

BROCK & GONZALES, LLP

6701 CENTER DRIVE WEST, STE. 610

LOS ANGELES, CA 90045

Tel: (310) 294-9595

Fax: (310) 961-3673

D. AARON BROCK, STATE BAR NO. 241919

DANIELLE L. GRUPPCHANG, STATE BAR NO. 313881

Attorneys for Plaintiff

Rachel Gillett

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

Rachel Gillett, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act

Plaintiff,

v.

The Pet Patrol LLC, a California limited liability company; and DOES 1 through 100, inclusive,

Defendants.

Case No.: CVRI2201461

Honorable Harold W. Hopp
Department 1

CLASS ACTION

PLAINTIFF'S NOTICE OF MOTION AND UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES

[Declaration of Proposed Class Counsel (Danielle L. GruppChang); Declaration of Proposed Class Representative (Rachel Gillett); and [Proposed] Order filed concurrently herewith]

Date: October 2, 2023

Time: 8:30 am

Department: 1

Complaint Filed: April 11, 2022

Trial Date: None Set

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

PLEASE TAKE NOTICE that on October 2, 2023 at 8:30 a.m. or as soon thereafter as the matter may be heard before the Honorable Harold W. Hopp in Department 1 of the Superior Court of California for the County of Riverside, located at the Historic Courthouse, 4050 Main Street, Riverside, California 92501, Plaintiff Rachel Gillett (“Plaintiff” or “Class Representative”) will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Amended Class Action and PAGA Settlement Agreement (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT A**” to the Declaration of Danielle L. GruppChang, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment to Class Counsel, Class Representative Service Payment to Plaintiff, and Administration Expenses Payment to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Rachel Gillett as Class Representative;
- Preliminarily appointing Brock & Gonzales, LLP as Class Counsel;
- Approving the proposed Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval (“Class Notice”), attached as “**EXHIBIT 1**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Simpluris as the Settlement Administrator; and
- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests

1 for the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment
2 to Class Counsel, Class Representative Service Payment for Plaintiff, and
3 Administration Expenses Payment to Settlement Administrator.

4 This motion is made pursuant to Rule 3.769 of the California Rules of Court, which
5 provides for approval by the Court of the settlement of a putative class action and allows the
6 Court to preliminarily certify a class for settlement purposes.

7 This motion is based upon the following memorandum of points and authorities, the
8 Settlement Agreement, the Declaration of Proposed Class Counsel (Danielle L. GruppChang)
9 and Proposed Class Representative (Rachel Gillett) in support thereof, the pleadings and other
10 records on file with the Court in this matter, and such evidence and oral argument as may be
11 presented at the hearing on this motion.

12
13 Dated: September 20, 2023

BROCK & GONZALES, LLP

14
15 By: 
16 Danielle L. GruppChang
Attorneys for Plaintiff

TABLE OF CONTENTS

I.	SUMMARY OF MOTION AND PROCEDURAL HISTORY	1
III.	SUMMARY OF THE SETTLEMENT TERMS	2
IV.	LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS.....	4
V.	THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT	5
A.	The Settlement Resulted from Arm’s-Length Negotiations Based Upon Extensive Investigation and Discovery.....	5
B.	The Settlement Is Fair, Reasonable, and Adequate.	6
C.	The Settlement Is of Significant Value.	8
VI.	CERTIFICATION OF THE CLASS IS APPROPRIATE.....	8
A.	The Class Is Ascertainable and Sufficiently Numerous.	8
B.	The Class Members Share a Well-Defined Community of Interest.	9
VII.	APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR ATTORNEYS’ FEES AND COSTS	10
VIII.	THE PROPOSED CLASS NOTICE IS ADEQUATE.....	12
IX.	APPOINTMENT OF SIMPLURIS AS THE SETTLEMENT ADMINISTRATOR.....	13
X.	PROPOSED DEADLINES FOR THE NOTICE PROCESS	14
XI.	APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR CLASS REPRESENTATIVE PAYMENT.....	14
XII.	CONCLUSION.....	15

TABLE OF AUTHORITIES

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135	5
<i>Bartold v. Glendale Federal Bank</i> (2000) 81 Cal.App.4th 816	9
<i>Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.</i> (S.D.N.Y. 1979) 480 F.Supp. 1195	12
<i>Capitol People First v. Department of Developmental Services</i> (2007) 155 Cal.App.4th 676 ...	9
<i>Cartt v. Superior Court</i> (1975) 50 Cal.App.3d 960	12
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	12
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	5
<i>Estrada v. Dr. Pepper/Seven-Up</i> , Los Angeles County Superior Court, Case No. BC 262247 (May 2005)	12
<i>Hicks v. Kaufman & Broad Home Corp.</i> (2001) 89 Cal.App.4th 908	9
<i>In re American Bank Note Holographics, Inc., Securities Litigation</i> (S.D.N.Y. 2001) 127 F.Supp.2d 418	7
<i>In re Ampicillin Antitrust Litigation</i> (D. D.C. 1981) 526 F.Supp. 494	12
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116	8
<i>Laffitte v. Robert Half Int’l, Inc.</i> (2016) 1 Cal.5th 480	12
<i>Lealao v. Beneficial Cal., Inc.</i> (2000) 82 Cal.App.4th 19.....	11, 12
<i>Linder v. Thrifty Oil Co.</i> (2000) 23 Cal.4th 429	9
<i>Mendoza v. United States</i> (9th Cir. 1980) 623 F.2d 1338.....	13
<i>Moore v. IKEA</i> , Los Angeles Superior Court, Case No. BC 263646 (Sept. 2006).....	12
<i>Rose v. City of Hayward</i> (1981) 126 Cal.App.3d 926	9
<i>Sav-On Drug Stores, Inc. v. Superior Court</i> (2004) 34 Cal.4th 319.....	8, 9
<i>Vranken v. Atlantic Richfield Co.</i> (N.D. Cal. 1995) 901 F.Supp. 294	14
Statutes	
Cal. Code Civ. Proc. § 1781.....	12
Cal. Code Civ. Proc. § 1781(f).....	5

Other Authorities

Conte & Newberg, Newberg on Class Actions § 11.26 (4th Ed.)	14
Conte & Newberg, Newberg on Class Actions § 11.47 (4th Ed.)	8
Conte & Newberg, Newberg on Class Actions § 14.03 (4th Ed.)	12

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION AND PROCEDURAL HISTORY

Plaintiff Rachel Gillett (“Plaintiff” or “Class Representative”) seeks preliminary approval of the Amended Class Action and PAGA Settlement Agreement (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant The Pet Patrol, LLC (“Defendant”), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the “Parties”) have agreed to settle this lawsuit for a Gross Settlement Amount of One Hundred Sixty Eight Thousand Dollars (\$168,000).¹

Plaintiff also seeks to provisionally certify the following Class for settlement purposes, which Defendant does not oppose:

any and all hourly-paid and/or non-exempt employees that worked for Defendant during the Class Period (“Class” or “Class Members”).²

The Class is estimated to consist of approximately 111 individuals.³

The Settlement resolves the Released Class Claims of Plaintiff and Participating Class Members and Released PAGA Claims of Plaintiff and Aggrieved Employees, against the Released Parties.⁴

Defendant is a dog grooming and boarding business. Plaintiff is a former employee of Defendant.

On April 11, 2022, Plaintiff filed a Class Action Complaint for Damages thereby commencing the above-captioned lawsuit (“Action”).

Plaintiff’s core allegation is that Defendant has violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiff and the Class Members, of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal

¹ Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Danielle GruppChang (“GruppChang Decl.”), § 1.22.

² *Id.*, §§ 1.5 & 1.12. The “Class Period” is the time period from April 11, 2018 to the earlier of: August 15, 2023 or the date of the Preliminary Approval Order.

³ GruppChang Decl., ¶ 10.

⁴ See Settlement Agreement at §§ 5.2 & 5.3 respectively for the definitions of the “Released Class Claims” and “Released PAGA Claims,” and at § 1.41 for the definition of the “Released Parties.”

and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiff contends that she, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees. Defendant answered the Complaint and has denied all allegations.

On May 16, 2023, the Parties participated in a formal, full-day mediation conducted by Henry Bongiovi, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. In fact, prior to transitioning his practice to ADR, Mr. Bongiovi practiced labor and employment law on behalf of employees and employers. Ultimately, with the aid of the mediator and the mediator's evaluations, the Parties reached the Settlement described herein to resolve the Action in its entirety.

III. SUMMARY OF THE SETTLEMENT TERMS

Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) attorneys' fees in an amount not to exceed Fifty Six Thousand Dollars (\$56,000) (i.e., 1/3 of the Gross Settlement Amount) and reimbursement of costs and expenses in an amount not to exceed Fifteen Thousand Dollars (\$15,000.00) to Class Counsel (collectively referred to as the "Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment"); (2) settlement administration costs, which are not to exceed Twelve Thousand Dollars (\$12,000) to the Settlement Administrator ("Administration Expenses Payment"); (3) Sixteen Thousand Eight Hundred Dollars (\$16,800) allocated towards the settlement of PAGA ("PAGA Penalties"); and (4) payment in the amount of up to Ten Thousand Dollars (\$10,000) to Plaintiff ("Class Representative Service Payment").⁵

The Parties have agreed that the Settlement Administrator will determine each Participating Class Member's share of the available Net Settlement Amount ("Individual Class

⁵ Settlement Agreement, §§ 3.1 - 3.2.4.2.

Payment”), in accordance with the following formula: Class Member’s Workweeks ÷ Class Workweeks) × Net Settlement Amount.⁶ Aggrieved Employee’s Individual PAGA Payment, will be calculated by the Settlement Administrator in accordance with the following formula: (Aggrieved Employee’s Workweeks ÷ PAGA Workweeks) x the PAGA Penalties.⁷

Each Participating Class Member’s Individual Class Payment will be allocated as follows: 33% as wages to be reported on an IRS Form W2 and 67% as penalties and interest to be reported on an IRS Form 1099.⁸ Participating Class Members will be issued payment of their Individual Class Payment subject to reduction for the employee’s share of taxes and withholdings with respect to the wage portion of each Individual Class Payment.⁹ Defendant will pay the employer’s share of payroll taxes and contributions with respect to the wage portion of Individual Class Payments separately and in addition to the Gross Settlement Amount.¹⁰ Each Aggrieved Employee’s Individual PAGA Payment will be allocated entirely as penalties and will be reported on an IRS Form 1099.¹¹

The checks issued to Participating Class Members and Aggrieved Employees will be negotiable for one hundred eighty (180) calendar days from the date of mailing.¹² Checks that are not negotiated within the 180-day period will be cancelled and the funds from associated with such cancelled checks will be transmitted by the Settlement Administrator to the State Controller Unclaimed Property Fund in the name of the corresponding Class Member.¹³

Class Members who wish to be excluded from the Settlement (i.e., opt out) must notify the Settlement Administrator in writing indicating that they want to exclude themselves (“Request for Exclusion”).¹⁴ To be timely, the Class Member must mail, fax, or email the Request for Exclusion to the Settlement Administrator, postmarked on or before the date that is

⁶ Settlement Agreement, § 3.2.4.

⁷ *Id.*, § 3.2.5.

⁸ *Id.*, § 3.2.4.1.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Id.*, § 3.2.5.1

¹² *Id.*, § 4.4.1.

¹³ *Id.*, § 4.4.3.

¹⁴ *Id.*, § 7.5.1.

sixty (60) calendar days from the initial mailing of the Class Notice (“Response Deadline”).¹⁵ A valid Request for Exclusion must include: (1) the Class Member’s name; (2) Class Member’s address; (3) Class Member’s email address or telephone number; and (4) the following statement: “Please exclude me as a Class Member in the *Rachel Gillett v. The Pet Patrol, LLC* matter, I understand that by excluding myself I will not receive any payment under the Settlement.” or a statement of reasonably similar meaning.¹⁶ Class Members who submit a valid and timely Request for Exclusion will not be bound by release of Released Class Claims.¹⁷ Aggrieved Employees may not request exclusion from the release of Released PAGA Claims.¹⁸

Only Class Members who do not exclude themselves from the Settlement (i.e., Participating Class Members) have standing to object to the Settlement.¹⁹ A valid Objection must be mailed, faxed, or emailed on or before the Response Deadline.²⁰ Alternatively, a Participating Class Member may appear in Court to present an oral objection at the Final Approval Hearing.²¹

Class Members who wish to dispute the number of Workweeks credited to may do so by mailing, faxing, or emailing a written letter to the Settlement Administrator on or before the Response Deadline (“Workweek Dispute”).²²

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). Courts review class action settlements in a two-step process: (1) an earlier conditional review by the court; and (2) a later detailed review after the period during which notice is distributed to class members for their comments or objections. Conte & Newberg, *Newberg on Class Actions* § 11.24 (4th Ed. 2002).

¹⁵ Settlement Agreement, § 1.43

¹⁶ *Id.*, § 7.5.1.

¹⁷ *Id.*, § 7.5.4.

¹⁸ *Id.*, § 7.5.3.

¹⁹ *Id.*, § 7.7.1.

²⁰ *Id.*, § 7.7.2.

²¹ *Ibid.*

²² *Id.*, § 7.6.

Preliminary approval of a settlement does not require a court to make a final determination that the settlement is fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after notice of the settlement has been given to the class members and they have had an opportunity to voice their views of the settlement or to exclude themselves from the settlement. Cal. R. Ct. 3.769(g).

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

The trial court has broad powers to determine whether a proposed settlement is fair under the circumstances of the case. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. To make this fairness determination, courts must consider several relevant factors, including “the strength of the plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and view of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” *Dunk, supra*, 48 Cal.App.4th at 1801.

“A presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Wershba, supra*, 91 Cal.App.4th at 245; *Dunk, supra*, 48 Cal.App.4th at 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151.

A. The Settlement Resulted from Arm’s-Length Negotiations Based Upon Extensive Investigation and Discovery.

The Parties actively litigated the Action since it was commenced on April 11, 2022. Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the case for class certification and trial.²³

Prior to engaging in mediation, Class Counsel conducted significant investigation and informal discovery regarding the facts of the case, including and not limited to, the exchange,

²³ GruppChang Decl., ¶¶ 12-14.

review, and analysis of thousands of pages of documents and data produced by Defendant.²⁴ Class Counsel interviewed Plaintiff and investigated other Class Members to gather facts and to identify potential witnesses.²⁵

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Henry Bongiovi, *esq.*, a well-respected mediator experienced in mediating complex labor and employment matters.²⁶ Prior to and during the mediation and settlement discussions, the Parties exchanged class-wide information and engaged in an extensive discussion regarding their evaluations of the case and various aspects of the case, including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, wage-and-hour enforcement, and PAGA representative claims, as well as the evidence produced and analyzed, the possibility of appeals, and what Defendant alleged was enforceable and valid arbitration agreements, among other things.²⁷ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.²⁸

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification and trial.²⁹ In addition, Class Counsel have extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.³⁰

B. The Settlement Is Fair, Reasonable, and Adequate.

The Settlement, which provides for a Gross Settlement Amount of One Hundred Sixty Eight Thousand Dollars (\$168,000), represents a fair, adequate, and reasonable resolution of the matter.³¹ The Settlement takes into account the potential risks and rewards inherent in any case

²⁴ GruppChang Decl., ¶ 13.

²⁵ *Ibid.*

²⁶ *Id.*, ¶ 12.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Id.*, ¶¶ 3-8.

³¹ *Id.*, ¶¶ 12, 14, 19 & 22.

1 and, in particular, in the case at issue (for example, evidence of meal period waivers).³²
 2 Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement
 3 represents a fair, reasonable, and adequate recovery for the Class.³³

4 Assuming that the Class Counsel Fees Payment, Class Counsel Litigation Expenses
 5 Payment, Class Representative Service Payment, PAGA Payment, and Administration Expenses
 6 Payment are approved by the Court and paid in the full amounts provided for by the Settlement,
 7 the Settlement provides for a Net Settlement Amount that is currently estimated to be Fifty Eight
 8 Thousand Two Hundred Dollars (\$58,200).³⁴ As discussed in Part III, *supra*, the entire Net
 9 Settlement Amount will be fully paid out to the Participating Class Members, in accordance
 10 with the Settlement Agreement. The amount of each Participating Class Member's Individual
 11 Class Payment will be calculated based on his or her Workweeks during the Class Period.³⁵
 12 There is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds
 13 for purposes of preliminary approval. Even at the final approval stage, "[a]n allocation formula
 14 need only have a reasonable, rational basis [to warrant approval], particularly if recommended
 15 by experienced and competent class counsel." *In re American Bank Note Holographics, Inc.*,
 16 *Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

17 In light of the foregoing considerations, Class Counsel believe that the Settlement as a
 18 whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.³⁶
 19 Although the recommendations of Class Counsel are not conclusive, the Court can properly take
 20 the recommendations into account, particularly if Class Counsel appear to be competent, and
 21 have experience with this type of litigation, and investigation have been completed, as is the
 22 case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the
 23 Settlement.

24 ///

25 ///

26 ³² GruppChang Decl., ¶¶ 18-20.

27 ³³ *Id.*, ¶¶ 12, 14, & 22.

28 ³⁴ Settlement Agreement, §§ 1.28 & 3.1 – 3.2.3.

³⁵ *Id.*, § 3.2.4.

³⁶ GruppChang Decl., ¶¶ 12, 14, & 22.

1 **C. The Settlement Is of Significant Value.**

2 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties
3 conducted significant informal discovery and exchanged thousands of pages of documents, data,
4 and information prior to mediation.³⁷ The documents and information that Class Counsel
5 obtained from Defendant and through other sources allowed Class Counsel to develop valuation
6 models in order to evaluate the potential value and merit of the claims, and perform a complete
7 evaluation of Defendant's defenses thereto.³⁸ As outlined in the Declaration of Danielle L.
8 GruppChang, Class Counsel performed an extensive analysis of each and every claim pursuant
9 to *Kullar* prior to entering into the Settlement.³⁹

10 **VI. CERTIFICATION OF THE CLASS IS APPROPRIATE.**

11 For settlement purposes, the requisites for establishing class certification are met, and
12 the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁴⁰
13 California Code of Civil Procedure Section 382 “authorizes class actions when the question is
14 one of a common or general interest, of many persons, or when the Parties are numerous, and it
15 is impracticable to bring them all before the court.” *Sav-On Drug Stores, Inc. v. Superior Court*
16 (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies
17 “both [1] an ascertainable class and [2] a well-defined community of interest among class
18 members.” *Id.*

19 **A. The Class Is Ascertainable and Sufficiently Numerous.**

20 “Ascertainability is required in order to give notice to putative class members as to whom
21 the judgment in the action will be *res judicata*.” *Hicks v. Kaufman & Broad Home Corp.* (2001)
22 89 Cal.App.4th 908, 914. “A class is ascertainable if it identifies a group of unnamed Plaintiff
23 by describing a set of common characteristics sufficient to allow a member of that group to
24 identify himself or herself as having a right to recover based on the description.” *Bartold v.*
25 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be
26

27 ³⁷ GruppChang Decl., ¶¶ 12-14 & 19.

28 ³⁸ *Id.*, ¶ 19.

³⁹ *Id.*, ¶¶ 12-14 & 17-19.

⁴⁰ Settlement Agreement, § 12.1.

1 sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

2 This action involves a class of approximately 111 individuals.⁴¹ This class is sufficiently
 3 numerous. See *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a
 4 class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at
 5 that point). Further, all Class Members can and will be identified by Defendant to the Settlement
 6 Administrator through a review of Defendant's employment records regarding hourly-paid
 7 and/or non-exempt employees in California during the Class Period. As such, the Class is
 8 ascertainable and sufficiently numerous.

9 **B. The Class Members Share a Well-Defined Community of Interest.**

10 The community of interest requirement “embodies three factors: (1) predominant
 11 common questions of law or fact; (2) class representative with claims or defenses typical of the
 12 class; and (3) class representative who can adequately represent the class.” *Sav-On, supra*, 34
 13 Cal.4th at 326. “[T]he community of interest requirement for certification *does not mandate*
 14 *that class members have uniform or identical claims.*” *Capitol People First v. Dep’t of*
 15 *Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original). Rather, courts
 16 focus on the defendant’s internal policies and “pattern and practice . . . in order to assess whether
 17 that common behavior toward similarly situated plaintiff renders class certification appropriate.”
 18 *Id.* (citing *Sav-On, supra*, 34 Cal.4th at 333).

19 Here, common issues of fact and law predominate as to each of the claims alleged and
 20 asserted in the Complaint. Based on the documents and information obtained through informal
 21 discovery and exchange of information in this case, Plaintiff contend that all Class Members
 22 were subject to the same or similar job duties and uniform operations and employment practices,
 23 policies, and procedures during the time period at issue.⁴² Plaintiff’s claims arise from
 24 Defendant's alleged uniform policy and systematic scheme, with respect to Plaintiff and the
 25 Class Members, of, *inter alia*, failing to: properly pay overtime and minimum wages for all
 26 hours worked, provide compliant meal and rest periods and associated premium pay, timely pay

27
 28 ⁴¹ GruppChang Decl., ¶ 10.

⁴² *Id.*, ¶ 12.

wages during employment and upon termination, provide complaint wage statements, keep requisite payroll records, and reimburse necessary business-related expenses.⁴³ Plaintiff also contends that Defendant's payroll and recordkeeping practices with respect to Plaintiff and the Class Members were substantially the same during the time period at issue.⁴⁴ As a result, Plaintiff claim that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue.⁴⁵

Plaintiff maintains that the outcome of this litigation would be determined by Defendant's alleged uniform operations and employment policies and procedures that applied across the putative class members. Accordingly, the Court should certify the Class for settlement purposes only.

VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR ATTORNEYS' FEES AND COSTS

Class Counsel has been investigating and litigating this action for almost one and one half years, and was actively preparing the matter for class certification and trial.⁴⁶ The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigations into the facts of the case and informal discovery. Class Counsel reviewed thousands of pages of documents and data⁴⁷ and also interviewed and obtained information from Plaintiff and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings, discovery, and the production of documents and data prior to mediation.⁴⁸ Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.⁴⁹

///

///

⁴³ GruppChang Decl., ¶ 19.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Id.*, ¶¶ 12-14.

⁴⁷ *Id.*, ¶ 13.

⁴⁸ *Ibid.*

⁴⁹ *Id.*, ¶ 12.

1 Class Counsel is well-experienced in employment law and wage-and-hour class action
2 litigation and used that experience to obtain a great result for the Class.⁵⁰

3 The Settlement provides for Class Counsel to apply to the Court for Class Counsel Fees
4 Payment consisting of attorneys' fees in an amount not to exceed one third (1/3) of the Gross
5 Settlement Amount (i.e., \$56,000) and Class Counsel Litigation Expenses Payment in an amount
6 not to exceed Fifteen Thousand Dollars (\$15,000.00) for costs and expenses.⁵¹ The attorneys'
7 fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took
8 in bringing and litigating the case, (2) the extensive time, effort, and expense that Class Counsel
9 has dedicated to the case, (3) the skill and determination that Class Counsel has shown, (4) the
10 results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement
11 that Class Counsel has achieved for the Class Members, and (6) the other cases that Class
12 Counsel had to turn down in order to devote their time and efforts to this matter. The proposed
13 Class Notice provides Class Members with information about the amount allocated toward the
14 Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, and that an award
15 of the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment will be
16 sought, as provided for by the Settlement.⁵²

17 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
18 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*
19 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. California law provides that attorney fee
20 awards should be equivalent to fees paid in the legal marketplace to compensate for the result
21 achieved and risk incurred. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 (citing
22 *Lealao, supra*, 82 Cal.App.4th at 48-49).

23 The propriety of calculating and awarding attorneys' fees as a percentage of a settlement
24 that has, by litigation, been preserved or recovered for the benefit of others, has been confirmed
25 by the California Supreme Court. *Laffitte, supra*, 1 Cal.5th 480 at 486 & 506.

26 ///

27 ⁵⁰ GruppChang Decl., ¶¶ 3-8.

28 ⁵¹ Settlement Agreement, § 3.2.2.

⁵² *Id.*, Exh. A.

Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. *Newberg*, § 14.03; see also *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys' fees in the amount of 45% of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys' fees). California courts routinely approve class action attorneys' fee awards "averag[ing] around one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions); see also *Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case No. BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles County Superior Court Case No. BC263646 (Sept. 2006) (wage and hour).

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁵³

Class Counsel will provide extensive evidence as to the time worked, litigation efforts, and further argument at the time of filing Plaintiff's motion for final approval of the Settlement and application for the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment at the Final Approval Hearing. Considering the work performed and the risks incurred, the attorneys' fees provided for by the Settlement and to be requested by Class Counsel are well within the range of reasonableness.

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE.

California statutory and case law vests the Court with broad discretion in fashioning appropriate class notice. See Cal. Code Civ. Proc. § 1781; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 973-74. A class notice is adequate if it "present[s] a fair recital of the subject matter and proposed terms" of the Settlement. *Mendoza v. United States* (9th Cir. 1980) 623 F.2d 1338, 1351 (quoting *Marshall v. Holiday Magic* (9th Cir. 1977) 550 F.2d 1173, 1177).

///

///

⁵³ GruppChang Decl., ¶ 20.

The proposed Class Notice⁵⁴ describes the Settlement, the deadlines and procedures to submit an Objection, Request for Exclusion, and/or Workweek Dispute, and the date and time of the Final Approval Hearing.⁵⁵ The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement.⁵⁶ The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement and also appraises the Class Members of, *inter alia*, how their gross Individual Class Payment and Individual PAGA Payment are calculated and the number of Workweeks credited to them.⁵⁷

The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39. Accordingly, the Court should approve the proposed Class Notice.

IX. APPOINTMENT OF SIMPLURIS AS THE SETTLEMENT ADMINISTRATOR

The Parties have selected Simpluris to administer the Settlement. Simpluris is a recognized national administrator of class action and claims administration.

The Settlement Administrator will mail the Class Notice to each Class Member by first class USPS mail.⁵⁸ For any undeliverable Class Notice that is returned to the Settlement Administrator returned on or before the Response Deadline, the Settlement Administrator will obtain an updated address, and re-mail the Class Notice to the Class Member.⁵⁹ The Settlement Administrator will receive and process Requests for Exclusion, Objections, and any Workweek Disputes.⁶⁰

The Settlement Administrator will calculate the amounts of the gross Individual Class Payments and Individual PAGA Payments; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of gross Individual Class Payments; mail the Individual Class Payment checks to Participating Class Members and Individual PAGA Payments to Aggrieved Employees; issue W-2 and 1099 forms; calculate and disburse the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative

⁵⁴ Settlement Agreement, Exh. A.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ *Id.*, § 7.4.2.

⁵⁹ *Ibid.*

⁶⁰ *Id.*, § 7.8.3.

Service Payment, and LWDA's portion of the PAGA Penalties; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.⁶¹ The Administration Expenses Payment will not exceed Twelve Thousand Dollars (\$12,000) and will be paid out of the Gross Settlement Amount, subject to approval by the Court.⁶²

Accordingly, Plaintiff respectfully request that the Court appoint Simpluris as the Settlement Administrator and direct the mailing of the Class Notice to the Class Members in the manner outlined and based on the proposed deadlines as described herein and set forth in the Settlement Agreement.

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At the preliminary approval stage, Plaintiff seeks approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26.

Within seven (7) calendar days after the preliminary approval date, Defendant will provide the Settlement Administrator with the Class Data.⁶³ Within fourteen (14) calendar days of receipt of the Class Data, the Settlement Administrator will mail the Class Notice to the Class Members via U.S. Mail.⁶⁴ Class Members and/or Aggrieved Employees will have until the applicable Response Deadline (i.e., 60 days after mailing) to submit a Request for Exclusion, Objection, and/or Workweek Dispute.⁶⁵

XI. APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR CLASS REPRESENTATIVE PAYMENT

Plaintiff respectfully requests that the Court appoint her as the Class Representative and preliminarily approve the Class Representative Service Payment in an amount up to Ten Thousand Dollars (\$10,000) to Plaintiff.⁶⁶ It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299.

⁶¹ Settlement Agreement, § 7.

⁶² *Id.*, § 3.2.3.

⁶³ *Id.*, § 4.2.

⁶⁴ *Id.*, § 7.4.2.

⁶⁵ *Id.*, § 1.43.

⁶⁶ *Id.*, § 3.2.1.

1 Plaintiff spent a substantial amount of time and effort in producing relevant documents
2 and past employment records and providing the facts and evidence necessary to attempt to prove
3 the allegations and was available whenever Class Counsel needed her and actively tried to obtain
4 and provide information that would benefit the Class.⁶⁷ Accordingly, it is appropriate and just
5 for Plaintiff to receive a Class Representative Service Payment for her services on behalf of the
6 Class.

7 **XII. CONCLUSION**

8 For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary
9 approval of the Settlement; conditionally certify the Class for settlement purposes; preliminarily
10 appoint and designate Brock & Gonzales, LLP as Class Counsel; preliminarily appoint and
11 designate Plaintiff Rachel Gillett as Class Representative; appoint Simpluris as Settlement
12 Administrator; preliminarily approve the allocations for Class Counsel Fees Payment, Class
13 Counsel Litigation Expenses Payment, Class Representative Service Payment, PAGA Penalties,
14 and Administration Expenses Payment; approve the proposed Class Notice; direct the
15 Settlement Administrator to undertake the notice and settlement administration process in
16 conformity with the deadlines and procedures provided by the Settlement Agreement; and
17 schedule a Final Approval Hearing to take place in approximately four months after the
18 Preliminary Approval Order is entered.

19 Dated: September 19, 2023

BROCK & GONZALES, LLP

20
21 By: 
22 Danielle L. GruppChang
23 Attorneys for Plaintiff
24
25
26
27
28

⁶⁷ GruppChang Decl., ¶ 21; Gillett Decl., ¶¶ 4-6.