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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

AMIRA CHIFFER, individually, and on behalf of all others similarly situated, Plaintiffs, vs. WILLDAN FINANCIAL SERVICES; and DOES 1 through 25, inclusive, Defendants.	Case No. CVRI2204377 [*Assigned to the Hon. Harold W. Hopp*] **UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS-ACTION AND PAGA SETTLEMENT AND CONDITIONAL CERTIFICATION OF THE PROPOSED SETTLEMENT CLASS** **RESERVATION ID. 111355199488** Date: November 7, 2023 Time: 8:30 a.m. Dept.: 1

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Amira Chiffer seeks preliminary approval of a $220,000 class action settlement[1] on behalf of herself and approximately 51 current and former employees of Defendant Willdan Financial Services, ("Defendant") (collectively with Plaintiffs, the "Parties"). The basic terms of the Settlement provide for the following:

(I) A **non-reversionary** Gross Settlement Amount ("GSA") of $220,000 that includes:

(a) A Net Settlement Amount ("NSA") of approximately $96,217.40 (GSA minus the requested Attorneys' Fees and Costs, Settlement Administration Costs, PAGA Payment, and the Enhancement Awards), which will be allocated to all Class Members on a pro-rata basis according to the number of weeks each Class Member worked during the Class Period (**paid to all Class Members who do not opt out of the Settlement Class, without the need to submit claims for payment.**

(b) Attorneys' fees in the amount of one-third of the GSA (or $73,332.60 before any escalator clause), and litigation costs and expenses not to exceed $10,500, to Taylor Labor Law, P.C. ("Plaintiffs' Counsel").

(c) Settlement administration costs not to exceed $4,950 to be paid to the jointly selected Settlement Administrator, Phoenix.

(d) A PAGA Payment of $20,000, of which 75%, or $15,000, will be paid to the LWDA and 25%, or $5,000, will be paid to Class Members who worked for Defendant from November 1, 2021 and ending on the date the Court grants Preliminary Approval, pursuant to the California Private Attorneys General Act ("PAGA").

(e) A Service Award of $5,000 for Plaintiff Amira Chiffer's service on behalf of the Settlement Class, the risks she took in bringing the claims, and $10,000 for her general releases of all claims arising out of her employment.

[1] Hereinafter "Settlement Agreement" or "Settlement." Unless indicated otherwise, terms used herein have the same meaning as those defined by the Settlement Agreement.

An objective evaluation of the Settlement confirms that the Settlement is fair, reasonable, and valuable. Throughout the litigation, Defendant has denied any wrongdoing or liability and has denied that any of Plaintiffs' claims are suitable for class or representative treatment. The Settlement was negotiated by the Parties at arm's-length with helpful guidance from experienced class-action and PAGA mediator Kelly Knight, and the Settlement confers substantial benefits to Class Members, which is particularly impressive viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases (and the defenses below).

Moreover, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied, Defendant prevailing at trial or there not being any funds from which to collect. As discussed below, the proposed Settlement satisfies all criteria for preliminary approval under California law and is within the range of reasonableness. Accordingly, Plaintiffs respectfully request that this Court grant preliminary approval of the Settlement Agreement.

II. FACTS AND PROCEDURE

A. Brief Overview of the Litigation

Plaintiffs, Amira Chiffer and other similarly aggrieved employees, worked for Defendant Willdan Financial Services ("Willdan"). Plaintiffs worked in a call center in Temecula, California, servicing Willdan's clients on tax assessment issues, among other things. Declaration of Chris W. Taylor ("Taylor Decl.") ¶ 2. Once the pandemic began, Defendant instructed employees in its Temecula, California location to work from home remotely. Taylor Decl. ¶ 3.

On October 11, 2022, Plaintiffs filed a class action against Defendant for: (1) failure to reimburse for necessary business expenses when working remotely from home during COVID-19 [Labor Code section 2802]; (2) failure to pay overtime with citations to wage statement violations and waiting time penalty claims [Labor Code sections 203, 204, 215, 216, 226, 510, 558, 1194, and 1198]; and (3) Violation of the Private Attorneys General Act ("PAGA") for failure to pay necessary expenditures and failure to pay overtime and with citations Labor Code sections related to waiting time penalties and wage statements. Taylor Decl. ¶ 4. On November 14, 2022, Defendant filed an Answer. *Id.*

On November 22, 2022, counsel held a preliminary phone call to discuss the case. Taylor Decl. ¶ 5. During this call, defense counsel indicated willingness and desire to review a list of documents and/or information Plaintiffs were looking for that may be easily provided via informal discovery. *Id.* Further, the defense stated a desire to explore early mediation. *Id.* Given how the court encouraged the parties to engage in early mediation, Plaintiffs agreed to calendar mediation provided Plaintiffs would be armed with sufficient information as to be able to meaningfully assess the merits of class claims. *Id.* On November 28, 2022, the parties agreed to use Kelly Knight, a mediator well-versed in representative wage and hour matters, for their matter. Taylor Decl. ¶ 6. On December 9, 2022, the parties booked a full-day mediation with Kelly Knight to take place on June 29, 2023. *Id.*

On December 20, 2022, Plaintiffs propounded their first set of written discovery, including Special Interrogatories, Requests for Production of Documents, Requests for Admissions, and Form-Rogs Employment and General. Taylor Decl. ¶ 10. After extensions, Defendant's responses were due on February 20, 2023, but Defendant provided objection-only responses on February 17, 2023, asserting such discovery was stayed pursuant to the Court's Case Management Order ["CMO"]. Taylor Decl. ¶ 7.

On March 15, 2023, Plaintiff propounded another set of interrogatories and sent along a proposed Stipulation for Belaire-West Notice and Proposed Order pursuant to and in compliance of section (D)(2) of the Court's Case Management Order ("CMO") Taylor Decl. ¶ 8.

By way of the same, Plaintiff hoped to meet and confer over stipulating to a Belaire notice and asked that Defendant stipulate to the proposed Belaire Notice by March 22, 2023. *Id.* In response, Defendant reiterated it intends to provide an informal production that would include all relevant statistics, relevant policies, and a sufficient data sample to allow for a meaningful mediation. *Id.* Defendant asserted it takes time to pull and prepare all the relevant data and reassured counsel such information would be provided no less than one month before mediation. *Id.*

Counsel met and conferred given there was a dispute as to whether sufficient information and documents had been produced (or, alternatively, would be) in advance of mediation. On

April 14, 2023, Plaintiffs informed Defendant that if Defendant wishes to use informal discovery as opposed to information obtained through current and ex-employees, Plaintiffs will need to know the categories of information, including, but not limited to, what expenses incurred by current and former employees, that will be produced promptly. Taylor Decl. ¶ 9. Plaintiffs reiterated without this information, Plaintiff cannot rely on the informal discovery providing a foundation for settlement, rendering the scheduled mediation on June 29, 2023 unfruitful. *Id.* Plaintiffs contemplated cancelling mediation in light of the same. *Id.*

On April 18, 2023, Defendant reassured Plaintiff it intended to produce substantial informal discovery in advance of the parties' mediation, which will provide Plaintiff with sufficient information to prepare in full for mediation. Taylor Decl. ¶ 10. Specifically, Defendant indicated it intended to produce the following categories of informal discovery no less than one month before mediation:

- Defendant's policies relevant to Plaintiff's alleged claims
- A 20% time and pay data sampling of putative class members/aggrieved employees
- Relevant statistics during the statute of limitations period identified in the Complaint, including:
    - Total number of putative class members/allegedly aggrieved employees
    - Total workweeks
    - Total number of employees whose employment was separated
    - Total number of employees who properly submitted an expense reimbursement form and were not reimbursed
    - The average rate of pay for putative class members/allegedly aggrieved employees. *Id.*

The parties then agreed to keep their mediation on calendar for June 29, 2023 as scheduled. Taylor Decl. ¶ 11. On June 1, 2023, Plaintiffs followed up on Defendant's informal discovery. Taylor Decl. ¶ 12. On June 12, 2023, Plaintiffs followed up again on Defendant's informal discovery. *Id.* On June 16, 2023, Defendant transmitted three (3) Excel files with punch

and payroll data for non-exempt employees, and reimbursement information during the putative class period, among other information. Taylor Decl. ¶ 13.

At the June 29, 2023, mediation, Kelly Knight helped to manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. Taylor Decl. ¶ 15. The Parties discussed various substantive issues at mediation all of which would affect the merits of Plaintiffs' class claims. For instance, with the help of mediator Kelly Knight, the Parties explored whether Plaintiffs would be able to meet the burden of showing Defendant was aware Plaintiffs worked off-the-clock as laid out in *Jong v. Kaiser Foundation Health Plan, Inc*., 226 Cal. App. 4th 391 (2014). Additionally, at mediation Defendant shared "sample" arbitration agreements, which, presumably, the Parties would have eventually discovered some of the putative class members signed. *Id.*

Kelly Knight helped to narrow the gap between the Parties' positions, and, while the parties did not reach resolution at mediation, mediator issued a proposal on August 3, 2023 resulting in a resolution. *Id.* After reaching a deal via a mediator's proposal, the Parties negotiated a complete Settlement Agreement including the Class Notice. *Id.* At all times, the negotiations were adversarial and non-collusive. *Id*.

III. THE PROPOSED SETTLEMENT

Subject to this Court's approval pursuant to California Rule of Court 3.769, Plaintiffs and Defendant have agreed to settle this class action lawsuit. Settlement Agreement is attached as Exhibit A to Chris Taylor's Declaration. The Settlement Agreement resolves all claims of Plaintiffs and the Class Members against Defendant. In exchange, Class Members will agree to release Defendant from liability for all claims for damages and declaratory or injunctive relief brought in this lawsuit. Settlement Agreement at section 31. A summary of the key Settlement terms is as follows:

A. Settlement Fund: The Parties agreed to settle the class and PAGA claims for the above class for $220,000 (before any escalator clause). Taylor Dec. ¶ 16, Exh. A, Section 51. This includes: (1) automatic payments to all Class Members (except those who submit timely

and valid Requests for Exclusion[2]) after deduction of wage withholdings as set forth in the Settlement; (2) 1/3 of the common fund in attorneys' fees and up to $10,500 in litigation costs to Plaintiffs' Counsel; (3) Settlement Administration Costs of up to $4,950; (4) a $20,000 PAGA Payment, which includes $15,000 to the LWDA and $5,000 to Aggrieved Employees; and (5) A Service Award of up to $15,000 to Plaintiff Amira Chiffer, and a general release of $10,000 for Plaintiff's individual claims. *Id.* at ¶ 30, After subtracting (2) through (5), the resulting NSA will be distributed to Participating Class Members in full. *Id.* at ¶ 14.

B. **Class Members**: To address the various Labor Code sections implicated in the PAGA/Class settlement, and to account for different groups of employees, the Parties organized "Class Members" into subclasses. "Class Members" are defined to include the following subclasses:

a. "Reimbursement Subclass": All individuals currently or formerly employed by Defendant Willdan Financial Services in California, whether classified as exempt or non-exempt, who worked for Defendant at any time during the period from October 11, 2018, to preliminary approval.

b. "Non-Exempt Employee Subclass": All individuals currently or formerly employed by Defendant Willdan Financial Services in California and classified as non-exempt, who worked for Defendant at any time during the period from October 11, 2018, to preliminary approval.

c. "Waiting Time Penalty Subclass": All individuals currently or formerly employed by Defendant Willdan Financial Services in California, whether classified as exempt or non-exempt, whose employment was ended with Defendant at any time during the period from October 11, 2019, to preliminary approval.

d. "Wage Statement and Section 204 Subclass": All individuals currently or formerly employed by Defendant Willdan Financial Services in California,

[2] There is no statutory right to object to, opt out of, or exclude oneself from a PAGA settlement, so they will still receive their portion of PAGA, if applicable, even if they opt out of the Class.

whether classified as exempt or non-exempt, who worked for Defendant at any time during the period from October 11, 2021, to preliminary approval.

The combination of all members of the Reimbursement Subclass, Non-Exempt Employee Subclass, Waiting Time Penalty Subclass, and Wage Statement and Section 204 Subclass are referred to as the "Class" or "Class Members."

C. **Formula for Calculating Payments from NSA**: Each Class Member's share of the NSA will be proportional to their workweeks worked during the Class Period and the portion of the PAGA Payment will be proportional to the number of pay periods worked during the PAGA Period, calculated as follows:

- "Workweek Rate" will mean the points credited to a Settlement Class Member for Workweeks Worked in each Subclass worked by the Settlement Class Member divided by the total of all points credited for all Workweeks Worked for membership in all Subclasses for all Settlement Class Members during the Class Period.
- The points allocated to a Settlement Class Member are calculated as follows so that the Net Settlement Amount is allocated among Settlement Class Members on a proportional basis based on the number of Workweeks Worked during the Class Period for each Subclass: (a) for members of the Reimbursement Subclass; (1) point for each Workweek Worked by the Settlement Class Member worked during the Reimbursement Subclass; (b) for members of the Non-Exempt Employee Subclass, (1) point for each Workweek Worked by the Settlement Class Member during the Non-Exempt Employee Subclass; (c) for members of the Waiting Time Penalty Subclass; (1) point for each Workweek Worked by the Settlement Class Member worked during the Waiting Time Penalty Subclass; and (d) for members of the Wage Statement and Section 204 Subclass, (1) point for each Workweek Worked by the Settlement Class Member during the Wage Statement and Section 204 Subclass
- For the Released PAGA Claims, no distinction will be made for Subclasses, and the "PAGA Workweek Rate" means the amount yielded from dividing the particular PAGA Member's Workweeks Worked credited to the PAGA Member during the PAGA Period

by the total of all Workweeks Worked credited to all PAGA Members during the PAGA Period

- All Settlement Class Members shall be paid an amount equal to their individual Workweeks Worked during the Class Period, multiplied by the points credited from each Subclass as explained in the Workweek Rate definition. The same shall be done for PAGA by multiplying the PAGA Workweek Rate by each individual PAGA Member's PAGA Workweeks Worked.
- Points allocated to the Reimbursement Subclass, Wage Statement and Section 204 Subclass and Waiting Time Penalty Subclass shall be allocated 100% to penalties and non-wages. The Parties agree that points allocated to Non-Exempt Employee Subclass shall be allocated 20 percent (20 %) to wages and W-2s shall be issued, and 80 percent (80%) of the amount distributed to each Settlement Class Member will be considered penalties and 40 percent (40 %) shall be allocated to interest and any other non-wage related amount, if any, and will be reported as such to each Settlement Class Member on an IRS Form 1099. The PAGA Payments to PAGA Members will be designated as payments for alleged penalties and other non-wage amounts.
- The Settlement Administrator shall calculate and deduct from the wage portion the employee's share of required taxes and other wage obligations or withholdings (but Employer's Side Taxes will be paid separately by Defendant). The Settlement Administrator shall issue to Participating Class Members an IRS Form W-2 for the wage portion and an IRS Form 1099 for the penalties, expenses and interest portion and PAGA payment (which will have no withholding).

Taylor Dec. at ¶ 19 and Exh. A, Section 53.

With around 51 Class Members, the average recovery will be about $1,266, which is much higher than many other approved wage and hour class action settlements.[3]). Given the

[3] E.*g.*, *Sandoval v. Nissho of Cal., Inc.*, Case No. 37-2009-00091861 (San Diego County Super. Ct.) (average $145); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average $120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018

different sub-classes, and given the parties' structure such that class members are credited points depending on how many workweeks they essentially check off based on each sub-class, counsel estimates a range of between $40 and $3,227 of possible recoveries for Class Members. Taylor Decl. ¶ 19, page 13.

D. **Release by the Settlement Class**: The release is congruent with the allegations in the First Amended Complaint and does not contain any terms that are outside the scope of the operative complaint. SA, section 50. The Settlement Agreement provides Class Members/Aggrieved Employees will release:

> 1) **Class Release**: "Released Claims" means:
>
> a. Reimbursement Subclass: all claims, allegations and assertions for Reimbursement Subclass members that were alleged, or reasonably could have been alleged, based on the facts, allegations, assertions and claims in the operative Complaint for failure to reimburse business expenses (see Labor Code § 2800-2802) and unfair business practices (see Bus. and Prof. Code § 17200, et seq.) based on failure to reimburse business expenses.
>
> b. Non-Exempt Employee Subclass: all claims, allegations and assertions for Non-Exempt Employee Subclass members that were alleged, or reasonably could have been alleged, based on the facts, allegations, assertions and claims in the operative Complaint for (a) Failure to pay minimum wages and overtime/double time wages (see Cal Labor Code §§ 510, 558, 1194, 1198); (b) Failure to provide or pay premium payments for meal periods (see Labor Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No. 1-2001, § 11); (c) Failure to authorize and permit or pay premium payments for rest periods (see Labor Code §§ 226.7, 512; IWC Wage Order No. 1-2001, § 12); and (d) unfair business practices (see Bus. and Prof. Code § 17200, et seq.) based on the claims for failure to pay minimum, overtime, double time wages and failure to provide or pay for meal and rest periods.
>
> c. Waiting Time Penalty Subclass: all claims, allegations and assertions for Waiting Time Penalty Subclass members that were alleged, or reasonably could have been alleged, based on the facts, allegations, assertions and claims in the operative Complaint for failure to pay wages due to discharged and quitting employees (see Labor Code §§ 201-203).
>
> d. Wage Statement and Section 204 Subclass: all claims, allegations and assertions for Wage Statement and Section 204 Subclass members that were alleged, or reasonably could have been alleged, based on the facts, allegations, assertions and claims in the operative Complaint for: 1) failure to provide accurate, itemized wage statements (see Labor Code § 226(a)) and (d) unfair business practices (see Bus. and Prof. Code § 17200, et seq.) based on the claims for failure to provide accurate itemized wage statements; and 2) regular payment of wages and requires that wages

(L.A. County Super. Ct.) (average $90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average $65).

earned are due twice during each calendar month, on days designated in advance by the employer as the regular paydays, pursuant to Labor Code sections 204 and 210.

2) **PAGA Release**: all claims asserted in the PAGA Letter of November 1, 2021, as amended by the Letter dated February 10, 2022, and included in the operative Complaint including Labor Code sections 201. 203, 204, 206, 208, 215, 216. 226, 501, 1194, 512 and 2802, which includes failure to pay business expenses, failure to pay overtime or minimum wages, failure to provide accurate wage statements, and failure to provide or pay premiums for meal and rest breaks and failure to make regular payment of wages and requires that wages earned are due twice during each calendar month, on days designated in advance by the employer as the regular paydays ("Released PAGA Claims").

Id. at ¶ 50.

E. <u>Form of Notice, Opt-Out, and Objections Procedures</u>: Within fourteen (14) days after receipt of a list of Class Members and PAGA Members, the Settlement Administrator shall send the Class Notice to each Class Member's and PAGA Member's Last Known Address or Updated Address (if applicable) via First-Class U.S. Mail. Exhibit A at Section 56(b). Subject to the Court's approval, Class Notice will be sent in English and Spanish and will include the scope of the release language for Released Claims, will notify Class Members of the Settlement, explain the Settlement and Class Members' options, including how Class Members may opt out or object to the Settlement, and explains the facts and methods based on which the Class Member's estimated settlement payments are calculated, substantially in the form attached hereto as "**Exhibit A**."

Class Members will have sixty (60) days from the postmark of the initial mailing of the Class Notice by the SA to submit by U.S. Mail their Opt-Out Requests, with proof of date of submission to be the postmark date of the completed Opt-Out Request. Exhibit A at Section 56(b). Those who wish to object to the Settlement must, 60 days from the postmark of the initial mailing, submit a written objection with the Settlement Administrator that sets forth the basis of the objection. *Id.* If returned as undeliverable, the Settlement Administrator will take appropriate steps to identify a current address. *Id*. at Section 56(d). If needed, the Settlement Administrator will immediately perform skip trace(s) using social security numbers provided by Defendant and National Change of Address searches, as needed, to verify the accuracy of the addresses provided and will conduct a second round of mailings of the Class Notice by First-Class, U.S. Mail. *Id.*

Subject to Court approval, to opt-out of the Settlement Class, a written Request for

Exclusion must be signed by the Class Member or his/her authorized representative, must contain the name, address, and telephone number of the person requesting exclusion, and must be sent to the Settlement Administrator postmarked or fax stamped within the Exclusion Period. *Id.* at Section 21. If submitted timely, he/she will not receive an Individual Settlement Payment, not be bound by the Settlement, and will not have a right to object, appeal, or comment thereon (but will receive a PAGA Payment, if applicable). *Id.* at 56(d)(iii).

F. **Settlement Administrator and Costs**: The parties' proposed Settlement Administrator is Phoenix, which the parties selected after receiving estimates from three reputable settlement administration firms. Taylor Dec., at ¶ 19. Phoenix provided a competitive bid. *Id.* Phoenix is a well-established class action settlement administrator and has substantial experience with class action settlements and fund distribution. Declaration of Jodey Lawrence, attached as Exhibit B to Taylor's Declaration) The Settlement provides that costs of the Settlement Administrator ($4,950) will be paid from the Gross Settlement Fund.

G. **Service Awards**: The Settlement Agreement provides for a service award of $5,000 for the class representative. Taylor Dec., at ¶ 20.

IV. The Court Should Preliminarily Approve the Proposed Settlement

A. Courts Review Class Action Settlements to Ensure that the Terms Are Fair, Adequate, and Reasonable

California Rule of Court ("Rule"), *Rule 3.769* requires court approval of class action settlements.[4] Approval is in two steps: (1) an early "preliminary" review by the trial court; and (2) a subsequent "final" review after notice of the settlement has been distributed to class members for their comments and objections. *Rule 3.769(c)-(g); Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2009). The motion for preliminary approval must be accompanied by the settlement agreement, proposed notice to the class, and the proposed order. *Rule 3.769(c).* It must also identify any agreement concerning the payment of attorneys' fees. *Rule 3.769(b).* The decision to approve/reject the settlement is committed to the trial court's sound discretion. *See Wershba v. Apple Computer, Inc*., 91 Cal.App.4th 224, 234-35 (2001).

[4] Court approval is also required for settlement/dismissal of PAGA. *Cal. Labor Code §2699(l).*

If the trial court grants preliminary approval, it must schedule a final approval hearing and approve the method by which notice is to be provided to the class of the hearing, "an explanation of the proposed settlement", and a procedure to file objections. *Rule 3.769(e) and (f).* At the final approval hearing, the court must conduct an inquiry into the fairness of the proposed settlement. *Rule 3.769(g).* Although Rule 3.769 does not provide detail as to the scope of review of the settlement, preliminary approval is warranted if the settlement falls within a "reasonable range." *See North County Contractor's Assn., Inc. v. Touchstone Ins. Services*, 27 Cal. App. 4th 1085, 1089-90 (1994); *In re Traffic Exec. Ass'n*, 627 F.2d 631, 633-634 (2d Cir. 1980). Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002) ("Newberg"). Reasonableness and fairness are presumed where, as here: (1) the Settlement is reached through "arms-length bargaining;" (2) investigation and discovery are "sufficient to allow counsel and the court to act intelligently;" and (3) counsel is "experienced in similar litigation". *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996).[5]

1. Plaintiffs Conducted a Thorough Investigation

Plaintiffs' Counsel's evaluation of the settlement terms was formed by several factors, including its analysis of the considerable discovery provided informally prior to the Parties' mediation. Taylor Decl. ¶ 17. Plaintiffs' formal and informal discovery requests led to the production of considerable evidence, including written discovery responses, Defendant's policies relevant to Plaintiff's alleged claims, a 20% time and pay data sampling of putative class members/aggrieved employees, total number of workweeks involved, the average rate of pay for putative class members/allegedly aggrieved employees, punch and payroll data for non-exempt employees, documents discussing reimbursement information during the putative class

[5] The presumption is consistent with California's public policy goal of favoring settlements. *Stambaugh v. Super. Ct.*, 62 Cal. App. 3d 231, 236 (1976); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1118; *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) Additionally, in reviewing fairness, due regard should be given to an otherwise "private consensual agreement between the parties." *Cellphone Termination Fee Cases*, 186 Cal. App. 4th at 1389. The inquiry is limited to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, and that the settlement is fair, reasonable and adequate to all concerned." *Id.*

period, and Plaintiffs' time and pay records. Taylor Decl. ¶ 17. As a result, Plaintiffs' Counsel was able to identify the policies and procedures that would have formed the backbone of the motion for class certification. *Id.* Overall, Plaintiffs' Counsel performed a thorough investigation, which included: (1) determining Plaintiffs' suitability as a putative representative through interviews; (2) evaluating Plaintiffs' potential representative claims; (3) researching and investigating Plaintiffs' claims; (4) researching similar cases, and the relevant labor market; (5) analyzing time, pay and financial records produced by Defendant; (6) reviewing the policies and practices; (7) evaluating Plaintiffs' claims and estimating Defendant's liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation. *Id.* By engaging in this thorough investigation and evaluation, Plaintiffs' Counsel can opine that the Settlement, for the consideration and on the terms set forth in the Settlement Agreement, is fair, reasonable, and adequate, and is in the best interests of Class Members in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, and defenses. *Id.*

2. The Settlement Was Reached Through Arm's-Length Bargaining in Which All Parties Were Represented by Experienced Counsel

"[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed settlement's fairness." *State v. Levi Strauss & Co.*, 41 Cal. 3d 460, 482 (1986). Courts presume the absence of fraud or collusion, unless evidence to the contrary is offered; there is a presumption negotiations are conducted in good faith. *Newberg, § 11.51*.

The Parties participated in a mediation with Kelly Knight, who helped manage their expectations and provided a useful, neutral analysis of the issues and risks. *In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against inference of collusive settlement), *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (same). The Parties were represented by experienced class action counsel. Plaintiffs are represented by seasoned class action attorneys at Taylor Labor Law, P.C., who routinely litigate wage and hour claims through certification and on the merits, and have considerable experience settling wage and hour class actions. Taylor Decl. ¶¶ 17. Defendant are represented by Jim Hart of Littler Mendelson P.C., a

respected employment and labor defense firm.

3. The Consideration Provided is Fair and Reasonable in Light of the Amount in Controversy Discounted by Risks of Continued Litigation

In seeking approval, a settling party must provide sufficient information to "enable the court to make an independent assessment of the adequacy of the settlement terms." *Kullar v. Foot Locker Retail, Inc*., 168 Cal. App. 4th 116, 131-32 (2008). However, "[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair." *See Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982). "The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved." *Id.* at 625. "Estimates of a fair settlement figure are tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery." *In re Toys R Us-Delaware, Inc .-- Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014). So, the plaintiff should discount the value for risks such as changes in the law, the probability of success, and other factors.[6]

Settling parties are not, however, required to partake in a hypothetical accounting exercise: "***Kullar* does not… require any such explicit statement of [maximum] value;** it requires a record which allows 'an understanding of the amount that is in controversy and the realistic range of outcomes.'" *Munoz v. BCI Coca-Cola Bottling Co.*, (210) 186 Cal. App. 4th 399, 409-10 (emphasis added). Overall, "the most important factor" is the "strength of the case for plaintiffs on the merits, balanced against the amount offered in the settlement." *Id.* at 409 n.6 (quoting *Kullar*, 168 Cal. App. 4th at 130). Defendant produced Class Member data that formed the basis of Plaintiffs' Counsel's valuation of theoretical exposure. Plaintiffs' Counsel determined an appropriate range of recovery for settlement by offsetting this by: the (i) strength of Defendant's defenses; (ii) risk of certification being denied; (iii) risk of the Court finding a

[6] Federal district courts recognize an inherent "range of reasonableness." *Newman v. Stein*, 464 F. 2d 689, 693 (2d Cir.). *In re Omnivision Tech., Inc.*, 559 F. Supp. 2d 1036 (N.D. Cal. 2008);

PAGA trial unmanageable;[7] (iv) risk of losing on dispositive motions brought prior to and after certification and trial (e.g., to decertify the class and/or for summary judgment) that may eliminate all/some claims or bar necessary evidence; (v) risk of losing at trial or prevailing on only some claims; (vi) chances the Court exercises its discretion to reduce PAGA penalties; (vii) chances of a favorable verdict being reversed on appeal; and (viii) difficulties in collecting a judgment. Taylor Decl. ¶ 17. Defendant also alleged most putative class members signed valid arbitration agreements with class action waivers (but Plaintiffs did not), offering a representative sample at mediation, and therefore the claims would need to be brought individually in arbitration and not as part of the class. Taylor Decl. ¶ 15.

Reimbursement Claim (LC §2802). Plaintiffs alleged Defendant required employees to work from home once the pandemic hit. In doing so, Plaintiffs alleged Defendant required Plaintiffs to take on numerous business expenses, including paying for telephone, computer, printer, and internet access, to facilitate their work but were not compensated for it. Taylor Decl. ¶ 3. Reimbursing for only a reasonable percentage of use has been approved. *Cochran v. Schwan's Home Service, Inv.* (2014), 228 Cal. App. 4th 1137, 1140. Defendant contends that putative class members were paid for business expenses. Specifically, it argued its "expense reports" indicated some of Defendant's employees were reimbursed for business expenses such as (1) cell phone use, (2) printing subscription, among other reimbursements. Taylor Decl. ¶ 14. Plaintiff estimates an average monthly expenditure by each Class Member to be $624. Taylor Decl. ¶ 18, page 9. Plaintiffs estimate damages for this claim to be $381,888 but based on the above reduced this 60% to $152,755.20. *Id.*

Unpaid Wages Claim (Failure to Pay Overtime). Plaintiff alleged that when working from home, they were not credited for all hours worked. Taylor Decl. ¶ 3. This resulted in wages due for the class, including unpaid overtime. Plaintiffs alleged they worked, on average, between 45 minutes to 2 hours of overtime per week. Taylor Decl. ¶ 18. Defendant would contend that

[7] Plaintiffs maintain this trial is manageable but are aware of the risks in *Wesson v. Staples the Office Superstore, LLC* (2021) 68 Cal.App.5th 746. *But Estrada v. Royalty Carpet Mills, Inc.* No. G059350 (Cal. Ct. App. Mar. 23, 2022) held they can't be stricken as unmanageable.

no wages are owed, and its records showed Plaintiffs were paid overtime compensation when appropriate. Id. at 17. Further, Defendant would contend Plaintiffs would not be able to meet the burden of showing Defendant was aware Plaintiffs worked off-the-clock as laid out in *Jong v. Kaiser Foundation Health Plan, Inc*., 226 Cal. App. 4th 391 (2014) because it is unlikely the class would be able to show Plaintiffs ever notified anyone in management they worked off the clock remotely. Defendant would also contend at best there were inadvertent technical violations, which were *de minimis* and not recoverable. *Id.* Plaintiff estimates damages to be $15,009, but accounting for the above arguments, Plaintiff reduced this by 50% to $7,054.50. *Id.*

Wage Statements. This is derivative of the above claims, which as noted have significant risks. Taylor Decl. ¶ 18. Plaintiffs estimated this portion of the claims to be $282,750 but based on the above reduced this 60% to $113,100. *Id on page 8.*

Waiting-Time Penalties. This is also derivative of the above claims and there is significant risk regarding the defenses and contentions of Defendant, showing it was willful, Discount factors and arbitration claim. Taylor Decl. ¶ 18. Plaintiffs estimated this portion of the claims to be $136,838.10 but based on the above reduced this 50% to $68,419.05. *Id on page 11*.

Litigation is not certain and there are substantial risks involved. These risks include the other Discount Factors above. Taking all of the above into consideration, Plaintiffs' Counsel ultimately made the assessment that the settlement reached taking into account the above risks is fair and reasonable as opposed to facing the very real threat that, after protracted litigation, there could be very little, if any, recovery.

B. The PAGA Consideration Is Fair and Reasonable

Pursuant to the Settlement, $20,000 is allocated to the resolution of the PAGA claim, of which 75% ($15,000) goes to the LWDA, and 25% ($5,000) goes to Aggrieved Employees. Taylor Decl. ¶ 19, Exh. A, Section 51(e). Plaintiffs' Counsel has submitted the Settlement to the LWDA. Taylor Decl. ¶ 16, Exhibit C This result was reached after good-faith negotiation between the Parties. Taylor Decl. ¶ 14. Based on information and evidence produced by Defendant, Aggrieved Employees worked a combined total of 1,131 pay periods (as of

mediation) during the PAGA Period. Taylor Decl. ¶ 13. Statutory penalties would be calculated according to Labor Code 2699(f)(2) of one hundred dollars ($100) per aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each subsequent violation. However, some courts interpret this "subsequent violation penalty" to apply only after an employer is notified its conduct violates the Labor Code. *See Trang v. Turbine Engine Components Technologies Corp.*, No. CV 12–07658 DDP (RZx), 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012); *Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Services, Inc.*, No. 05cv1199–IEG–CAB, 2009 WL 2448430 (S.D. Cal. 2009). Defendant would also argue penalties can't be stacked (which Plaintiffs disputes), greatly reducing potential exposure. *Id* at ¶ 18.

Based on the foregoing, Defendant's maximum potential exposure for PAGA penalties using a $100 penalty is $100 x 1,131 = $113,100. Taylor Decl. ¶ 18, page 13. However, this assumes a violation for each pay period. *Id.* As noted above, the records analyzed showed Defendant paid out reimbursements and overtime payments to its employees during some pay periods, making it unlikely there was a violation for each pay period.

The $113,100 estimate also does not take into account the significant risks addressed above prevailing on the claims. *Id.* The $113,100 estimate also does not take into account the court's discretion to reduce the amount of penalties. PAGA gives the Court wide latitude to do so "based on the facts and circumstances of a particular case" when "to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." *Cal. Lab. Code § 2699(h).* Courts have considered issues including whether the employees suffered actual injury, whether the defendant was aware of the violations, and the employer's willingness to fix the violation. *See Carrington v. Starbucks Corp.*, 30 Cal. App. 5th at 529; *Cotter v. Lyft, Inc*., 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016); *Fleming v. Covidien*, 2011 WL 7563047, at *4 (C.D. Cal. 2011). In *Carrington*, the plaintiff requested PAGA penalties of approximately $70 million, but was awarded $150,000—**0.21% of the maximum**—because imposing the maximum penalty would be "unjust, arbitrary, and oppressive" based on Starbucks's "good faith attempts" to comply with meal period obligations and the court found the violations were minimal. *Carrington*, 30 Cal.

App. 5th at 517. Likewise, in *Cotter*, the Court found in light of the unsettled nature of the law, a $2.52 per pay period award (a 97.5% reduction) was appropriate. In *Covidien*, the Court reduced the potential penalties by over 82%. *See also Thurman v. Bayshore Transit Mgmt.*, 203 Cal. App. 4th 1112, 1135-36 (2012) (30% reduction); *Li v. A Perfect Day Franchise, Inc.*, No. 5:10-CV-01189-LHK, 2012 WL 2236752, at *17 (N.D. Cal. June 15, 2012) (denying PAGA penalties for violation of §226 as redundant); *Aguirre v. Genesis Logistics*, No. SACV 12-00687 JVS (ANx), 2013 WL 10936035 at *2-*3 (C.D. Cal. Dec. 30, 2013) (reducing penalty for past PAGA violations 72.22%).

Plaintiffs therefore determined an appropriate range of settlement for PAGA penalties as a percentage of the settlement range that was consistent with, if not more than, other hybrid class/PAGA settlements approved by California courts, namely 9% [$20,000/$220,000].[8] Where PAGA penalties are negotiated in good faith and "there is no indication that [the] amount was the result of self-interest at the expense of other Class Members," such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24 (N.D. Cal. Apr. 3, 2009); *Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 579 (2010).

C. The Court Should Preliminarily Approve the Class Representative Award

Service awards "are fairly typical in class action cases." *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1393 (2010) (affirm. incentive awards of $10,000); *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958 (9th Cir. 2009), citing 4 Newberg on Class Actions (4th ed. 2002) § 11:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53 UCLA L. Rev. 1303 (2006). They "are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a

[8] *Dearaujo v. Regis Corp.*, No. 2:14-cv-01408-KJM-AC (E.D. Cal. June 29, 2016), 2016 WL 3549473 at *3 ($1.95 million settlement, $10,000 penalties); *Garcia v. Gordon Trucking, Inc.*, No. 1:10–CV–0324 AWI SKO (E.D. Cal. Oct. 31, 2012), 2012 WL 5364575 at *7 ($3.9 million settlement $10,000 penalties); *Chu v. Wells Fargo Invst., LLC*, No. C 05–4526 MHP (N.D. Cal Feb. 16, 2011), 2011 WL 672645 at *1 ($6.9 million settlement, $10,000 penalties).

private attorney general." *Rodriguez*, 563 F.3d at 958–59; *Clark v. American Residential Services LLC*, 175 Cal. App. 4th 785 (2009).

Approximately 51 current and former employees will share a $220,000 settlement fund due entirely to the effort and commitment of Plaintiff Amira Chiffer. Subject to Court approval, therefore, the Settlement provides for a Service Award of up to $15,000 for Plaintiff.[9] This is fair and reasonable compensation for her effort in pursuing the action, assisting counsel with litigation, regularly conferring with counsel on the case status and strategies, and serving as class and PAGA representatives. Plaintiffs will file a formal Motion for Final Approval and Motion for Attorney's Fees, Costs and Administration Costs addressing the amount and respectfully submits that the above is sufficient for preliminary approval of the negotiated Service Award.

D. The Court Should Preliminarily Approve the Negotiated Fees and Costs

The purpose of an attorneys' fee award in class action litigation is to reward counsel who took the risk of non-payment and invested in a case that achieved a substantial positive result for the class. California courts routinely award attorneys' fees equaling 1/3 or more of the potential value of the common fund. *See Laffitte v. Robert Half, Inc.*, 1 Cal. 5th 480 (2016) (affirming fee of 1/3 of the common fund); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008) ("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."). At final approval, Plaintiffs will seek Court-approval of attorneys' fees of one-third of the GSA and up to $10,500 in litigation costs and will provide details through declarations of counsel for the basis thereof. Taylor Labor Law, P.C. have entered into a fee splitting agreement of which Plaintiff is aware of and to which she has consented.

[9] Such amounts are reasonable by reference to amounts California courts have repeatedly found as reasonable *See Carter v. GMRI Inc.*, No. RIC 1506085 (Riverside County Super. Ct. Jan. 10, 2017) ($10,000); *Crook v. Barton Healthcare System*, No. SC20150146 (El Dorado County Super. Ct. Dec. 9, 2016) ($10,000); *Singh v. American Building Supply, Inc.*, No. 34-2015-00179889-CU-OE-GDS (Sacramento County Super. Ct. Oct. 3, 2016) ($10,000); *Alvarez v. MAC Cosmetics Inc.*, No. CIVDS1513177 (San Bernardino County Super. Ct. July 29, 2016) ($10,000); *Coffey v. Beverages & More, Inc.*, No. BC477269 (L.A. County Super. Ct. July 26, 2016) ($10,000).

E. California Law Authorizes Provisional Certification for Settlement

1. The California Standard for Class Certification

Class actions are authorized "when the question is one of common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court." Cal. Civ. Proc. Code § 382; *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1332 (2008). Class certification is appropriate when there is an "ascertainable class and a well-defined community of interest among class members." *Sav-On Drug Stores, Inc. v. Super. Ct. (Rocher)*, 34 Cal. 4th 319, 326 (2004). Class treatment is appropriate even if class members at some point may be required to make an individual showing of eligibility. *Bufil v. Dollar Financial Group, Inc.*, 162 Cal. App. 4th 1193, 1207 (2008); *Sav-On*, 34 Cal. 4th at 333.

2. The Proposed Settlement Class is Ascertainable and There Is a Well-Defined Community of Interest Among Class Members

Whether a class is "ascertainable" under Section 382 is "determined by examining the (1) class definition, (2) class size, and (3) means available for identifying class members." *Lee*, 166 Cal. App. 4th at 1334. Class members are ascertainable where they may be readily identified without unreasonable expense or time by reference to official records. *Id.* The community of interest requirement embodies three factors: predominant common questions of law or fact, class representatives with claims/defenses typical of the class, and class representatives and counsel who can adequately represent the class. *Cal. Civ. Proc. Code § 382*. The ultimate predominance question is if "the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants." *Brinker*, 53 Cal. 4th at 1021-1022 (citations omitted).

As detailed above, Class Members are broken down to **four** (4) subclasses consisting of (1) reimbursement; (2) non-exempt employees; (3) waiting time penalty; and (4) wage statement and section 204 employees who worked for Defendant in California from October 11, 2018 through October 17, 2023. Conditional certification is particularly warranted given the relatively relaxed standard for it at the preliminary approval stage. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996) (courts can apply a "lesser standard of scrutiny" for class certification in settlement cases); Newberg § 13:18 (5th ed.) (courts "declin[e] to treat formal

class certification as a prerequisite for preliminary approval and undertak[e] a more cursory class certification analysis at the preliminary approval stage."). In *Dunk*, the Court rejected the argument that the standard for certifying a class for settlement is the same as for certifying it for litgiation. *Id.* at n19.

Here, the California statutes relating to each of Plaintiffs' claims apply with equal force and effect to Class Members (and Aggrieved Employees) and the alleged violations arise from the same factual and legal basis. Factually, Plaintiffs contends Defendant's policies and practices apply class-wide and Defendant's liability can be determined by facts common to all members of the class. Plaintiffs also assert the wage and hour issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the class. Likewise, Plaintiffs contend their interests are entirely coextensive with the interests of the Class as they alleges they were injured by the same company-wide practices. Given the size of individual claims, they likely have little incentive to litigate claims on an individual basis. Plaintiffs have already demonstrated their ability to advocate for the interests of the Class by initiating this litigation, assisting in the undertaking of representative discovery, and evaluating the proposed settlement. Additionally, Plaintiffs are represented by competent counsel who have extensive experience in litigating wage and hour class action cases. Taylor Decl. ¶¶ 17.

F. Notice Properly Informs Class Members of the Case and Settlement

Class members are entitled to the best practical notice under the circumstances. *Kass v. Young*, 67 Cal. App. 3d 100, 106 (1977). It must advise class members "that they may be excluded from the class if they so request and that they will be bound by the judgment, whether favorable or not, if they do not request exclusion." *Id*. The purpose is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. *Trotsky v. Los Angeles Fed. Savings & Loan Assn.*, 48 Cal. App. 3d 143, 151-52 (1975).[10] The Parties jointly drafted the Class Notice,

[10] Due process does not require each Class Member receive a notice, but just a procedure reasonably certain to reach them. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986); *Fontana v. Elrod*, 826 F.2d 729, 732 (7th Cir. 1987).

which fairly and neutrally informs Class Members of their rights and remedies. Once approved it will be mailed to all Class Members mail and includes information regarding the nature of the lawsuit, Settlement terms including claims released, the class definition, the procedure and time period to opt out, object or dispute the amount they will receive, the date for the final approval hearing, and the formula to calculate settlement payments. Taylor Decl. Exh. A, Section 51. Accordingly, the method of disseminating it and content of it satisfy due process and California law. *See* C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss*, 41 Cal. 3d 460, 485 (1986).

V. CONCLUSION

The Parties negotiated a fair and reasonable Settlement. Having appropriately presented the materials and information necessary for preliminarily approval, the Parties request the Court preliminarily approve the settlement, enter the proposed Order, and take such other steps as necessary and appropriate including setting a hearing date for final approval of the settlement.

DATED: October 11, 2023

TAYLOR LABOR LAW, P.C.

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