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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

JOHN WALDREP, in his capacity as Private Attorney General Representative,

Plaintiff,

v.

CAMBLY INC.,

Defendant.

Case No. 34-2022-00314360-CU-OE-GDS

Assigned for all purposes to:
Hon. Lauri A. Damrell, Dept. 22

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

Date: December 12, 2025
Time: 9:00 a.m.
Dept.: 22

Operative Complaint: March 3, 2025
Trial Date: None Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 15, 2025, or on such other date or time as this matter may be called, in Department 22 of the Gordon D Schaber Sacramento County Courthouse, 720 9th Street, Sacramento, CA 95814, Plaintiff Jon Waldrep, in his capacity as Private Attorney General Representative, will and hereby does, move for an order preliminarily approving the class action settlement described herein and ordering that notice be issued to the Settlement Class. The motion is based on this Notice of Motion, the Memorandum of Points and Authorities in support thereof submitted herewith, the Declaration of Shannon Liss-Riordan and exhibits thereto, submitted herewith, the Declaration of Jon Waldrep, and such other filings and arguments that may be submitted for the Court's consideration, as well as all documents and records on file in this matter.

Plaintiff's Motion is made pursuant to Code of Civil Procedure Section 382 and Civil Code Section 1781(f), on the grounds that the proposed settlement is fair, reasonable, and adequate and is in the best interests of the Settlement Class.

Dated: December 5, 2025

Respectfully submitted,

JON WALDREP, in his capacity as Private Attorney General Representative,

By his attorneys,

/s/ Shannon Liss-Riordan

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Jon Waldrep ("Plaintiff") has alleged that Defendant Cambly Inc. ("Cambly" or "Defendant") has misclassified tutors for its online English as a Second Language ("ESL") tutoring service, which engages teachers across the world to teach online ESL classes to its students. Plaintiff brought this claim on behalf of the State of California and other similarly situated aggrieved employees pursuant to the Private Attorney General Act ("PAGA"), Labor Code Sections 2699, *et. seq*., alleging that Defendant has violated numerous provisions of the Labor Code by failing to reimburse teachers for their necessary business expenses incurred in performing their duties, including the cost of computers, webcams, and internet, as well as by failing to pay tutors minimum wage for all hours worked, failing to afford meal and rest breaks when tutors taught back-to-back classes, and willfully misclassifying tutors as independent contractors in violation of California law.[1]

During the pendency of this case, the U.S. Supreme Court decided *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639 [142 S.Ct. 1906, 213 L.Ed.2d 179], *reh'g denied* (2022) 143 S.Ct. 60 [213 L.Ed.2d 1145], in which it held that PAGA claims, like Plaintiff's claim here, could be divided into individual and non-individual components, and individual PAGA claims could be compelled to arbitration. Soon after, the California Supreme Court granted review in *Adolph v. Uber Technologies, Inc.* (Cal. July 20, 2022, No. S274671) to address the question left open in *Viking River*: "whether an aggrieved employee who has been compelled to arbitrate claims under the Private Attorney General Act (PAGA) that are 'premised on Labor Code violations actually sustained by' the aggrieved employee . . . maintains statutory standing to

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[1] Plaintiff filed his initial PAGA letter and notified the Labor & Workforce Development Agency ("LWDA") of Cambly's violations of the Labor Code on November 9, 2021. *See* Declaration of Shannon Liss-Riordan in Support of Plaintiff's Revised Motion for Preliminary Approval of Class Action Settlement ("Liss-Riordan Decl."), Ex. A (LWDA Notice). In particular, in this letter, Plaintiff alleged that pursuant to the California Supreme Court's landmark decision in *Dynamex Operations W. v. Superior Court* (2018) 4 Cal.5th 903, *reh'g denied* (June 20, 2018), as subsequently codified by the Legislature in Assembly Bill 5 ("AB 5"), Lab. Code § 2775, it was clear that tutors were misclassified as independent contractors rather than employees.

pursue 'PAGA claims arising out of events involving other employees' . . . in court or in any other forum the parties agree is suitable." *Id.* In light of this development, the Parties agreed that Waldrep would submit his individual PAGA claim to individual arbitration and that the representative portion of the claim would remain pending before this Court in the interim. The Parties proceeded to arbitrate the claim before Arbitrator Helen Blohm and engaged in extensive discovery and exchange of documents. Following the California Supreme Court's intervening decision in *Adolph*, where the Court affirmed that Waldrep would maintain statutory standing to pursue the representative portion of his PAGA claim, *see Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104 [310 Cal.Rptr.3d 668, 532 P.3d 682], the Parties agreed to mediate that case.

With the assistance of a professional mediator, Hon. Kevin Murphy (Ret.), the Parties mediated the case in December 2023, and they have now reached a global settlement to resolve this litigation. Pursuant to the Parties' agreement, Cambly will pay a total sum of $393,000 in exchange for a class and PAGA release of claims on behalf of approximately 227 current and former individuals who provided services in connection with Cambly's platform in the State of California between November 9, 2020 and May 26, 2022, when Cambly ceased contracting with tutors[2] in the state. *See* Declaration of Shannon in Support of Plaintiff's Revised Motion for Preliminary Approval of Class Action Settlement "Liss-Riordan Decl.", Ex. D ("Settlement Agreement") at ¶¶ 2.1; 2.37.[3] These individuals will release their wage-and-hour-related claims for the period of November 9, 2020 through May 26, 2022. *Id.*, ¶ 2.5. This proposed settlement will provide tremendous value to the Settlement Class. The total settlement amount exceeds Class Members' full recovery on their claims for minimum wage and expense reimbursement and will allow tutors to receive funds without having to file individual arbitrations. Those tutors

[2] Notwithstanding the definition of Class Members in the Parties' settlement agreement, this motion refers to such individuals as "tutors" in shorthand.

[3] Unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Settlement Agreement.

who would prefer to pursue claims individually against Cambly remain free to opt out of the settlement and do so.

Plaintiff thus asks the Court to grant preliminary approval to this settlement, which will provide tutors the certainty of obtaining payment now, without the risk and delay associated with having to successfully arbitrate Waldrep's individual PAGA claim first, and without having to undertake the time and expense of pursuing individual arbitrations. Plaintiff requests that the Court allow notice to be distributed to the Settlement Class and that the Court schedule a date following the notice period for a final approval hearing in Fall 2025. For the reasons set forth further below, the settlement is fair, reasonable, and adequate, and the Court should grant preliminary approval and allow notice to be issued to the Settlement Class in the form attached as Exhibit E to the Liss-Riordan Decl.

II. FACTUAL BACKGROUND

Defendant Cambly is an online ESL tutoring company. *See* First Amended Complaint, ¶ 8. Until May 26, 2022 (after this lawsuit was filed), Cambly contracted with individuals who provided services in connection with its platform in the State of California to teach online ESL sessions to students in numerous countries. *Id.*, ¶ 9. Plaintiff Waldrep worked as a tutor for Cambly from approximately March 2020 until May 2022, when Cambly discontinued its contracts with tutors based in California. *See id.*, ¶ 10. Plaintiff alleges that Cambly tutors were misclassified as independent contractors rather than employees and that Defendant violated California state law by failing to reimburse these individuals for their necessary business expenses and by failing to pay overtime and minimum wage and provide proper meal and rest breaks. *See id.,* ¶¶ 21-25.

Plaintiff filed his PAGA letter and notified the LWDA of Defendant's alleged violations of the Labor Code on November 9, 2021. *See* Liss-Riordan Decl., ¶ 4; Ex. A. Plaintiff filed this case as a PAGA action on January 24, 2022. *See* Complaint. Following the Supreme Court's decision in *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639, the Parties stipulated to arbitrating Mr. Waldrep's individual PAGA claim in arbitration and staying the representative portion of the PAGA claim pending a decision by the California Supreme Court in *Viking River*.

See Liss-Riordan Decl., ¶ 7. The Parties went to arbitration and Arbitrator Helen Blohm, Esq. was duly appointed. *Id.*, ¶ 8. The Parties exchanged written discovery, and Cambly produced nearly 6,000 pages of responsive documents. *Id*. Following the California Supreme Court's decision in July 2023 in *Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104 [310 Cal.Rptr.3d 668, 532 P.3d 682], the Parties agreed to mediate. *Id.*, ¶¶ 9-10. Eventually they agreed on a mediator and a date for the mediation, which occurred on December 14, 2023, with mediator Hon. Kevin Murphy (Ret.). *See* Liss-Riordan Decl., ¶ 11. In preparation for that mediation, Defendant produced detailed data regarding the total number of PAGA class members, total workweeks, and detailed week-by-week data for each class member regarding their total pay and classroom minutes. *Id.*, ¶ 10. The Parties reached an agreement to settle the case as a PAGA and class action in order to afford Defendant a complete release of claims, and the Parties signed a Memorandum of Understanding (MOU) at the mediation. *Id.*, ¶ 11.

The Parties consummated a long-form settlement agreement and submitted it to the Court for preliminary approval on June 11, 2024. The Court issued a Tentative Ruling on August 15, 2024, directing the Parties to address a number of issues in the Settlement Agreement, Notice, Motion for Preliminary Approval, and Proposed Order. Plaintiff thereafter voluntarily withdrew the Motion for Preliminary Approval without prejudice so that the parties could address and resolve the issues identified by the Court. Plaintiff filed a First Amended Complaint adding class-wide Labor Code claims on March 3, 2025.

The parties have since met and conferred extensively regarding the Court's Tentative Ruling, and have revised the relevant settlement documents to address the issues identified by the Court. The Parties ask that this Court now grant preliminary approval of the settlement and allow notice to be issued to the Settlement Class.

III. THE PROPOSED SETTLEMENT AGREEMENT

A. MONETARY RELIEF

The Settlement Agreement provides that Defendant will pay $393,000 to fully resolve the claims in the action. *See* Liss-Riordan Decl., Ex. D (Settlement Agreement) at ¶ 2.37. Per the Court's Tentative Ruling, this amount includes separate funds to resolve the class claims (a

"Settlement Payment Fund" of $363,000) and the PAGA claims (a "PAGA Payment Fund" of $30,000). *Id.*, ¶¶ 10.2-10.3. The Settlement Payment Fund is non-reversionary and will be paid out in full to the benefit of the Settlement Class, less the following categories of expenses: settlement administrator expenses (which are currently estimated at $14,000); attorneys' fees and costs (for which Plaintiff's counsel will request approval in the amount that may not exceed one-third of the Total Settlement Amount, approximately $131,000); and service award (not to exceed $10,000 for the named Plaintiff). *Id.*, ¶¶ 2.34; 2.36; 2.3. The $30,000 PAGA Payment Fund allocates 75% to the LWDA and 25% to be distributed pro rata to PAGA members based on their total classroom minutes worked. *Id.*, ¶¶ 2.20-2.21.

Plaintiff believes this monetary recovery is robust based on his valuation of the claims at issue stemming from the misclassification of tutors as independent contractors. *See* Liss-Riordan Decl., ¶ 13. Cambly produced data showing the total number of current and former individuals who provided services in connection with Cambly's platform in the State of California (227), and total number of workweeks (2,819), and provided detailed data showing the total minutes worked by each tutor during each workweek, which Plaintiff utilized to calculate minimum wage damages and overtime (the latter of which was negligible). *Id.*, ¶ 10. Based on Plaintiff's calculations, tutors incurred roughly $113,000 in minimum wage damages during the relevant period. *Id.*, ¶ 12. That figure could be roughly twice as high however, when additional uncompensated time spent preparing lessons and scheduling lessons is accounted for. *Id*. Plaintiff's counsel also estimated class-wide damages for the expense reimbursement claim by assuming $30 per pay period per tutor towards the use of personal home internet and devices (such as computer or webcam) to teach lessons, which came to $84,570. *Id*. The final settlement amount thus exceeds the maximum recovery for the two most valuable claims – minimum wage and expense reimbursement – by a considerable margin. *Id.*

Based on the data Defendant provided, Plaintiff also calculated the maximum PAGA penalties for all PAGA violations at roughly $2.4 million. *See* Liss-Riordan Decl., ¶ 13. However, as set forth further *infra,* pp. 13-14, because it is unclear whether stacking of penalties would be permitted or whether a Court would exercise its discretion to lower the total amount of penalties, the total settlement amount of $393,000 is eminently fair and reasonable, particularly given the risk and delay associated with proceeding to arbitrate Mr. Waldrep's individual claim and then litigate the representative PAGA claim in court.

In sum, the settlement payment of $393,000 for approximately 227 current and former individuals who provided services in connection with Cambly's platform in the State of California will provide a substantial recovery to Settlement Class Members. After deductions for fees, administration costs, PAGA penalties, and the service award, the average settlement share will be roughly $950, with those Settlement Class Members who performed the most work receiving more than ten thousand dollars.[4] *See* Liss-Riordan Decl., ¶ 17.

B. THE PROPOSED PLAN OF DISTRIBUTION OF SETTLEMENT FUND

Upon preliminary approval by the Court, the third-party Settlement Administrator selected by the Parties, Simpluris, will email Settlement Class Members the proposed notice to the last known email addresses, and if the email is not successfully delivered, will mail the proposed notice to the last known mailing addresses of all Settlement Class Members, as required by the Settlement Agreement. *See* Liss-Riordan Decl., Ex. D (Settlement Agreement) at ¶¶ 6.3-6.5. The notice informs Settlement Class Members about the allegations in this case and the terms of the settlement. *See* Liss-Riordan Decl., Ex. E (Notice). It informs Settlement Class Members of their right to participate in the settlement and clarifies that they need not do anything (*e.g.*, need not submit a claim form) in order to participate. The notice also informs Settlement Class Members of their right to opt out of the settlement or to object to the settlement if they choose and the deadline to do so, and it will identify the date and time of the final approval hearing.

The Settlement Agreement and Notice previously required Settlement Class Members to submit a claim form to participate in the settlement. In its Tentative Ruling, the Court noted that it was "not persuaded that a claims-made distribution is superior to a checks-mailed approach for

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[4] The data provided for mediation purposes showed a class size of 227 current and former individuals who provided services in connection with Cambly's platform in the State of California. *See* Liss-Riordan Decl., ¶ 31.

either the Class or PAGA portions of the settlement" and directed Plaintiff to explain why requiring claim forms is appropriate. As the Parties noted in their Joint Case Management Statement of January 24, 2025, the Parties initially included a claim form process because Defendant does not have access to the Settlement Class Members' mailing addresses since Settlement Class Members were paid through PayPal (*i.e.*, via email). Thus, checks cannot simply be mailed to Settlement Class Members upon the Court's approval of the Settlement Agreement. However, after extensive conferral, the Parties and Simpluris have determined that it is possible to issue payments directly to Settlement Class Members' PayPal accounts (which Defendant does have on file), thus eliminating the need for a claiming process. The Notice also provides Settlement Class Members with the opportunity to request payment via alternative means if they do not wish to receive payment via PayPal. *See* Liss-Riordan Decl., Ex. D (Settlement Agreement) at ¶ 5.6.

Proceeds of the Settlement Payment Fund and PAGA Payment Fund will be distributed in proportion to the estimated Total Classroom Minutes spent performing services for Cambly during the relevant time period. *See* Liss-Riordan Decl., Ex. D (Settlement Agreement) at ¶ 5.3. No Settlement Class Member who does not opt out will receive less than $25. *Id*. Following the effective date and subject to the approval and further order(s) of the Court, all Settlement Class Members who did not opt out will receive payment with a portion withheld to account for any claims submitted late or to resolve any disputes that may arise with respect to the settlement distribution. *Id.* ¶¶ 2.28; 10.5; *see also* Liss-Riordan Decl., Ex. E (Notice). Any remaining funds will be redistributed to the Settlement Class Members who did not opt out, who received their first settlement payment and whose residual share would be more than $50.00. *Id.* ¶ 10.6. Any remaining unclaimed funds after the final distribution will be distributed to the California Controller's Unclaimed Property Fund. *Id.*,¶ 10.6. Thus, the total proceeds of the settlement (less incentive payment for the lead Plaintiff, claims administration costs, the PAGA payment, and attorneys' fees and costs) will be paid out to Settlement Class Members. No portion of the settlement funds will revert to Defendant.

C. TAX TREATMENT

The Settlement Agreement settles both wage and non-wage claims of misclassified employees. While the Parties believe there is authority for treating the settlement payments entirely as non-wages, the Parties recognize that the Court previously raised concerns about this approach. As such, the Parties propose that 10% of the settlement payment be allocated to wages, and 90% be allocated to non-wage penalties and reimbursement. *See Aguirre v. DirecTV, LLC*, (C.D. Cal. Oct. 6, 2017, No. CV1606836SJOJPRX) 2017 WL 6888493, at *11, *16 (granting preliminary approval where settlement provided for 10% of each Individual Settlement Payment being allocated as wages, and the remaining 90% being allocated as non-wage compensation). Additionally, Cambly has agreed that it will pay the employer portion of the taxes separate from the settlement payment. However, because Cambly does not have documentation of Class Members' social security numbers and/or tax identification numbers, the Administrator will apply "backup" withholding at the highest tax rate. At the time it distributes the settlement payments, the Administrator will request that Class Members submit an IRS Form W-4 (and Form W-9). If a Class Member does not submit a W-4 the maximum amount would be withheld from their payment and then remitted to the IRS in the Class Member's name.

IV. LEGAL STANDARD

It is well-established that courts favor settlements of lawsuits over continued litigation. *See, e.g., Williams v. First Nat'l Bank* (1910) 216 U.S. 582, 595; *Class Plaintiff v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276 (noting the "strong judicial policy that favors settlements, particularly where complex class action litigation is concerned"); *Bell v. American Title Ins. Co.* (1991) 226 Cal.App.3d 1589, 1607 (noting a "strong public policy" in favor of class action settlements); Newberg on Class Actions, § 11:41 ("[t]he compromise of complex litigation is encouraged by the courts and favored by public policy"). The advantages of settlements are particularly apparent in the compromise of class actions, which are "often complex, drawn out proceedings demanding a large share of finite judicial resources," *Mayfield v. Barr* (D.C. Cir. 1993) 985 F.2d 1090, 1092, and "where one proceeding can resolve many thousands . . . of claims that might otherwise threaten to swamp the judiciary," 2 McLaughlin on Class Action § 6:3.

At preliminary approval, a court must "make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms . . . ." *See* Cal. Rules of Court, Rule 3.769(c) (g); *see also* Manual for Complex Litigation (Fourth) § 21.63. The Court should grant preliminary approval if the proposed settlement has no obvious deficiencies and falls within the range of possible approval. *See Chavez v. Netflix, Inc*. (Cal. Sup. Oct. 27, 2005) 2005 WL 3048041. A presumption of fairness attaches to the proposed settlement where: (1) the parties reached settlement after arm's-length negotiations; (2) investigation and discovery were sufficient to allow counsel and the court to act intelligently; and (3) counsel is experienced in the litigation. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802; *see also* 4 Newberg on Class Actions (4th ed. 2002) § 11.41; *In re Heritage Bond Litig.* (C.D. Cal. June 10, 2005) 2005 WL 1594403, *2. Courts will also weigh the risk, expense, and complexity of continued litigation. *Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 245.

As set forth further below, an examination of these factors in this case demonstrates that the proposed settlement is fair, reasonable, and adequate and should be approved by the Court.

V. ARGUMENT

A. THE PROPOSED SETTLEMENT IS ENTITLED TO A PRESUMPTION OF FAIRNESS

1. The Settlement Was Negotiated at Arm's Length

For the parties "to have brokered a fair settlement, they must have been armed with sufficient information about the case to have been able to reasonably assess its strengths and value." *Acosta v. Trans Union, LLC* (C.D. Cal. 2007) 243 F.R.D. 377, 396; *see also Dunk v. Ford Moto Co.* (1996) 48 Cal.App.4th, 1802 ("[A] presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; [and] (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently . . . ."). Thus, adequate discovery and the use of an experienced mediator support the finding that settlement negotiations were both informed and non-collusive. *See Villegas v. J.P. Morgan Chase & Co.* (N.D. Cal. Nov. 21, 2012) 2012 WL 5878390, *6. Here, the settlement was clearly the product of arms-length bargaining, as Plaintiff's counsel participated in mediation with a professional mediator, Hon. Kevin Murphy (Ret.), who has particular expertise in wage-and-hour matters like this one. *See Satchell v. Fed. Express Corp.* (N.D. Cal. Apr. 13, 2007) 2007 WL 1114010, *4 ("The assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive."). Thus, this factor weighs in favor of finding that the settlement should be presumed to be fair.

2. The Settlement Was Negotiated After Sufficient Investigation

There was also a sufficient investigation and exchange of information before and during the litigation and subsequent mediation session to allow counsel to act intelligently in agreeing to this settlement. Plaintiff's counsel investigated the claims prior to the filing of Plaintiff's PAGA letter and the complaint, including by reviewing publicly available information that described Defendant's business model (such as Cambly's website and the Cambly Application) and working closely with the lead Plaintiff to establish a complete understanding of Defendant's operations. *See* Liss-Riordan Decl., ¶ 3. Once the Parties agreed to arbitrate Plaintiff's individual PAGA claim, the Parties exchanged written discovery, and Plaintiff received nearly 6,000 pages of materials from Defendant. *Id.*, ¶ 8. Finally, in preparation for mediation, Defendant supplied detailed data regarding the settlement class, including information regarding total minutes spent teaching on the Cambly platform during each week of the PAGA period, as well as information regarding total workweeks and number of tutors. *Id.*, ¶ 10. Utilizing this data, Plaintiff's counsel was able to perform detailed calculations of the potential PAGA penalties at issue here as well as the class-wide damages for the expense reimbursement and minimum wage claims. *See* Liss-Riordan Decl., ¶ 13.

Furthermore, as set forth further below, Plaintiff's counsel has extensive experience litigating cases against other similar companies in the "gig economy" industry, including a similar online tutoring service. *See* discussion immediately *infra,* Part V(A)(3).

Thus, through pre-filing investigation, fulsome discovery and litigation of the PAGA claim in arbitration, and analysis of very detailed mediation data for the settlement class, Plaintiff's counsel was able to make accurate calculations of the potential damages, accounting for various theories and the risks associated with these theories. This factor therefore weighs in favor of a presumption of fairness because there was clearly sufficient investigation of the claims and their value by Plaintiff's counsel.

3. The Settlement Was Negotiated by Counsel Experienced in Similar Litigation

Plaintiff's counsel is extremely experienced in litigating this type of case. Over the last ten years, Plaintiff's counsel has been the pioneering firm challenging numerous "gig economy" companies that have classified their workers as independent contractors. Counsel was the first to file and obtain class certification in one of these cases (*see O'Connor v. Uber Technologies, Inc.* (N.D. Cal., Sept. 1, 2015, No. C-13-3826 EMC) 2015 WL 5138097, *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2015) 311 F.R.D. 547, *rev'd on other grounds* (9th Cir. 2018) 904 F.3d 1087 (certifying class of 240,000 Uber drivers on misclassification claim and expense reimbursement and gratuities claims)). Counsel also won class certification in a case alleging independent contractor misclassification against a "gig economy" service, Uber, under *Dynamex* and AB 5, *James v. Uber Technologies, Inc*. (N.D. Cal., Jan. 26, 2021, No. 19-cv-06462-EMC) 338 F.R.D. 123 (certifying class of Uber drivers who drove in Uber in California between February 28, 2019 and December 16, 2020, and who opted out of Uber's arbitration agreement, bringing independent contractor misclassification claims under *Dynamex* and AB 5). In addition, Counsel also brought the first such case (challenging "gig economy" misclassification of their workers as independent contractors) to trial in *Lawson v. Grubhub, Inc.* (N.D. Cal. 2018) 302 F.Supp.3d 1071, *vacated and remanded*, (9th Cir. 2021) 13 F.4th 908, where Plaintiff's counsel secured a reversal of an unfavorable verdict and prevailed on key issues on remand, *see Lawson v. Grubhub, Inc.* (N.D. Cal. Mar. 30, 2023, No. 15- 05128) 2023 WL 2746290, *motion to certify appeal denied*, (N.D. Cal. May 30, 2023, No. 15- 05128) 2023 WL 3726490.

Counsel has also defeated summary judgment motions on the misclassification issue brought by other similar "gig economy" companies such as Lyft, Uber, and Grubhub under the more challenging *Borello s*tandard for misclassification. *See, e.g., Cotter v. Lyft, Inc*. (N.D. Cal.

2015) 60 F.Supp.3d 1067 (denying the defendant's Motion for Summary Judgment); *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2015) 82 F.Supp.3d 1133 (same); *Lawson v. Grubhub, Inc.* (N.D. Cal., July 10, 2017, No. 15-CV-05128-JSC) 2017 WL 2951608, at *1 (same). Plaintiff's counsel has successfully settled a number of these cases as well, including a case against a similar online ESL tutoring service, VIPKid. *See Ibeji v. VIPKid International Inc. dba VIPKID* (San Joaquin Sup. Ct. Jan. 4, 2023, No. STK-VA-UCE-2019-0009895) (granting final approval of class action settlement); *see also Cole v. Caviar LLC* (L.A. Sup. Ct. July 8, 2020, No. BC719079); *Groves v. Maplebear Inc. dba Instacart* (L.A. Sup. Ct., No. BC695401); *Marciano v. DoorDash Inc.* (Cal. Sup. Ct. July 12, 2018, No. CGC-15-548102); *Garcia v. Lyft, Inc.* (L.A. Sup. Ct., No. BC712959), Order Granting Final Approval of Class Action Settlement (dated January 14, 2019); *Cotter v. Lyft, Inc.* (N.D. Cal. 2016) 193 F.Supp.3d 1030; *Singer v. Postmates, Inc.* (N.D. Cal., Sept. 1, 2017, No. 4:15-CV-01284-JSW) 2017 WL 4842334, at *4.

Moreover, at the end of April of 2018, the California Supreme Court decided *Dynamex*, and announced a new test for employee-status in California for wage claims arising under the Wage Orders, which tracks the ABC test currently utilized in Massachusetts. This test was then statutorily codified through AB 5. Plaintiff's counsel is based in Massachusetts and has been litigating cases under this very incarnation of the ABC test for 20 years, originating much of the caselaw under the Massachusetts ABC test. Counsel also successfully litigated *Vazquez v. Jan-Pro Franchising International, Inc.* (2021) 10 Cal.5th 944, in which the California Supreme Court found (on review of a certified question from the Ninth Circuit) that *Dynamex's* ABC test for misclassification applies retroactively. *See also Vazquez v. Jan-Pro Franchising International, Inc*. (9th Cir. 2021) 986 F.3d 1106 (holding that landmark *Dynamex* decision applies to misclassification claims against "cleaning franchisor" and applies to top-tier company in multi-tier "fissured employment" scheme; providing guidance on strength of ABC test for employment misclassification; and reinstating wage claims on behalf of janitors who challenged paying for their jobs and other wage violations). On remand, Plaintiff's counsel secured class certification and partial summary judgment for the class on key issues, including that janitors were employees under the ABC test. *See Roman v. Jan-Pro Franchising Int'l, Inc.,* (N.D. Cal.

2022) 342 F.R.D. 274. In sum, Plaintiff's counsel is uniquely situated to appreciate the strengths and potential weaknesses of the claims at issue in this case under California's incarnation of the ABC test and has successfully litigated such issues in both Massachusetts and California.

Plaintiff's counsel has not hesitated to take cases, including class actions, to trial in other instances, and has agreed to a settlement only when she believed doing so was in the best interests of the class.[5] Here, Attorney Liss-Riordan was able to draw on her substantial experience in order to provide the Settlement Class with a high degree of expertise in this field in negotiating this settlement. *See* Liss-Riordan Decl., ¶ 35; Ex. C.

Thus, this settlement is entitled to a presumption of fairness because "(1) the settlement [wa]s reached through arm's-length bargaining; (2) investigation and discovery [we]re sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation." *Dunk*, *supra,* 48 Cal.App.4th at p. 1802; *see also In re Microsoft I-V Cases (*2006) 135 Cal.App.4th 706, 723.

[5] For example, Attorney Liss-Riordan has won a number of ground-breaking wage cases across a variety of industries at trial: *see*, *e.g.*, *Ordono v. Marriott* (April 9, 2023, No. CGC-16-550454) (Order following Bench Trial); *Norrell v. Spring Valley Country Club, Inc. et al.* (Mass. Super. 2017, C.A. No. 1482-cv-00283) (verdict for plaintiff class for violation of Massachusetts Tips Law); *Calcagno v. High Country Investor, Inc., d/b/a Hilltop Steak House* (Mass. Super. 2006, Essex Civ. A. No. 03-0707)) (employer violated Tips Law by not paying out full proceeds of service charges to waitstaff employees); *Benoit et al. v. The Federalist, Inc.* (Mass. Super. 2007, Suffolk Civ. A. No. 04-3516) (same); *Travers v. Flight Services & Systems, Inc.* (D. Mass. 2014, C.A. No. 11-cv-10175) (jury awarded skycaps approximately $1 million on retaliation claim, though verdict was later reduced by the court, and appeal is pending); *Bradley et al. v. City of Lynn et al.* (D. Mass. 2006) 443 F.Supp.2d 145 (verdict for plaintiff class where federal court held following bench trial that Commonwealth's entry-level firefighter hiring examination has disparate impact on minorities and violated Title VII); *DiFiore v. American Airlines, Inc.* (D. Mass. 2008, Civ. A. No. 07-10070 (skycaps should have received proceeds of $2 per bag charge for curbside check-in because passengers reasonably believed it was their tip), *revd.* on federal preemption grounds (1st Cir. 2011) 646 F.3d 81.

B. OTHER FACTORS ALSO WEIGH IN FAVOR OF GRANTING PRELIMINARY APPROVAL

1. The Risks of Continued Litigation Weigh in Favor of the Settlement

Another "relevant factor" that courts consider in contemplating approval of a potential settlement is "the risk of continued litigation balanced against the certainty and immediacy of recovery from the Settlement." *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482, 489. Thus, courts "consider the vagaries of litigation and compare the significance of immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation." *Id.* (citing *Oppenlander v. Standard Oil Co. (Ind.)* (D. Colo.1974) 64 F.R.D. 597, 624).

While Plaintiff was very confident regarding the merits of this case in light of the California Supreme Court's *Dynamex* decision and the enactment of AB 5, there was still the risk that Plaintiff could lose in his individual arbitration on the central question of whether he was Cambly's employee under the ABC test. For instance, there is litigation regarding the "hiring entity" language in *Dynamex* and Labor Code Section 2775, and many defendants have argued that they do not qualify as a "hiring entity" in an attempt to avoid application of the ABC test under Section 2775. Plaintiff believes that he has the better of this argument[6], but it still presents a risk. Likewise, it is possible that Defendant would argue that it falls under other exemptions to AB 5, such as the "referral agency exemption." Again, Plaintiff believes Defendant would not succeed on this argument, but it presents a risk. Furthermore, the need to arbitrate Plaintiff's individual PAGA claim before even reaching the representative portion of the claim and the penalties phase creates the likelihood of significant delay in ever achieving any benefit for Cambly tutors.

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[6] The California Court of Appeal considered and disposed of the notion that there was a predicate requirement to the California ABC test, to prove that the company was the "hiring entity" of the putative employees. *See People v. Uber Techs., Inc.* (2020) 56 Cal.App.5th 266, 288; *Mejia v. Roussos Construction, Inc.* (2022) 76 Cal.App.5th 811 .

Defendant's arbitration provision also creates a near certainty that a class action would not be possible in this case and, thus, this settlement presents the only realistic possibility of class-wide relief.

Furthermore, although the California Supreme Court has made clear that representative PAGA claims cannot be compelled to arbitration, there was significant uncertainty regarding the total amount of penalties that Plaintiff could ultimately recover in this case under the PAGA. Case law casts doubt on whether PAGA penalties stacking would be permitted. *See Yadira v. Fernandez* (N.D. Cal. Sept. 8, 2011) 2011 WL 4101266, at *3 (citing *Doe v. D.M. Camp & Sons* (E.D. Cal. 2008) 624 F.Supp.2d 1153, 1174 (recognizing that "[w]here state law provides for statutory damages, the trial court's discretion may be called upon to prevent double recovery")). And in any event, since courts have discretion to reduce the amount of penalties on the ground that they are "unjust, arbitrary and oppressive, or confiscatory," *see* Lab. Code § 2699(e)(2), it is extremely likely that a court would exercise this discretion and not award stacked penalties. Indeed, courts have routinely exercised their authority to reduce PAGA penalties, at times making dramatic reductions. *See Magadia v. Wal-Mart Associates, Inc.* (N.D. Cal. 2019) 384 F.Supp.3d 1058, 1104 ("[T]he Court reduces the amount of PAGA penalties awarded the Final Wage Statement Class to 20% of Plaintiff's original request of $28,928,500 in PAGA penalties."); *Bernstein v. Virgin Am., Inc.* (N.D. Cal. 2019) 365 F.Supp.3d 980, 992 (reducing PAGA penalties by 25%); *Kaanaana v. Barrett Business Services, Inc.* (2018) 29 Cal.App.5th 778, 788 [240 Cal.Rptr.3d 636, 642] (reducing PAGA penalties to 13% of the total penalties); *Aguirre v. Genesis Logistics* (C.D. Cal., Dec. 30, 2013) 2013 WL 10936035, at *2 (reducing PAGA penalties from $1.8 million to $500,000); *Fleming v. Covidien Inc.* (C.D. Cal. Aug. 12, 2011) 2011 WL 7563047, at *3-4 (invoking § 2699(e)(2) and reducing PAGA penalty award from $2.8 million to $500,000); *see also* Liss-Riordan Decl., ¶¶ 14-17.

Thus, the PAGA exposure is very speculative because of the high likelihood that the total amount would be reduced. Indeed, a vast percentage of the maximum theoretical PAGA penalties are attributable to the "willful misclassification" claim, but willfulness would be challenging to prove here, given the ongoing legal uncertainty as to the proper classification of tutors and the fact that no court has ever found Defendant liable for misclassification. *See Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201, 1204 (noting where a defendant presents a defense "based in law," or even where there is "uncertainty in the law," the willfulness element cannot be satisfied for Labor Code statutes that impose a "willfulness" requirement).[7]

For all these reasons, there was significant risk in going forward with Plaintiff's PAGA claim, and this class-wide and PAGA settlement provides excellent value to the class in light of those risks.

2. The Settlement Provides Significant Benefits to the Class

The monetary amount of the settlement relative to the total possible potential damages in this case is likewise fair and reasonable. In preparation for the mediation, Plaintiff's counsel estimated Plaintiff's maximum theoretical recovery based on the full amount of the expense reimbursement claim and minimum wage claim for all tutors in the State of California. *See* Liss-Riordan Decl., ¶ 12.

Plaintiff assigned other claims negligible value. For example, any claim for willful misclassification has no value for settlement purposes (except as a predicate violation for purposes of calculating PAGA penalties), because the Court of Appeal has found that there is no private right of action under California Labor Code Section 226.8. *See Noe v. Superior Court* (2015) 237 Cal.App.4th 316, 338. Moreover, the statute requires a showing of "willfulness," which would be difficult to meet in the face of ongoing litigation and uncertainty in this area of law. *See O'Connor v. Uber Techs., Inc.* (N.D. Cal. Mar. 29, 2019, No. 13-CV-03826-EMC) 2019

[7] In any case, numerous courts have approved settlements that similarly propose to pay less than 1% of the total theoretical PAGA exposure, particularly where the PAGA allocation is part of a robust class settlement, as is the case here. *See, e.g., Turner v. Motel 6 Operating L.P.* (C.D. Cal. Nov. 6, 2018) 2018 WL 6977474 (approving PAGA allocation of $20,000 on maximum PAGA liability of "over $10,000,000", representing approximately 0.2%. of the total PAGA liability); *Avila v. Cold Spring Granite Company* (E.D. Cal. Jan. 12, 2018) 2018 WL 400315 (approving $10,000 PAGA allocation based on maximum PAGA exposure of $2,610,874.85, about 0.38% of the maximum PAGA recovery); *Jennings v. Open Door Marketing, LLC* (N.D. Cal. Oct. 3, 2018) 2018 WL 4773057 at *9 (approving $10,000 PAGA allocation, representing .6% of total estimated value of $1.4 million, noting that LWDA has not objected to the settlement).

WL 1437101, at *11 n.6 (noting that "[s]everal of the remaining claims required a finding of willfulness" including claims under § 226.8, such that it was "reasonable for Plaintiff's counsel to assign no or little value to these claims when considering the overall full-verdict value."). *See* Liss-Riordan Decl., ¶ 20.

In addition, the claim for violation of Labor Code, section 226(a), based on the allegation that Defendant has not provided proper itemized pay statements, faces similar risks. To recover under section 226, an employee must also show injury. Injury exists under section 226 when an employee is not provided with a pay statement at all, *see* § 226 (e)(2), or when there is a deficient wage statement <u>and</u> an employee cannot promptly and easily determine from the statement alone the information required by section 226 (a)(2) (total hours worked), (a)(3) (piece rate units earned, if applicable), (a)(4) (all deductions), (a)(6) (inclusive dates of the pay period), and (a)(9) (all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee). Courts have determined that this injury generally requires that the employee be unable to "quickly verify earnings when looking at the wage statements." *Holak v. K Mart Corp.* (E.D. Cal. Sept. 30, 2014) 2014 WL 4930762, at *7. Plaintiff believes it would have been difficult to show injury here. In sum, because Defendant does maintain pseudo records of the hours worked by Settlement Class Members, which are accessible to them, the recovery for these claims was likely to be small. *See* Liss-Riordan Decl., ¶¶ 21-23. Similarly, the data showed that the vast majority of tutors did not have overtime claims and that the claim had minimal value. *Id.*, ¶¶ 18-19. Thus, as set forth *supra,* Plaintiff views damages for expense reimbursement and minimum wage to be the best measure of tutors' claims.

"[I]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair." *Villegas, supra,* 2012 WL 5878390, at *6 (approving gross settlement of "approximately fifteen percent (15%) of the potential recovery against Defendant"). Here, Plaintiff's recovery would be over 100% of the potential maximum recovery on these two claims and would thus have achieved far more than a mere "fraction of the potential recovery." *See also Barbosa v. Cargill Meat Sols. Corp.* (E.D.

Cal. 2013) 297 F.R.D. 431, 446 (noting that "there were significant risks in continued litigation and no guarantee of recovery" whereas "[t]he settlement [] provides [c]lass [m]embers with another significant benefit that they would not receive if the case proceeded—certain and prompt relief"); *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482, 489 (Courts "consider the vagaries of litigation and compare the significance of immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation."). Given the potential challenges faced by Plaintiff, the amount of the settlement compared to the amount at issue in this case is an excellent result and should be approved as more than fair and adequate.

With respect to PAGA, the Parties allocated $30,000 to those penalties. Courts have routinely approved lesser allocations for PAGA penalties in settlements that provide sufficient class-wide recovery, as this one does. *See, e.g., del Toro Lopez v. Uber Techs., Inc.* (N.D. Cal. Nov. 14, 2018) 2018 WL 5982506, at *8 (granting final approval to $50,000 PAGA payment out of $10 million settlement fund); *Ahmed v. Beverly Health & Rehab. Servs., Inc.* (E.D. Cal. Feb. 7, 2018) 2018 WL 746393, at *10 (granting preliminary approval to $4,500 PAGA payment out of $450,000 settlement fund); *Martin v. Legacy Supply Chain Servs. II, Inc.* (S.D. Cal. Feb. 12, 2018) 2018 WL 828131, at *2 (granting preliminary approval to PAGA allocation of $10,000 out of $625,000 settlement fund).

In exchange for these monetary concessions, California tutors who fall within the class definition will release all wage and hour claims that have been brought against Defendant from November 9, 2020 to May 26, 2022. *See* Liss-Riordan Decl., Ex. D (Settlement Agreement) at ¶ 2.29. Thus, the scope of the claims being released is eminently reasonable and the consideration received is excellent in light of the risks and uncertainties of going forward.

For all these reasons, the settlement is fair, adequate, and reasonable, and the Court should grant preliminary approval.

3. The Proposed Class Notice of Settlement Should Be Approved

The proposed Notice forms and dissemination method warrant approval as they inform Class Members of the settlement terms and of their rights to be excluded from the settlement.

See Liss Riordan Decl., Ex. D (Settlement Agreement) at § VII. Moreover, if there are Class Members who wish to object to this settlement, they will have the opportunity to file their objections and be heard at the Final Approval Hearing. (*Ibid*.)

Accordingly, the proposed Notice meets all the requirements of California Rules of Court, Rule 3.769(f).

4. The Service Award to Plaintiff Is Reasonable

Named plaintiffs in class action lawsuits "are eligible for reasonable incentive payments to compensate them for the expense or risk they have incurred in conferring a benefit on other members of the class." *Munoz*, *supra*, 186 Cal.App.4th at 412. Courts routinely grant approval of class action settlement agreements that permit the class representative to seek such awards, which are necessary to provide incentive to represent the class and are appropriate given the benefit the class representatives help to bring about for the class. *See Rodriguez v. W. Publ'g Corp*. (9th Cir. 2009) 563 F.3d 948, 958–59.

Service awards are particularly important to plaintiffs in PAGA and misclassified employment cases because they promote the important public policies underlying employment regulations and laws. This strong policy is codified in Labor Code Sections 2699, *et seq.*, 2755 and AB 5.

The "criteria courts may consider in determining whether to make an incentive award include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation." *In re Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380, 1394–95.

Under the Settlement Agreement, subject to the Court's approval, Cambly agreed to pay Service Awards in the amount of $10,000 to Plaintiff. Plaintiff will file a motion seeking these Service Awards, which will detail the time and effort of Plaintiff, and the reasonableness of the requested amounts based on the assistance Plaintiff provided to Settlement Class Counsel, the services rendered to Settlement Class Members, the risk incurred, and their service in furthering the public policy underlying employment regulations and laws. Settlement Class Counsel represent that Plaintiff devoted a great deal of time and work assisting counsel in the case and communicated with counsel very frequently for litigation and in preparing for the arbitration and mediation sessions. The amount of the Service Award is reasonable, particularly considering the substantial benefits Plaintiff generated for all Settlement Class Members.

5. At Final Approval, Plaintiff Will Request that the Court Award One-Third of the Settlement Amount as Attorneys' Fees and Costs

As explained above, Plaintiff's counsel has succeeded in negotiating a fair and reasonable settlement. Plaintiff's counsel submit that this is an excellent result for the class. At final approval, Plaintiff will request that the Court award one-third of the recovery for attorneys' fees and costs, as is typical in class action settlements. The proposed Notice informs the class of this proposed award, and thus the Court will also be able to determine if there is any objection from the class.

The California Supreme Court has "join[ed] the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created." *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 503 [376 P.3d 672, 686] (approving award of a one-third contingency fee).

California has recognized that fee awards generally average one-third of the common fund established through litigation. *See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n. 11 [75 Cal.Rptr.3d 413] ("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."); *see also Smith v. CRST Van Expedited, Inc.* (S.D. Cal. 2013) 2013 WL 163293, *5 ("Under the percentage method, California has recognized that most fee awards based on either a lodestar or percentage calculation are 33 percent…."). Even courts that use the lodestar method to award fees "may increase or decrease that amount by applying a positive or negative 'multiplier' to take into account a variety of other factors, including the quality of the representation, the novelty and complexity of the issues, the results obtained, and the contingent risk presented." *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26 [97 Cal.Rptr.2d 797].

There is no definitive set of factors California courts require to be considered in determining the reasonableness of an attorneys' fees award; however, courts assessing fee requests under California standards have utilized factors including: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made in similar cases. *See Hendricks v. Starkist Co.* (N.D. Cal., Sept. 29, 2016) 2016 WL 5462423, at *11 *citing Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048-50. Other courts have additionally considered (6) reactions from the class; and, if it so chooses, (7) a lodestar cross-check. *See Barnes v. The Equinox Group, Inc.* (N.D. Cal. 2013) 2013 WL 3988804, at *4.

Here, counsel spent substantial time on all stages required for the successful litigation of this case, including arbitration, mediation, extensive discovery practice, and settlement negotiations. Plaintiff's counsel performed this work while undertaking substantial risk associated with working under a contingency arrangement on this complex and novel legal issue, with no payment along the way and the risk of never seeing a dime. In the face of these risks, Plaintiff's counsel achieved a substantial victory for the Class.

Based on these substantial benefits, the Court should preliminarily approve the requested fees, which are comparable to fees awarded in similar cases.

C. CLASS CERTIFICATION OF THE SETTLEMENT CLASS IS APPROPRIATE

In addition to the discussion above supporting preliminary approval of this settlement, Plaintiff explains here why certification of the Settlement Class is appropriate.

"Code of Civil Procedure Section 382 allows class actions when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court." *Bufil v. Dollar Financial Group* (2008) 162 Cal.App.4th 1193, 1204. Section 382 has been construed to require an ascertainable class and a well-defined community of interest. *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 809. To demonstrate that the latter "community of interest" requirement is met, a plaintiff must show: "(1) predominant questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435. A plaintiff must also demonstrate that the class procedure is superior to other forms of adjudication. *Reese v. Wal-Mart Stores, Inc.* (1999) 73 Cal.App.4th 1225, 1234. Here, as set forth below, all of these factors are met.[8]

Further, for settlement purposes only, Cambly stipulated to the certification of class claims that are likewise subject to the certification requirements of Code of Civil Procedure Section 382.[9]

1. **The Settlement Class Is Numerous and Ascertainable**

To determine whether a proposed settlement class is ascertainable for purposes of Section 382, courts consider "1) the class definition; 2) the size of the class; and 3) the means available for identifying class members." *Reyes v. Board of Supervisors* (1987) 196 Cal.App.3d 1263, 1271. Here, the proposed Settlement Class is clearly ascertainable because it is comprised of all individuals who provided services in connection with Cambly's platform in the State of California at any time from November 9, 2020 to May 26, 2022. *See* Liss-Riordan Decl., Ex. D at ¶ 2.1. Defendant keeps records of the identities of these individuals, their contact information, the number of minutes spent teaching on the Cambly platform, and their pay. *See* Liss-Riordan Decl., ¶ 10, n.1. Thus, Cambly will be able to readily provide this information for purposes of issuing notice and calculating the settlement distribution. The total class of all California tutors is approximately 227 individuals. *Id.*, ¶ 29. Thus, the numerosity requirement is easily satisfied.

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[8] "The California Supreme Court has repeatedly directed that in the absence of controlling state authority, [] courts should utilize the procedural guidelines of rule 23 of the Federal Rules of Civil Procedure." *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347. Thus, Plaintiff has also cited to authority interpreting Federal Rule 23, which closely tracks the factors of Section 382.

[9] Cambly disputes that certification is proper for the purposes of litigating the class claims proposed or in flowing from the claims asserting in this action. Cambly expressly reserves the right to oppose certification of any purported class should the Settlement fail to become final and effective.

Villalpando v. Exel Direct, Inc. (N.D. Cal. 2014) 303 F.R.D. 588, 605-606 ("Although the requirement is not tied to any fixed numerical threshold, courts have routinely found the numerosity requirement satisfied when the class comprises 40 or more members.").

2. Common Questions of Law or Fact Predominate

Plaintiff contends that Settlement Class Members' classification as independent contractors is clearly suited to common determination. *See* Liss-Riordan Decl., ¶ 32. In *Dynamex*, the California Supreme Court expressly adopted the Massachusetts version of the ABC test, which requires the alleged employer to establish each of three factors to prove independent contractor status, through what is commonly called an ABC test. *Dynamex,* 4 Cal.5th at 956-57. Those factors are:

> (A) the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact; *and* (B) that the worker performs work that is outside the usual course of the hiring entity's business; *and* (C) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.

Id. Here, Plaintiff alleges that all tutors performed the same service—teaching and practicing English to non-native English speakers—and Plaintiff asserts that tutors' services are within Cambly's usual course of business because Cambly is an online ESL tutoring service. *See, e.g., Lawson v. Grubhub, Inc*. (N.D. Cal. 2018) 302 F.Supp.3d 1071, 1090 ("While food delivery is not Grubhub's only or primary business[,] . . . it is a regular part of its business in Los Angeles. Indeed, offering delivery services is key to Grubhub's continued growth in urban markets such as Los Angeles.") (internal citations omitted). Thus, while Cambly disputes these allegations and assertions, Plaintiff asserts they would be likely to establish that the tutors are employees under Prong B of the ABC test, because services performed by tutors are necessary and not merely incidental to Cambly's business, and a class can be certified on this basis alone. *See Costello v. BeavEx, Inc.* (7th Cir. 2016) 810 F.3d 1045, 1060, *cert. denied*, (2017) 137 S. Ct. 2289 (noting that class could be certified based on common evidence of just one prong of the three-part ABC test); *James v. Uber Technologies Inc.* (N.D. Cal. 2021) 338 F.R.D. 123, 139 (certifying class under Prongs A and B of the California ABC test only because "the ABC test is conjunctive"). Plaintiff also contends that the nature of the proof needed to establish either the usual course of Cambly's business or the type of work that Settlement Class Members perform will not vary among Settlement Class Members.[10]

3. Plaintiff's Claims Are Typical of the Class

"Typicality is present when the named class representatives' interest in the action is significantly similar to that of the other class members." *City of San Diego v. Haas* (2012) 207 Cal.App.4th 472, 501; *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1020 (claims are typical if they are "reasonably coextensive with those of absent class members; they need not be substantially identical."); *Dalton v. Lee Publications, Inc.* (S.D. Cal. 2010) 270 F.R.D. 555, 560 ("Typicality is a permissive standard . . ."). Here, the named Plaintiff completed many hours of ESL tutoring for Cambly in California as an independent contractor during the proposed settlement class period. *See* Complaint ¶¶ 3, 10. Plaintiff's claims therefore are typical of the proposed class. *See Bowerman v. Field Asset Servs., Inc.* (N.D. Cal. Mar. 24, 2015) 2015 WL 1321883, at *15 ("[Plaintiff's] claims arise from the same conduct that provides the basis for all class members' claims – namely, [defendant's] alleged misclassification of vendors as independent contractors and consequent failure to pay overtime wages and indemnify costs. The Plaintiffs are typical class members.") (internal quotation and citation omitted).

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[10] Because the ABC test requires the employer to establish all three prongs, Plaintiff believes that it is unnecessary to discuss Prongs A or C. *Dynamex, supra*, 4 Cal.5th at p. 963. Nevertheless, Plaintiff asserts that the necessary evidence would be common among Settlement Class Members even under Prongs A and C as well. For example, under Prong A, the issue is whether the defendant has the right to control the worker's performance. *Id.*, p. 956. Plaintiff asserts that this question would go to Defendants' *contractual* right to control tutors, which would be common to all Settlement Class Members. Likewise, regarding Prong C, which requires that the worker be "engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity," Plaintiff would also be successful because, although Cambly tutors are permitted to work for other tutoring services, they are uniformly disallowed from teaching Cambly customers outside the auspices of Cambly and can be terminated for soliciting their students to retain them outside of the Cambly platform. *See* Complaint, ¶ 13. In sum, all three prongs of the test will be decided based on common evidence, and class certification is plainly appropriate.

4. Plaintiff Is an Adequate Class Representatives and Has Retained Counsel Who Are Eminently Qualified to Represent the Class

"Adequacy of representation depends on whether the plaintiff's attorney is qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the class." *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450. Here, there is no potential conflict between the named Plaintiff and the other Settlement Class Members since he is challenging practices that Plaintiff contends are applied uniformly to all Settlement Class Members. *See* Liss-Riordan Decl., ¶ 33. Similarly, Plaintiff's interests do not differ from those of the Class as a whole, in that he seeks to benefit the proposed class by obtaining damages for those Settlement Class Members. Additionally, Plaintiff has retained counsel with extensive expertise and experience in prosecuting wage and hour cases, with a particular specialty in independent contractor misclassification (indeed with a particular sub-specialty of litigating misclassification cases for "gig economy" workers) and with the resources to represent the class effectively.[11] *Id*, ¶ 34.

5. A Class Action Is Superior to Other Means of Resolving Plaintiff's Claims

"A class action also must be the superior means of resolving the litigation, for both the parties and the court." *Aguiar v. Cintas Corp. No. 2* (2006) 144 Cal.App.4th 121, 132, *disapproved on other grounds by Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955. In determining whether a class action would be superior, courts have considered factors such as judicial efficiency and the need to avoid many "separate, duplicative proceedings," *see Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th at 340, and whether workers are unlikely to come forward to pursue their own individual claims in the absence of a class action, either because of the relatively small individual recoveries or the "desperate financial condition" of

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[11] Plaintiff's lead counsel, Attorney Liss-Riordan, has been a leader and pioneer in the field of independent contractor misclassification over the last twenty years. She has represented workers in numerous cases in California and around the country challenging misclassification, particularly recently in the "gig economy." She has obtained significant and first-of-their-kind victories in cases challenging independent contractor misclassification in a variety of industries, including the cleaning, trucking, adult entertainment, and call center industries. For more information, see her website bio at https://www.llrlaw.com/shannon-liss-riordan/.

putative class members. *See Reyes,* 196 Cal.App.3d at 1279–1280; *Aguiar*, *supra,* 144 Cal.App.4th at pp. 132–133. "[W]age and hour disputes (and others in the same general class) routinely proceed as class actions." *Id.*, 138. Here, granting class certification is superior to litigating numerous individual cases that would remain without certification of the Settlement Class. Because there are roughly 227 Settlement Class Members, a class action would clearly be superior to hundreds of individual suits. *See* Liss-Riordan Decl., ¶ 37.

VI. CONCLUSION

As set forth above, the proposed settlement is eminently fair, reasonable, and adequate, and provides meaningful relief to the proposed Settlement Class. The Court should grant preliminary approval, allow the Notice to be issued to Settlement Class Members, and schedule a date for a final approval hearing.

Dated: December 5, 2025

Respectfully submitted,

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By his attorneys,

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