[I]n assessing a reasonable hourly rate, the trial court is allowed to consider the attorneys’ skill as reflected in the quality of work, as well as the attorneys’ reputation and status.” *MBNA American Bank, N.A. v. Gorman*, 147 Cal. App. 4th 1, 3 (2006). The trial court may also “find hourly rates reasonable based on evidence of other courts approving similar rates.” *Parkinson v. Hyundai Motor America*, 796 F.Supp.2d 1160, 1172 (C.D. Cal. 2010).

Class Counsel are experienced litigators who specialize in employment law, with a substantial wage and hour class action practice. (Leviant Decl., ¶¶ 21-27.) A number of courts, including this

1 Court, have approved Class Counsel's hourly rates. (Leviant Decl., ¶ 21.) Given the skill and
2 experience of Class Counsel, and the excellent result achieved, Class Counsel's hourly rates are
3 reasonable.

4 *c) Class Counsel's Costs Are Reasonable*

5 Class Counsel seeks costs in the amount of \$19,075.43. (Leviant Decl., ¶ 32, Exh. 2.) These
6 costs were reasonably incurred in prosecuting the Action on behalf of the Class Members and should be
7 approved by the Court. Accordingly, Class Counsel respectfully requests the Court approve total costs in
8 the amount of **\$19,075.43**.¹⁵ (*Ibid.*)

9 **7. The Payment to the Administrator Is Fair and Reasonable**

10 Phoenix Settlement Administrators, which has been selected due to its competitive bid, stated in
11 its declaration that administration could be performed for **\$11,832.79**. (Lee Decl., ¶ 17). In counsel's
12 experience, based on similar wage-and-hour actions, a cost of \$11,832.79 is a fair and reasonable amount
13 for administration fees and should be finally approved, and it is below the Parties' original estimated cost
14 of \$15,000.00 to administer the Settlement. (Leviant Decl., ¶ 34.) Phoenix already confirmed its
15 capabilities and security protocols in the accompanying declaration. In the declaration filed herewith,
16 Phoenix confirms that the administration process is underway, confirms it is performing as required, and
17 confirms its bid.

18 **8. The PAGA Allocation is Reasonable**

19 The ultimate decision as to the amount of penalties is always up to the discretion of the Court.
20 Labor Code § 2699(e)(2) states: "In any action by an aggrieved employee seeking recovery of a civil
21 penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil
22 penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do
23 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."

24 Prior to the issuance of *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021), the only sources
25 of persuasive guidance as to how to assess the reasonableness of a PAGA allocation were found in
26

27 ¹⁵ The Settlement provides that Defendant will not oppose costs requested in any amount up to
28 \$17,500.00, so Defendant retains the right, if it elects to do so, to oppose the costs requested in excess of
that amount.

1 federal court decisions. In their view, a PAGA allocation, even if a small portion of the total settlement,
2 could be reasonable if the settlement of the wage and hour claims is robust and serves the deterrent
3 purpose of PAGA. *O'Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016)
4 (“By providing fair compensation to the class members as employees and substantial monetary relief, a
5 settlement not only vindicates the rights of class members as employees, but may have a deterrent effect
6 upon the defendant employer and other employers, an objective of PAGA.”). *Moniz* provided explicit
7 confirmation that this was an appropriate yardstick by which to measure reasonableness of a PAGA
8 settlement. *Moniz*, 72 Cal. App. 5th at 77. *Moniz*, in agreeing with federal courts that have considered
9 how to evaluate a PAGA settlement, concluded that the class action factors are appropriately considered,
10 along with a consideration of whether the settlement furthers “PAGA’s purposes to remediate present
11 labor law violations, deter future ones, and to maximize enforcement of state labor laws.”

12 As to the first set of elements (the class-type analysis), it is embodied in Plaintiff’s discussion of
13 the adequacy of the settlement generally. Here, the expense, complexity and likely duration of future
14 litigation was to some extent an unknown. However, what is certain is that to adequately establish the
15 violations that would support a substantial penalty, tremendous time and expense would be invested.

16 The second element (the PAGA purposes element) is also satisfied here. As held by *Moniz*,
17 PAGA’s purposes include (1) remediation of present labor law violations, (2) deterrence of future
18 violations, and (3) maximization of enforcement of state labor laws. Here the allocation of a major
19 portion of settlement funds to class members still advances the goal of labor law violation remediation.
20 The allocation of a major portion of settlement funds to class members also deters future violations. This
21 is a \$275,000.00 settlement, not a trivial sum. Deterrence is fulfilled. Finally, allocation of a major
22 portion of settlement funds to class members still advances the goal of enforcement of state labor law.
23 This settlement is, by definition, a response to alleged violations of labor laws, balanced against risks.

24 In addition, there is no evidence that a court or a commissioner had informed Defendant that their
25 conduct violated the Labor Code. *Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157, 1209 (2008); *Willis v.*
26 *Xerox Bus. Servs., LLC*, 2013 WL 6053831, *7-8 (E.D. Cal. 2013). And in *Cotter*, the court found a
27 significant reduction of the PAGA claim would be appropriate because “[t]his does not appear to be a
28 case where a company has deliberately sought to evade the law.” *Cotter*, 176 F. Supp. 3d at 941.

1 Finally, the PAGA allocation is fair. The LWDA is receiving \$21,750.00. The Class is
2 receiving, net, an estimated \$112,757.90 for the releases of eight other claims (excluding the \$7,250.00
3 as the aggrieved employees' share of the PAGA Allocation) (Lee Decl., ¶ 13). While the proportion is
4 tipped in favor of the employees, the allocation is not unfair because it satisfies California's wage and
5 hour policies.

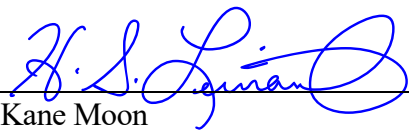
6 **VII. CONCLUSION**

7 For all the foregoing reasons, because the Class meets the requirements for certification, because
8 the Settlement bears all requisite indicia of fairness, and because the notice procedure complied with
9 Rule 3.766 and due process, this Court should grant this Motion for Final Approval.

10 Respectfully submitted,

11 Dated: December 13, 2024

MOON LAW GROUP, PC

12 By: 
13 Kane Moon
14 H. Scott Leviant
15 Sandy Pham

16 Attorneys for Plaintiff
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 725 S. Figueroa St., 31st Floor, Los Angeles, CA 90017.

On the date indicated below, I served the document described as: **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

James A. Goodman
jgoodman@ebglaw.com
Kevin Sullivan
ksullivan@ebglaw.com
EPSTEIN BECKER & GREEN, P.C.
1925 Century Park East, Suite 500
Los Angeles, California 90067
Facsimile: (310) 553-2165

Counsel for Defendant

☒ **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above via third-party cloud service CASEANYWHERE. I did not receive an error message.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed this **December 13, 2024**, at Los Angeles, California.

H. Scott Leviant
Type or Print Name


Signature