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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

EDITH BOATMAN, individually, and on behalf
of all others similarly situated,

Plaintiff,

vs.

CLAUSEN HOUSE, a California corporation;
and DOES 1 through 10, inclusive,

Defendants.

Case No.: 22CV006470

[Assigned for all purposes: Hon. Brad Seligman]

CLASS ACTION

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

Reservation Id: A-06470-001

Date: October 10, 2023
Time: 3:00 p.m.
Courtroom: Dept. 23
Judge: Hon. Brad Seligman

Action Filed: February 3, 2022
Trial Date: Not Set

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

2 PLEASE TAKE NOTICE that on October 10, 2023, at 3:00 p.m., or as soon thereafter as the
3 matter may be heard, in Department 23 of the above-captioned Court, located at 1221 Oak Street,
4 Oakland, CA 94612, Plaintiff EDITH BOATMAN (“Plaintiff”) will and hereby does move this Court for
5 an order:

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

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

10 3. Appointing counsel for Moon Law Group, PC (formerly named Moon & Yang,
11 APC), as Class Counsel;

12 4. Appointing Plaintiff as the Class Representative;

13 5. Approving the sufficiency of the notice process;

14 6. Approving ILYM Group, Inc. as the third-party administrator;

15 7. Ruling that Settlement Class Members who did not timely submit requests for
16 exclusion from the settlement as set forth in the Agreement have released their claims against
17 Defendant and the other releasees as set forth in the Agreement;

18 8. Ruling that Settlement Class Members who did not timely object to the settlement
19 pursuant to the terms set forth in the Agreement are barred from prosecuting or pursuing any
20 appeal of the Court’s Order;

21 9. Awarding the sums requested in the Motion;

22 10. Entering a Final Judgment; and,

23 11. Without affecting the finality of the final judgment, reserving continuing
24 jurisdiction over the parties for the purposes of implementing, enforcing and/or administering
25 the settlement as set forth in the Agreement or enforcing the terms of the Final Judgment.

26 Good cause exists to grant this Motion because:

27 1. The Class meets all of the requirements for class certification for settlement
28 purposes under Code of Civil Procedure § 382;

2. The Settlement Agreement is a fair, adequate, and reasonable compromise of the disputed wage and hour claims asserted by Plaintiff;

3. Plaintiff and Class Counsel are adequate to represent the Class; and,

4. The notice procedures and related forms complied with California Rules of Court 3.766(d) and (e) and this Court's Order granting preliminary approval of the Settlement, and adequately apprised Class Members of their rights and fully comport with due process.

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

TENTATIVE RULINGS: Pursuant to Local Rule 3.30, the court has adopted the tentative ruling procedure set out in California Rules of Court, rule 3.1308(a)(1). The tentative ruling or notice to appear will generally be available by 4:00 p.m. two court days prior to the scheduled hearing and no later than 3:00 p.m. the court day before the hearing. Unless the court directs otherwise, the court's tentative ruling will be available online or by calling (866) 223-2244. The process for viewing a tentative ruling online are subject to change. Instructions for access to tentative rulings online can be found at <http://www.alameda.courts.ca.gov/Pages.aspx/Tentative-Rulings>. Whenever a tentative ruling has not been issued, the parties are to appear at the hearing unless otherwise ordered.

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

Respectfully submitted,

Dated: September 13, 2023

MOON LAW GROUP, PC

By:

Kane Moon
H. Scott Leviant
Mariam Ghazaryan

Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court, Rules 3.769, Plaintiff requests that this Court finally
3 approve the class action settlement set forth in the FIRST AMENDED CLASS ACTION AND PAGA
4 SETTLEMENT AGREEMENT (“Settlement” or “Agreement”) with CLAUSEN HOUSE
5 (“Defendant”).

6 After informal discovery, the exchange of documents and data, and an arm’s-length mediation
7 session with mediator Steve Rottman, Esq., Plaintiff and Defendant (collectively referred to herein as the
8 “Parties”) reached a proposed class action settlement with a gross settlement amount (“GSA”) of
9 **\$250,000.00** in compromise of disputed claims asserted on behalf of the below-defined Class consisting
10 of **129** members. The notice process was completed in compliance with the Court’s Orders and due
11 process requirements. The notice process was completed in compliance with the Court’s Orders and due
12 process requirements. Plaintiff now submits this Motion for Final Approval, along with the Settlement
13 (attached to the Declaration of H. Scott Leviant [“Leviant Decl.”], at Exhibit 1 thereto). Plaintiff
14 respectfully requests that the Court: (1) grant final approval; (2) certify a Class for settlement; (3) appoint
15 Moon Law Group, PC, as Class Counsel; and (4) enter judgment. For the Court’s convenience, key
16 Settlement provisions are summarized below.

17 **II. THE NOTICE PROCESS WAS SUCCESSFULLY COMPLETED**

18 Plaintiff and Defendant have fulfilled the class notice procedures set forth in the Settlement. The
19 Settlement Administrator, ILYM Group, Inc. (“ILYM”), sent individual Notices to 129 Class Members
20 on May 24, 2023 (Declaration of Nick Castro [“Castro Decl.”], ¶¶ 3-7.) Of the Notices to Class
21 Members that were mailed, 11 were returned after mailing. (Castro Decl., ¶ 8.) Using skip tracing 7
22 updated addresses were located. (*Ibid.*) After re-mailing, 4 notice packets are considered undeliverable.
23 (Castro Decl., ¶¶ 9-10.) No individual requested to be excluded from the Settlement. (Castro Decl., ¶
24 11.) No Class Members objected in writing by the written objection deadline. (Castro Decl., ¶ 12.)

25 **PAYMENTS:** For 129 Class Members, the average benefit per Class Member is **\$1,937.98**
26 (before deductions from the GSA = \$250,000.00 ÷ 129). The highest payment to a Class Member
27 (before any withholdings) is estimated to be at least **\$2,491.39**, and the average payment to a Class
28 Member (before any withholdings) is estimated to be **\$826.87** [the declaration of Castro contains a

1 typographical error listing the amount as \$828.87, but $\$106,666.67 \div 129 = \826.87]. (Castro Decl., ¶
2 14.) The Net Settlement Amount (excluding the PAGA payment to Aggrieved Employees) will be at
3 least **\$106,666.76**.¹ (Castro Decl., ¶ 14.) The average PAGA payment to an Aggrieved Employee is
4 **\$84.51** and the highest payment is **\$184.81**. (Castro Decl., ¶ 14.)

5 **III. THE MAJOR TERMS OF SETTLEMENT**

6 The provisions of the proposed Settlement include the following:

- 7 • Defendant agrees not to oppose certification for purposes of Settlement (Settlement, ¶ 12.1);
- 8 • Class: All non-exempt, hourly employees of Defendant who worked for Defendant in
9 California during the Class Period (the “Class Period” is February 3, 2018 through
10 December 31, 2022). (Settlement, ¶ 1.5, 1.12.) “Participating Class Members” are those
11 Class Members who do not submit timely exclusion requests to the Settlement
12 Administrator. (Settlement, ¶ 1.9, 1.35);
- 13 • Settlement Amount: Defendant will pay a maximum of **\$250,000.00**, referred to as the
14 Gross Settlement Amount (or GSA herein), resulting in an average **gross** benefit per Class
15 Member of approximately **\$1,937.98** (Settlement, ¶ 1.22);
- 16 • Class Size: **129** individuals, who worked **10,960.40** workweeks. (Settlement, ¶¶ 4.1, 8;
17 Castro Decl., ¶ 14);
- 18 • PAGA Group Size: **71** individuals, who worked **1,883** pay periods (Leviant Decl., ¶ 18;
19 Castro Decl., ¶ 14);
- 20 • PAGA Period: February 3, 2021 to the date of Court approval of the PAGA settlement
21 (Settlement, ¶ 1.31);
- 22 • Escalator Clause: In the event of an increase in workweeks of more than 15% from original
23 estimate of 12,272 workweeks worked by employees during the Class Period, (i.e., exceeds
24 14,113 workweeks), Defendant will either (a) increase the GSA by a pro-rata dollar value
25 equal to the number of workweeks in excess of 14,113 workweeks, or (b) elect to set the end
26

27 ¹ The Administrator is assuming all amounts are awarded as requested and also assuming that Class
28 Counsel will request the full amount of costs, up to the cap. The actual costs are below the cap, which
means that the Net Settlement Amount is higher than the Administrator’s estimate.

- 1 date for the Class Period on the date when the total workweeks for the Class Period would be
2 14,113 (the “Escalator Clause”). The Escalator Clause is not triggered. (Settlement, ¶ 8);
- 3 • Kullar/Munoz Analysis: Plaintiff addresses the claims analysis herein, at Part VI.B.3, and
4 in the Declaration of Leviant, at Paragraph 18;
 - 5 • No Reversion: The Settlement is a *non-reversionary* settlement (Settlement, ¶ 3.1);
 - 6 • Certification: Plaintiff addresses certification requisites herein, at Part VI.A. Certification
7 was addressed in greater detail in the Motion for Preliminary Approval.
 - 8 • No Claim Form: No claim form is required (Settlement., ¶ 3.1);
 - 9 • Class Release: The Settlement will release specified wage-and-hour claims for Class
10 Members (those Class Members who do not opt out of the Settlement) as defined by the
11 First Amended Complaint (Settlement, ¶¶ 2.1, 5.2);
 - 12 • PAGA Release: Class Members will release the PAGA Claims set forth in this Action, that
13 were identified in the Operative Complaint and Plaintiff’s LWDA Notice Letter, regardless
14 of whether they opt out of the class portion of the Settlement (Settlement, ¶¶ 2.1, 5.3);
 - 15 • Release Effective Date: The Release is not active until Defendant tenders all payments
16 required under the Settlement to the Settlement Administrator (Settlement, ¶ 5);
 - 17 • Net Settlement Amount Available to the Class: After deducting Class Counsel’s attorneys’
18 fees and costs, service payment to Plaintiff, administration costs, and the PAGA penalty,
19 the remainder will be available for distribution to Class Members who do not opt out, with
20 each Class Member receiving a share based on the number of workweeks each Class
21 Member worked for Defendant within the Class Period. The Net Settlement Amount is
22 estimated to be at least **\$106,666.67**, resulting in an average **net** payment per Class Member
23 of at least **\$826.87**, before any tax withholdings. (Settlement, ¶ 3);
 - 24 • Tax Allocation: The amounts distributed to Class Members will be characterized as 25%
25 alleged unpaid wages, 75% to penalties and interest, and PAGA Settlement Payments will
26 be allocated as 100% penalties. (Settlement, ¶ 3.2.4.1, 3.2.5.2);
 - 27 • Employer’s Portion of Payroll Taxes Paid Separately: Defendant’s portion of payroll taxes
28 (e.g., FICA, FUTA, etc.) owed on any settlement payments to Class Members that

constitute wages will be paid separate and apart from the GSM (Settlement, ¶ 3.1);

- Settlement Administrator: The notice portion of the Settlement will be administered by a third-party Administrator, ILYM Group, Inc., and the Parties estimated that the costs of administration should not reasonably exceed \$15,000.00. ILYM Group, Inc.’s bid for settlement administration services in the amount of **\$8,500.00** was selected as the lowest bid from a competitive bidding process. (Settlement, ¶ 3.2.3; Hartranft Decl., Exh. C.)
- Class Data for Administration: The Settlement Administrator will receive the Class List within 14 calendar days of Preliminary Approval, use the NCOA database to update the Class List, and then use skip tracing on returned Notices (Settlement, ¶ 4.2);
- Notice: The Notice will issue within 14 days of receipt of the Class List (Settlement, ¶ 7.4.2). The Notice describes how to dispute workweeks, submit an objection in writing, in person, or through an attorney, or request exclusion (Settlement, ¶¶ 7.4 – 7.7);
- Notice Language: Notice will issue in English (Spanish not required) (Settlement, ¶ 1.11);
- Objections: Objections can be submitted in person, through an attorney, or in writing to the Settlement Administrator, with no pre-requisite to being heard (Settlement, ¶ 7.7);
- Exclusion Requests: The procedure for exclusion requests, mailing a request to the Settlement Administrator, is the same as the procedure for submitting a written objection (Settlement, ¶¶ 7.5 and 7.7);
- PAGA Allocation: From the GSA, **\$24,000** will be allocated to settle claims brought pursuant to the California Private Attorneys General Act, Labor Code § 2699 *et seq.* (“PAGA”), and seventy-five percent (75%), or **\$18,000**, will be paid to the California Labor & Workforce Development Agency. (Settlement, ¶¶ 1.34, 3.2.5.);
- Notice to LWDA: Notice was provided prior to the filing of this Motion. Evidence is attached to the Leviant Declaration;
- Enhancement/Service Awards to Plaintiff: Defendant will not oppose the application for Class Representative Service Payment of up to **\$7,500.00** for Plaintiff, to be paid from the GSA (Settlement, ¶ 3.2.1);
- Fees and Costs: Defendant will not oppose Class Counsel’s application for fees not to

exceed 33 1/3% of the GSA (\$83,333.33), and actual costs, in an amount not to exceed \$20,000, to be paid out of the GSA (Settlement, ¶ 3.2.2);

- Check Void Period: Settlement checks will be valid for 180 days (Settlement, ¶ 4.4.3);
- Uncashed Checks: Any settlement checks that are mailed to the Class Members and remain uncashed after 180 days of the date of issuance will be cancelled, and the moneys will be directed to the State Bar's Justice Gap Fund. (Settlement, ¶ 4.4.3);
- Judgment Notice: Judgment will be posted on the Settlement Administrator's website after entry (Settlement, ¶ 7.8.1);
- Confidentiality Provisions: The Settlement permits Class Counsel to discuss the Settlement with Class Members (Settlement ¶ 12.2).

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

IV. FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiff's Claims

On February 3, 2022, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for: (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to pay all hourly wages, including both minimum wage, straight time and overtime; (4) failure to maintain and provide accurate itemized wage statements; (5) failure to timely pay all wages and final wages; (6) failure to indemnify necessary business expenses; and, (7) unfair competition. On March 30, 2022, Plaintiff filed a First Amended Complaint alleging an additional cause of action against Defendant for violation of PAGA. The First Amended Complaint is the operative complaint in the Action (the "Operative Complaint.") (Leviant Decl., ¶ 4.)

Pursuant to Labor Code § 2699.3(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice. (Leviant Decl., ¶ 5.)

B. Pre-Mediation Data Production and Analysis

The Parties conducted informal discovery and investigation of the facts and law. Such investigation included, inter alia, the exchange of informal data and discoverable information in preparation for the mediation sessions. (Leviant Decl., ¶ 6.) The Parties have analyzed payroll and other data pertaining to Plaintiff and the Class during the relevant Settlement Period, including but not limited

1 to the following:

- 2 (a) Time records and payroll data for the entire class. No sampling was used.
- 3 (b) Relevant policy documents.
- 4 (c) Plaintiff's personnel file.
- 5 (d) Class composition data, including total class size, work week counts, pay period
- 6 counts, termination counts, and the number of employees who worked during the
- 7 one-year statutory periods for wage statement penalty and PAGA penalty
- 8 purposes.

9 (*Id.*)

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

16 **C. Settlement**

17 On August 23, 2022, the Parties participated in an all-day mediation presided over by mediator
18 Steve Rottman, Esq., which led to this Agreement to settle the Action. (Leviant Decl., ¶ 8.) The Parties
19 discussed at length the burdens and risks of continuing with the litigation as well as the merits of the
20 claims and defenses. (*Id.*) After the successful mediation, the Parties then signed a long form settlement
21 agreement (the Agreement). (*Id.*)

22 Plaintiff and Class Counsel are aware of the burdens of proof necessary to establish liability for
23 the claims asserted in the Action, both generally and in response to Defendant's defenses thereto.
24 (Leviant Decl., ¶ 9.) Plaintiff and Class Counsel have also taken into account Defendant's agreement to
25 enter into a Settlement that confers substantial relief upon the Class.

26 Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement set forth
27 in this Agreement is a fair, adequate, and reasonable Settlement and is in the best interests of the Class.
28 (Leviant Decl., ¶ 10.) Solely for the purpose of settling this case, the parties agree that the requirements

1 for establishing class action certification with respect to this class have been met and are met. (*Id.*) If
2 this Settlement is not approved by the Court for any reason, Defendant reserves its rights to contest class
3 certification. (*Id.*) This Settlement, if approved, will result in the termination of the litigation through the
4 entry of the Judgment and the release of all Released Claims for all Class Members, including all within
5 the class definition who have not elected to exclude themselves from the Class. (*Id.*)

6 **V. CLASS DEFINITION**

7 The Class is defined as follows:

8 All current and former non-exempt employees who worked for Defendant in California
9 during the Class Period (the “Class Period” is February 3, 2018 through December 31,
10 2022.) “Participating Class Members” are those Class Members who do not submit
timely exclusion requests to the Settlement Administrator. (Settlement, ¶ 1.35.)

11 (Leviant Decl., ¶ 34 and Exhibit 1.)

12 The Aggrieved Employees are defined as follows:

13 Those current and former non-exempt employees who worked for Defendant in
14 California on or after February 3, 2021 to Court approval of the PAGA settlement.
(Settlement, ¶ 7.5.4.)

15 **VI. DISCUSSION**

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

18 Under Code of Civil Procedure § 382, class certification is warranted so long as there is a
19 numerous and ascertainable class with a well-defined community of interest and that a “class action
20 proceeding is superior to other means for a fair and efficient adjudication of the litigation.” *See, e.g., Sav-*
21 *on Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 326, 332 (2004). For purposes of this Settlement
22 only, Defendant stipulated to conditional certification of the proposed class. (Settlement ¶ 19.)

23 “The certification question is ‘essentially a procedural one that does not ask whether an action is
24 legally or factually meritorious.’” *Id.*, at 326, quoting *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440
25 (2000). The certification question asks whether the theory of recovery advanced by the plaintiff is likely
26 to prove amenable to class treatment. *See, e.g., Jaimez v. Daiohs USA, Inc.*, 181 Cal. App. 4th 1286,
27 1298 (2010). As the court noted in *Dunk*, although certification requirements are intended “to protect the
28 interests of the non-representative class members,” that concern is “protected by the trial court’s fairness

review of the settlement.” *Dunk v. Ford Motor Co.* 48 Cal. App. 4th 1794, 1807 n. 19 (1996). In view of these standards, *as discussed more thoroughly as part of the preliminary approval motion*, the Settlement Class should be certified for settlement. Code Civ. Proc. § 382; Rules of Court, Rule 3.769(c).

B. The Court Should Approve the Settlement Because It Is a Fair, Adequate, and Reasonable Compromise of Disputed Wage Claims in View of Defendant’s Potential Liability Exposure and the Risks of Continued Litigation

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

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

A settlement of class litigation must be reviewed and approved by the court. Rules of Court, Rule 3.769(a). Approval occurs in two steps: (1) an early (preliminary) review and (2) a subsequent (final) review after notice. The present motion seeks *final approval* and entry of a Judgment. To evaluate a settlement, a court must receive “basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 133 (2008). But the record need *not* contain an explicit statement of the maximum theoretical recovery. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 409 (2010).

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

A settlement is presumptively fair where it is reached through arms’ length bargaining, based on sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is

1 experienced in similar litigation, and the percentage of objectors is small.² *Dunk*, 48 Cal.App.4th at 1802;
2 *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *7-Eleven Owners for Fair Franchising v.*
3 *Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000). In deciding whether to approve a settlement, a
4 trial court has broad powers to determine whether it is fair under the circumstances of the case. *See, e.g.,*
5 *Mallick v. Superior Court*, 89 Cal. App. 3d 434, 438 (1979). In exercising these powers, the overriding
6 concern is to ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk*, at 1801,
7 quoting *Officers for Justice v. Civil Serv. Comm’n of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

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

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

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

14 Here, the Settlement resulted from thorough, arms’ length negotiations between experienced
15 counsel with the assistance of a highly-regarded mediator. (Levant Decl., ¶¶ 8-10.) With respect to the
16 claims at issue in this case, Plaintiff obtained data from Defendant (through informal discovery) and then
17 carefully reviewed that information. Counsel for Plaintiff also examined relevant policies and
18 interviewed witnesses in detail about their work experiences and Defendant’s practices. Based on the
19 totality of that review, Plaintiff estimated the potential exposure and then estimated risk factors to adjust
20 the reasonable expected outcome. The investigation that Plaintiff’s counsel conducted was sufficient to
21 provide enough information to intelligently evaluate the estimated exposure in this action for purposes of
22 negotiating the Settlement in view of the risks discussed below and are also sufficient to allow this Court
23 to do the same. *See, e.g., Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 245 (2001). Finally,
24 the number of objections is currently zero, as of the time of filing this motion. Thus, the Settlement is
25 presumed fair.

26
27
28 ² Because the fourth prerequisite for the presumption to arise cannot be addressed until the final
approval hearing, only the first three prerequisites are relevant at this preliminary approval stage.

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

4 The proposed Settlement of \$250,000.00 offers substantial, timely, and guaranteed payments to
5 Class Members. A settlement is not judged against what might be recovered at trial and does not have to
6 provide 100% of damages to be reasonable. "In the context of a settlement agreement, the test is not the
7 maximum amount plaintiffs might have obtained at trial on the complaint, but rather whether the
8 settlement is reasonable under all of the circumstances." *Wershba*, 91 Cal.App.4th at 250.

9 With respect to the claims asserted on behalf of the Class in this case, there are serious risks that
10 support the reduced compromise amount. These risks include, but are not limited to: (i) the risk that
11 Plaintiff would be unable to establish liability for unpaid straight time or overtime wages, *see Duran v.*
12 *US Bank Nat'l Ass'n*, 59 Cal. 4th 1, 39 & n. 33 (2014) ("*Duran*"); (ii) the risk that Defendant's meal and
13 rest period policies might not ultimately support class certification or a class-wide liability finding; (iii)
14 the risk that uncertainties pertaining to the ultimate legality of Defendant's policies and practices could
15 preclude class-wide awards of statutory penalties; (iv) the risk that individual differences between Class
16 Members could be construed as pertaining to liability and not solely to damages; (v) the risk that any
17 civil penalties award under the PAGA could be reduced by the Court in its discretion; (vi) the risk that
18 class treatment could be deemed improper as to one or more claims, except for settlement purposes; and,
19 (vii) the risk that appellate litigation could ensue. (Leviant Decl., ¶ 16.) These risks are non-exhaustive.

20 In light of the uncertainties of protracted litigation, the settlement amount reflects a fair and
21 reasonable recovery for the Class Members. (Leviant Decl. ¶¶ 13-20.) The settlement amount is, of
22 course, a compromise figure. (Leviant Decl. ¶ 17.) By necessity it took into account risks related to
23 liability, damages, and the defenses asserted by Defendant. (*Id.*) Moreover, each Class Member will be
24 given the opportunity to opt-out of the Settlement, allowing those who feel they have claims that are
25 greater than the benefits they can receive under this Settlement to pursue their own claims. (*Id.*) For the
26 approximately **129** members of the Class, the average **gross** benefit is **\$1,937.98** per class member, and
27 the estimated average **net** recovery for each Class Member is approximately **\$826.87**. (*Id.*) Given that
28 Defendant could challenge certification and liability, this is a significant sum to have achieved in

1 settlement. Moreover, a Class Member who worked a greater number of weeks for Defendant will
2 receive a larger share of the Settlement than a Class Member who worked for a shorter amount of time
3 during the class period. (*Id.*)

4 The maximum calculated plausible exposure is **\$1,293,086.20**, including PAGA penalties.
5 (Leviant Decl., ¶ 18.) However, after analyzing the claims in this matter, Plaintiff has concluded that the
6 Gross Settlement Amount of **\$250,000.00** is about 96% of the **\$259,173.07** estimate of *risk-adjusted*
7 recovery (excluding interest) at this stage in the litigation. (*Id.*) This assessment is based on a carefully
8 constructed model of the current fair value of the case, using estimated risks, average wage rates,
9 numbers of employees, and the amount of time covered by the class period. (*Id.*)

- 10 • **Rounding:** The total calculated net underpayment for the rounding of time clock punches
11 was \$3,223.00. This was based upon an analysis showing that 40.9% of employees had a net
12 underpayment from rounding, while 41.8% had a net gain during the class period. At the
13 time of mediation, our *Camp v. Home Depot* appeal had not yet issued, so we were limited to
14 stating our strong belief that the result in *Camp* would be favorable for plaintiff Camp on the
15 issue of rounding. This claim is not related to the nature of the work or the industry. It is a
16 purely mathematical claim, based on time clock data post-processing for purposes of
17 calculating payroll. However, with the risk factor discounts for certification and liability
18 proof, the value of that claim is estimated by Plaintiff's counsel to be approximately **\$676,83**,
19 assuming certification probability of 60% and merits success at 35%.
- 20 • **Off-the-clock work.** Plaintiff alleged that she had to finish paperwork at home consisting of
21 reports with firm completion deadlines and respond to work-related calls on her personal cell
22 phone once or twice a week. Using Plaintiff's experiences, we estimated \$272,211.00 as the
23 maximum exposure on this claim. However, Plaintiff's experiences were almost certainly
24 not universal, so the estimated exposure cannot reasonably be stated as plausible. First, the
25 majority of the class did not have the paperwork obligations that impacted field employees in
26 the "job coach" position. Job coaches comprise roughly one quarter of the class. Second, the
27 majority of the class did not have job duties that generated work-related calls outside of
28 regularly scheduled work hours. And, since off-the-clock work is difficult to establish by its

1 very nature, the likelihood of certifying a claim based mostly on testimonial evidence, for a
2 fraction of the class, was highly unlikely. As a result, this off-the-work allegation as a basis
3 for claiming unpaid wages carried with it a significant element of risk.

- 4 • **Rest breaks.** Plaintiff alleges that, due to time pressure on her schedule as a field employee,
5 she was unable to take most of her rest breaks. The contention is based, factually, on the
6 nature of field work involving stops at up to about eight or nine client job sites per day to
7 supervise clients while working. This claim suffers from two distinct issues. First, as with
8 off-the-clock work, it is very difficult to prove rest break issues with common evidence.
9 Second, because most class members were not job coaches, the nature of the job duties for
10 job coaches creates an additional issue. The exposure evaluation started with the assumption
11 that 100% of the class missed one rest break per week, as assumption we considered to be
12 overly optimistic. It is equally if not more likely that a fraction of the class (something less
13 than the 25% portion that consists of job coaches) missed more rest breaks than one per
14 week, while a majority of the class did not have rest break issues.
- 15 • **Meal periods.** The meal period claim is predicated upon an analysis of the actual records
16 produced by Defendant. Plaintiff contends that she missed meal periods because she was
17 always at a job site or driving to the next job site. This issue, as with rest breaks, may be
18 limited to job coaches with similar client loads each day (somewhere at or below 25% of the
19 class). Based only on facial meal period violations evident on the face of the records, the
20 maximum exposure was calculated to be \$265,264.00, based on those records; this also
21 includes meal periods missing on shifts of five to six hours in length. However, Defendant
22 produced a meal period waiver form with an irregularity. It included a signature line on it for
23 its revocation. Many employees signed both the waiver and the revocation at the same time,
24 rendering it unclear as to the intention behind the two signatures. This injected an additional
25 issue with the potential to create individualized issues. Assuming that the likelihood of
26 certification is 40% and the likelihood of succeeding on the merits is 40%, the current value
27 of the exposure is \$42,442.24. But these probabilities are likely too high, given the
28 confounding issues surrounding the varied job duties and the peculiar meal period waiver

1 form.

- 2 • **Reimbursement of Expenses.** Expenses incurred by the class included cell phone usage and
3 mileage. Defendant provided a \$25 stipend for cell phone usage. In order to recover any
4 additional reimbursement, Plaintiff would need to demonstrate that the stipend was
5 insufficient to be deemed reasonable, a difficult showing to make, given the amount of the
6 stipend and the amount of a typical cell phone bill. With respect to mileage, only one quarter
7 of the class consists of job coaches, so the mileage reimbursement claim may be limited in
8 that regard. Additionally, data produced by Defendant shows additional stipends, which
9 appear to be mileage reimbursements. To state a viable claim for unreimbursed mileage, it
10 would then be necessary to show that the stipends were unreasonably low on a classwide
11 basis, also a difficult proposition. As a result, the value of this claim was viewed as
12 essentially *de minimis*, since the evidence produced demonstrated that reimbursements did
13 occur. Only the adequacy of the amount is theoretically in dispute, and the amounts
14 reimbursed are not implausibly low.
- 15 • **Derivative Claims.** The wage statement and Section 203 late final pay claims are entirely
16 dependent upon proof of an underlying wage underpayment. These claims carry all of the
17 risk associated with the unpaid wage claim and the additional risk that defenses to these
18 claims could negate them entirely.
- 19 • **PAGA.** The PAGA claim incorporates the same underlying allegations, and, as such, also
20 incorporates the same challenges of proof inherent in claims that are primarily events not
21 captured by any data system (the off-the-clock work allegations and rest break issues). The
22 meal period claim would also present proof issues, since it would be necessary to show that
23 facial meal period violations were not predicated upon employee choice, made without
24 coercion.

25 The concurrently-filed Declaration of H. Scott Leviant also discusses claim valuation. (*See*, Leviant
26 Decl., ¶ 18.)

27 This result here is fully supportable as reasonable. First, it is important to recognize the
28 wilfulness finding required for Labor Code §§ 203 and 226 is challenging to establish. (Leviant Decl., ¶

19.) Second, rest break and meal period claims have been challenging to certify for many years, even after *Brinker*. (Leviant Decl., ¶ 19.) Third, the certification rates in California are lower than conventional wisdom holds. See, H. Scott Leviant, *Second Interim Report on class actions in California sheds new light on certification* (February 19, 2010), www.thecomplexlitigator.com, available at <http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html>; see also, *Findings of the Study of California Class Action Litigation, 2000-2006*, available at <http://www.courtinfo.ca.gov/reference/documents/class-action-lit-study.pdf> (finding, at page 5, and in Table 9, at page 15, that only 21.4% of all class actions were certified either as part of a settlement *or* as part of a contested certification motion). Here, the estimated certification probabilities are *above* the average rate at which cases were certified in California over the study years, based upon data available through the California Courts websites. (Leviant Decl., ¶ 19.) In sum, well *under* 20% of all cases filed as proposed class actions are ultimately certified by way of a *contested* motion. (*Id.*) The recovery is roughly **19%** of the maximum plausible recovery (estimated to be approximately **\$1,293,086.20**, including PAGA), which falls within the expected outcome under the likelihood of success metric. (*Id.*) It would also be appropriate to evaluate the result by examining only the premium wages at issue (approximately \$645,870.20, with no risk reduction), excluding penalties and interest; the settlement is about 40% of the premium wages (unpaid wages, meal period premiums, and rest break premiums) at maximum realistic exposure value.³ This Settlement achieves the goals of the litigation.

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

The proposed method of allocating the Settlement to Class Members also is fair. As noted, the Parties agreed to allocate the Settlement based on time worked by the Class Member during the Class Period, in relation to the total amount of time worked by all participating Class Members collectively.

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

1 This proposed method is fair and reasonable because each Class Member's actual potential damages vary
2 based on the number of workweeks he or she actually worked. A Class Member who worked a greater
3 number of weeks for Defendant will receive a larger payment under the Settlement than a Class Member
4 who worked for a shorter amount of time during the relevant period. (Leviant Decl., ¶¶ 11, 17.)

5 **5. The Proposed Enhancement Award to Plaintiff Warrants Approval.**

6 The proposed enhancement payment to Plaintiff is intended to recognize the substantial initiative
7 and significant efforts on behalf of the Class. Courts routinely approve incentive awards to compensate
8 named plaintiffs for the services they provide and the risks they incur during class action litigation, often
9 in much higher amounts than that sought here. Factors considered when awarding an incentive include
10 the actions the plaintiff has taken to protect the class, the degree to which the class has benefitted, the
11 amount of time and effort the plaintiff expended in the litigation, the risk to the class representative in
12 commencing suit (financial and otherwise), the notoriety and personal difficulties encountered, the
13 duration of the litigation, and the personal benefit (or lack thereof) enjoyed by the plaintiff as a result of
14 the litigation. *Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 804 (2009). Plaintiff
15 contributed time to the prosecution of this matter, including assistance prior to the mediation with
16 information and substantial time conferring with counsel over the course of this litigation and before it
17 was filed. (Boatman Decl., ¶¶ 5-20; Leviant Decl., ¶ 33.) The enhancement also recognizes the
18 considerable risks Plaintiff undertook on behalf of the Class to be personally liable for all costs incurred
19 regardless of the success of the litigation or class certification, as well as the personal risk of facing
20 discovery and potential disclosure to future employers that Plaintiff sued a former employer, making
21 future employment prospects uncertain. Plaintiff's Declaration supports the requested enhancement.

22 **6. The Proposed Award of Attorneys' Fees and Costs Is Also Fair, Adequate,**
23 **and Reasonable and Merits Approval.**

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

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

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

The California Supreme Court removed any lingering doubt about the use of the percentage of the fund method to award attorney’s fees in California Courts. *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016).⁴ Thus, this Court may and, as strongly encouraged by the California Supreme Court, *should* award attorney’s fees to Plaintiffs’ counsel based upon the percentage methodology.

“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 47 n. 11 (2008). This is also consistent with Plaintiffs’ counsels’ experience in these types of cases. Here, Plaintiff’s attorneys request attorneys’ fees of **\$83,333.33** (33 1/3% of the adjusted GSA), and costs of **\$18,315.95**, which includes payment for mediation, filing fees, and other expenses, including the upcoming costs. (Leviant Decl., ¶ 32.) Given the efforts and risks, and the results, these amounts warrant *final approval*.

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

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

⁴ The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing doubt about the use of the percentage method: “The *Dunk* court, while finding the percentage method inapplicable to the settlement before it due to the lack of a readily valued common fund, did not purport to bar its usage generally in common fund cases.” *Laffitte*, 1 Cal. 5th at 501.

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

5 Here, Class Counsel’s billed lodestar exceeds the fee requested, billed at the attorneys’ customary
6 hourly rates (and omitting about 10 hours of time that were not billed by Mr. Leviant). (Leviant Decl., ¶
7 32.) The actual lodestar is estimated to exceed \$114,896.50. (Leviant Decl., ¶ 32.) The request for
8 **\$83,333.33** in attorneys’ fees, which is less than the final *billed* lodestar for Moon Law Group, PC, is
9 reasonable under the lodestar method.

10 **(1) Class Counsel’s Hours Are Reasonable**

11 In determining whether the number of hours was reasonable, the court must determine that “the
12 time spent was reasonably necessary and that [] counsel made ‘a good faith effort to exclude from the fee
13 request hours that are excessive, redundant, or otherwise unnecessary.’” *Jordan v. Multnomah County*,
14 815 F.2d 1258, 1263 n.8 (9th Cir. 1987). The court should defer to the lawyer’s judgment as to how
15 much time he was required to spend on the case. *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112
16 (9th Cir. 2008) (“[l]awyers are not likely to spend unnecessary time on contingency fee cases in the hope
17 of inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee.”).
18 Here, Counsel expended a prudent amount of time to achieve the excellent result. (Leviant Decl. ¶ 32.)

19 **(2) Class Counsel’s Hourly Rates Are Reasonable**

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

26 Class Counsel are experienced litigators who specialize in employment law, with a substantial
27 wage and hour class action practice. (Leviant Decl. ¶¶ 21-27.) A number of courts, including this Court,
28 have approved Class Counsel’s hourly rates. (Leviant Decl. ¶ 27.) Given the skill and experience of

Class Counsel, and the excellent result achieved, Class Counsel's hourly rates are reasonable.

c) Class Counsel's Costs Are Reasonable

The Settlement Agreement provides for reimbursement of costs not to exceed \$20,000.00. Moon Law Group, PC, seeks costs in the amount of \$18,315.95. (Leviant Decl., ¶ 32 and Exh. 2.) These costs were reasonably incurred in prosecuting the Action on behalf of the Class Members and should be approved by the Court. Accordingly, Class Counsel respectfully requests the Court approve total costs in the amount of **\$18,315.95**. (Leviant Decl., ¶ 32 and Exh. 2.)

7. The Proposed Payment to the Administrator Is Fair and Reasonable

ILYM Group, Inc., which has been selected due to its competitive bid, estimates that administration can be performed for **\$8,500.00**. In counsel's experience, based on similar wage-and-hour actions, an estimated cost of **\$8,500.00** is a fair and reasonable amount for administration fees and should be approved. (Leviant Decl., ¶ 34; Castro Decl., ¶ 15.)

8. The PAGA Allocation is Reasonable

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

Prior to the issuance of *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021), the only sources of persuasive guidance as to how to assess the reasonableness of a PAGA allocation were found in federal court decisions addressing that question. In their view, a PAGA allocation, even if a small portion of the total settlement, could be reasonable if the settlement of the underlying wage and hour claims is robust and serves the deterrent purpose of the PAGA statute. *O'Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016) ("By providing fair compensation to the class members as employees and substantial monetary relief, a settlement not only vindicates the rights of class members as employees, but may have a deterrent effect upon the defendant employer and other employers, an objective of PAGA."); *see also Visceral v. Mistras Group*, 2016 WL 5907869 *9 (N.D. Cal. 2016) ("Applying O'Connor's sliding scale approach, settlement of the PAGA claim may be

1 substantially reduced below its standalone settlement value without sacrificing its statutory purposes
2 because the non PAGA settlement is relatively substantial.”) *Moniz* then provided explicit confirmation
3 that this was an appropriate yardstick by which to measure reasonableness of a PAGA settlement.
4 *Moniz*, 72 Cal. App. 5th at 77. *Moniz*, in agreeing with the federal courts that have considered how to
5 evaluate a PAGA settlement, concluded that the class action factors are appropriately considered, along
6 with a consideration of whether the settlement furthers “PAGA’s purposes to remediate present labor law
7 violations, deter future ones, and to maximize enforcement of state labor laws.”

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

12 The second element (the PAGA purposes element) is also satisfied here. As held by *Moniz*,
13 PAGA’s purposes include (1) remediation of present labor law violations, (2) deterrence of future
14 violations, and (3) maximization of enforcement of state labor laws. Here the allocation of a major
15 portion of settlement funds to class members still advances the goal of labor law violation remediation.
16 The allocation of a major portion of settlement funds to class members also deters future violations. This
17 is a \$250,000.00 settlement, not a trivial sum. Deterrence is fulfilled. Finally, allocation of a major part
18 of settlement funds to class members still advances the goal of enforcement of state labor law. This
19 settlement is, by definition, a response to alleged violations of state labor laws, balanced against risks.

20 In addition, there is no evidence that a court or a commissioner had informed Defendant that any
21 conduct violated the Labor Code. *Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157, 1209 (2008); *Willis*
22 *v. Xerox Bus. Servs., LLC*, 2013 WL 6053831, *7-8 (E.D. Cal. 2013) (“Under California law, courts have
23 held that employers are not subject to heightened penalties for subsequent violations until and unless a
24 court or commissioner notified the employer that it is in violation of the Labor Code.”) And in *Cotter*,
25 the court found a significant reduction of the PAGA claim would be appropriate because “[t]his does not
26 appear to be a case where a company has deliberately sought to evade the law.” *Cotter v. Lyft, Inc.*, 176
27 5 F. Supp. 3d 930, 941 (N.D. Cal. 2016). Here, Defendant can state a strong case that, as the Court
28 concluded in *Cotter*, the efforts to devise compliant operational policies do not indicate an organization

1 that has deliberately sought to evade the law. This is a very significant risk factor.

2 Finally, the PAGA allocation is fair. The LWDA is receiving **\$18,000.00**. The Class is
3 receiving, net, an estimated **\$106,666.67** for the releases for eight theories of recovery (excluding the
4 \$6,000.00 as the aggrieved employees' share of the PAGA Allocation). The allocation to the LWDA is
5 not unfair and satisfies the policies underlying California's wage and hour laws.

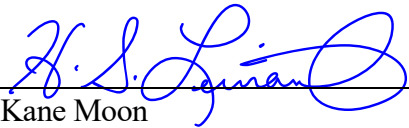
6 **VII. CONCLUSION**

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

10 Respectfully submitted,

11 Dated: September 13, 2023

MOON LAW GROUP, PC

12 By: 
13 Kane Moon
14 H. Scott Leviant
15 Mariam Ghazaryan

16 Attorneys for Plaintiff
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1055 W. 7th Street, Suite 1880, Los Angeles, CA 90017.

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

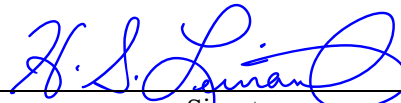
Keith Chrestionson
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Counsel for Defendant Clausen House

- ☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.
- ☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.
- ☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the offices of the addressee(s) named herein.
- ☐ **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed this **September 13, 2023** at Los Angeles, California.

H. Scott Leviant
Type or Print Name


Signature