

Larry W. Lee (State Bar No. 228175)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa St., Suite 1250
Los Angeles, California 90071
(213) 488-6555
(213) 488-6554 facsimile
lwlee@diversitylaw.com

Attorneys for Plaintiff and the Class
* ADDITIONAL ATTORNEYS ON FOLLOWING PAGE

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

TRAVIS THOMPSON, on behalf himself
and on of all others similarly situated,

Plaintiff,

vs.

SELECTQUOTE INSURANCE
SERVICES, a California Corporation; and
DOES 1 through 100, inclusive,

Defendants.

) Case No. CVRI2200129

)

) [Assigned for All Purposes to Honorable Harold
) Hopp in Dept 1]

)

)

) **NOTICE OF MOTION AND MOTION
) FOR PRELIMINARY APPROVAL OF
) CLASS ACTION SETTLEMENT; AND
) MEMORANDUM OF POINTS AND
) AUTHORITIES**

)

)

) Date: September 11, 2023

) Time: 8:30 a.m.

) Department: 1

)

) **RES. ID: Per 6/14/23 Minute Order**

)

)

1 Edward W. Choi, Esq. SBN 211334
2 LAW OFFICES OF CHOI & ASSOCIATES
3 515 S. Figueroa St., Suite 1250
4 Los Angeles, CA 90071
5 Telephone: (213) 381-1515
6 Facsimile: (213) 465-4885
7 Email: edward.choi@choiandassociates.com

8 William L. Marder, Cal Bar No. 170131
9 POLARIS LAW GROUP, LLP
10 501 San Benito Street, Suite 200
11 Hollister, California 95023
12 Telephone: 831.531.4214
13 Facsimile: 831.634.0333

14 Dennis S. Hyun (State Bar No. 224240)
15 HYUN LEGAL, APC
16 515 S. Figueroa St., Suite 1250
17 Los Angeles, CA 90071
18 (213) 488-6555
19 (213) 488-6554 facsimile

20 Attorneys for Plaintiff and the Class
21
22
23
24
25
26
27

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on September 11, 2023 at 8:30 a.m. in Department 1 of the Superior Court of the State of California for the County of Riverside, Historic Courthouse, located at 4050 Main Street, Riverside, CA 92501, before the Honorable Harold W. Hopp, Judge presiding, Plaintiff TRAVIS THOMPSON will and hereby does move the Court for an Order:

(1) preliminarily approving the Class Action Settlement Agreement and Release of Claims between Plaintiff and Defendant SelectQuote Insurance Services (“Settlement Agreement”) and the settlement fund in the amount of Four Hundred Seventy-Five Thousand Dollars and No Cents (\$475,000.00) (“Gross Settlement Amount”), which is to be distributed as follows: out of the Gross Settlement Amount, (a) an estimated minimum of \$231,166.67 to be paid to the Participating Class Members; (b) up to \$7,500 to be paid to the Class Representative Service Payment for his services to the Class; (c) up to a total of \$ \$158,333.33 to be paid to Class Counsel for attorneys’ fees and reimbursement of actual costs up to a maximum of \$30,000.00; (d) the PAGA Payment of \$50,000, 75% of which, or \$37,500 will be paid to the Labor Workforce Development Agency (the “LWDA”) and 25% of which, or \$12,500 will be paid to Aggrieved Employees; and (e) the Settlement Administrator to be paid for its fees and costs relating to the claims administration process in the amount of \$10,500.00;

(2) finding on a preliminary basis that the Settlement appears to be within the range of reasonableness of a settlement, and that the Class Representative service award, Class Counsel fees and costs, the claims administration fees, and the allocation of payments to Participating Class Members, could ultimately be given final approval by this Court;

(3) approving the Notice of Proposed Settlement or Class Notice packet (“Class Notice”) to be sent to Class Members, that is attached as Exhibits A-C to the Agreement;

(4) appointing Phoenix Settlement Administrators as the Settlement Administrator; and

(5) setting the matter for a Final Fairness and Final Approval hearing.

1 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
2 provides for court approval of the settlement of a purported class action and allows the Court to
3 preliminarily certify a class for settlement purposes.

4 The basis for this Motion, filed without any opposition from Defendant, is that the
5 proposed settlement is fair, adequate, and reasonable and the procedures proposed by the Parties
6 are adequate to ensure the opportunity of class members to participate in, opt out of, or object to
7 the settlement.

8 This Motion will be based on the Memorandum of Points and Authorities included
9 herein, the Settlement Agreement concurrently filed herewith, and the supporting Declarations
10 of Edward W. Choi ("Choi Decl."), Larry W. Lee ("Lee Decl."), William Marder ("Marder
11 Decl."), Declaration of Dennis S. Hyun ("Hyun Decl."), Declaration of Angela J. Rafoth
12 ("Rafoth Decl."), Declaration of Deanne Gash ("Gash Decl."), Declaration of Travis Thompson
13 ("Thompson Decl."), Declaration of Jodey Lawrence on behalf of Phoenix Settlement
14 Administrators as Settlement Administrator ("Phoenix Decl."), and upon the oral arguments of
15 counsel (should there be any) and on the complete records and file herein.

16 Dated: August 17, 2023

LAW OFFICES OF CHOI & ASSOCIATES

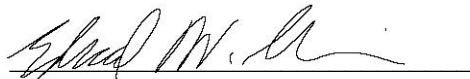
17
18 By: 
19 Edward W. Choi, Esq.
20 Attorneys for Plaintiff TRAVIS THOMPSON
21
22
23
24
25
26
27

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION AND SUMMARY OF THE CASE.....	1
II. PROCEDURAL HISTORY.....	1
III. THE PARTIES' SETTLEMENT NEGOTIATIONS	2
IV. DISCUSSION.....	3
A. PROPOSED CLASS (CMO G(3)(a)(i))	4
B. ATTORNEY'S ESTIMATE OF THE TOTAL AMOUNT OF DAMAGES, MONETARY PENALTIES OR OTHER RELIEF THAT THE CLASS WOULD BE AWARDED IF THE ACTION WERE SUCCESSFUL AT TRIAL ON ALL OF ITS CLAIMS (CMO G(3)(a)(ii))	5
1. Failure to Pay Regular/Overtime Wages.....	5
2. Meal and Rest Break Premiums.....	6
3. Unreimbursed Business Expenses	6
4. Derivative Labor Code Penalties.....	6
C. ATTORNEY'S ESTIMATE OF WHAT THE CLASS COULD REASONABLY EXPECT TO BE AWARDED AT TRIAL, TAKING INTO ACCOUNT THE LIKELIHOOD OF PREVAILING AND OTHER ATTENDANT RISKS (CMO G(3)(a)(ii))	7
D. ATTORNEY'S ESTIMATE OF THE RECOVERY BY THE AVERAGE CLASS MEMBER IF THE SETTLEMENT WERE APPROVED (CMO G(3)(a)(iv)). 	10
E. ATTORNEY'S ESTIMATE OF THE RECOVERY BY THE AVERAGE AGGRIEVED EMPLOYEE IF THE SETTLEMENT WERE APPROVED (CMO G(3)(a)(v)).....	10
F. DISCOVERY AND OTHER FACTUAL INVESTIGATION CMO G(3)(a)(vi)).	10

1	G. OTHER PENDING LITIGATION (CMO G(3)(a)(vii) and G(3)(b)).....	10
2	H. UNCASHED CHECKS, UNPAID RESIDUE OR OTHER UNCLAIMED OR	
3	ABANDONED FUNDS (CMO G(3)(c)(i)-(v)).....	11
4	I. SETTLEMENT ADMINISTRATOR (CMO G(3)(d)(i)).....	11
5	J. RELEASE BY CLASS MEMBERS IS LIMITED (CMO G(3)(e)(i)-(iv))	11
6	K. NOTICE TO CLASS MEMBERS (CMO G(3)(f)).....	13
7	L. SETTLEMENT DOES NOT REQUIRE ANY CLASS MEMBERS TO SUBMIT	
8	CLAIMS (CMO G(3)(g))	14
9	M. SETTLEMENT DOES NOT PROVIDE ANY REVERSION TO DEFENDANT	
10	(CMO G(3)(h)).....	14
11	N. THE SETTLEMENT INCLUDES COMPENSATION FOR UNPAID WAGES	
12	(CMO G(3)(i) & (j)).....	14
13	O. PROPOSED NOTICE, OBJECTION FORM AND EXCLUSION FORMS (CMO	
14	G(3)(k))	15
15	P. TYPICALITY AND ADEQUACY OF REPRESENTATION.....	15
16	1. Class Representative’s Claims are Typical of the Class.....	15
17	2. Class Counsel Have Adequately Represented the Class and Has	
18	Experience with Wage and Hour Class Actions	16
19	Q. CLASS REPRESENTATIVE ENHANCEMENT AND ATTORNEYS’ FEES	
20	AND COSTS	16
21	1. Attorneys’ Fees and Costs.....	16
22	R. PROPOSED PAYMENT TO CLASS REPRESENTATIVE.....	17
23	V. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR	
24	PRELIMINARY APPROVAL.....	18

TABLE OF AUTHORITIES

Page(s)

State Cases

<i>Carrington v. Starbucks Corp.</i> , 30 Cal. App. 5th 504, 517 (2018).....	8, 9
<i>City of San Jose v. Superior Court</i> , 12 Cal. 3d 447, 460 (1974).....	15
<i>Furry v. East Bay Publishing, LLC</i> , 30 Cal. App. 5th 1072, 1085 (2018).....	8
<i>Kao v. Holiday</i> , 12 Cal. App. 5th 947, 961-62 (2017)	8
<i>Laffitte v. Robert Half Int'l</i> , 1 Cal. 5th 480, 503 (2016)	17
<i>Morillion v. Royal Packing Co.</i> , 22 Cal. 4th 575, 584 (2000)	5
<i>Naranjo v. Spectrum Security Serv.</i> , 2023 Cal. App. Lexis 143 (Feb. 27, 2023)	8
<i>Richmond v. Dart Industries, Inc.</i> , 29 Cal. 3d 462, 473 (1981).....	15
<i>Stephens v. Montgomery Ward & Co., Inc.</i> , 193 Cal. App. 3d 411, 421 (1987).....	15
<i>Vasquez v. Superior Court</i> , 4 Cal. 3d 800, 812-13 (1971).....	15

Federal Cases

<i>Frlekin v. Apple Inc.</i> , 2015 U.S. Dist. LEXIS 151937, at *10 (N.D. Cal. July 16, 2015)	5
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011, 1019 (1998).....	15
<i>Kyriazi v. Western Elec. Co.</i> , 527 F. Supp. 18 (D. N. J. 1981).....	18
<i>League of Martin v. City of Milwaukee</i> , 588 F. Supp. 1004 (E. D. Wis. 1984).....	18
<i>Women's Committee for Equal Employment Opportunity v. NBC</i> , 76 F.R.D. 173 (SDNY 1977)	18

Statutes

Bus. & Prof. Code § 17200, <i>et seq.</i>	1
Cal. Bus. & Prof Code § 17200 <i>et seq.</i>	12
Labor Code § 1174(d)	12

1	Labor Code § 1182.12	12
2	Labor Code § 1194	1, 5, 12
3	Labor Code § 1194.2	1, 12
4	Labor Code § 1197	1, 5, 12
5	Labor Code § 1197.1	1, 5, 12
6	Labor Code § 1198	12
7	Labor Code § 201	12
8	Labor Code § 202	12
9	Labor Code § 203	7, 12
10	Labor Code § 204	12
11	Labor Code § 218.5	12
12	Labor Code § 223	12
13	Labor Code § 226	passim
14	Labor Code § 226.3	12
15	Labor Code § 226.7	1, 2, 12
16	Labor Code § 246	12
17	Labor Code § 2698, <i>et seq.</i>	1
18	Labor Code § 2699(f)(2)	8
19	Labor Code § 2699.3	1
20	Labor Code § 2800	12
21	Labor Code § 2802	1, 2
22	Labor Code § 510	1, 5, 12
23	Labor Code § 512	1, 2, 12
24	Labor Code § 516	12
25	Labor Code § 558	1, 5, 12
26		
27		

1 Labor Code § 226(e)8

2 Labor Code §§ 1400-1403.....12

3 Labor Code §§ 201-203.....2

4 **Other Authorities**

5 4 Alba Conte & Herbert B. Newberg, Newberg on Class Actions, § 11.26 (4th ed. 2002).....4

6 Manual for Complex Litigation (Third)§ 30.413

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

2

3
4
5
6
7
8
9
10
11

12
13
1416
17
18

19

20
21
22
23
24

25
26

1 Failure to Provide Accurate Itemized Wage Statements; (4) Failure to Provide Wages When
2 Due; and (5) Unfair Competition. (Choi Decl. at ¶3). On June 9, 2022, Plaintiff filed a First
3 Amended Complaint adding a cause of action for alleged PAGA violations. (*Id.* at ¶4). On or
4 about October 11, 2022, Plaintiff submitted an amended letter to the LWDA, which included
5 additional claims for alleged violation of Labor Code sections 226.7 and 512 for allegedly
6 noncompliant rest periods and derivative claims for alleged violations of Labor Code sections
7 226 and 201-203, as well as claims for failure to reimburse necessary business expenditures
8 pursuant to Labor Code section 2802. (*Id.* at ¶ 5, Ex. B). On March 13, 2023, Plaintiff filed a
9 Second Amended Class Action Complaint adding a cause of action under failure to provide rest
10 periods and reimburse business expenses. (*Id.* at ¶ 6).

11 After exchanging formal and informal discovery, the Parties agreed to engage in private
12 mediation with well-respected mediator, Honorable Brian Walsh (Ret.) on October 27, 2022 and
13 successfully reached a resolution of the entire matter. (*Id.* at ¶7). Plaintiff now moves for
14 preliminary approval of the class claims against SelectQuote.

15 **III. THE PARTIES' SETTLEMENT NEGOTIATIONS**

16 On October 27, 2022, the Parties attended a full-day mediation session with experienced
17 wage and hour mediator Honorable Brian Walsh (Ret.). (Choi Decl. at ¶7). In advance of the
18 mediation, the Parties discussed the basis of Plaintiff's legal claims under the asserted Labor
19 Code sections and the legal authorities for and against Plaintiff's theories of liability. (*Id.* at ¶ 8).
20 The Parties also engaged in informal discovery, where Defendant SelectQuote provided Plaintiff
21 with data which included the class members' dates of employment, time records, and
22 corresponding pay data. (*Id.*). Based on the data produced by SelectQuote, Plaintiff
23 subsequently conducted an exposure analysis. (*Id.*).

24 After independently analyzing and investigating the facts and law relevant to the
25 Plaintiff's claims, the parties outlined their respective positions in mediation briefs for Judge
26 Walsh. (*Id.* at ¶8.) Based on data provided by SelectQuote, Plaintiff's counsel also calculated
27 the maximum exposure in Labor Code penalties in preparation for mediation. (*Id.* at ¶ 10).

1 The Parties participated in a full-day mediation with Judge Walsh. (*Id.* at ¶ 7). During
2 the mediation, the Parties debated the strengths and weaknesses of Plaintiff’s claims and
3 SelectQuote’s defenses thereto and the scope of employees whom Plaintiff could represent even
4 if Plaintiff’s legal claims had merit. (*Id.*)

5 After a full day of mediation, the Parties were able to resolve this matter and executed
6 the Memorandum of Understanding (*Id.* at ¶ 7). The Parties subsequently memorialized all
7 formal terms in the Settlement Agreement. (*Id.*)

8 IV. DISCUSSION

9 Any settlement of class litigation must be reviewed and approved by the Court. This is
10 done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review
11 after notice has been distributed to the class members for their comment or objections. The
12 Manual for Complex Litigation (Third) states:

13 “Approval of class action settlements involves a two-step process.
14 First, counsel submits the proposed terms of settlement and the
15 court makes a preliminary fairness evaluation. If the preliminary
16 evaluation of the proposed settlement does not disclose grounds to
17 doubt its fairness or other obvious deficiencies, such as unduly
18 preferential treatment of class representatives or of segments of
19 the class, or excessive compensation for attorneys, and appears to
20 fall within the range of possible approval, the court should direct
21 that notice ... be given to the class members of a formal fairness
22 hearing, at which arguments and evidence may be presented in
23 support of and in opposition to the settlement.”
24 § 30.41.

25 Thus, the preliminary approval by the trial court is simply a conditional finding that the
26 settlement appears to be within the range of acceptable settlements. As Professor Newberg
27 comments, “[t]he strength of the findings made by a judge at a preliminary hearing or
conference concerning a tentative settlement proposal may vary. The court may find that the
settlement proposal contains some merit, is within the range of reasonableness required for a
settlement offer, or is presumptively valid subject only to any objections that may be raised at a

1 final hearing.” 4 Alba Conte & Herbert B. Newberg, Newberg on Class Actions, § 11.26 (4th
2 ed. 2002).

3 The procedures for the parties’ submission of a proposed settlement for preliminary
4 approval by the court also are discussed in 4 Newberg on Class Actions:

5 “When the parties to an action reach a monetary settlement, they
6 will usually prepare and execute a joint stipulation of settlement,
7 which is submitted to the court for preliminary approval. The
8 stipulation should set forth the central terms of the agreement,
9 including but not limited to, the amount of settlement, form of
payment, manner of determining the effective date of settlement
and any recapture clause.” Id. at § 11.24.

10 Here, the Parties have reached such an agreement and have submitted to this Court in
11 connection with this Motion a copy of the Settlement Agreement fully setting forth the
12 agreement reached among the Parties. The Agreement sets forth all terms of the agreement
13 reached by the Parties, which complies with the Court’s April 8, 2022 Class Action Case
14 Management Order #1 (“CMO”).

15 **A. PROPOSED CLASS (CMO G(3)(a)(i))**

16 The current settlement is being settled on behalf of:

17 “All Defendant’s current and former non-exempt sales employees in
18 California who were employed at any time during the Class Period
19 (January 11, 2018 through the date on which Plaintiff files a motion for
20 preliminary approval), excluding those former employees with enforced
21 individual severance and release agreements covering the claims alleged
22 in this Action, in relation to reductions in force”.

23 (Settlement Agreement ¶¶ I.C., I.I.).

24 The number of class members is estimated at 600 individuals. (Choi Decl. ¶9). There
25 are approximately 450 PAGA aggrieved employees.¹

26 ¹ Class and PAGA size numbers as of the time of mediation. Updated class and PAGA numbers are being
27 determined at the time of filing, and the parties will be able to provide final numbers at the hearing on this motion.

**B. ATTORNEY'S ESTIMATE OF THE TOTAL AMOUNT OF DAMAGES,
MONETARY PENALTIES OR OTHER RELIEF THAT THE CLASS WOULD
BE AWARDED IF THE ACTION WERE SUCCESSFUL AT TRIAL ON ALL OF
ITS CLAIMS (CMO G(3)(a)(ii))**

Based on the data provided, Plaintiff believes that the class could have obtained damages of approximately \$10,889,416 plus PAGA penalties. (Choi Decl. ¶ 10). Specifically, Plaintiff estimates the following damages for each of the sub-classes as follows:

1. Failure to Pay Regular/Overtime Wages

Pursuant to California law, a plaintiff seeking wages for unpaid work time need only show that they were under the “control” of the employer in order to be owed compensation, whether or not the employee is actually required to work. *Morillion v. Royal Packing Co.*, 22 Cal. 4th 575, 584 (2000) (“Under California law, it is only necessary that the worker be subject to the ‘control of the employer’ in order to be entitled to compensation”). In other words, the employee does not need to be actually “working” to be entitled to wages. Indeed, Judge Alsup specifically described this distinction in the Frlekin summary judgment decision, stating the “California Supreme Court has held that the two phrases – ‘subject to the control of an employer’ and ‘time the employee is suffered or permitted to work’ — are ‘independent factors, each of which defines whether certain time spent is compensable as hours worked.’ See *Frlekin v. Apple Inc.*, 2015 U.S. Dist. LEXIS 151937, at *10 (N.D. Cal. July 16, 2015). As Judge Alsup further held, the “control theory of liability requires proving two elements. The first is that the employer restrains the employee’s action during the activity in question. The second is that the employee has no plausible way to avoid the activity; put differently, the activity must be mandatory and not optional at the discretion of the worker.” *Id.*

Plaintiff and Class Members were subjected to Defendant’s control when they were required to attend training courses and take exams. Nevertheless, they were not paid minimum, regular and/or overtime wages for such time, which is an undisputed violation of Labor Code §§ 510, 558, 1194, 1197, and 1197.1. Plaintiff’s counsel estimated the maximum exposure for

1 underpaid wages amounts to \$53,204.50 based on 4 hours for attending training courses and
2 taking exams. (Choi Decl. ¶ 10.a.).

3 **2. Meal and Rest Break Premiums**

4 Plaintiff alleged that Defendant failed to provide compliant meal periods. (Choi Decl. at
5 ¶ 10.b.). Plaintiffs contended that meal breaks that were not provided within the first 5 hours of
6 work, less than 30 minutes in length or a second meal break that was not provided for shifts
7 over 10 hours were non-compliant. (*Id.*) For each such meal break, Plaintiffs assessed 1 hour
8 of pay at the regular rate for meal break damages. (*Id.*) Based on the time records, Plaintiff
9 estimated the maximum exposure for these individuals to amount to \$3,819,862. (*Id.*)

10 Plaintiff alleged that Defendant failed to provide compliant rest periods due to the work
11 requirements, such as to respond to customer calls. Based on the violation rate utilized for meal
12 periods, Plaintiff estimated the maximum exposure to amount to \$3,819,862. (*Id.*)

13 **3. Unreimbursed Business Expenses**

14 Plaintiff alleges that class members were not reimbursed for utilizing their own internet
15 and cell phones to carry out their duties for Defendant. Defendant paid \$25 per pay period for a
16 “Remote Stipend” that subsidized the costs of internet and cell phone expenses. (Choi Decl.
17 ¶10.c.) However, Plaintiff believes that class members should have been paid at least \$50 per
18 pay period for using their own internet and cell phones. Based on the data produced, Plaintiff
19 estimated the maximum exposure at \$375,075. (*Id.*) The formula for Labor Code §2802
20 penalties was the number of total pay periods X \$25. (*Id.*)

21 **4. Derivative Labor Code Penalties**

22 Plaintiff alleged that Defendant failed to provide compliant wage statements because the
23 wage statements failed to identify the applicable rate of pay and hours for Commissions
24 Overtime wages. (Choi Decl. ¶10.d.) Based on the data produced, Plaintiff estimated the
25 maximum exposure at \$330,475.00. (*Id.*) The formula for Labor Code §226 penalties for each
26 class member is \$50 for the first pay period with a violation plus \$100 for each subsequent pay
27 period with a maximum of \$4,000.00. (*Id.*)

There were 399 terminated employees during the Class Period. For each of these employees, Plaintiff estimated waiting time penalties pursuant to Labor Code §203 to amount to \$2,866,013. (*Id.*) The formula for waiting time penalties for each class member is their final rate of pay X 8 hours X 30 days. (*Id.*)

Assuming 100% liability, the derivative PAGA penalties amounted to \$2,846,400.00 for the claims alleged above. (*Id.*)

C. ATTORNEY’S ESTIMATE OF WHAT THE CLASS COULD REASONABLY EXPECT TO BE AWARDED AT TRIAL, TAKING INTO ACCOUNT THE LIKELIHOOD OF PREVAILING AND OTHER ATTENDANT RISKS (CMO G(3)(a)(ii))

Plaintiff believes that he can prevail at trial and be awarded the entire amount of the maximum exposure. (Choi Decl. ¶11). However, having tried wage and hours cases to trial, Plaintiff's counsel believes there is also a possibility that the Court may find in favor of SelectQuote and award nothing to Plaintiff based on SelectQuote's defenses. (*Id.*)

SelectQuote alleged that each class member signed an arbitration agreement that could have been utilized to dismiss all of the Plaintiff's class claims. (*Id.*) Thus, there was a possibility that the Court may have found in favor of SelectQuote and awarded nothing to the class. (*Id.*)

SelectQuote alleged that even if Plaintiff were to overcome the hurdle to maintain a class action, that Plaintiffs’ meal and rest break claims would not be certified because it maintained compliant policies informing class members of their right to take meal or rest breaks. (*Id.*) Further, SelectQuote asserted that many of the class members worked remotely during all or most of the class period and had job duties that permitted them to take meal and rest breaks at their full discretion and at times of their choice. Further, SelectQuote alleged that the training courses and exams could have been taken while Plaintiff and class members were on the clock and therefore would have been paid their wages, and SelectQuote did not have knowledge of any class members completing training “off the clock”. SelectQuote further argued that \$25 per

1 pay period for business expense reimbursement was reasonable given that Plaintiff and class
2 members utilized their internet and cell phone for personal reasons. Moreover, even if Plaintiff
3 prevailed on class certification, Defendant contested the extent of liability. (*Id.*) For example,
4 with respect to meal and rest break penalties, although a meal break may not have been taken
5 within the first 5 hour of a shift, an employee could have chosen not to take the meal at within
6 the first 5 hours due to preference of taking a later meal break. (*Id.*) Likewise, with respect to
7 waiting time penalties, Defendant contended that it would not be subject to Section 203
8 penalties, based on a good faith defense since its policy was compliant. (*Id.*) With respect to
9 wage statement liability, Defendant contended that liability under Section 226(e) would be
10 subject to additional defenses requiring proof of injuries resulting from knowing and intentional
11 violations. (*Id.*) Moreover, there is a split in authority as to Section 226(e) penalties and a
12 recent decision held that an employer's good faith litigation of its affirmative defenses may
13 preclude a finding of knowing and intentional conduct to support 226 penalties. *Naranjo v.*
14 *Spectrum Security Serv.*, 2023 Cal. App. Lexis 143 (Feb. 27, 2023). While Plaintiffs disagree
15 with *Naranjo* and believe that *Furry v. East Bay Publishing, LLC*, 30 Cal. App. 5th 1072, 1085
16 (2018), and *Kao v. Holiday*, 12 Cal. App. 5th 947, 961-62 (2017), which hold that an
17 employer's good faith belief is not a defense, this Court could have followed *Naranjo*.

18 PAGA penalties are also subject to any good faith defenses that Defendant may raise.
19 (Choi Decl. ¶ 11). Moreover, PAGA penalties are discretionary and subject to reduction by this
20 Court. Pursuant to Labor Code § 2699(f)(2), the Court can decline to award the full amount of
21 PAGA penalties where "...if, based on the facts and circumstances of the particular case, to do
22 otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory."
23 Indeed, courts have affirmed the reduction of PAGA penalties in the past. As shown in
24 *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 517 (2018), the Court of Appeal affirmed
25 the trial court's reduction of PAGA penalties by 90 percent, citing the employer's good faith
26 attempt at complying with the law. Defendant argued that based on their compliant policies,
27 that the Court would not be inclined to impose maximum PAGA penalties based on their

1 compliant policies and good faith attempt to pay out any premiums that were due to class
2 members. (Choi Decl. ¶11).

3 While the Parties disagree on the application of the law to the facts, each Party
4 recognized in negotiations that, if taken to trial, the other Party would at least have reasonable
5 arguments, such that the Gross Settlement Amount to which the Parties ultimately agreed was
6 reasonable. (Choi Decl. ¶¶ 11).

7 The total maximum exposure for class claims amounts to approximately \$10,889,416.
8 (Choi Decl. ¶ 11). If Defendant's arbitration agreement were enforced, the court could award
9 nothing for the class claims. (*Id.*) The total PAGA Penalties amounted to \$2,846,400. (*Id.*)
10 However, if the Court were to reduce the PAGA penalties by 90% similar to *Carrington*, the
11 PAGA penalties exposure would amount to approximately \$284,640. (*Id.*) Based on the
12 foregoing, total settlement amount would be more than the potential award that could be
13 achieved at trial. (*Id.*) If the class claims were not dismissed, Plaintiff believes that the court
14 could award the full amount of damages for the unpaid wage claim in the amount of \$53,204.50.
15 (*Id.*) For the meal break claim, although Plaintiff would be entitled to a presumption that meal
16 breaks were not provided if the individual's time records do not reflect one, there would still be
17 at least a 50% risk factor given that some class members may testify that they chose to take their
18 meal breaks late or for less than 30 minutes which would yield a realistic value of the meal
19 break claim at \$1,909,930.86. (*Id.*) With respect to rest break claims, there are no documents
20 that could support Plaintiff's claims and therefore, applying a 75% risk factor would yield a
21 realistic value at \$954,965.43. (*Id.*) Given the split of authority for Labor Code §226 defenses,
22 the applying a 50% risk factor would yield a realistic value at \$165,237.65. (*Id.*) For waiting
23 time penalties and business reimbursement expenses, applying a 50% risk factor would yield a
24 realistic value at \$1,433,006.50 and \$187,537.50 respectively. (*Id.*) The total realistic class and
25 PAGA penalties amounts to \$4,988,522. (*Id.*) The total settlement amount is approximately
26 9.52% of the maximum potential penalties and well within the reasonable range of settlement
27 for class action cases. (*Id.*).

D. ATTORNEY’S ESTIMATE OF THE RECOVERY BY THE AVERAGE CLASS MEMBER IF THE SETTLEMENT WERE APPROVED (CMO G(3)(a)(iv)).

Based on the maximum number of class members, which is estimated at 600, each class member will receive approximately \$385.28 (which is the pro-rata amount per class member based on the estimated Net Settlement Amount of \$231,166.67). (Choi Decl. ¶12).

E. ATTORNEY’S ESTIMATE OF THE RECOVERY BY THE AVERAGE AGGRIEVED EMPLOYEE IF THE SETTLEMENT WERE APPROVED (CMO G(3)(a)(v)).

Each Aggrieved Employee would be a member of the class. (Choi Decl. ¶13). Thus, in addition to the \$385.28 pure raw average received, each Aggrieved Employee would receive an estimated additional \$27.78 for the PAGA claims. (*Id.*)

F. DISCOVERY AND OTHER FACTUAL INVESTIGATION CMO G(3)(a)(vi)).

Plaintiff propounded written discovery, but agreed to conduct informal discovery in this matter. (Choi Decl. ¶ 14). The informal discovery production included exemplars of arbitration agreements and severance agreements signed by class members along with policy documents such as the employee handbook along with onboarding documents that detail SelectQuote’s wage and hour policies. (*Id.*). Plaintiff also received Excel spreadsheets that included the time and pay records for 564 class members which Plaintiff’s expert utilized to perform damage calculations. (*Id.*)

G. OTHER PENDING LITIGATION (CMO G(3)(a)(vii) and G(3)(b))

SelectQuote is not aware of any other class, representative or other collective action in any other court in this or any other jurisdiction that asserts claims similar to those asserted in this action on behalf of a class or group of individuals some or all of whom would also be members of the class defined in this action. (Declaration of Angela Rafoth (“Rafoth Decl.”) ¶2).

///

///

**H. UNCASHED CHECKS, UNPAID RESIDUE OR OTHER UNCLAIMED OR
ABANDONED FUNDS (CMO G(3)(c)(i)-(v))**

Participating Class Members shall have one hundred eighty (180) days from the date of issuance of the check to negotiate the check. (Choi Decl. ¶16; Settlement Agreement ¶ III.D.10.). The funds from any checks returned as undeliverable, and any checks not negotiated within 180 days, shall be transmitted to the California State Controller's office in the name of the class member. (*Id.*).

Plaintiff believes that sending the funds to the unclaimed funds is superior to redistribution to class members that cashed their checks because the class members that either had their checks lost in the mail or otherwise did not deposit their checks within 180 days will still have an opportunity to receive their settlement funds beyond the 180 days. (Choi Decl. ¶ 16). In Plaintiff counsel's experience, there have been occasions where class members have contacted Plaintiff's counsel after the 180-day expiration to claim their settlement proceeds, and because the funds were sent to the State Controller's office (or being held in trust by the settlement administrator per the direction of the State Controller), the class members were able to receive their settlement funds. (*Id.*). Thus, each of the class members' right to receive their settlement proceeds will be best protected by transmitting the funds to the State Controller.

I. SETTLEMENT ADMINISTRATOR (CMO G(3)(d)(i))

The Settlement Agreement provides that \$9,750 will be paid for administration fees. (Settlement Agreement ¶ III.B.4.). Plaintiff requested and obtained bids from several class action administrators and received the lowest bid from Phoenix Settlement Administrators. (Choi Decl. ¶ 17). Phoenix Settlement Administrators has extensive experience in administering employment class action settlements. (Declaration of Jodey Lawrence ("Phoenix Decl.") ¶¶ 3-7)

J. RELEASE BY CLASS MEMBERS IS LIMITED (CMO G(3)(e)(i)-(iv))

The release is limited to Defendant Defendant SelectQuote Insurance Services; together with their officers, directors, employees and agents, including SelectQuote Auto and Home,

Population Health, Inc., Express Med Pharmaceuticals, Inc., Simple Meds, LLC, Tiburon Insurance Services, and InsideResponse, LLC. (Settlement Agreement ¶ I.BB, Declaration of Deanne Gash (“Gash Decl.”) ¶4). The following is a description of the Participating Class Members’ Released Claims:

“Upon entry of final judgment and payment by Defendant of the Gross Settlement Amount (plus employer-side payroll taxes) in accordance with Paragraph III.E.9 of this Agreement, Defendant and the Released Parties shall be entitled to a release from the Participating Class Members for any and all claims that were alleged in the Action or which could have been asserted based on the factual allegations asserted in the Action. Specifically, without limitation, Settlement Class Members will release claims under Cal. Lab. Code §§ 201, 202, 203, 204, 218.5, 223, 226, 226.3, 226.7, 246, 510, 512, 516, 558, 1174(d), 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1400-1403, 2800, 2802, and the IWC Wage Orders, and the federal Fair Labor Standards Act, and for unlawful and/or unfair business practices under Cal. Bus. & Prof Code § 17200 et seq, to the extent such claims are predicated on a released claim; and any claim for attorneys’ fees and costs related to the above-referenced released claims. The doctrines of res judicata, claim preclusion, issue preclusion, primary rights, and collateral estoppel shall fully and broadly apply to Released Claims and the release in this Settlement to the greatest effect and extent permitted by law.”

(Settlement Agreement ¶ III.F.1.). As the Court can see, the Release is solely limited to “any and all claims that were alleged in the Action or which could have been asserted based on the factual allegations asserted in the Action” pursuant to the CMO G(3)(e)(ii). Further, the release is limited to the class period as defined by the settlement pursuant to CMO G(3)(e)(iii).

The following is a description of the Aggrieved Employees’ Released Claims:

“Upon entry of final judgment and payment by Defendant of the Gross Settlement Amount in accordance with Paragraph III.E.9 of this Agreement, the State of California and Plaintiff hereby do and shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished and discharged any and all of the Released Parties of and from the claims for civil penalties that could have been sought by the Labor Commissioner for the violations of the California Private Attorneys General Act of 2004 identified in Plaintiff’s letter to the LWDA and amendment thereto, and those based solely upon the facts alleged in the letter to the LWDA and amendment thereto during the PAGA Period. However, to the extent the LWDA has released the PAGA claims in connection with this Agreement, no Aggrieved Employee may pursue these same PAGA claims released here in another action. The Aggrieved Employees are collaterally estopped from pursuing the PAGA claims released and compromised by the LWDA. After the Court grants final approval of the settlement, Plaintiff will provide the LWDA with a copy

of the Judgment which will include a list of the Aggrieved Employees during the PAGA Period. Plaintiff does not release any Aggrieved Employees' claim for wages and damages. This does not preclude the release of wages and damages by the Settlement Class Members as set forth in Paragraph III.F.1. The Aggrieved Employees will be issued a check for their share of the PAGA Payment and will not have the opportunity to opt out of, or object to, the PAGA Payment and release of the PAGA Claims set forth in this Paragraph. The Aggrieved Employees are bound by the release of the PAGA Claims regardless of whether they cash or deposit their portion of the PAGA Payment or exclude themselves from the settlement in accordance with Paragraph III.E.3.c"

The PAGA release complies with CMO G(3)(e)(iv).

K. NOTICE TO CLASS MEMBERS (CMO G(3)(f))

Notice to class members will be given by First Class Mail. (Settlement Agreement ¶III.E.2.) Specifically, no later than 30 calendar days after the Court enters an Order Granting Preliminary Approval of the Settlement, Defendant will provide to the Settlement Administrator an electronic database containing each Class Member's Class Data. (*Id.* at ¶III.E.2.a.) The Settlement Administrator shall update the Class Data using the National Change of Address database prior to mailing the Class Notice Packets. (*Id.* at ¶III.E.2.b.). No later than 14 days after receiving the class data, the Settlement Administrator will mail the Class Notice Packets to all Class Members via first-class regular U.S. Mail using the mailing address information provided by Defendant. (*Id.*) If a Class Notice Packet is returned because of an incorrect address, the Settlement Administrator will promptly, and not longer than fourteen (14) days from receipt of the returned packet, search for a more current address for the Class Member and re-mail the Class Notice Packet to the Class Member. (*Id.* at ¶III.E.2.c.). If a Notice Packet is returned as undeliverable with no forwarding address, the Settlement Administrator shall take reasonable steps including, performing address searches for all mail returned without a forwarding address using available email addresses, phone numbers, social security numbers, credit reports; and promptly re-mailing to Class Members for whom new addresses are found. (*Id.*)

///

L. SETTLEMENT DOES NOT REQUIRE ANY CLASS MEMBERS TO SUBMIT CLAIMS (CMO G(3)(g))

Class members will be automatically paid from the settlement and do not need to submit claim forms to be entitled to settlement payments pursuant to the terms of the Agreement. (Settlement Agreement ¶III.E.3.c., Ex. A). If a class member does not wish to take part in this settlement and be bound by the release, the class member must submit an exclusion/opt-out request. (*Id.* at ¶III.E.3.c.) Should any class member fail to submit an exclusion/opt-out request, the class member will automatically become a Participating Class Member and will be bound by all terms and conditions of the Settlement. (*Id.*) Such obligations are thoroughly identified in each class member's Notice. (Settlement Agreement; Ex. A)

M. SETTLEMENT DOES NOT PROVIDE ANY REVERSION TO DEFENDANT (CMO G(3)(h))

This is a non-reversionary settlement, as the entirety of the settlement amount will be fully paid out. As such, none of the settlement funds will revert to Defendant. (Settlement Agreement ¶III.A.)

N. THE SETTLEMENT INCLUDES COMPENSATION FOR UNPAID WAGES (CMO G(3)(i) & (j))

33.4% of each Participating Class Member's Settlement Share is in settlement of wage claims ("Wage Portion") and is subject to wage withholdings and shall be reported on IRS Form W-2. (Settlement Agreement at ¶III.C.3.a.) 33.3% of each Participating Class Member's Settlement Share is in settlement of claims for interest and 33.3% of each Participating Class Member's Settlement Share is in settlement of claims for penalties allegedly due to employees and shall not be subject to wage withholdings and shall be reported on IRS Form 1099. (*Id.* at ¶III.C.3.b.) The portion of the PAGA Payment distributed to Aggrieved Employees shall not be subject to wage withholdings and shall be reported on IRS Form 1099. (*Id.* at ¶III.B.3.)

///

O. PROPOSED NOTICE, OBJECTION FORM AND EXCLUSION FORMS (CMO G(3)(k))

Attached as Exhibits A, B and C to the Settlement Agreement are the Proposed Class Notice, Objection Form and Exclusion Forms. Plaintiff prepared the forms based on previously approved forms by this Court. The Parties have attempted to draft the notice in a manner that will be likely to be readily understood.

SelectQuote requires that the class members are fluent in English to perform their job duties. (Gash Decl. ¶3) Thus, notice in English only will be sufficient.

P. TYPICALITY AND ADEQUACY OF REPRESENTATION

1. Class Representative's Claims are Typical of the Class

The commonality requirement is met when there are questions of law and fact common to the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) (“The existence of shared legal issues with divergent legal factual predicates is sufficient, as is a common core of salient facts couple with disparate legal remedies within the class”). Commonality requires only that some common legal or factual questions exist; the plaintiffs need not show that all issues in the litigation are identical. *See Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473 (1981). Defendant's conduct is central to the commonality inquiry. *See City of San Jose v. Superior Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13 (1971). Where the employer's conduct is uniformly directed at a class of employees, as it is here, the class wide impact of the Defendant's policies satisfies the commonality requirement. *See Stephens v. Montgomery Ward & Co., Inc.*, 193 Cal. App. 3d 411, 421 (1987).

Plaintiff claims that Defendant, as a matter of its corporate policy, practice, or procedure violated the Labor Code by requiring its employees to attend training courses and take exams without payment of minimum, regular and/or overtime wages for such time. Plaintiff also alleges that Defendant failed to pay proper overtime wages because it failed to include all non-discretionary remuneration into the regular rate of pay. Further, Plaintiff alleges that he and class members were not provided with compliant meal and rest periods due to the demands of

1 answering and responding to calls. Plaintiff also alleges that Defendant failed to properly
2 reimburse business expenses and provide compliant wage statements. Plaintiff was employed
3 by Defendant, like all of the other class members, and allegedly was not paid for training time.
4 (Thompson Decl. ¶3). Plaintiff, like all of the other class members, did not receive compliant
5 meal and rest periods, proper business expense reimbursements and wage statements. Thus,
6 Plaintiff's claims are typical to those of class members. (*Id.*).

7 The Class Representative does not have any interests adverse to the class, nor has any
8 such issue been raised or presented. (Thompson Decl. ¶ 4). The Class Representative has taken
9 all necessary steps to represent the interests of the Class, by making himself available to answer
10 questions, gather and provide documents, and review and execute the Settlement Agreement and
11 her accompanying declaration. (*Id.* at ¶7). For such reasons, the Class Representative has
12 adequately represented the class members and will continue to do so.

13 **2. Class Counsel Have Adequately Represented the Class and Has Experience**
14 **with Wage and Hour Class Actions**

15 From the inception of the case, Class Counsel have protected the interests of the class.
16 Class counsel all of the time and pay records prior to the mediation to perform a damage
17 analysis. The mediation and settlement were obtained for the benefit of the class, not for the
18 individual Class Representative. Class counsel have been approved as class counsel on a
19 number of prior cases and are competent to represent the class. (Choi Decl. ¶ 19; Lee Decl. ¶3-
20 5; Hyun Decl. ¶¶ 3-6).

21 **Q. CLASS REPRESENTATIVE ENHANCEMENT AND ATTORNEYS' FEES AND**
22 **COSTS**

23 **1. Attorneys' Fees and Costs**

24 The Settlement Agreement allows Plaintiff to seek up to 1/3 of the gross settlement
25 amount, or \$158,333.33 as payment for attorneys' fees. The California Supreme Court
26 established that when class action litigation establishes a monetary fund for the benefit of the
27 class members, and the trial court in its equitable powers awards class counsel a fee out of that

1 fund, the court may determine the amount of a reasonable fee by choosing an appropriate
2 percentage of the fund created. *Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016). “The
3 recognized advantages of the percentage method—including relative ease of calculation,
4 alignment of incentives between counsel and the class, a better approximation of market
5 conditions in a contingency case, and the encouragement it provides counsel to seek an early
6 settlement and avoid unnecessarily prolonging the litigation.” (*Id.*) (internal citations omitted).

7 In *Laffitte*, the Court affirmed an award of attorneys’ fee award of \$6,333,333.33, based
8 on 33 1/3% of the \$19 million common fund. (*Id.* at 503) As in *Laffitte*, the parties have agreed
9 to a 33 1/3% of the common fund for attorney’s fees.

10 Further, the parties have agreed to payment of up to \$30,000.00 as reimbursement for
11 class counsel’s litigation costs. (Settlement Agreement, ¶III.B.2.) Class counsel have, at their
12 own risk, expended costs, for example, to file this instant action, service of process, payment of
13 mediation fees and other litigation related costs. Class counsel will only request the amounts
14 actually expended up to a maximum of \$30,000.00 and will provide their supporting
15 declarations at the time of final approval.

16 Based on the foregoing, the court should preliminarily approve the attorney’s fees and
17 costs being requested by class counsel.

18 **R. PROPOSED PAYMENT TO CLASS REPRESENTATIVE**

19 Plaintiff/Class Representative Travis Thompson requests an enhancement of \$7,500.

20 As shown in the supporting declaration, Plaintiff has not previously been a named
21 plaintiff in any other class action cases. (Thompson Decl. ¶5). Plaintiff understood that the
22 filing of this action was a matter of public action and this was being prosecuted on a
23 representative basis. (*Id.* at ¶6). Plaintiff further understood that a representative action would
24 take longer in litigation than an individual action and undertook such risks. (*Id.*). Plaintiff did
25 not incur any expenses, but has expended a significant amount of time on this matter. (*Id.*).
26 Plaintiff spent approximately 30 hours discussing this matter with Counsel on a number of
27 occasions to discuss the case with his counsel, including providing substantive information

1 regarding Defendant's practices, and providing documents related to his own claims and the
2 claims of the Aggrieved Employees. (*Id.* at ¶7.)

3 Furthermore, given that future employers are much less likely to hire individuals who
4 have filed suit against their prior employer, particularly cases of this nature, the Class
5 Representative also faced, and likely continues to face, significant risk in not being able to find
6 suitable employment, all as a result of her filing of this case against Defendant.

7 The Class Representative took this risk upon himself and the whole class benefited from
8 this. Class members did not have to file individual lawsuits and bear the risks of payment of
9 fees and costs if they did not prevail, nor did they have to face the potential for retaliation and
10 not getting future employment had they filed a lawsuit which is a public record.

11 These are significant benefits, even apart from the time the Class Representative has
12 spent working on this case, that weigh in favor of granting the requested enhancement, which is
13 also consideration for the general individual release to which Plaintiff agrees on his own behalf..

14 Courts have routinely granted approval of settlements containing such enhancements. In
15 *League of Martin v. City of Milwaukee*, 588 F. Supp. 1004 (E. D. Wis. 1984), the court held that
16 the proposal settlement properly granted the Class Representatives individual relief. It is "not
17 uncommon for Class Members...to receive special relief in settlement... [The Plaintiff]...had
18 been instrument in prosecuting this lawsuit since the date it was filed." *Id.* at 1024. In *Kyriazi*
19 *v. Western Elec. Co.*, 527 F. Supp. 18 (D. N. J. 1981), a named plaintiff in a Title VII class
20 action was awarded individual relief of back-pay and interest, reinstatement, punitive damages
21 and counsel fees. Similarly, in *Women's Committee for Equal Employment Opportunity v.*
22 *NBC*, 76 F.R.D. 173 (SDNY 1977), the court approved as fair a settlement that included awards
23 to 16 Class Representatives of virtually all the damages they sought.

24 **V. CONCLUSION AND ACTION REQUESTED AS PART OF**
25 **THE MOTION FOR PRELIMINARY APPROVAL**

26 For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary
27 approval of the proposed settlement, sign the proposed Order, and approve and authorize

1 mailing of the proposed Class Notice. Plaintiff further requests that a hearing date for the final
2 fairness and final approval hearing be set for a date on or after January 15, 2024.

3
4 DATED: August 17, 2023

LAW OFFICES OF CHOI & ASSOCIATES

5
6 By: 
7 Edward W. Choi
8 Attorneys for Plaintiff TRAVIS THOMPSON
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27