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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

MICHELE LEWANA EVANS and MELODY
SPOUSE, individually, and on behalf of all
others similarly situated,

Plaintiff,

vs.

DOWNTOWN WOMEN'S CENTER, a
California corporation; and DOES 1 through 10,
inclusive,

Defendants

Case No.: 22STCV06578

[Assigned to Hon. Laura A. Seigle, Dept. 17]

CLASS ACTION

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

Date: January 15, 2025
Time: 9:00 a.m.
Courtroom: Dept. 17
Judge: Hon. Laura A. Seigle

Complaint Filed: February 23, 2022
Trial: None Yet Set

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

2 PLEASE TAKE NOTICE that on January 15, 2025, at 9:00 a.m., or as soon thereafter as the
3 matter may be heard, in Department 17 of the above-captioned Court, located at 312 N. Spring Street,
4 Los Angeles, California 90012, Michele Lewana Evans and Melody Sprouse (“Plaintiffs”) will and
5 hereby does move this Court for 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 CLASS ACTION AND PAGA SETTLEMENT
9 AGREEMENT AND CLASS NOTICE (“Settlement” or “Agreement”);

10 3. Appointing counsel for Plaintiffs, Moon Law Group, PC, as Class Counsel;

11 4. Appointing Plaintiffs as the Class Representatives;

12 5. Ruling that Settlement Class Members who did not timely submit requests for
13 exclusion from the settlement as set forth in the Agreement have released their claims against
14 Defendants and the other releasees as set forth in the Agreement;

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

18 7. Awarding the sums requested in the Motion;

19 8. Entering a Final Judgment; and,

20 9. Without affecting the finality of the final judgment, reserving continuing jurisdiction
21 over the parties for the purposes of implementing, enforcing and/or administering the settlement
22 as set forth in the Agreement or enforcing the terms of the Final Judgment.

23 Good cause exists to grant this Motion because: (1) the Class meets all of the requirements for
24 class certification for settlement purposes under Code of Civil Procedure § 382; (2) the Settlement
25 Agreement is a fair, adequate, and reasonable compromise of the disputed wage and hour claims asserted
26 by Plaintiff; (3) Plaintiffs and Class Counsel are adequate to represent the Class; (4) the proposed notice
27 procedures and related forms comply with California Rules of Court 3.766(d) and (e) this Court’s Order
28 granting preliminary approval of the Settlement, and adequately apprised Class Members of their rights

1 and fully comport with due process.

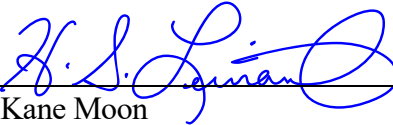
2 This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court,
3 which require approval by the Court of a class action settlement and permit the Court to extend the page
4 limit for memoranda.

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

10
11 Respectfully submitted,

12 Dated: December 20, 2024

MOON LAW GROUP, PC

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

16 Attorneys for Plaintiffs
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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court, Rules 3.769, Plaintiffs request that this Court finally
3 approve the class action settlement set forth in the CLASS ACTION AND PAGA SETTLEMENT
4 AGREEMENT AND CLASS NOTICE (“Settlement” or “Agreement”) with Downtown Women’s
5 Center (“Defendant” or “DWC”).

6 After extensive formal discovery, a motion to certify, and a motion for summary adjudication,
7 Plaintiffs and Defendant (collectively referred to herein as the “Parties”) reached a proposed class action
8 settlement with a gross settlement amount (“GSA”) of **\$200,000.00** in compromise of disputed claims
9 asserted on behalf of the below-defined Class consisting of **159** members. Plaintiffs believe this
10 settlement is a fair, adequate, and reasonable compromise of disputed claims for alleged wage and hour
11 violations and penalties asserted in this case.

12 Plaintiffs now submit this Motion for Final Approval of Class Action Settlement, along with the
13 Settlement (attached to the Declaration of H. Scott Leviant [“Leviant Decl.”], Exhibit 1 thereto). For the
14 Court’s convenience, below is a summary of the key provisions of the Settlement.

15 **II. THE NOTICE PROCESS PROCEEDED AS DIRECTED**

16 Plaintiffs and Defendant have thus far fulfilled the class notice procedures set forth in the
17 Settlement. The Settlement Administrator, Apex Class Action (“Apex”), sent individual Notices to Class
18 Members on September 11, 2024. (Declaration of Madely Nava, ¶ 7.) Two (2) Notices were
19 undeliverable. (*Id.*, at ¶ 10.) One (1) request for exclusion was received. (*Id.*, at ¶ 11.) There have been
20 **no** opt out requests and **no** objections or workweek disputes received. (*Id.*, at ¶ 12.) The final Class
21 includes 159 individuals who did not submit a timely request for exclusion. (*Id.*, at ¶ 13.)

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

23 The provisions of the proposed Settlement include the following:

- 24 • Defendant agrees not to oppose certification for purposes of Settlement (Settlement, ¶ 12.1);
- 25 • Class: All individuals employed at any time during the Class Period as non-exempt
26 employees of DWC in California, excluding participants in the LA:RISE program, who
27 received bonuses and whose regular rate of pay was used for purposes of calculating
28 overtime pay, meal period premiums or rest period premiums (the “Class Period” is February

23, 2018, to July 9, 2024). “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Class portion of the Settlement. (Settlement, ¶¶ 1.5, 1.9, 1.12, 1.34.)

- Settlement Amount: Defendant will pay a maximum of **\$200,000.00**, referred to as the Gross Settlement Amount (or GSA herein), resulting in an estimated average **gross** benefit per Class Member of about **\$1,242.24** (Settlement, ¶ 1.21; 3.1; Leviant Decl., ¶ 17.);
- Funding of Gross Settlement Amount: Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant’s share of payroll taxes by transmitting the funds to the Administrator no later than 30 days after the Effective Date. (Settlement, ¶¶ 3.1, 4.3.)
- Class Size: **159** individuals¹ who worked about 21,223 workweeks during the Class Period. (Settlement, ¶ 8.);
- PAGA Group Size: **564** aggrieved employees who worked 13,000 pay periods during the PAGA Period (Settlement, ¶ 8);
- PAGA Period: February 19, 2021, to July 9, 2024. (Settlement, ¶ 1.30);
- Kullar/Munoz Analysis: Plaintiffs address the claims analysis herein, at Part VI.B.3, and in the Declaration of Leviant, at Paragraph 18;
- No Reversion: The Settlement is a **non-reversionary** settlement (Settlement, ¶ 3.1);
- Certification: Plaintiffs address certification requisites herein, at Part VI.A., and in the Declaration of Leviant, at Paragraphs 34-40;
- No Claim Form: No claim form is required (Settlement., ¶ 3.1);
- Class Release: The Settlement will release wage-and-hour claims for Participating Class Members (those Class Members who do not opt out of the Settlement) as to all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the

¹ The Parties’ settlement agreement stated that there were 161 putative class members. DWC later discovered, that there was one duplicate on its class list, and there were in fact 160 putative class members. Therefore, the 159 class members listed above reflect one opt-out from the Class Action Settlement.

Operative Complaint (Settlement, ¶¶ 1.38, 5.2);

- PAGA Release: Aggrieved Employees and the LWDA will release all PAGA penalties that were alleged, or could have been alleged, based on the facts stated in the PAGA Notice, regardless of whether they opt out of the class portion of the Settlement (Settlement, ¶¶ 1.39, 5.3);
- Net Settlement Amount Available to the Class: After deducting Class Counsel’s attorneys’ fees and costs, service payment to Plaintiff, administration costs, and the PAGA penalty, the remainder will be available for distribution to Class Members who do not opt out, with each Class Member receiving a share based on the number of Workweeks each Class Member worked for Defendant within the Class Period. The Net Settlement Amount is **\$51,533.33**, resulting in an average **net** payment per Class Member of **\$324.11**, before any tax withholdings. (Settlement, ¶ 1.27.)
- Tax Allocation: The amounts distributed to Class Members will be characterized as 20% alleged unpaid wages, 80% to interest and penalties, and PAGA Settlement payments to Aggrieved Employees will be allocated as 100% penalties. (Settlement, ¶¶ 3.2.4.1, 3.2.5.2.)
- Employer’s Portion of Payroll Taxes Paid Separately: Defendant’s portion of payroll taxes (e.g., FICA, FUTA, etc.) owed on any settlement payments to Class Members that constitute wages will be paid separate and apart from the GSA (Settlement, ¶ 3.1);
- Settlement Administrator: The notice portion of the Settlement will be administered by a third-party Administrator, Apex Class Action, with the costs of administration at a flat rate of up to \$9,300.00. Apex’s estimate for settlement administration services in the amount of \$9,300.00 was selected as the lowest bid from a competitive bidding process. (Settlement, ¶ 3.2.3; Hartranft Decl., ¶ 7 and Exh. B; Leviant Decl., ¶ 32.)
- Class Data for Administration: The Settlement Administrator received the Class Data within 30 calendar days of Preliminary Approval, used the National Change of Address (“NCOA”) database to update the Class Data, and then used skip tracing on returned Notices (Settlement, ¶¶ 4.2; 1.10);

- 1 • Notice: The Notice was issued within 14 days of receipt of the Class List (Settlement, ¶
- 2 7.4.2). The Notice describes how to dispute workweeks, submit an objection in writing, in
- 3 person, or through an attorney, or request exclusion (Settlement, ¶¶ 7.5 – 7.7);
- 4 • Notice Language: Notice was issued in English and Spanish (Settlement, ¶ 1.11; 7.4.2);
- 5 • Objections: Objections can be submitted in person, by attorney, or in writing to the
- 6 Administrator, with no pre-requisite to being heard (Settlement, ¶¶ 7.7.1 – 7.7.3);
- 7 • Exclusion Requests: The procedure for exclusion requests, mailing a request to the
- 8 Settlement Administrator, is the same as the procedure for submitting a written objection
- 9 (Settlement, ¶¶ 7.5.1 and 7.7.2);
- 10 • PAGA Allocation: From the GSA, **\$20,000.00** will be allocated to settle claims brought
- 11 pursuant to the California Private Attorneys General Act, Labor Code § 2699 *et seq.*
- 12 (“PAGA”), of which seventy-five percent (75%), or **\$15,000.00**, will be paid to the
- 13 California Labor & Workforce Development Agency. (Settlement, ¶ 1.33; 3.2.5);
- 14 • Notice to LWDA: Notice to the LWDA was provided prior to the filing of this Motion.
- 15 Evidence is attached to the Leviant Declaration;
- 16 • Enhancement/Service Award to Plaintiff: Defendant will not oppose the application for
- 17 Class Representative Service Payments of up to **\$7,500.00** for each Plaintiff, to be paid
- 18 from the GSA (Settlement, ¶ 3.2.1);
- 19 • Fees and Costs: Defendant will not oppose Class Counsel’s application for fees not to
- 20 exceed 33 1/3% of the GSA (**\$66,666.67**), and actual costs, in an amount not to exceed
- 21 **\$37,500.00**, to be paid out of the GSA (Settlement, ¶ 3.2.2);
- 22 • Check Void Period: Settlement checks will be valid for 180 days (Settlement, ¶ 4.4.1);
- 23 • Uncashed Checks: Any settlement checks that are mailed to the Class Members and remain
- 24 uncashed after 180 days of the date of issuance will be cancelled, and the moneys will be
- 25 directed to the State Controller’s Office, Unclaimed Property Division in the name of the
- 26 Class Member (Settlement, ¶ 4.4.3);
- 27 • Judgment Notice: Judgment will be posted on the Settlement Administrator’s website after
- 28 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. Plaintiffs' Claims

On February 23, 2022, Plaintiff Evans commenced this Action by filing a Complaint alleging causes of action against Defendant for: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay all wages to terminated employees; (6) failure to provide accurate itemized wage statements; (7) failure to indemnify necessary business expenses; and (8) violation of California's Unfair Competition Law, California Business and Professions Code § 17200 *et seq.* (Leviant Decl., ¶ 4.)

Plaintiff Evans sent a letter to the Labor and Workforce Development Agency ("LWDA"), pursuant to California Labor Code § 2699.3, providing notice of his intent to seek civil penalties under the Private Attorneys General Act, California Labor Code § 2698, *et seq.* ("PAGA Letter"). (*Id.* at ¶ 5.) The LWDA did not indicate that it intended to investigate the alleged violations referenced in the letter, and the 65-day time period permitted for the LWDA to provide such a notification expired. On April 26, 2022, Plaintiff Evans filed a First Amended Complaint alleging an additional cause of action for violation of the Private Attorneys General Act ("PAGA"). On October 13, 2022, Plaintiff Evans filed a Second Amended Complaint adding named Plaintiff Melody Sprouse as a party. The Second Amended Complaint is the operative complaint in the Action (the "Operative Complaint.") (*Id.* at ¶ 5.)

B. Pre-Settlement Discovery and Class Certification

The Parties conducted extensive discovery and investigation of the facts and law. Discovery included, *inter alia*, time and wage data, policy documents, and depositions. (Leviant Decl., ¶ 6.)

Plaintiffs moved for class certification. (Leviant Decl., ¶ 7.) The Court granted class certification as to the narrow issue of whether the regular rate of pay was correctly calculated when paying overtime pay, meal period premiums or rest period premiums. (*Id.*) No other claims were certified. (*Id.*)

C. Settlement

Following the rulings on Plaintiffs' Motion for Class Certification and DWC's Motion for

Summary Adjudication, the Parties commenced direct negotiations between counsel that resulted in this Settlement. (Leviant Decl., ¶ 8.) The Parties then signed a long form settlement agreement (the “Agreement”). (*Id.*)

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

Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement set forth in this Agreement is a fair, adequate, and reasonable Settlement and is in the best interests of the Class. (Leviant Decl., ¶ 10.) Solely for the purpose of settling this case, the parties agree that the requirements for establishing class action certification with respect to this class have been met and are met. (*Id.*) If this Settlement is not approved by the Court for any reason, Defendant reserves the right to contest class certification (other than as to the class previously certified by the Court). (*Id.*) This Settlement, if approved, will result in the termination of the litigation through the entry of the Judgment and the release of all Released Claims for all Class Members, including all within the class definition who have not elected to exclude themselves from the Class. (*Id.*)

V. CLASS DEFINITION

The Class is defined as follows:

All individuals employed at any time during the Class Period as non-exempt employees of DWC in California, excluding participants in the LA:RISE program, who received bonuses and whose regular rate of pay was used for purposes of calculating overtime pay, meal period premiums or rest period premiums (the “Class Period” is February 23, 2018, to the date on which preliminary approval for the Settlement is granted). “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Class portion of the Settlement. (Settlement, ¶¶ 1.5, 1.9, 1.12, 1.34.)

(Leviant Decl., ¶ 34 and Exhibit 1.)

VI. DISCUSSION

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

Under Code of Civil Procedure § 382, class certification is warranted so long as there is a

1 numerous and ascertainable class with a well-defined community of interest and that a “class action
2 proceeding is superior to other means for a fair and efficient adjudication of the litigation.” *See, e.g., Sav-*
3 *on Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 326, 332 (2004). For purposes of this Settlement
4 *only*, Defendants stipulate to conditional certification. (Settlement ¶ 12.1.)

5 “The certification question is ‘essentially a procedural one that does not ask whether an action is
6 legally or factually meritorious.’” *Id.*, at 326, quoting *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440
7 (2000). The certification question asks whether the theory of recovery advanced by the plaintiff is likely
8 to prove amenable to class treatment. *See, e.g., Jaimez v. Daiohs USA, Inc.*, 181 Cal. App. 4th 1286,
9 1298 (2010). As the court noted in *Dunk*, although certification requirements are intended “to protect the
10 interests of the non-representative class members,” that concern is “protected by the trial court’s fairness
11 review of the settlement.” *Dunk v. Ford Motor Co.* 48 Cal. App. 4th 1794, 1807 n. 19 (1996). In view
12 of these standards, *as discussed more thoroughly as part of the preliminary approval motion*, the
13 Settlement Class should be certified for settlement. Code Civ. Proc. § 382; Rules of Court, Rule
14 3.769(c).

15 **B. The Court Should Approve the Settlement Because It Is Fair, Adequate, and**
16 **Reasonable**

17 California courts favor settlement. *See, e.g., Stambaugh v. Superior Court*, 62 Cal. App. 3d 231,
18 236 (1976). Unlike most settlements, class action settlements involve a court approval process that exists
19 to prevent fraud, collusion, and unfairness to class members. *Malibu Outrigger Bd. of Governors v.*
20 *Superior Court*, 103 Cal.App.3d 573, 578-579 (1980). This approval process consists of preliminary
21 settlement approval, notice being given to class members, and a final fairness and approval hearing being
22 held at which class members may be heard with respect to the settlement. *Id.* For the reasons discussed
23 below, this Court should finally approve the Settlement and enter Judgment.

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

25 Any settlement of class litigation must be reviewed and approved by the presiding court. Rules
26 of Court, Rule 3.769(a). Approval occurs in two steps: (1) an early (preliminary) review by the trial
27 court and (2) a subsequent (final) review after notice has been distributed to the class members. The
28 Preliminary Approval Hearing and Final Approval Hearing coincide with these two steps. The present

1 motion seeks *final approval* and the entry of a Judgment.

2 To evaluate a settlement, a court must receive “basic information about the nature and magnitude
3 of the claims in question and the basis for concluding that the consideration being paid for the release of
4 those claims represents a reasonable compromise.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th
5 116, 133 (2008). But the record need **not** contain an explicit statement of the maximum theoretical
6 recovery. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 409 (2010).

7 **2. The Parties Reached the Settlement Through Arms’ Length Negotiations**
8 **Between Experienced Counsel After Sufficient Data Was Exchanged in**
9 **Formal Discovery to Evaluate Settlement.**

10 A settlement is presumptively fair where it is reached through arms’ length bargaining, based on
11 sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is
12 experienced in similar litigation, and the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at 1802;
13 *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *7-Eleven Owners for Fair Franchising v.*
14 *Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000). In exercising these powers, the overriding
15 concern is to ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk*, at 1801,
16 quoting *Officers for Justice v. Civil Serv. Comm’n of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

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

18 [T]he complexity and likely duration of further litigation, the risk of maintaining class
19 action status through trial, the amount offered in settlement, the extent of discovery
20 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.

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

23 Here, the Settlement resulted from thorough, arms’ length negotiations between experienced
24 counsel after a motion for class certification and a motion for summary adjudication provided substantial
25 information about costs and risks. (Leviant Decl., ¶¶ 8-10.) Plaintiffs obtained data from Defendant
26 through discovery and then carefully reviewed that information. Counsel for Plaintiffs also examined
27 relevant policies and interviewed witnesses in detail about their work experiences and Defendant’s
28 practices. Defendant also expressly and vigorously denies any wrongdoing or legal liability arising out

1 of the conduct alleged in the action.

2 Based on the review of data, Plaintiffs estimated potential exposure and then estimated risk
3 factors to adjust the reasonable expected outcome. The investigation that Plaintiffs' counsel conducted
4 was sufficient to provide them with enough information to intelligently evaluate the estimated exposure
5 for purposes of negotiating the Settlement in view of the risks discussed below and was sufficient to
6 allow this Court to do the same. *See, e.g., Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 245
7 (2001).

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

11 The proposed Settlement of \$200,000.00 offers substantial, timely, and guaranteed payments to
12 Class Members. A settlement is not judged against what might have been recovered had a plaintiff
13 prevailed at trial and does not have to provide 100% of damages sought to be fair and reasonable. "In the
14 context of a settlement agreement, the test is not the maximum amount plaintiffs might have obtained at
15 trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances."
16 *Wershba*, 91 Cal. App. 4th at 250. Accordingly, because settlements involve compromise, even one that
17 provides for substantially narrower relief than would likely be obtained if the suit were successfully
18 litigated can be reasonable given that "the public interest may indeed be served by a voluntary settlement
19 in which each side gives ground in the interest of avoiding litigation." *Id.*

20 With respect to the claims asserted on behalf of the Class in this case, there are serious risks that
21 support this compromise amount. These risks include, but are not limited to: (i) the risk that Plaintiffs
22 would be unable to establish liability for unpaid wages, *see Duran v. US Bank Nat'l Ass'n*, 59 Cal. 4th 1,
23 39 & n. 33 (2014) ("*Duran*"); (ii) the risk that uncertainties about the legality of Defendant's policies and
24 practices could preclude class-wide awards of statutory penalties; (iii) the risk that individual differences
25 between Class Members could be construed as pertaining to liability and not just damages; (iv) the risk
26 that any penalty award under PAGA could be reduced by the Court in its discretion; (v) the risk that
27 lengthy trial or appellate litigation could ensue; and, (vi) the risk that violation rates could prove lower
28 than expected. These risks are non-exhaustive. (Leviant Decl., ¶ 16.) **Moreover, the undeniable fact in**

1 *this case is that certification was granted as to only one theory of liability in this matter.* (*Id.*) That
2 means that the “risk” dominating all others is the question of whether any portion of the Court’s
3 certification ruling could be reversed on appeal. (*Id.*) This is an astoundingly significant risk factor that
4 justifies the tremendous discount imposed on the un-certified claims in this case. (*Id.*)

5 In light of the uncertainties of protracted litigation, the settlement amount reflects a fair and
6 reasonable recovery for the Class Members. (Leviant Decl. ¶¶ 13-20.) The settlement amount is, of
7 course, a compromise figure. (Leviant Decl. ¶ 17.) By necessity it took into account risks related to
8 liability, damages, and the defenses asserted by Defendant. (*Id.*) Moreover, each Class Member was
9 given the opportunity to opt-out of the Settlement, allowing those who felt they have claims that are
10 greater than the benefits they can receive under this Settlement to pursue their own claims. (*Id.*) Here,
11 only one person opted out of the settlement. For the **159** members of the Class, the average **gross** benefit
12 is **\$1,257.86** per class member, and the estimated average **net** recovery for each Class Member is
13 approximately **\$324.11**. (*Id.*) Given that Defendant could challenge both the core liability and the
14 derivative penalties, this is the best result that could have been achieved in settlement. Moreover, a Class
15 Member who worked a greater number of workweeks will receive a larger Settlement share than a Class
16 Member who worked for a shorter time during the class period. (*Id.*)

17 After analyzing the claims in this matter, Plaintiffs have concluded that the Gross Settlement
18 Amount of **\$200,000** is about 93% of the **\$214,675.21** estimate of *risk-adjusted* recovery (excluding
19 interest) at this stage in the litigation. (Leviant Decl., ¶ 18.) This assessment is based on a carefully
20 constructed model of the current fair value of the case, using estimated risks, average wage rates,
21 numbers of employees, and the amount of time covered by the class period. (*Id.*)

- 22 • Plaintiffs claimed that they were required to perform client service note entry off-the-clock.
23 The full value of the exposure is estimated to be approximately \$123,153.75, assuming about
24 15 minutes of off-the-clock work for every single class member for every single workweek.
This exposure estimate is certainly far too high. For settlement purposes, this claim was not
certified and has negligible value as a result.
- 25 • Plaintiffs claimed that they regularly missed rest breaks due to the volume of work. A
26 reasonably estimated exposure for rest break violations over the class period was calculated
27 at \$295,569.00, assuming approximately one missed rest break every pay period for 100% of
the Class. This exposure estimate is certainly far too high. For settlement purposes, this
claim was not certified and has negligible value as a result.
- 28 • Plaintiffs claimed that they regularly had late meal periods due to the volume of work. A

1 reasonably calculated exposure for meal break violations over the class period was calculated
2 at \$197,046.00, assuming approximately one deficient meal period every pay period for
3 100% of the Class. This exposure estimate is certainly far too high. For settlement purposes,
4 this claim was not certified and has negligible value as a result.

- 5 • The regular rate of pay theory of liability was the only theory certified. For settlement
6 purposes, the value is assumed to be \$25,000. With a 50% chance of success on the merits,
7 the settlement value is \$12,500.00. This claim is extremely dependent upon legal findings at
8 trial. Further Defendant maintains that it properly calculated employees' regular rate of pay,
9 and that any bonuses employees received were discretionary and should have been excluded
10 from the regular rate.
- 11 • Risk-adjusted penalty recoveries for wage statement and Labor Code § 203 penalties were
12 estimated to be approximately \$26,833.33 and \$108,675.00, respectively, on maximum
13 estimated exposures of \$107,333.33 and \$434,700.00, respectively (with merits success
14 chances of 25%, based on the regular rate of pay theory of unpaid wages, adjusted for the
15 additional risk of willfulness). The Supreme Court's recent decision in *Naranjo v. Spectrum*
16 increased the risk that the derivative penalties would not be assessed.
- 17 • Plaintiffs alleged use of personal cell phones for work purposes. A reasonably calculated
18 exposure for unreimbursed expenses was estimated to be \$68,418.75. For settlement
19 purposes, this claim was not certified and has negligible value as a result.
- 20 • Performing risk-adjusted valuations for all claims yields a total value in the range of
21 \$154,850.21, excluding PAGA.²
- 22 • PAGA penalties were calculated as having a maximum realistic exposure of \$598,250.00, but
23 a risk adjusted value of \$59,825.00, after factoring in risks of reduction in penalties pursuant
24 to Court discretion and the high risk of the inability to prove violations for all aggrieved
25 employees.

26 The concurrently-filed Declaration of H. Scott Leviant sets forth claim valuation in additional detail.
27 (See, Leviant Decl., ¶ 18.)

28 This result here is fully supportable as reasonable. First, it is important to recognize the
wilfulness finding required for Labor Code §§ 203 and 226 is now highly challenging to establish, and
the value of the regular rate of pay claim rests on the derivative penalties. (Leviant Decl., ¶ 19.) The
Judicial Council's Class Certification in California: SECOND INTERIM REPORT FROM THE
STUDY OF CALIFORNIA CLASS ACTION LITIGATION - FEBRUARY 2010 ("Second Interim

² It is difficult to assign specific percentages to future events, but it does provide a specific method
for attempting to reduce the concept of "very high risk" or "high risk" to a quantifiable amount.
Certification of a claim is typically a binary event. One does not obtain a 20% certification; a claim is
either certified or it is not. But the current expected value is best quantified by applying a risk reduction,
based on the total experience of counsel. The numbers explain with math what can also be described
conceptually in words.

Report”), at page 5, states that “less than a quarter of disposed cases in the study sample were certified, either through a litigated motion for certification or as part of a classwide settlement agreement.” See, Second Interim Report, at 5 (emphasis added).³ That “*or*” is significant. The certification rates identified in the study of less than 25% includes *both* contested certifications and settlement certifications, which are the majority of certifications. In other words, one must assume in any wage and hour class action prior to certification that a contested certification motion will have a success rate of well under 25%, and probably closer to 10% as a starting point for risk evaluation. The facts of each case have significant bearing on these percentages. But it cannot be disputed that certification is an exceptionally difficult procedural hurdle to successfully overcome. Thus, it is not unreasonable to start from the proposition that a pre-certification settlement that is 10% to 15% of the maximum plausible exposure is a valid starting point for valuation. If roughly 10% of class actions are certified on a contested basis, then, on average, 90% of the time a class will not be certified and the result for the class is *zero* dollars.

In sum, well *under* 20% of all cases filed as proposed class actions are ultimately certified by way of a *contested* motion, and that was demonstrated in this case. (Leviant Decl., ¶ 19.) It would also be appropriate to evaluate the result by examining only the premium wages at issue (approximately \$640,768.75, with no risk reduction), excluding penalties and interest; the settlement is about 31% of the premium wages (unpaid wages, meal period premiums, and rest break premiums) at maximum realistic exposure value.⁴ 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 Fund to Class Members also is fair and

³ The report is available at <https://www.courts.ca.gov/documents/classaction-certification.pdf> (last viewed March 12, 2024).

⁴ 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 reasonable. The Settlement Fund is to be allocated between all Class Members, based on time worked
2 by the Class Member during the Class Period, in relation to the total amount of time worked by all
3 participating Class Members. This proposed method is fair and reasonable because each Class
4 Member's actual potential damages vary based on the number of workweeks the Class Member worked
5 (e.g., Lab. Code § 226.7 provides for an extra hour of pay at the employee's regular rate of pay for each
6 violation, resulting in a higher potential damage when a higher number of incidents occur). A Class
7 Member who worked a greater number of work weeks will receive a larger payment under the
8 Settlement than a Class Member who worked for a shorter amount of time. (Leviant Decl., ¶¶ 13, 17.)

9 **5. The Proposed Enhancement Awards to Plaintiffs Warrant Approval.**

10 The proposed enhancement of \$7,500 to each Plaintiff is intended to recognize substantial
11 initiative and significant efforts on behalf of the Class. Courts routinely approve incentive awards to
12 compensate named plaintiffs for the services they provide and the risks they incur during class action
13 litigation, often in much higher amounts than that sought here. Factors considered when awarding an
14 incentive include the actions the plaintiff has taken to protect the class, the degree to which the class has
15 benefitted, the amount of time and effort the plaintiff expended in the litigation, the risk to the class
16 representative in commencing suit (financial and otherwise), the notoriety and personal difficulties
17 encountered, the duration of the litigation, and the personal benefit (or lack thereof) enjoyed by the
18 plaintiff as a result of the litigation. *Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 804
19 (2009). Here, Plaintiffs were deposed, and contributed substantial time to the prosecution of this matter.
20 (Evans Decl., ¶¶ 14-21; Sprouse Decl., ¶¶ 14-21; Leviant Decl., ¶ 33.) The enhancements also recognize
21 risks Plaintiffs took to be personally liable for costs regardless of the success of the litigation, as well as
22 the personal risk of facing intrusive discovery and potential disclosure to future employers that Plaintiffs
23 sued an employer, making future employment less certain. Plaintiffs' Declarations support the requested
24 enhancements.

25 **6. The Proposed Award of Attorneys' Fees and Costs Is Also Fair, Adequate,** 26 **and Reasonable and Merits Final Approval.**

27 *a) Plaintiffs Counsel Should be Awarded Fees Based on a Percentage of the*
28

Fund Recovered, Consistent with the Common Fund Method

The request for fees as a percentage of a settlement is supported by the “common fund theory,” where “one who expends attorneys’ fees in winning a suit which creates a fund 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. *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).⁵ 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 consistent with Plaintiffs’ counsel’s experience. Here, Plaintiffs’ attorneys intend to request attorneys’ fees of up to \$66,666.67 (one-third of the GSA), and costs capped at \$37,500.00 (which includes payment for class certification analysis, filing fees, legal research fees, and other expenses). (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

Plaintiffs’ fee application is also reasonable based on 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,

⁵ 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.

622 (2000). The moving party meets its burden 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.” *Wershba*, 91 Cal. App. 4th at 254-55; *Dunk*, 48 Cal. App. 4th at 1810; *Nightengale v. Hyundai Motors America*, 31 Cal. App. 4th 99, 103 (1994). The hours spent and the reasonable hourly compensation are used to arrive at a “lodestar” figure which may then be augmented or diminished taking into account various “multiplier” factors. *See Ramos*, 82 Cal. App. 4th at 622 (citing *Serrano*, 20 Cal. 3d at 48-49).

Here, Class Counsel’s *total* lodestar is **\$156,712.50** (including about 10 hours of past and future time not billed by Mr. Leviant). (Leviant Decl., ¶ 32.) The request for **\$66,666.67** in attorneys’ fees, which is 0.42 times the estimated total lodestar (a “negative” multiplier), is reasonable under the lodestar method.

(1) Class Counsel’s Hours Are Reasonable

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

(2) Class Counsel’s Hourly Rates Are Reasonable

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

Class Counsel are experienced litigators who specialize in employment law, with a substantial

wage and hour practice. (Leviant Decl., ¶¶ 21-27.) A number of courts, including this Court, have approved Class Counsel’s hourly rates. (Leviant Decl., ¶ 21.) 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 \$37,500.00. Moon Law Group, PC seeks capped costs in the amount of \$37,500.00, because actual costs exceed the cap. (Leviant Decl., ¶ 32, 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 \$37,500.00. (*Ibid.*)

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

Apex Class Action, which has been selected due to its competitive bid, states that administration can be performed for a flat rate of **\$9,300.00**. In counsel’s experience, based on similar wage-and-hour actions, an estimated cost of **\$9,300.00** is a fair and reasonable amount for administration fees and should be approved. (Leviant Decl., ¶ 34.) Apex has also confirmed its capabilities and security protocols in the accompanying declaration.

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. In their view, a PAGA allocation, even if a small portion of the total settlement, could be reasonable if the settlement of the wage and hour claims is robust and serves the deterrent purpose of PAGA. *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

1 upon the defendant employer and other employers, an objective of PAGA.”). *Moniz* provided explicit
2 confirmation that this was an appropriate yardstick by which to measure reasonableness of a PAGA
3 settlement. *Moniz*, 72 Cal. App. 5th at 77. *Moniz*, in agreeing with federal courts that have considered
4 how to evaluate a PAGA settlement, concluded that the class action factors are appropriately considered,
5 along with a consideration of whether the settlement furthers “PAGA’s purposes to remediate present
6 labor law violations, deter future ones, and to maximize enforcement of state labor laws.”

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

11 The second element (the PAGA purposes element) is also satisfied here. As held by *Moniz*,
12 PAGA’s purposes include (1) remediation of present labor law violations, (2) deterrence of future
13 violations, and (3) maximization of enforcement of state labor laws. Here the allocation of a major
14 portion of settlement funds to class members still advances the goal of labor law violation remediation.
15 The allocation of a major portion of settlement funds to class members also deters future violations. This
16 is a \$200,000.00 settlement, a good result. Deterrence is fulfilled. Finally, allocation of a major portion
17 of settlement funds to class members still advances the goal of enforcement of state labor law. This
18 settlement is, by definition, a response to alleged violations of labor laws, balanced against risks.

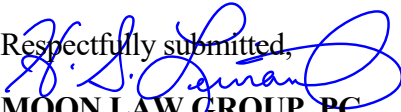
19 In addition, there is no evidence that a court or a commissioner had informed Defendant that their
20 conduct violated the Labor Code. *Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157, 1209 (2008); *Willis v.*
21 *Xerox Bus. Servs., LLC*, 2013 WL 6053831, *7-8 (E.D. Cal. 2013). And in *Cotter*, the court found a
22 significant reduction of the PAGA claim would be appropriate because “[t]his does not appear to be a
23 case where a company has deliberately sought to evade the law.” *Cotter*, 176 F. Supp. 3d at 941.

24 Finally, the PAGA allocation is fair. The LWDA is receiving \$15,000.00. The Class is
25 receiving, net, \$51,533.33 for the releases of all other claims (excluding the \$5,000.00 as the aggrieved
26 employees’ share of the PAGA Allocation). While the proportion is tipped in favor of the employees,
27 the allocation is not unfair because it satisfies California’s wage and hour policies. The LWDA is
28 receiving about 38.81% of what the Class is receiving as a Net Settlement Amount.

1 **VII. CONCLUSION**

2 For all the foregoing reasons, because the Class meets the requirements for certification, because
3 the Settlement bears all requisite indicia of fairness, reasonableness, and adequacy, and because the
4 notice procedure and forms comported with Rule 3.766 and due process, this Court should grant this
5 Motion for Final Approval.

6
7
8 Dated: December 20, 2024

Respectfully submitted,

MOON LAW GROUP, PC

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10 By: _____
11 Kane Moon
12 H. Scott Leviant
13 Mariam Ghazaryan
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15 Attorneys for Plaintiffs
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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 725 S. Figueroa St., Suite 3100, Los Angeles, CA 90017.

On the date indicated below, I served the document described as: **PLAINTIFFS' 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:

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WOMEN'S CENTER

☒ **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above via third-party cloud service CASEANYWHERE. I did not receive an error message.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this **December 20, 2024** at Los Angeles, California.

H. Scott Leviant
Type or Print Name


Signature