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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

JASMIN GONZALEZ, an individual, on
behalf of herself, others similarly situated,
and as a private attorney general on behalf of
the State of California,

PLAINTIFF,

v.

AUTISM SPECTRUM THERAPIES, LLC.,
a California Limited Liability Company,
LEARN-IT SYSTEMS, LLC, a Maryland
Limited Liability Company, and DOES 1
thru 50, inclusive,

DEFENDANTS.

CASE NO: CIVSB2206648

[Assigned to the Hon. Jessica Morgan, Dept. S-
26]

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

*[Filed concurrently with the Declaration of David
S. Winston, the Declaration of Jasmin Gonzalez,
and [Proposed] Order]*

Date: September 10, 2024

Time: 8:30am

Dept: S-26

Date Filed: March 24, 2022

FAC Filed: July 1, 2022

Trial Date: April 7, 2025

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on September 10, 2024 at 8:30 am in Department S-26 of the
3 above-entitled court, located at 247 West 3rd Street, San Bernardino, CA 92415, Plaintiff Jasmin
4 Gonzalez will move the Court for Preliminary Approval of the Proposed Class Settlement. The Motion
5 will be made on the grounds that the proposed Class Settlement is fair, adequate, reasonable, and in
6 the best interest of the Class and the Parties.

7 The Motion will be based on this Notice of Motion, the attached Memorandum of Points and
8 Authorities, the Declaration of David S. Winston, the Declaration of Jasmin Gonzalez, the Class
9 Action and PAGA Settlement Agreement attached to the Declaration of David S. Winston, and the
10 Notice to Class Members attached to the Declaration of David S. Winston, all other papers and records
11 on file in this action, and on such oral and documentary evidence as may be presented at the hearing
12 on this Motion.

13
14 Dated: May 23, 2024

WINSTON LAW GROUP, P.C.

15
16 By: David Winston
17 DAVID S. WINSTON
18 Attorney for Plaintiff Jasmin Gonzalez, the
19 Proposed Class, and the aggrieved employees
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Jasmin Gonzalez, now known by her married name of Jasmin Anabel Rivas, (“Plaintiff”) submits this Memorandum of Points and Authorities in support of her Motion for Preliminary Approval of Class Settlement reached between Plaintiff and Defendants Autism Spectrum Therapies, LLC and Learn-It Systems, LLC (hereafter “Defendants”). By this Motion, Plaintiff requests that the Court:

(1) Grant preliminary approval of the Class Action and PAGA Settlement Agreement (“Settlement Agreement”). A true and correct copy of the Joint Stipulation of Settlement and Release of Class Action and PAGA Claims is attached to the Declaration of David S. Winston ¶ 21, Exh. 2 (hereafter the “Winston Decl.”);

(2) Approve the proposed Notice to Class Members (“Notice of Settlement”), a copy of which is attached as Exhibit A to the Settlement Agreement (which is Exhibit 2 of the Winston Decl.) and direct that the Notice of Settlement be sent to Class Members in the manner set forth in the Settlement Agreement; and

(3) Schedule a hearing on final approval of the settlement (“Settlement”) and Plaintiff’s Counsel’s application for an award of attorneys’ fees and litigation costs at which time Class Members may be heard (“Final Approval Hearing”).

Class Counsel has achieved a good result in this litigation given the unique facts of this case. The proposed Settlement provides substantial benefits to the Class and is the product of diligent litigation by Class Counsel to obtain the best possible result for the Class Members following two mediations. The settlement of this Action (defined below) is fair, reasonable, adequate, and in the best interests of the Class. Accordingly, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement Agreement and certify the proposed Class for settlement purposes.

II. FACTUAL BACKGROUND

A. The Prior Durham Litigation

The class period in this Action commences one day after the class period ended from a prior class action (*Gregory Durham vs. Autism Spectrum Therapies, LLC*, Los Angeles County Superior

1 Court Case No. 19STCV25183) ended. Winston Decl., ¶ 9. Unlike the other members of the *Durham*
2 Class, Plaintiff was not a member of the *Durham* Class because she filed this Action before preliminary
3 approval in *Durham* and the class definition in *Durham* specifically excluded all individuals with their
4 own pending claims against Defendants as of the date of preliminary approval. Specifically, the
5 *Durham* Class was defined as “all non-exempt hourly-paid employees working in the State of
6 California for Autism Spectrum Therapies, LLC who performed any work for AST as an hourly-paid
7 employee from July 19, 2015 through September 1, 2021 (the ‘Settlement Class Period’), and expressly
8 excluding therefrom any such individual who, as of the date the Court grants preliminary approval of
9 this Settlement Agreement, has filed a pending, separate lawsuit, as a named plaintiff, individually
10 and/or as a putative class or representative action, asserting the same or similar claims to those alleged
11 in the Litigation...” Winston Decl., ¶ 10. As such, in addition to the class and PAGA claims in this
12 Action that cover the post-*Durham* period of September 2, 2021 through December 31, 2022, Plaintiff
13 also asserted individual claims for the more than six (6) year period covered by the *Durham* Action that
14 have already been released by those class members who worked for Defendants during the *Durham*
15 class period. *China Agritech, Inc. v. Resh*, 584 U.S. 732 (2018) (explaining that “*American Pipe &*
16 *Constr. Co. v. Utah*, 414 U.S. 538 (1974), established that the timely filing of a class action tolls the
17 applicable statute of limitations for all persons encompassed by the class complaint... *American Pipe*’s
18 tolling also applies to putative class members who, after denial of class certification, ‘prefer to bring
19 an individual suit rather than intervene.’”).

20 **B. Litigation Overview**

21 On March 22, 2022, Plaintiff Gonzalez filed a PAGA Notice with the LWDA and requested a
22 copy of her personnel file, pay records, time records, and other employment related documents.
23 Winston Decl., ¶ 14, Exh. 1. Shortly thereafter, on March 24, 2022, Plaintiff filed a Class Action and
24 Representative Action Complaint in San Bernardino County Superior Court. *Id.* at ¶ 15. Defendants
25 sought to compel this matter to arbitration, but after the Parties fully briefed the issue for the Court,
26 Defendants agreed to mediate the Action with respected mediator Michael Dickstein, Esq. *Id.* at ¶ 16.
27 The Parties reached a preliminary settlement at the mediation; however, the Parties thereafter
28

1 discovered some additional issues they had to work through, which ultimately led to a second mediation
2 on January 8, 2024 where the Parties were able to resolve their differences. *Id.* at ¶ 17.

3 As part of the mediation process, Defendants provided Plaintiff with informal discovery related
4 to the number of Class Members (2,506), the number of workweeks (73,390) during the Class Period,
5 the number of Class Members whose employment ended during the Class Period (1,297) the number
6 of employees who worked during the PAGA period (3,445), and the total number of pay periods during
7 the PAGA period (57,308) at issue during the PAGA period. Winston Decl., ¶ 18. Defendants also
8 provided Plaintiff with relevant policy documents as well as a sample of pay records for 345 Class
9 Members as well as a sample of time records. *Id.* at ¶ 19. Plaintiff hired a third-party data expert to
10 analyze the time and pay records produced by Defendants in advance of the first mediation in order to
11 ascertain the violation rates and the value of the claims and the supplemental production after the second
12 mediation. *Id.* at ¶ 20. With significant assistance from the Mediator and following a mediator's
13 proposal, the Parties agreed to the proposed non-reversionary, checks-mailed Settlement pending
14 before the Court. *Id.* at ¶ 21.

15 Class Counsel believes that the proposed Settlement is fair and reasonable and in the best
16 interest of the Parties and the Class. Winston Decl., ¶ 8.

17 **III. THE SETTLEMENT**

18 **A. The Settlement Class and Release**

19 This Action concerns, and the Proposed Settlement Class is defined as “all non-exempt hourly-
20 paid employees working in the State of California for Defendants from September 2, 2021 through
21 December 31, 2022 (the “Settlement Class Period”) who performed any work for Defendants as a non-
22 exempt employee. The Settlement Class shall expressly exclude any putative class member who is a
23 former employee who has previously released such claims after his or her employment ended.” Winston
24 Decl., ¶ 21, Exh. 2 at § 6. Under the terms of the Parties’ Settlement Agreement, the “Settlement Class
25 Period” is defined as the period “from September 2, 2021 through December 31, 2022” *Id.* at § 6 and
26 35. There are approximately 2,506 Class Members. Winston Decl., ¶¶ 22-23.¹

27 _____
28 ¹ Following a supplemental production, the Parties discovered there were slightly fewer workweeks during the class period,
but slightly more class members than Defendant originally represented. The amount of additional class members was still less
than the amount necessary to trigger the escalator clause under the terms of the Settlement and the damages were still consistent

1 Under the terms of the Proposed Settlement, upon the funding of the Gross Settlement Amount,
2 the participating Class Members will release the Released Parties “of and from any and all claims,
3 demands, complaints, actions, causes of action, costs, expenses, attorneys’ fees, economic damages,
4 non-economic damages (if any), restitution, civil penalties, statutory penalties, liquidated damages,
5 punitive damages (if any), interest, obligations, liabilities, or other monies and remedies, of any and
6 every kind, contingent or accrued, that have been or reasonably could have been alleged or asserted in
7 any of the pleadings filed in the Litigation, based on the allegations contained therein, including the
8 operative First Amended Complaint, for failure to pay (or correctly pay) wages and/or overtime wages,
9 failure to timely pay wages, including final wages, failure to furnish accurate itemized wage statements
10 and failure to reimburse employment-related expenses, violations of Cal. Labor Code § 212, violations
11 of Business & Professions Code § 17200, violations of the California Unfair Competition Law (“UCL”),
12 and/or civil penalties, based in whole or in part on any direct or imputed violation of any state, local or
13 administrative constitution, charter, law, rule, regulation or ordinance (collectively, “Released Claims”)
14 from September 2, 2021 through December 31, 2022.” Winston Decl., ¶ 21, Exh. 2 at § 35.

15 In addition to the Class claims, upon the funding of the Gross Settlement Amount, the LWDA
16 and the aggrieved employees will also release the Released Parties “from any and all claims and causes
17 of action, contingent or accrued, arising out of the allegations asserted in the Litigation and from all
18 violations asserted or that could have reasonably been asserted based on the allegations in any notice sent
19 to the LWDA as referenced in any of the pleadings filed in the Litigation (including the First Amended
20 Complaint) including, without limitation, for civil penalties under the Private Attorneys General Act of
21 2004 Cal. Labor Code § 2698 *et seq.* based upon the facts alleged, including: failure to pay minimum
22 wages in violation of Cal. Labor Code § 1194 and 1194.3; failure to pay overtime wage in violation of
23 Cal. Labor Code § 510; penalties pursuant to Cal. Labor Code § 226 for failure to furnish accurate
24 itemized wage statements; failure to timely pay final wages in violation of Cal. Labor Code 201-203;
25 failure to reimburse employment-related expenses in violation of Labor Code § 2802; and for violations
26 of Labor Code §§ 201, 202, 203, 204, 210, 212, 226, 226.3, 510, 558, 1174, 1174.5, 1194, 1197, 1197.1,
27

28 _____
with what was expected based upon the information previously provided by Defendants related to the number of workweeks.
Winston Decl., ¶ 22.

1 1198, 2802, and IWC Wage Order Nos. 4-2001 and 5-2001 (“Released PAGA Claims”) that occurred
2 from September 2, 2021 through September 1, 2023.” Winston Decl., ¶ 21, Exh. 2 at § 36.

3 **B. Settlement Payments**

4 As detailed fully in the Settlement Agreement, the Settlement provides for Defendants to pay a
5 Gross Settlement Amount of \$325,000.00. Winston Decl., ¶ 21, Exh. 2 at §§ 11-12. Pursuant to the
6 Settlement Agreement, Class Counsel proposes the following allocation of the Settlement to determine
7 the Net Settlement Amount:

8	Gross Settlement Amount:	\$325,000.00
9	Attorneys’ Fees (1/3):	up to \$108,333.33
10	Estimated Litigation Costs:	up to \$30,000.00
11	Estimated Enhancement Award:	up to \$5,000.00
12	Estimated Cost of Administration:	up to \$25,000.00
13	PAGA Payment To the LWDA (\$20,000 total in PAGA Penalties):	\$15,000.00

14		
15	Estimated Net Settlement Amount	\$141,666.67
16	Including Employees’ \$5,000	
17	Share of PAGA Penalties	

18 The Estimated Net Settlement Amount (\$141,666.67) is the amount distributable to Participating
19 Class Members and Aggrieved Employees and consists of the Gross Settlement Amount minus Court
20 Approved Class Counsel’s attorneys’ fees and litigation costs, Settlement Administrator Costs, the
21 LWDA’s portion of the PAGA penalties as well as an Enhancement Award for the Class Representative.
22 Winston Decl. ¶¶ 21 and 25, Exh. 2, at §§ 13 and 24.² The Settlement is non-reversionary, and
23 Defendants will pay 100 percent of the Gross Settlement Amount. Winston Decl. at ¶ 21, Exh. 2, at §
24 11. This is a checks-mailed settlement meaning that Class Members do not need to submit a claim form
25 and will receive a check as long as the Settlement is approved. Winston Decl. ¶ 21, Exh. 2, at § 22.

26 Each Participating Class Member will share pro-rata in the settlement fund based upon the
27 number of workweeks worked during the Class Period. Winston Decl., ¶ 21, Exh. 2, at § 24.³ The
28 estimated average net settlement award each Class Member is expected to receive when including the

² The proposed settlement was submitted to the LWDA. Winston Decl., ¶ 31, Exh. 3.

³ Defendants paid employees on a bi-weekly basis such that a pay period generally encompasses two workweeks.

1 employee's \$5,000 share of PAGA penalties is approximately \$56.53 (\$141,666.67/2,506 Class
2 Members), the maximum estimated net settlement award is estimated to be approximately \$133.19 ((69
3 workweeks⁴ during the class period/73,390 total workweeks) x \$141,666.67), and the minimum
4 estimated settlement award is estimated to be approximately \$1.93 ((1 workweek worked during the
5 class period/73,390 total workweeks) x \$141,666.67). *Id.* at ¶ 26. The average estimated net settlement
6 amount when excluding the employee's share of PAGA penalties is approximately \$54.54
7 (\$136,666.67/2,506 Class Members). *Id.*

8 The proposed method of allocation is fair and reasonable. *Id.* at ¶ 27.

9 **C. Process for Administering Settlement after Preliminary Approval**

10 The Notice of Settlement procedure established by the Settlement Agreement will efficiently and
11 accurately ensure that the Notice of Settlement is provided to the Class Members. The Parties have
12 agreed to use the reputable third-party claims administrator ILYM Group, Inc. to administer the
13 Settlement. Winston Decl., ¶ 21, Exh. 2 at § 21. Defendants must provide ILYM Group, Inc. with the
14 Class List and Notice data within twenty-eight (28) calendar days of the Preliminary Approval Order.
15 *Id.* at § 31. Before distributing the class notices, ILYM, Inc. will perform a national change of address
16 search for each Class Member, update the addresses per the results of the search, populate the data for
17 the estimated Net Settlement Award for each Class Member, and mail the Notice of Settlement to all
18 Class Members via first-class, United States Mail. *Id.* at §§ 31-32. The Notice of Settlement will be
19 substantially in the form attached as Exhibit A to the Settlement Agreement. *Id.* at § 32, Exh. A.

20 With respect to those Class Members whose Notice of Settlement is returned to the Settlement
21 Administrator as undeliverable, the Settlement Administrator shall resend the class notice to any
22 available forwarding address and run a skip-trace in an effort to attempt to ascertain the current address
23 of the Class Member. Winston Decl., ¶ 21, Exh. 2 at § 33.

24 In addition to formal notice, the Class will also receive notice informally through the
25 establishment of a page on the settlement administrator's website that shall contain copies of the
26 Settlement Agreement, the Motion for Preliminary Approval and related papers, and the Order granting
27 preliminary approval, and any other documents directed to be posted by the Court. Winston Decl., ¶ 21,
28

⁴ There are 69 weeks between September 2, 2021 and December 31, 2022.

Exh. 2 at § 34.

D. Process for Class Members to Respond to Class Notice

Class Members will have an opportunity to request exclusion from the Settlement Class (*i.e.*, opt out), object to the settlement, or dispute the number of workweeks attributed to them to the Settlement at the Final Approval Hearing. Winston Decl., ¶ 21, Exh. 2 at § 25. Class Members will have forty-five (45) calendar days from the date of mailing the Notices of Settlement within which to exclude themselves or file an objection to the Settlement. *Id.* Class Members wishing to exclude themselves from the Settlement can send a request for exclusion to the Settlement that includes: (i) the full name, current mailing address, signature, and last four digits of the Social Security number of the Class Member seeking exclusion; and (ii) an unequivocal statement that the individual does not want to be included in the settlement, (such as “I elect to opt-out of the *Gonzalez v. Autism Spectrum Therapies, LLC et al.* class action settlement. I understand that by doing so, I will not receive a share of the class settlement.”). *Id.* at § 25(a). To be valid, a Request for Exclusion must be postmarked before the Response Deadline. *Id.*

Class Members will also be provided an opportunity to object. Winston Decl., ¶ 21, Exh. 2 at § 25(b). To object, a Class Member can either appear and orally object at the Final Approval and Fairness Hearing or submit a written objection that includes the Class Member’s full name, current mailing address, signature, and last four digits of the Social Security number of the objecting Class Member, a statement indicating the legal and factual grounds for the objection, a statement indicating whether the objecting Class Member is represented by counsel and identifying any such counsel to avoid any unintended communications with a represented party, and a statement indicating whether the objecting Class Member intends to appear for and wishes to be heard at the Final Approval Hearing. *Id.*

In addition, Class Members may dispute Defendants’ records of the number of workweeks or PAGA pay periods worked during the Class and PAGA periods by notifying the Settlement Administrator that they dispute the amount of pay periods listed in their Class Notice by the Response Deadline. Winston Decl., ¶ 21, Exh. 2 at § 25(c). Written objections and disputes must be post-marked within forty-five (45) days of the mailing of the notice, and must include: (a) the Class Member’s full name, current mailing address, signature, and last four digits of the Social Security number; (b) a

statement indicating the legal and factual grounds for the objection; (c) a statement indicating whether the objecting Class Member is represented by counsel and identifying any such counsel; and (d) a statement indicating whether the objecting Class Member intends to appear for and wishes to be heard at the Final Approval Hearing. However, even if a Class Member does not indicate that they intend to appear at the Final Approval Hearing, any objection they wish to make may still be heard at the final approval hearing.

IV. THE PROPOSED SETTLEMENT IS ENTITLED TO A PRESUMPTION OF FAIRNESS

A presumption of fairness exists where: (1) the settlement is reached through arm's length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; and (3) counsel is experienced in similar litigation, *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996). To prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action requires court approval. *Malibu Outrigger Bd. of Governors v. Sup. Ct.*, 103 Cal. App. 3d 573, 578-79 (1980). The purpose of the requirement is the protection of those class members, including the named plaintiff, whose rights may not have been given due regard by the negotiating parties. *Officers for Justice v. Civil Serv. Comm'n.*, 688 F.2d 615, 624 (9th Cir. 1982), *cert. denied* 459 U.S. 1217 (1983). The trial court has broad powers to determine whether a proposed class action settlement is fair. *Mallick v. Sup. Ct.*, 89 Cal. App. 3d 434 (1979).

The Settlement Agreement was the product of thorough, arms-length negotiations conducted by experienced and informed counsel and represents a favorable resolution of the Class claims. Winston Decl., ¶ 33. The Parties mediated the matter with respected mediator Michael Dickstein, Esq. on May 11, 2023 and again on January 8, 2024. *Id.* at ¶ 34. At the mediations, Mr. Dickstein helped to manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides that resulted in the non-reversionary settlement pending before the Court. *Id.* A mediator's participation in a settlement negotiation weighs considerably against any inference of collusion.⁵ Accordingly, the Parties' Proposed Settlement is entitled to a presumption of fairness.

⁵ *In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 WL 4820784 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against any inference of a collusive settlement); *In re Amtel Corp. Derivative Litig.*, No. C 06-4592 JF (HRL), 2010 U.S. Dist. LEXIS 145551 (N.D. Cal. June 25, 2008) (same); *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2nd Cir. 2001) (a "mediator's involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure.").

1 **V. THE PROPOSED SETTLEMENT IS FAIR AND SHOULD BE APPROVED**

2 Pursuant to California Rule of Civil Procedure § 1781(f), “a class action shall not be dismissed
3 or compromised without the approval of the court, and notice of the proposed dismissal or compromise
4 shall be given to all members of the Class in such manner as the court directs...” C.C.P. § 1781 (f). In
5 deciding whether to grant approval to a proposed class action settlement under C.C.P. § 382, the court’s
6 overriding concern is whether the proposed settlement is “fair, adequate, and reasonable.” *Dunk*, 48 Cal.
7 App. 4th at 1801 (*quoting Officers for Justice*, 688 F.2d at 625). Here, the proposed settlement offers
8 meaningful relief for Class Members. Winston Decl., ¶ 33.

9 The case of *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008), sets forth
10 several factors that the Court should analyze in determining whether to approve a class action settlement.
11 These factors include: (1) the strength of the plaintiff’s case; (2) the risk, expense, complexity and likely
12 duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount
13 offered in settlement; (5) the extent of discovery completed and stage of the proceedings; (6) the
14 experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of
15 the class members to the proposed settlement. Winston Decl., ¶ 35.

16 The proposed settlement satisfies each of these factors. Plaintiff and Class Counsel conducted
17 meaningful informal discovery as part of the settlement negotiations in this matter that included the
18 retention of a data expert. Winston Decl., ¶ 36. As part of the discovery and mediation process,
19 Defendants provided Plaintiff with informal discovery related to the number of Class Members (2,506),
20 the number of workweeks (73,390) during the Class Period, the number of Class Members whose
21 employment ended during the Class Period (1,297) the number of employees (3,445) who worked during
22 the PAGA period, and the total number of pay periods during the PAGA period (57,308) at issue during
23 the PAGA period. *Id.* Defendants also provided Plaintiff with relevant policy documents as well as a
24 sample of time and pay records. *Id.* Plaintiff hired a third-party data expert to analyze the time and pay
25 records produced by Defendants in advance of the first mediation in order to ascertain the violation rates
26 and the value of the claims and the supplemental production after the second mediation. *Id.* at ¶ 37. With
27 significant assistance from the Mediator, the Parties agreed to the proposed non-reversionary, checks-
28 mailed Settlement pending before the Court. *Id.* at ¶ 38. This discovery permitted Class Counsel to fairly
evaluate the strength of the case and the risks associated with ongoing litigation. *Id.* at ¶ 39. Class

Counsel is experienced in handling wage and hour class actions and supports this Settlement. Winston Decl., ¶¶ 4-5 and 40.

A. The Strength and Risks Associated with Plaintiff's Case

1. The Strength and Risks Associated with the Minimum Wage Claims

Under California law, an employer must compensate an employee for each and every minute worked. *Troester v. Starbucks Corp.*, 5 Cal. 5th 829 (2018) (finding that there is no *de minimis* doctrine under California law and that California law does “not allow employers to require employees to routinely work for minutes off the clock without compensation.”). Plaintiff alleged that Defendants required and/or suffered and permitted or expected Plaintiff, the Class, and the aggrieved employees to perform work off-the-clock including responding to inquiries from clients while off-the-clock. Winston Decl., ¶ 41. Moreover, Plaintiff alleged that Defendants regularly and consistently failed to pay Plaintiff, the Class, and the aggrieved employees for all hours worked at the local municipal wage ordinances in effect for their job assignments. *Id.* Plaintiff, the Class, and the aggrieved employees also alleged that they were regularly and consistently assigned to work in a number of different counties and municipalities throughout the state of California. Many of the municipalities (including Los Angeles, West Hollywood, Santa Monica, and many others throughout the state) and unincorporated areas within counties maintain minimum wage ordinances that apply to any work performed within their borders. *Id.* at ¶ 42.

Significant risk existed that the Court might find that the claims were not certifiable or that a common method of proof did not exist because the expert determined that the average base rate was approximately \$21.59 per hour or more than the local municipal minimum wage ordinances and the other minimum wage claims concerned extremely risky off-the-clock claims. Winston Decl., ¶ 43. Indeed, even the plaintiff failed to certify their off-the-clock claims in *Troester* on remand from the California Supreme Court. Winston Decl., ¶¶ 44, Exh. 4 (“Order Granting Defendant’s Motion for Partial Summary Judgment and Denying Plaintiff’s Motion for Class Certification”). In total, Plaintiff determined the reasonable risk adjusted settlement value of this claim to be \$58,101.15 calculated as follows: \$726,264.23 x .4 (40% chance that Plaintiff would certify this class) x .50 (50% chance that Plaintiff would prevail on the merits) x .4 (40% chance that Defendants would decertify the claims if they were certified). Winston Decl., ¶ 45.

2. The Strength and Risks Associated with the Overtime Wage Claims

Plaintiff alleged that Defendants violated California's overtime laws for the same reasons as with their minimum wage claims and also that Defendants failed to include differentials, non-discretionary bonuses, production bonuses, efficiency bonuses, piece rate compensation, pay under the pay code "Language Premium," or attendance bonuses. Winston Decl., ¶ 46. With respect to the non-regular rate related claims, Defendants possessed the same defenses as with the minimum wage claims. *Id.* Moreover, the off-the-clock hours were highly unlikely to be overtime hours because the Class typically worked between 3.9-4 hours per shift depending upon the year and worked approximately 4.3 shifts per week based upon the data expert's analysis. *Id.* at ¶ 47. Although Plaintiff may have prevailed on the regular rate related claims because Plaintiff alleged that Defendants did not include the Language Premium or Tech Stipend in the regular rate, the informal discovery provided by Defendants indicated that there were only 186 employees who received either of these forms of compensation in only 1,116 pay periods without taking into account whether overtime hours were worked where anyone received this compensation. *Id.* ¶ 48.

In total, Plaintiff determined the reasonable risk adjusted settlement value of the overtime claims when including interest based upon the data expert's analysis to be \$11,027.60 calculated as follows: \$27,569.00 x .5 (50% chance that Plaintiff would certify this class) x .80 (80% chance that Plaintiff would prevail on the merits). Winston Decl., ¶ 49.

3. The Strength of and Risks Associated With the Claim for Labor Code § 226(e) Penalties

Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing: (1) gross wages earned; (2) total hours worked by the employee...; (5) net wages earned...; (6) the inclusive dates of the period for which the employee is paid...; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee..."A claim for damages under Section 226(e) requires a showing of three elements: (1) a violation of Section 226(a); (2) that is "knowing and intentional"; and (3) a resulting injury." *Garnett v. ADT LLC*, 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015).

Plaintiff alleged both derivative and non-derivative wage statement claims. The non-derivative

1 wage statement claims stem from Defendants’ alleged failure to include the start date of the pay period
2 of the wage statement, in violation of Labor Code § 226(a)(6). Winston Decl., ¶ 50. Defendants advised
3 that they intended to argue that the issue was limited to paper and final wage statements issued before
4 the end of the pay period and that no liability applied because Defendants simultaneously and/or at the
5 end of the pay period issued electronic wage statements that contained the inclusive dates of the pay
6 period. *Id.* at ¶ 51. Although Plaintiff was confident that she would certify the non-derivative wage
7 statement claims since they arose out of a common policy and practice, Plaintiff was less certain that
8 she would prevail on the merits. *Id.* Although not binding upon this Court since it was a federal decision
9 on a state substantive issue, the Ninth Circuit held in *Magadia v. Wal-Mart Assocs., Inc.*, 999 F.3d 668,
10 682 (9th Cir. 2021) that an employer did not violate Labor Code § 226 when it issued a final wage
11 statement that did not include the inclusive dates of the pay period because all terminated employees
12 received an additional final wage statement at the end of the next semimonthly pay period that contained
13 the inclusive dates of the pay period. As such, a substantial risk existed that Defendants could prevail
14 on this claim. Winston Decl., ¶ 53. With respect to the derivative wage statements claims, if Plaintiff
15 prevailed on her minimum wage or overtime claims, Plaintiff was confident that the Class would certify
16 and prevail on the derivative wage statement claims. Winston Decl., ¶ 54. Nevertheless, additional risk
17 also exists because of the recent decision in *Naranjo v. Spectrum Sec. Servs., Inc.*, 13 Cal. 5th 93 (2022)
18 review granted *Naranjo v. Spectrum Sec. Servs.*, No. S279397, 2023 WL 3745105, at *1 (Cal. May 31,
19 2023).⁶ In *Naranjo*, the California Court of Appeal for the first time recognized a good faith defense to
20 a claim for failure to comply with accurate itemized wage statements in violation of Labor Code section
21 226. *Id.* At the time the Parties negotiated this settlement, *Naranjo* was still pending review by the
22 Supreme Court of California, such that no one actually knows whether or not Defendants could
23 theoretically prevail entirely on the Labor Code § 226 claims as well now. Although the issue subject to
24 review in *Naranjo* is limited to determining the meaning of knowing and intentional referenced in Labor
25 Code Section 226(e)(1) based upon the failure to report wages, the same reasoning ostensibly will be
26

27 ⁶ There are 3 appellate decisions that disagree with *Naranjo*’s good faith defense to a Labor Code section 226(e) claim: *Furry*
28 *v. East Bay Publishing, LLC*, 30 Cal. App. 5th 1072, 1085 (2018); *Kao v. Holiday*, 12 Cal. App. 5th 947, 961–962 (2017);
Gola v. Univ. of San Francisco, 90 Cal. App. 5th 548, 567, (2023), as modified (May 9, 2023), reh’g denied (May 15, 2023),
review filed (May 23, 2023).

1 applied to other violations of Labor Code section 226(a) to determine if those violations are also
2 knowing and intentional. Ultimately, after the Parties reached this Settlement, the California Supreme
3 Court ruled in the employer's favor in *Naranjo v. Spectrum Sec. Servs., Inc.*, No. S279397, 2024 WL
4 1979980, at *1 (Cal. May 6, 2024).

5 Plaintiff determined the non-risk adjusted value of this claim was \$3,544,200.00⁷. Winston Decl.,
6 ¶ 55. Plaintiff determined the reasonable risk adjusted settlement value of this claim as of the time of
7 settlement to be \$124,047.00 calculated as follows: \$3,544,200.00 x .50 (50% chance that Plaintiff
8 would certify this class) x .20 (20% chance that Plaintiff would prevail on the merits of the underlying
9 claims when taking into account Defendants' significant defenses to the non-derivative and derivative
10 claims and low violation rates) x .70 (30% chance of decertification) x .50 (50% chance that *Naranjo*
11 will come out in the employee's favor). *Id.* However, now that the California Supreme ruled in the
12 employer's favor on the existence of a good faith defense in *Naranjo* in May 2024, it is likely that the
13 risk adjusted settlement value of this claim is somewhere between \$0.00 and 50% of the prior risk
14 adjusted settlement value of the claim (which would be \$62,023.50). *Id.*

15 4. The Strength of and Risks Associated With the Claim for Labor Code § 203
16 Penalties

17 Plaintiff also alleged that Defendants violated Labor Code §§ 201-202 as to those Class Members
18 whose employment ended because they left their employment without receiving all minimum wages
19 and overtime wages owed. Winston Decl., ¶ 56. Since these claims were derivative in nature, Defendants
20 possessed the same defenses to these claims as with the underlying claims. *Id.*

21 Plaintiff's data expert determined without taking into account the risks associated with the claim
22 that the maximum value of this claim was approximately \$3,700,001.00. Winston Decl., ¶ 57. Plaintiff
23 determined the reasonable risk adjusted settlement value of this claim as of the time of the Settlement
24 to be \$111,000.03 calculated as follows: \$3,700,001.00 x .60 (60% chance that Plaintiff would certify
25 this class) x .20 (20% chance that Plaintiff would prevail on the merits of the underlying claims) x .5
26 (50% chance that merely offering a defense will be found to be good faith consistent with *Naranjo*, 2023

27 ⁷ There are 2,506 Class Members who worked during the wage statement period and approximately 36,695 pay periods during
28 the statutory period applicable to the wage statement claims. Accordingly, there were 2,506 pay periods for which the initial
\$50.00 penalty would apply under Labor Code section 226(e) and 34,189 pay periods for which the subsequent \$100.00 per
pay period penalty would apply.

1 WL 3745105) x .50 (50% change that Plaintiff would survive a post-certification motion to decertify
2 the class or appeal). *Id.* However, now that the California Supreme ruled in the employer’s favor in
3 *Naranjo* in May 2024 on the existence of a good faith defense and adopted a more stringent standard to
4 obtain these penalties, it is likely that the risk adjusted settlement value of this claim is somewhere
5 between \$0.00 and 50% of the prior risk adjusted settlement value of the claim (which would be
6 \$55,502.00). *Id.*

7 5. The Strength of and Risks Associated with the Claim for Failure to Reimburse
8 Business Expenses in Violation of Labor Code § 2802

9 Labor Code § 2802 provides that “[a]n employer shall indemnify his or her employee for all
10 necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his
11 or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless
12 the employee, at the time of obeying the directions, believed them to be unlawful.” Plaintiff alleged that
13 Defendants required and/or expected Plaintiff and the aggrieved employees to use their own personal
14 wifi in the discharge of their duties for which they did not receive compensation in violation of Labor
15 Code § 2802. Winston Decl., ¶ 58. Significant risk existed with respect to certification and whether or
16 not Plaintiff could establish a common method of proof existed. *Id.* Since Defendants do not maintain
17 records of employee wifi data that they do not have access to, Plaintiff would likely need to rely upon
18 survey evidence at the certification and trial phase. *Id.* It is uncertain what results the survey would yield
19 or if a statistically significant response rate could even be obtained. *Id.*

20 Plaintiff’s data expert determined that the value of this claim without taking into account
21 Defendants’ defenses was approximately \$421,564.00, but Plaintiff determined the reasonable risk
22 adjusted settlement value of this claim was \$31,617.30 calculated as follows: \$421,564.00 x .30 (30%
23 chance that Plaintiff would certify this class) x .50 (50% chance that Plaintiff would prevail on the
24 merits) x .50 (50% change that the Class would survive a post-certification motion to decertify the class
25 or appeal). Winston Decl., ¶ 59.

26 6. The Strength of and Risks Associated with the Unfair Competition Claim

27 Plaintiff also wishes to address her claims for unfair competition under Bus. & Prof. Code §
28 17200 and interest. With respect to the Bus. & Prof. Code § 17200, this claim is typically pled to
functionally extend the statute of limitations a year; however, that did not have any meaningful value
in this case because of the prior *Durham* action.

7. The Strength of and Risks Associated with the PAGA Claim

In addition to the derivative minimum wage, overtime, wage statement, waiting time penalty, and expense reimbursement claims discussed above, Plaintiff also alleged derivative PAGA claims contending that Defendants failed to timely pay wages during employment and failed to maintain accurate time records. Winston Decl., ¶ 60. The same defenses existed with respect to these derivative claims as with the underlying claims. *Id.* Plaintiff also alleged a non-derivative claim for PAGA penalties for issuing paper checks drawn on an out-of-state bank in violation of Labor Code § 212. Winston Decl., ¶ 61. However, only a small subset of aggrieved employees who received a paper check instead of a direct deposit experienced this alleged violation and no evidence existed that this caused an actual monetary loss to either Plaintiff or the aggrieved employees. *Id.*

Moreover, as with any PAGA case, significant risk also exists with respect to the amount of PAGA penalties that a Court may award given their discretionary nature. Winston Decl., ¶ 62. Under Labor Code § 2699.3(e)(2), “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.” Plaintiff believed that it was unlikely that the Court would award a significant amount of PAGA penalties based upon the unique facts of this case. Winston Decl., ¶ 63. Courts can still exercise their discretion to reduce the amount of penalties awarded. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 529 (2018) (the trial court declined to stack PAGA penalties and the Court of Appeal affirmed the reduction of the PAGA penalties to \$5.00 per pay period). As such, it was likely that the Court would exercise at least some discretion when awarding PAGA penalties. *In re Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class action).⁸

While Plaintiff was confident that she would prevail on at least some of the PAGA claims, some risk existed that the amount of recoverable damages would be low because the unusually low violation rates observed in the time and pay data provided by Defendants evidenced that they made a meaningful

⁸ See also *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, No. 08cv821 IEG (BLM), 2010 WL 2196104, at *2 (S.D. Cal. June 1, 2010) (approving \$3,000 PAGA allocation in \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement).

effort to comply with California’s wage and hour laws. Winston Decl., ¶ 64. Thus, Plaintiff believed a reasonable amount of risk existed that the Court could exercise its discretion to award a small amount of PAGA penalties due to Defendants’ efforts to comply with California’s wage and hour laws. *Id.*

When taking into account the stacking of PAGA penalties and assuming a 100% violation rate on every single claim—which was not a remotely plausible outcome—and without taking into account any of Defendants’ significant defenses or the discretionary nature of PAGA penalties, Plaintiff and PAGA Counsel determined the maximum exposure on the PAGA claims to be \$36,497,600.00 calculated as follows:

Labor Code § 2699 Penalties For Alleged Minimum Wage Violations

- PAGA penalties assessed at the \$100 per pay period initial violation rate = 57,308 pay periods x \$100=\$5,730,800.00

Labor Code § 2699 Penalties For Alleged Overtime Violations

- PAGA penalties assessed at the \$100 per pay period initial violation rate = 57,308 pay periods x \$100=\$5,730,800.00

Labor Code § 2699 Penalties For Alleged Reimbursement Violations

- PAGA penalties assessed at the \$100 per pay period initial violation rate = 57,308 pay periods x \$100=\$5,730,800.00

Labor Code § 2699 Penalties For Alleged Checks Drawn on Out of State Banks

- PAGA penalties assessed at the \$100 per pay period initial violation rate = 57,308 pay periods x \$100=\$5,730,800.00

Labor Code § 558 Penalties Recoverable Pursuant to PAGA for Defendants’ Violations of Labor Code Section 204

- Labor Code § 210 PAGA penalties are assessed at the rate of \$50 per pay period initial violation rate = 57,308 pay periods x \$50=\$2,865,400.00

Labor Code § 210 Penalties Recoverable Pursuant to PAGA for Defendants’ Violations of Labor Code Section 204

- Labor Code § 210 PAGA penalties are assessed at the rate of \$100 per pay period = 57,308 pay periods x \$100=\$5,730,800.00

Labor Code § 226 PAGA Penalties Related to the Issuance of Itemized Wage Statements⁹

- PAGA penalties assessed at the \$100 per pay period initial violation rate = 57,308 pay periods x \$100=\$3,255,700.00

⁹ There is currently a split of authority regarding which PAGA penalties apply to violations of Labor Code § 226(a). *Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334, 355 (2021) (holding that such violations give rise to a 2699.3 penalty) *cf.*; *Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal.App.5th 667, 675 (2018) (holding that such violations give rise to a Labor Code § 226.3 penalty). Plaintiff performed the calculations in accordance with the decision in *Gunther* as Plaintiff believes it is better reasoned.

Labor Code § 1174.5 Penalties Recoverable Pursuant to PAGA for Defendants' Violations of Labor Code section 1174

- Labor Code § 1174.5 PAGA penalties are assessed at the rate of \$500 per employee = 3,445 aggrieved employees x \$500=\$1,722,500.00

Winston Decl., ¶ 65. However, it should be noted that this is merely a mathematical calculation that only reflects the number of pay periods worked and number of potentially aggrieved employees rather than what actually occurred to employees, the actual violation rates (which were extremely low for a typical wage and hour case), Defendants' significant defenses, or the actual risks associated with the claims. Even assuming that Plaintiff could establish liability for each and every claim for every single pay period, which was highly unlikely for the reasons explained above, as with any PAGA case, significant risk exists with respect to the amount of PAGA penalties that a Court may award given their discretionary nature. Winston Decl., ¶ 66. Under Labor Code § 2699.3(e)(2), "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." Plaintiff believed that the Court likely would have restricted the PAGA penalty award under these unique circumstances to an amount comparable to *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 529 (2018). *Id.* (the trial court declined to stack PAGA penalties and the Court of Appeal affirmed the reduction of the PAGA penalties to \$5.00 per pay period). A similar methodology here would result in penalties of approximately \$286,540.00 (57,308 pay periods x \$5.00 per pay period). However, that only takes into account the discretionary nature of the PAGA penalties and not the likelihood that Plaintiff would prevail on the merits or Defendants' considerable defenses. Even attributing a generous 50% chance of success of prevailing on the merits for each and every pay period, would still only result in a risk adjusted settlement value of \$143,270.00. Winston Decl., ¶ 68. And within the context of a hybrid settlement, the Court could decline to award any PAGA penalties whatsoever or an amount of less than \$5,000.00. *In re Nordstrom Com. Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class action).¹⁰ Indeed, the California Supreme Court cited with affirmance to *In re Nordstrom in Naranjo V*

¹⁰ See also *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, No. 08cv821 IEG (BLM), 2010 WL 2196104, at *2 (S.D. Cal. June 1, 2010) (approving \$3,000 PAGA allocation in \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement).

(the May 2024 decision) and seemingly gave grounds to another potential avenue to attack PAGA penalties by citing with acceptance the maxim that “courts refuse to impose civil penalties [such as PAGA penalties] against a party who acted with a good faith and reasonable belief in the legality of his or her actions.” *Naranjo v. Spectrum Sec. Servs., Inc.*, No. S279397, 2024 WL 1979980, at *7 (Cal. May 6, 2024) (quoting *Lusardi Construction Co. v. Aubry*, 1 Cal.4th 976, 996–997 (1992)). This seemingly provides new grounds for employers to attack the well-established rule *Amaral v. Cintas Corp.* No. 2, 163 Cal. App. 4th 1157, 1213, (2008) that PAGA penalties are mandatory and not discretionary. *Id.* (“This argument rests on a misunderstanding of the nature of PAGA penalties: As we have explained, they are mandatory, not discretionary.”). While this provision of *Naranjo* is dicta since it concerns an issue outside the court’s review and the court seemingly conflated the nature of the statutory penalties available under Labor Code §§ 203 and 226(e) as being civil penalties instead of in that portion of the decision, it nevertheless suggests that additional risk now exists with respect to the recovery of PAGA penalties. Ultimately, this settlement seeks to maximize the amount of money recovered by the employees who experienced the alleged Labor Code violations while also still providing for a meaningful PAGA penalty under the circumstances.

B. The Risk, Expense, Complexity, and Likely Duration of Further Litigation

There are also always risks attendant to wage and hour cases given the evolving nature of such claims. Winston Decl., ¶ 69. Given the ever-evolving landscape of wage and hour law, there are always risks that a new case will come out that will clarify and/or potentially limit employees’ claims. *Id.* For example, although generally it was well-established that employees could recover both wage statement and waiting time penalties based upon an employer’s failure to provide lawful meal/rest periods, a recent appellate case held that such penalties are not recoverable before it was later overturned. *Naranjo v. Spectrum Security Services, Inc.*, 40 Cal. App. 5th 444 (2019); *aff’d in part, rev’d in part and remanded* 13 Cal. 5th 93, (2022). Similarly, in another recent decision the California Court of Appeal held that employers could pay employees meal/rest period premiums at the employee’s hourly base rate instead of at their regular rate before that decision was also overturned by the California Supreme Court. *Ferra v. Loews Hollywood Hotel, LLC*, 40 Cal. App. 5th 1239 (2019) *rev’d*, 11 Cal. 5th 858 (2021). While Plaintiff was confident that she would prevail on her claims based upon present law, the plaintiffs in *Ferra* and *Naranjo* likely believed they would have as well, and actually did on their derivative claims

1 prior to the California Court of Appeal’s recent ruling and before each matter was eventually reversed
2 by the California Supreme Court. As the California Court of Appeal explained in the now overturned
3 *Naranjo* decision, “[a]lthough wage and hour lawsuits are ubiquitous in state courts, most settle before
4 trial. Consequently, our appellate courts have not had much opportunity to publish decisions addressing
5 the derivative wage claim issue[s].” *Naranjo*, 40 Cal. App. 5th at 468. While Plaintiff acknowledges
6 that the California Supreme Court reversed in both cases, each nevertheless are emblematic of the
7 inherent risk associated with litigating wage and hour cases and the fact that a new appellate decision
8 can dramatically alter the strength of the employees’ claims at any time. Indeed, *Naranjo* was appealed
9 again to the California Supreme Court where the Court ruled in the employer’s favor. *Naranjo v.*
10 *Spectrum Sec. Servs., Inc.*, No. S279397, 2024 WL 1979980, at *1 (Cal. May 6, 2024).

11 **C. The Risk of Maintaining Class Action Status Through Trial**

12 This case has not been certified to be tried as a class action. Winston Decl., ¶ 71. While there is
13 evidence to support certification, certification is always hard fought and subject to judicial discretion.
14 *Id.* Moreover, in class actions, decertification is always a possibility. *Id.*; *In re Autozone, Inc.*, No. 3:10-
15 md-02159-CRB, 2016 WL 4208200 (N.D.Cal. Aug. 10, 2016) (decertifying a rest period class due to
16 the absence of a lack of a uniform policy or common measure of damages). In attempting to certify a
17 class, the Parties would need to conduct deposition of the named Plaintiff and of the person most
18 knowledgeable regarding Defendants’ policies and practices related to the claims and surveys. Winston
19 Decl., ¶ 72. There is a risk for both sides as to what these depositions will reveal and whether they will
20 support class certification. *Id.*

21 **D. The Amount Offered in Settlement**

22 A trial court should not evaluate a proposed settlement “against a hypothetical or speculative
23 measure of what might have been achieved had plaintiffs prevailed at trial.” *Munoz v. BCI Coca-Cola*
24 *Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 409 (2010). “The test is not the maximum amount
25 plaintiffs might have obtained at trial on the complaint, but rather whether the settlement is reasonable
26 under all of the circumstances.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 250 (2001)
27 (disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* 4 Cal. 5th 260, 269 (2018)).
28 Nor does a *Kullar* showing require parties to submit the outer reaches of maximum possible recovery

1 without taking into account various risks. *Munoz*, 186 Cal. App. 4th at 409; *Altamirano v. Shaw*
2 *Industries, Inc.*, 2015 WL 4512372, at *9 (N.D. Cal. 2015) (preliminarily approving wage and hour class
3 action settlement, stating, “[a]lthough 15% represents a modest fraction of the hypothetical maximum
4 recovery estimated by Plaintiff, that figure is sufficient for the Court to grant preliminary approval.”).

5 Nevertheless, to allow the Court to analyze the reasonableness of the Parties’ Proposed
6 Settlement, Plaintiff analyzed the maximum possible value of the claims at issue in this action if Plaintiff
7 certified and prevailed on all of the claims and the Court declined to exercise any discretion when
8 awarding PAGA penalties. Winston Decl., ¶ 73. Plaintiff, based upon the work performed by her third-
9 party data expert, determined the maximum exposure on the claims to be \$44,917,198.23. *Id.* at ¶ 74.
10 However, Plaintiff and her Counsel did not believe that this presented a remotely realistic outcome given
11 Defendants’ significant defenses, the exceedingly low violation rates, and the Court’s discretion with
12 respect to the PAGA penalties. *Id.* Further, while the reasonable risk adjusted settlement value of the
13 claims at first glance is higher on a purely mathematical approach than the proposed settlement
14 (\$325,000.00 Gross Settlement Amount versus \$479,063.08 risk adjusted value as of the time of the
15 settlement), this does not take into account the additional risks that exist independent of the value of the
16 claims, nor does it ascribe sufficient value to the fact that Defendants possess strong defenses to many
17 of the claims. *Id.* at ¶ 75. For instance, given the comparatively low observed violation rates and
18 Defendant’s defenses, more risk existed than usual with respect to the viability of the claims and
19 Plaintiff’s chances of succeeding at class certification. *Id.* at ¶ 76. Unlike in many wage and hour cases,
20 real risk existed that the Class might lose this case and/or the vast majority of this case as the vast
21 majority of potential damages in this Action flow from the off-the-clock wage and hour claims and
22 reimbursement claims for which no records exist given the nature of the claims. *Id.* As such, the
23 individual risks discussed above likely considerably underestimate the actual risk to the Class. *Id.*

24 Moreover, in light of the California Supreme Court’s decision subsequent decision in *Naranjo*
25 *v. Spectrum Sec. Servs., Inc.*, No. S279397, 2024 WL 1979980, at *1 (Cal. May 6, 2024), the present
26 risk adjusted settlement value of the claims—taking into account the additional risks with the Labor
27 Code §§ 203, 226(e), and dicta related arguments to the PAGA claims is between \$100,746.05 (when
28 ascribing \$0.00 to the 226, 203, and the PAGA claims) and \$289,904.57 (when attributing an additional

1 50% reduction to risk adjusted amounts as of the Settlement to account for the pro-employer decision in
2 *Naranjo*).

3 In addition, when evaluating the reasonableness of the settlement offers, Class Counsel
4 considered both his own experience with wage and hour litigation as well as similar settlements obtained
5 by other firms and the unique issues applicable to this case. Winston Decl., ¶ 77. In the instant action,
6 Plaintiff negotiated a monetary gross settlement of approximately \$129.69 per employee (\$325,000.00
7 gross settlement amount/2,506 Class Members) and an estimated average net settlement amount of
8 approximately \$56.53 (\$141,666.67/2,506 Class Members). *Id.* In comparison to other settlements, this
9 settlement is a good result for the class under the unique facts of the case.

10 Furthermore, despite Defendants’ significant defenses, the amount recovered in this class action
11 is consistent with and compares favorably to the amounts awarded in other wage and hour class actions.
12 *See e.g. Williams v. Centerplate, Inc.*, 2013 WL 4525428, at *8 (S.D. Cal. Aug. 26, 2013) (finally
13 approving a wage and hour class action settlement for non-compliant meal periods, non-compliant rest
14 periods, unpaid overtime, unreimbursed business expenses, waiting time penalties, inaccurate itemized
15 wage statements for 9,394 class members in the gross amount of \$650,000.00 with a reversion to the
16 Defendants of \$128,136.86, a net settlement fund of \$239,363.14 and an average award of \$108.22 to
17 the 2,212 class members who submitted claims and \$25.48 when including the Class Members who did
18 not submit claims and therefore received nothing in exchange for the release); *Schiller v. David's Bridal,*
19 *Inc.*, 2012 WL 2117001, at *24 (E.D. Cal. June 11, 2012) (approving a proposed wage and hour class
20 action settlement for unpaid overtime wages, non-compliant meal periods, unreimbursed business
21 expenses, inaccurate itemized wage statements of a reversionary settlement with a maximum settlement
22 amount of \$518,245.00 and a potential 45% reversion on a claims-made settlement for 3,327 Class
23 Members); *Altamirano v. Shaw Industries, Inc.*, 2015 WL 4512372, at *9 (N.D. Cal. 2015)
24 (preliminarily approving wage and hour class action settlement, stating, “[a]lthough 15% represents a
25 modest fraction of the hypothetical maximum recovery estimated by Plaintiff, that figure is sufficient
26 for the Court to grant preliminary approval.”).

27 After weighing the strengths and risks associated with each of the claims in light of the factual
28 challenges as well as Defendants’ potential defenses, Class Counsel determined that the amount offered

1 in settlement was fair and reasonable considering the risks and the likelihood of success on the merits.
2 Winston Decl., ¶ 78.

3 **E. The Experience and Views of Counsel**

4 Class Counsel is experienced in wage-and-hour class actions and has served as Class and/or
5 PAGA Counsel in numerous wage and hour class actions. Winston Decl., ¶¶ 3-7 and 79. The Parties’
6 Counsel, operating at arm’s length and with the assistance of the Mediator, weighed the strengths and
7 risks of this case, and unanimously share the view that this is a fair and reasonable settlement in light of
8 the nature of the claims, realistic risk adjusted value of damages, complexities of the case, the state of
9 the law, and the uncertainties of class certification and litigation. Winston Decl., ¶ 80. After factoring in
10 the risks explained herein, Class Counsel believes that the proposed Settlement is fair and reasonable.
11 *Id.* at ¶ 81.

12 **F. The Proposed Plan of Allocation Is Fair and Reasonable**

13 Plans of allocation are subject to the same standard of review as class action settlements; they
14 must be “fair, adequate and reasonable.” *See e.g., Officers for Justice v. Civil Service Comm’n of City*
15 *& County of San Francisco*, 688 F.2d 615, 624–625, 629–630 (9th Cir. 1982). Here, the Net Settlement
16 Amount shall be allocated among Settlement Class members on a pro-rata basis based upon the number
17 of workweeks worked during the Class Period. Winston Decl., ¶ 21, Exh. 2 at § 24. The proposed method
18 of allocation is fair and reasonable and reflects the strength and value of the claims at issue in this action.
19 Winston Decl., ¶ 83.

20 Under the terms of the proposed Settlement, Defendant shall pay the employer’s share of payroll
21 taxes separate from, and in addition to, the Gross Settlement Fund. Winston Decl., ¶ 84. The tax treatment
22 of the Settlement was a matter of negotiation between the Parties and the Parties espoused different views
23 on this issue. *Id.* at ¶ 85. The tax allocation within the Settlement Agreement reflects a compromise of
24 the Parties’ differing views as to the values of each claim and the strength of the claims as opposed to
25 merely Plaintiff or Class Counsel’s opinion. *Id.* Pursuant to the Settlement Agreement, the Individual
26 Class Payments will be allocated 25% as wages and 75% as penalties. *Id.* at ¶ 86. The Parties’
27 compromise on the tax issues constitutes a fair resolution of their differing views on the issues and a fair
28 the allocation of the settlement.

1 The proposed PAGA allocation reflects the fact that Defendants made significant efforts to
2 comply with the law and the meaningful monetary relief recovered through the Proposed Settlement.
3 Winston Decl., ¶ 87. Even though the Parties allocated \$20,000.00 to PAGA, the California Court of
4 Appeal has previously found that a wage and hour class action settlement that ascribes zero value to the
5 PAGA claims was valid. *See Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 589 (2010) (affirming an
6 award of \$0 in PAGA penalties in a wage and hour class action). And courts routinely approve similar
7 or even significantly less PAGA valuations where there is a significant recovery for the Class even
8 where the aggrieved employees do not necessarily obtain any non-monetary relief. *See Jack v. Hartford*
9 *Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011)
10 (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, No.
11 08cv821 IEG (BLM), 2010 WL 2196104, at *2 (S.D. Cal. June 1, 2010) (approving \$3,000 PAGA
12 allocation in \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL
13 928133, at *9 (N.D. Cal. Apr. 3, 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement).

14 **G. The Proposed Notice Fairly Apprises the Class Members of the Terms of the**
15 **Settlement and of the Class Members' Rights under the Settlement**

16 Plaintiff requests that the Court approve the proposed plan and form of Notice of Class Action
17 Settlement. The standard for determining the adequacy of notice is whether the notice has “a reasonable
18 chance of reaching a substantial percentage of the class members.” *Cartt v. Sup. Ct.*, 50 Cal. App. 3d
19 960, 974 (1975). With respect to the contents of the Notice of Settlement, the “notice given to the class
20 must fairly apprise the class members of the terms of the proposed compromise and of the options open
21 to dissenting class members.” *Trotsky v. L.A. Fed. Sav. & Loan Ass’n*, 48 Cal. App. 3d 134, 151–52
22 (1975). As discussed in detail in Section III(C) and III(D) of this Motion, Class Members will receive a
23 detailed notice that provides class members with sufficient information to decide whether they should
24 accept the benefits offered, opt out and pursue their own remedies, or object to the Settlement. Winston
25 Decl., ¶ 21, Exh. 2 at § 25. In addition, the class notice will be distributed in English and Spanish. *Id.* at
26 ¶ 90. In short, the Court should approve the proposed Notice of Settlement because it describes the
27 proposed Settlement with enough specificity to allow Class Members to make an informed choice
28 regarding whether to participate. Winston Decl., ¶ 91.

H. The Proposed Settlement Class Should Be Certified For Settlement Purposes¹¹

1. Ascertainability

Putative class members are deemed “ascertainable” when they may be “readily identified without unreasonable expense or time by reference to official records.” *Rose v. City of Hayward*, 126 Cal. App. 3d 926, 933 (1981) (disapproved of on other grounds by *Noel v. Thrifty Payless, Inc.*, 7 Cal. 5th 955, 981 (2019)). In determining whether a class is ascertainable, a court scrutinizes the class definition, the size of the class and the means of identifying class members. *Miller v. Woods*, 148 Cal. App. 3d 862, 873 (1983) (disapproved of on other grounds by *Noel*, 7 Cal. 5th at 986 n.15).

Here, Plaintiff seeks to represent a clear and distinct class of Defendants’ employees defined as “all non-exempt hourly-paid employees working in the State of California for Defendants from September 2, 2021 through December 31, 2022 (the “Settlement Class Period”) who performed any work for Defendants as a non-exempt employee. The Settlement Class shall expressly exclude any putative class member who is a former employee who has previously released such claims after his or her employment ended.” Winston Decl., ¶ 21, Exh. 2 at § 6. Under the terms of the Parties’ Settlement Agreement, the “Settlement Class Period” is defined as the period “from September 2, 2021 through December 31, 2022” *Id.* at § 6 and 35. There are approximately 2,506 Class Members who have already been identified using Defendants’ records. Winston Decl., ¶¶ 18 and 23. Thus, the Class Members can be readily identified by Defendants’ own records and have been.

2. Numerosity

There is no set number that is required as a matter of law to maintain a class action. *Rose*, 126 Cal. App. 3d at 934. Where a question is of common interest to “many” persons, an action may be maintained as a class action even where the parties are numerous and it is in fact practicable to join them all. *Id.* In the case at hand, the Class consisted of approximately 2,506 Class Members. Winston Decl., ¶¶ 18 and 23. This is more than enough for class certification.

3. There Is a Well-Defined Community of Interest

a. There Are Predominant Questions of Law and Fact

In deciding whether questions of common or general interest predominate, a court must

¹¹ Defendants contend that class certification is appropriate only for purposes of settlement.

determine whether “the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.” *Collins v. Rocha*, 7 Cal.3d 232, 238 (1972); accord *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 326 (2004). As a general matter, if the defendant’s liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages.” *Hicks v. Kaufman & Broad Home Corp.*, 89 Cal. App. 4th 908, 916 (2001); accord, *Knapp v. AT & T Wireless Services, Inc.* 195 Cal. App. 4th 932, 941 (2011).

In the case at hand, Plaintiff contends that there are clear and common questions of law and fact that can be decided with one stroke:

- a. Whether Defendants failed to pay minimum wages for all hours worked;
- b. Whether Defendants failed to pay minimum wages in accordance with local minimum wage ordinances;
- c. Whether Defendants failed to pay wages and/or overtime compensation and at the correct rate as required by Labor Code § 510;
- d. Whether Defendants violated Labor Code § 226(a) and (e) by failing to provide an accurate itemized wage statements that accurately indicate the gross wages earned, total hours worked, the net wages earned, the inclusive dates of the period for which the employee is paid, as well as all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee;
- e. Whether Defendants violated §§ 201-203 of the Labor Code by failing to pay compensation due and owing at the time that Class Members’ employment with Defendants concluded;
- f. Whether Defendants violated Labor Code § 2802 by failing to compensate Plaintiff and the Class for business expenses, including wifi, needed to discharge his or her duties; and
- g. Whether Defendants violated § 17200 et seq. of the Business & Professions Code by engaging in the acts previously alleged against the Class.

Winston Decl., ¶ 92.

Moreover, a class of similarly situated employees may be certified based on common questions

of fact or law, even if each employee has to establish the amount of his or her damages. *See Bell v. Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 741 (2004); *Sav-On Drug Stores, Inc.*, 34 Cal.4th at 340. Here, Plaintiff contends that the proposed Class Members suffered the same alleged injuries, in the same manner: they were not paid minimum wages for all hours worked, they were not paid all overtime wages owed, were not provided with accurate itemized wage statements, were not paid all wages owed at the end of their employment, and that they were not reimbursed for all business expenses. Winston Decl., ¶ 93. Because the proposed Class Members worked in the same capacity for the same employer and were subject to the same employment policies and practices, Plaintiff contends that the questions of fact and claims are the same for each member of the class. Here, Plaintiff contends that she will be able to establish that common questions of law and fact predominate.

b. The Class Representative Has Claims Typical of the Proposed Class

A putative class representative's claim must be "typical," but not necessarily identical to the claims of other class members. The test of typicality "is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Seastrom v. Neways, Inc.*, 149 Cal. App. 4th 1496, 1502 (2007). Thus, it is sufficient that the representative is similarly situated so that he or she will have the motive to litigate on behalf of all class members. *See, e.g., Classen v. Weller* 145 Cal. App. 3d 27, 45 (1983). It is not necessary that the class representative have personally incurred all of the damages allegedly suffered by each of the other class members. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 238 (2001).

Plaintiff Jasmin Gonzalez (now known as Jasmin Anabel Rivas after her marriage) worked as a non-exempt, hourly employee for Defendants from in or around January 2013 to in or around mid-March 2022. Declaration of Jasmin Gonzalez Decl., ¶ 2 (hereafter the "Gonzalez Decl."). Plaintiff alleges that she was not paid minimum wages for all hours worked, did not receive overtime pay and/or at the correct rate, did not receive accurate itemized wage statements, was not timely paid all wages owed during and after her employment ended, and was not reimbursed for all business expenses incurred within the scope of her employment. *Id.* As such, Plaintiff contends that she is typical of the Class Members.

c. The Class Representative Will Adequately Represent the Proposed Classes

A putative class representative must show that she can adequately represent the class. *Lockheed*

1 *Martin Corp. v. Sup. Ct.*, 29 Cal. 4th 1096, 1104 (2003). The representative, through qualified counsel,
2 must be capable of “vigorously and tenaciously” protecting the interests of the class members. *Simons*
3 *v. Horowitz*, 151 Cal. App. 3d 834, 846 (1984).

4 Plaintiff Jasmin Gonzalez (now known as Jasmin Anabel Rivas following her wedding) is
5 capable of and has fairly represented and adequately protected the interests of the proposed Class
6 Members. Plaintiff’s interest in this litigation is coextensive with the interests of the proposed Class.
7 Plaintiff assisted in gathering facts and information about the case and assisted in the factual
8 development of the case. Gonzalez Decl., ¶¶ 5-6. The proposed Class Members all worked for
9 Defendants during the relevant time period and incurred the same type of alleged damages with regard
10 to Defendants’ alleged violations. Moreover, Plaintiff has agreed to serve as Class Representative and
11 has retained Counsel who regularly litigates employment cases. Plaintiff also participated in a mediation
12 via phone. Gonzalez Decl., ¶¶ 5-6. This demonstrates her commitment to bringing about the best
13 possible results for the benefit of the proposed Class. Therefore, Plaintiff has and will adequately
14 represent the proposed Settlement Class Members.

15 4. **The Class Action Vehicle Is Superior to the Alternatives**

16 “The ultimate question in every case of this type is whether . . . the issues which may be jointly
17 tried, when compared with those requiring separate adjudication, are so numerous or substantial that the
18 maintenance of a class action would be advantageous to the judicial process and to the litigants.”
19 *Lockheed Martin Corp.*, 29 Cal. 4th at 1104–1105. Class certification is appropriate where, as here,
20 substantial duplication of legal and judicial resources will result if the class is not certified. All of the
21 issues of law and fact will be identical for each proposed Class Member. In the event that each person
22 is required to bring an individual action against Defendant, the common factual and legal issues would
23 have to be litigated and tried repeatedly. In this case, the methods of proof to be used will be similar
24 across the Class.

25 **I. The Proposed Attorneys’ Fees and Expense Reimbursement Sought Are Reasonable**

26 Although the Court need not and should not make any actual determinations regarding the
27 amount of attorneys’ fees to award until that Motion is pending before the Court, Class Counsel intends
28 to seek an award of attorneys’ fees in the amount of 1/3 of the common fund. In *Laffitte v. Robert Half*

1 *Internat., Inc.*, 1 Cal. 5th 480, 503 (2016) the California Supreme Court “recognized [the] advantages
2 of the percentage method – including relative ease of calculation, alignment of incentives between
3 counsel and the class, a better approximation of market conditions in a contingency case, and the
4 encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging
5 litigation – convince us the percentage method is a valuable tool that should not be denied by our trial
6 courts.” *Id.* Class Counsel’s intended request for attorneys’ fees in the amount of 1/3 of the common
7 fund falls within the range of attorneys’ fees regularly awarded by courts in similar matters. *McCrory v.*
8 *Elations Co., LLC*, 2016 WL 769703, at *2 (C.D. Cal. Feb. 25, 2016) (finding that most fee awards
9 based on either a percentage calculation or lodestar percentage are 33%).¹² At this juncture, the Court
10 need only find that it falls within the range of reasonableness and need not actually decide what amount
11 to award.

12 Plaintiff’s Counsel is also not receiving any attorneys’ fees associated with the resolution of
13 Plaintiff’s individual claims from the *Durham* class period. Winston Decl., ¶ 101; Gonzalez Decl., ¶ 10.
14 As consideration for this separate payment, Plaintiff will generally release any and all claims against
15 Defendants and Releasees as defined in the final stipulation of settlement, and Plaintiff will provide a
16 waiver of rights under California Civil Code Section 1542. Winston Decl., ¶ 21, Exh. 2 at p. 2.

17 With respect to costs, the Settlement allows Class Counsel to request cost reimbursement in the
18 amount of up to \$30,000.00. Winston Decl., ¶ 21, Exh. 2 at § 18. At this juncture, the Court need only
19 find that the requested costs fall within the range of reasonableness and need not actually decide what
20 amount to award. Nevertheless, Class Counsel has provided information about many of the costs already
21 incurred in his concurrently filed declaration along with copies of invoices and proof of payment where
22 available. *Id.* at ¶ 103, Exh. 5.

23 **J. Plaintiff’s Requested Enhancement Award Is Reasonable**

24 Plaintiff is requesting an Enhancement Award in an amount of \$5,000.00 in recognition of her
25 time and efforts on behalf of the Class, the fact that her name could become known, and the possibility
26

27 ¹² See also *Romero v. Producers Dairy Foods, Inc.*, 2007 U.S. Dist. LEXIS 86270, 2007 WL 3492841, at *4 (E.D. Cal. Nov.
28 14, 2007) (awarding 33% of the settlement fund in a wage-and-hour case involving allegations of unpaid wages after explaining that “fee awards in class actions average around one-third of the recovery.”); *Stuart v. RadioShack Corp.*, 2010 WL 3155645 (N.D. Cal. Aug. 9, 2010) (noting that a fee award of 1/3 of the settlement was “well within the range of percentages which courts have upheld as reasonable in other class action lawsuits.”).

1 that her involvement in the matter could make it more difficult for her to obtain employment in the
2 future. Winston Decl., ¶ 104; Gonzalez Decl., ¶¶ 7 and 9.

3 The requested Enhancement Award falls well within the range of incentive payments typically
4 awarded to Class Representatives in similar class actions. *Bond v. Ferguson Enterprises, Inc.*, No. 1:09–
5 cv–1662 OWW MJS, 2011 WL 2648879 (E.D. Cal. June 30, 2011) (approving \$11,250 service award
6 to each of the two class representatives wage and hour class action); *Vasquez v. Coast Valley Roofing,*
7 *Inc.*, 266 F.R.D. 482, 493 (E.D. Cal. 2010) (approving service awards in the amount of \$10,000 each
8 from a \$300,000 settlement fund in a wage/hour class action). At this juncture, the Court need only find
9 that it falls within the range of reasonableness and need not actually decide what amount to award.

10 **K. Compliance with Code of Civ. Proc. § 384**

11 Code of Civ. Proc. § 384 requires that any funds associated with uncashed voided checks issued
12 as part of this settlement be paid “nonprofit organizations or foundations to support projects that will
13 benefit the class or similarly situated persons, or that promote the law consistent with the objectives and
14 purposes of the underlying cause of action, to child advocacy programs, or to nonprofit organizations
15 providing civil legal services to the indigent.” In accordance with Code of Civ. Proc. § 384, the Parties
16 propose to designate CASA of San Bernardino County as the proposed *cy pres* beneficiary. Winston
17 Decl., ¶ 21, Exh. 23 at § 30. Neither Plaintiff, Defendant, nor their Counsel have any interest and/or
18 involvement with the governance of CASA of San Bernardino County. Winston Decl., ¶ 106; Gonzalez
19 Decl., ¶ 12.

20 **L. Final Approval Hearing Timing**

21 In order to ensure an orderly administration, Plaintiffs respectfully requests a final approval
22 hearing in early March 2025.

23 **VI. CONCLUSION**

24 Plaintiff respectfully submits that the Proposed Settlement is fair, adequate, reasonable, and in
25 the best interest of the Class. Therefore, Plaintiff respectfully requests that the Court (1) grant
26 preliminary approval of the Settlement and all of its terms; (2) approve the proposed form of Notice of
27 Settlement, and direct that the Notice be sent to Class Members in the manner set forth in the Settlement;
28

1 and (3) schedule hearings on Final Approval of the Settlement and Class Counsel’s Motion for an award
2 of attorney’s fees and litigation costs.

3
4 Dated: May 23, 2024

WINSTON LAW GROUP, P.C.

5
6 *David Winston*

7 DAVID S. WINSTON

8 Attorney for Plaintiff Jasmin Gonzalez, the Proposed
9 Class, and the aggrieved employees
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