

1 Mark D. Potter, SBN 166317
James M. Treglio, SBN 228077
2 POTTER HANDY, LLP
100 Pine St., Ste 1250,
3 San Francisco, CA 94111
Telephone: (858) 375-7385
4 Facsimile: (888) 422-5191
jimt@potterhandy.com
5

6 Attorneys for Plaintiff and the Proposed Class

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **COUNTY OF LOS ANGELES**

9 JOY MACOPSON, individually and on
10 behalf of all others similarly situated,

11 Plaintiff,

12 v.

13 PACIFIC BELL TELEPHONE
14 COMPANY, a California corporation, and
DOES 1 to 100, inclusive
15

16 Defendants.
17
18
19
20
21
22
23
24
25
26
27
28

CASE NO. 22STCV13800
Complaint Filed: April 26, 2022

CLASS ACTION

**DECLARATION OF JAMES M.
TREGLIO IN SUPPORT OF
PLAINTIFFS' MOTION FOR ORDER
GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: November 8, 2023
Time: 10:30 a.m.
Dept.: 1 (Spring Street)
Judge: Hon. Stuart M. Rice
Res. Id.: N/A - Set By Court

1 **DECLARATION OF JAMES M. TREGLIO**

2 I, James M. Treglio, declare as follows:

3 1. I am the lead attorney of the class action division for the law firm of Potter Handy, LLP,
4 (“PH,” or “Plaintiffs’ Counsel”), attorneys of record for Plaintiff Joy Macopson (“Plaintiff”) and the
5 proposed settlement class (the “Class”) in the above-captioned matter. I am duly authorized to practice
6 law in the State of California and over 18 years of age. The matters stated herein are known to me
7 based upon my personal knowledge except as otherwise stated.

8 2. This declaration¹ is submitted in support of Plaintiffs’ Motion For Preliminary Approval
9 and for an order:

- 10 a. Granting preliminary approval of the class action settlement reached in this
11 matter;
- 12 b. Appointing Atticus Administration as the Settlement Administrator;
- 13 c. Provisionally certifying the Settlement Class for settlement purposes only;
- 14 d. Approving as to form the Notices of Class Action Settlement and Hearing Date
15 for Final Court Approval (collectively, the “Class Notices”) and ordering that the
16 Class Notices be distributed to the Settlement Class;
- 17 e. Appointing Plaintiff as the Class Representative for settlement purposes only;
- 18 f. Appointing Mark D. Potter and James M. Treglio of Potter Handy LLP as Class
19 Counsel for settlement purposes only;
- 20 g. Setting this matter for hearing on the issues of final approval of the class action
21 settlement, approval of the Class Representative Service Payment to Plaintiff, and
22 approval of Plaintiff’s Counsel’s Attorneys’ Fees and Litigation Expenses; and
- 23 h. Granting all other and further relief as the Court deems just and proper.

24 **PROCEDURAL & FACTUAL HISTORY**

25 3. On April 26, 2022, Plaintiff commenced this action against Defendant Pacific Bell
26

27 ¹ This declaration incorporates by reference the definitions set forth in the Class Action and
28 PAGA Settlement Agreement (“Settlement Agreement”). To the extent the terms are defined in the

Telephone Company. On June 21, 2022, Plaintiff filed a First Amended Class and Representative Action Complaint (the “FAC”)—which is the Operative Complaint in this Action.

4. The Operative Complaint is brought on behalf of “all individuals who are or were employed by Defendants, or their predecessor or merged entities in California as hourly, non-exempt employees . . . during the Class Period.” It alleges Defendants alleged failed to: (1) pay at least minimum wage for all hours worked; (2) pay all overtime wages owed; (3) provide meal periods and pay missed meal period premiums; (4) provide accurate wage statements; (5) timely pay wages; (6) reimburse business expenses; and (7) pay all wages due at termination. And it predicates causes of action under California’s Unfair Competition Law (“UCL”) and the California Labor Code Private Attorneys General Act (“PAGA”) on these alleged Labor Code violations.

5. PAGA requires requires “an aggrieved employee or representative” to “give written notice by online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation” before that employee may pursue claims under PAGA. Cal. Lab. Code § 2699.3(a)(1)(A). Plaintiff provided such notice to Defendant and the LWDA on April 10, 2022, and has since amended that notice in accordance with the parties’ Settlement Agreement. The amended notice is the Operative PAGA Notice in this Action.

6. As required by the Labor Code, the Operative PAGA Notice informed Defendant and the LWDA that Plaintiff intended to, on behalf of herself and all other aggrieved employees, assert legal rights granted by PAGA. The aggrieved employee population encompasses “all individuals who are or were employed by Defendants or AT&T Services, Inc. or their predecessor or merged entities in California in an hourly, non-exempt position . . . from April 10, 2021 through the date of trial and/or approval of settlement.” And it gives notice that Plaintiff intended to seek PAGA penalties for Defendant’s alleged failure to (1) pay all wages; (2) provide compliant meal periods and pay missed meal period premiums; (3) pay overtime wages; (4) timely pay wages; (5) timely pay all wages due on separation; (6) provide accurate, itemized wage statements; (7) reimburse necessary business expenses;

Settlement Agreement, all defined terms contained herein shall have the same meaning as set forth in the

and (8) comply with its obligations to provide employees with paid sick leave and/or kin care leave.

7. On December 22, 2022, Defendant initiated an Individual Settlement Program, mailing putative Settlement Class Members a packet offering to settle their claims against Defendant. Each packet contained (1) an offer letter providing information about (a) this case, (b) other cases in which the recipient could be a putative class member, and (c) the Individual Settlement Program; (2) answers to anticipated questions about the Individual Settlement Program; (3) the applicable release; (4) the Operative Complaint and the operative complaints in other cases in which they could be a putative class member; and (5) a check to cash if the recipient opted to accept Defendant's offer. As of the date of the Settlement Agreement, approximately 2,462 Settlement Class Members accepted their offered settlement through the Individual Settlement Program, resulting in Defendant paying \$481,208.00 to those Settlement Class Members.

MEDIATION

8. On March 20, 2023—while the Individual Settlement Program was ongoing—the Parties participated in an all-day mediation presided over by Hon. Gail Andler (Ret.). The mediation included discussions and considerations of each party's respective positions on the legal and factual issues raised, as well as the asserted liability. As part of the mediation process, and before the March 20 session, Plaintiff obtained and reviewed through informal discovery documents and information, including, *inter alia*, data points regarding the Settlement Class Members and Aggrieved Employees. After mediation, the Parties agreed to settle this case on a class wide basis and entered into a Memorandum of Understanding, ultimately executing a long form Settlement Agreement now before the Court for preliminary approval. At all times, the Parties' negotiations were adversarial, non-collusive and at arm's length.

SUMMARY OF SETTLEMENT

9. The Parties have reduced their agreement to writing in the Class Action and PAGA Settlement Agreement and Class Notices (the "Settlement Agreement"). A true and correct copy of the Parties' fully executed Settlement Agreement is attached hereto as **Exhibit 1** and incorporated herein by

Settlement Agreement.

reference. This Settlement Agreement (and the Class Notices herein), are based on the template(s) of the LA Superior Court “[MODEL] CLASS ACTION SETTLEMENT AGREEMENT AND CLASS NOTICE.”

10. As required by PAGA, at the time of filing the Motion for Preliminary Approval, my office caused the executed Settlement Agreement with Class Notices to be submitted to the LWDA. A true and correct copy of the confirmation of submission is attached hereto as **Exhibit 4** and incorporated herein by reference.

Size of Class & Aggrieved Employee Population

11. Based on a review of its records to date—and excluding anyone who has filed their own separate action as a named plaintiff alleging the same or similar claims being released by the Settlement and/or who has previously released such claims—Defendant estimates that there are approximately 10,945 Settlement Class Members who collectively worked a total of approximately 808,432 Workweeks from the start of the Class Membership Period to September 30, 2023. However, approximately 2,462 Settlement Class Members had participated in Defendant’s Individual Settlement Program covering approximately 428,887 Workweeks. Accordingly, there are approximately 8,483 Settlement Class Members and 379,425 Workweeks for which Defendant’s Individual Settlement Program has not secured releases.

12. Based on a review of its records to date, Defendant also estimates that there are approximately 9,879 Aggrieved Employees who worked a total of 194,854 PAGA Pay Periods from the start of the PAGA Period to September 30, 2023.

Settlement Amount & Payments

13. The Parties have agreed to settle this case for a total of **\$2,235,000.00** (“Gross Settlement Amount”). Ex. 1, ¶ 3.1. Defendant has already paid \$481,208 of this amount to certain Settlement Class Members pursuant to its Individual Settlement Program, which amount therefore will be deducted from its payment of the Gross Settlement Amount. *Id.*, ¶ 3.1.1. With this Court’s approval, the Administrator will make and deduct the following further payments from the remaining Gross Settlement Fund (*i.e.*, \$1,753,792):

To Class Members:	<u>\$1,310,000</u> is to be distributed to the Settlement Class Members as follows: (1) Participating Class Members who negotiated (i.e., cashed or deposited) the check representing their Individual Settlement Share will have the amount of their Individual Settlement Share credited against payment of their calculated Individual Class Payment—but each such Participating Class Member will receive a guaranteed minimum Individual Class Payment of \$25. This amount is in addition to the amount received by the Participating Class Member through the Individual Settlement Program. However, Participating Class Members who participated in the <i>In Re Pacific Bell Wage and Hour Cases</i> settlement approved by the court in those proceedings will not be entitled to such a guaranteed minimum payment. (2) Participating Class Members who did not negotiate the check representing their Individual Settlement Share, or who otherwise were not offered to participate in the Individual Settlement Program, will be allocated their Individual Class Payment—but each such Participating Class Member will receive a guaranteed minimum Individual Class Payment of \$125. However, Participating Class Members who participated in the <i>In Re Pacific Bell Wage and Hour Cases</i> settlement approved by the court in those proceedings will not be entitled to such a guaranteed minimum payment.²
To Plaintiff:	<u>\$20,000</u> to Plaintiff as a service award. This amount is to fairly compensate Plaintiff for her service to the class, the risks and stigma attached to her role as Class Representative, and the extensive help and contribution to the litigation. <i>Id.</i>, ¶ 3.2.1.
To Class Counsel:	<u>\$770,000</u> to Class Counsel representing a Class Counsel Fees Payment of not more than 33-1/3% of the Gross Settlement Fund (i.e., \$745,000) and a Class Counsel Litigation Expenses Payment of not more than \$25,000. <i>Id.</i>, ¶ 3.2.2.

² The Parties recognize that this means one group of settling class members will receive more than the other, depending on whether the member participated in Defendant’s Individual Settlement Program. That should not, however, create any barriers for approving this settlement. “There is ... no legal requirement that all members of the class must participate equally in any settlement.” *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal.App.4th 1135, 1162 (2000). “While intraclass disparities may be a signal of unfairness, the inference is rebuttable by a showing that differences in treatment ‘are rationally based on legitimate considerations.’” *Id.* The consideration for the difference in the two groups in this settlement is that approximately one-fourth of the class has already released their individual claims due to their acceptance of the Individual Settlement Program checks thus lowering the value of those class members’ subsequent class wide release for the \$25 consideration they receive as a part of this settlement.

To The Administrator:	No more than \$75,000 will be paid to the settlement administrator, except for a showing of good cause and as approved by the Court. <i>Id.</i> , ¶ 3.2.3. To the extent the Administration Expenses are less or the Court approves payment less than \$75,000.00, the Administrator will allocate the remainder to the Net Settlement Fund. <i>Id.</i>
To the LWDA/Aggrieved Employees:	\$60,000 will be allocated for the settlement of PAGA claims, to be distributed as follows: \$45,000 (<i>i.e.</i> 75% of the \$60,000 amount allocated to settle PAGA claims) will be paid to the LWDA. <i>Id.</i> , ¶ 3.2.5. \$15,000 (<i>i.e.</i> 25% of the \$60,000 amount allocated to settle PAGA claims) will be paid to the Aggrieved Employees pro-rata, based on the number of PAGA Pay Periods worked by each Aggrieved Employee. <i>Id.</i> , ¶ 3.2.5.

14. This is not a claims made settlement, there is no possible reversion, and all class members will be sent their allocated share of the net settlement funds. Settlement class members will then have 180 days to cash their checks. *Id.*, ¶ 4.3.1. The Settlement Administrator will transmit the funds for any Participating Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date to the California Controller's Unclaimed Property Fund in the name of the Participating Class Member; thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). *Id.*, ¶ 4.4.3.

Scope of Applicable Releases

15. All Participating Class Members will release all Released Parties from "any and all allegations, claims, debts, rights, demands, charges, complaints, actions, causes of action, guarantees, costs, expenses, attorneys' fees, economic damages, non-economic damages, restitution, civil penalties, statutory penalties, liquidated damages, punitive damages, interest, obligations, liabilities, or other monies and remedies, of any and every kind, contingent or accrued, that have been or reasonably could have been alleged or asserted in the Complaints and/or any of the other pleadings filed in the Action based on the facts and/or legal violations alleged therein, and in any notice Plaintiff sent to the LWDA pursuant to PAGA based on the facts and theories alleged in such notice, from April 26, 2018 through

the date of Final Approval of the Settlement. This includes, but is not limited to, claims for statutory, constitutional, contractual or common law claims for wages, damages, unpaid costs or expenses, penalties, liquidated damages, punitive damages, interest, attorneys’ fees, litigation costs, restitution, or equitable relief for violations of the California Labor Code, California Industrial Welfare Commission Wage Orders, and Bus. & Prof. Code § 17200, *et seq.*, and claims for or based on any type of unpaid minimum, regular, overtime or other wages; failure to provide, authorize or permit compliant meal and rest periods; failure to pay any wages timely or at all during and/or upon termination of employment; failure to provide accurate itemized wage statements; failure to reimburse any business expenses; and derivative violations of the California Unfair Competition Law and/or relief available under PAGA.” Ex. 1, ¶ 5.2.

16. The Class Membership Period runs from April 26, 2018 through the date the Court grants preliminary approval of this Settlement. *Id.*, ¶ 1.10.

17. Plaintiff—on behalf of the State of California, the LWDA, and the Aggrieved Employees³— will “release[] and discharge[] the Released Parties of any and all claims for civil penalties that have been alleged, or that reasonably could have been alleged based on the violations, facts and/or theories asserted in the Complaints and/or PAGA Notice and/or ascertained in the course of the Action through the date of Final Approval of the Settlement.” *Id.*, ¶ 5.3. All Aggrieved Employees will therefore be “deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties, from all claims for civil penalties that (1) were alleged, or that reasonably could have been alleged based on the violations, facts and/or theories asserted, in the Complaints and/or PAGA Notice and/or (2) ascertained in the course of the Action through the date of Final Approval of the Settlement.” *Id.*

³ Litigants who sue under PAGA do not sue for themselves; they sue on behalf of California. *Arias v. Superior Court*, 46 Cal.4th 969, 986 (2009) (“An employee suing . . . under the Labor Code Private Attorneys General Act of 2004, does so as the proxy or agent of the state’s labor law enforcement agencies.”). As a result, a “judgment [a PAGA] action is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding.” *Id.* This rule applies to both settled and litigated cases. *Guerrero-Hernandez v. Ozburn-Hessey Logistics, LLC*, 2018 U.S. Dist. LEXIS 225487, at *29 (C.D. Cal. July 13, 2018) (a “[s]ettlement, if approved, binds the State as well” as individual employees).

18. The PAGA Period runs from April 10, 2021 through the date the Court grants preliminary approval of this Settlement. *Id.*, ¶ 1.35.

19. Finally, in consideration of her Class Representative Service Payment, Individual Class Payment, and the other terms and conditions of the Settlement, Plaintiff will also release the Released Parties from “any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys’ fees, damages, actions or causes of action of every kind or nature, contingent or accrued, known or unknown, which do or may exist through and including the date of Final Approval.” *Id.*, ¶ 5.1. This release will include a waiver of provisions, rights, and benefits (if any) of Civ. Code § 1542. *Id.*, ¶ 5.1.1.

Settlement Administration

20. The Parties have agreed, subject to Court approval, to appoint Atticus Administration as the Settlement Administrator. Ex. 1, ¶ 7.1. Pursuant to the terms of the Settlement Agreement, Atticus will be responsible for determining each Class Member’s Individual Settlement Share according to the terms of the Settlement Agreement; preparing, printing, and mailing the Class Notice to all Class Members; promptly notifying Class Counsel and Defendant’s counsel of any requests for exclusion or objections; preparing and distributing checks to Participating Class Members, the LWDA, and Aggrieved Employees in accordance with the terms of the Settlement Agreement; and providing necessary declarations and reports, along with other duties, as necessary to carry out the terms of the settlement. Atticus will also disburse all proceeds of the settlement in accordance with the terms of the Settlement Agreement and the Orders of this Court. *Id.*, ¶¶ 7.1–7.8. Atticus has agreed to cap its fee at \$75,000. *Id.*, ¶ 3.2.3.

Providing Class Notice

21. All Class Members will be mailed one of two Class Notices, depending on whether they participated in Defendant's Individual Settlement Program. Ex. 1, ¶ 7.4.2; *see also* (Settlement Agreement, Exs. A–B). Each Notice includes information regarding the nature of the litigation; a summary of the terms of the Settlement Agreement; the definition of the Settlement Class; the estimated cost for administration of the settlement; information regarding the Settlement Payments to be paid

1 from the Gross Settlement Fund; the total number of Workweeks worked by the Class Member; the
2 Class Member's estimated Individual Settlement Share; the formula for calculating Individual
3 Settlement Shares; the dates of the Class Period; instructions for requesting exclusion from or objecting
4 to the settlement, as well as the deadlines by which Class Members must postmark such requests or
5 objections; the date, time and location of the Final Approval/Fairness Hearing; and the claims to be
6 released by Participating Class Members. *Id.* These Notices have been drafted using the template
7 provided by the Los Angeles Superior Court Complex Panel. Counsel for the Parties have agreed to the
8 language of the Class Notices.

9 22. The Settlement Agreement provides for the Settlement Administrator to mail the Class
10 Notice to all Class Members via regular First-Class U.S. Mail within 14 calendar days of receiving the
11 Class Member Data from Defendant. *Id.*, ¶ 7.4.2. For Class Notices that are returned as non-
12 deliverable on or before the Opt-Out Period, the Settlement Administrator will take all reasonable steps,
13 such as by performing skip-tracing and other reasonable searches, to determine the correct address. *Id.*,
14 ¶ 7.4.3.

15 23. Additionally, per the Settlement Agreement, the Administrator "will establish and
16 maintain and use an internet website to post information of interest to Class Members" and "also
17 maintain and monitor an email address and a toll-free telephone number to receive Class Member calls,
18 faxes and emails." *Id.*, ¶ 7.8.1.

19 Exclusions, Objections, and Challenges

20 24. Under the terms of the Settlement Agreement, Class Members will have the opportunity
21 to exclude themselves from the settlement by timely submitting a valid Opt-Out Notice to the
22 Settlement Administrator. Ex. 1, ¶ 7.5. The Opt-Out Notice must "reasonably communicate [] the
23 Class Member's election to be excluded from the Settlement and includes the Class Member's name,
24 address and email address or telephone number." *Id.*, ¶ 7.5.1. "To be valid, a Request for Exclusion
25 must be timely faxed, emailed, or postmarked by the Response Deadline"—which is no later than
26 "forty-five (45) days after the Administrator mails the Class Notice (plus an additional fourteen (14)
27 days for Class Members whose Class Notices are re-mailed)." *Id.*

25. Additionally, the Settlement Agreement permits Class Members who do not request exclusion from the settlement to object to the settlement by timely submitting a valid written Notice of Objection to the Settlement Administrator. *Id.*, ¶ 7.7. “Participating Class Members may send written objections to the Administrator, by fax, email, or mail,” provided they do so “not later than forty-five (45) days after the Administrator’s mailing of the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice was re-mailed).” *Id.*, ¶ 7.7.2. Alternatively, “Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing.” *Id.*

26. Finally, the Agreement also permits Class Members to “challenge whether he or she participated in the Individual Settlement Program by cashing or otherwise depositing the check representing their” payment through the Program, “and/or the number of Workweeks and PAGA Pay Periods (if any) allocated to the Settlement Class Member in the Class Notice.”⁴ *Id.*, ¶ 7.6. They may do so “by communicating” their challenge to “the Administrator via fax, email, or mail” within “forty-five (45) days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed).” *Id.* The Administrator “must encourage the challenging Settlement Class Member to submit supporting documentation” and, absent such documentation, “is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data.” *Id.* “The Administrator’s determination of each Settlement Class Member’s participation in the Individual Settlement Program, as well as allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge.” *Id.*

Effect on Related Cases

27. As noted in Section 2.7 of the Agreement, neither the Parties nor their Counsel are aware of any pending actions brought prior to the filing of this Action by anyone who would be a Settlement Class Member asserting claims in such matters that may or will be extinguished or affected by the

⁴ Class Members are only able to challenge whether they participated in the Individual Settlement Program by cashing or depositing the individual payment they received. They cannot nullify their participation via such challenge.

Settlement. Notwithstanding, the Parties identified the following potentially related actions:

- a. *In Re Pacific Bell Wage and Hour Cases*, Los Angeles County Superior Court, JCCP Case No. 5017.
- b. *Meza v. Pacific Bell Telephone Company*, Kern County Superior Court, Case No. BCV-15-101572.
- c. *Garcia v. Pacific Bell Telephone Company*, Tulare County Superior Court, Case No. VCU276232.
- d. *Jones v. Pacific Bell Telephone Company*, Los Angeles County Superior Court, Case Nos. 22STCV2949 and 22STCV35974.
- e. *Hicks v. AT&T Inc. et al.*, Orange County Superior Court, Case No. 30-2023-01326712-CU-OE-CXC.
- f. *Rumenapp v. Pacific Bell Telephone Company*, El Dorado County Superior Court, Case No. 23CV1230.
- g. *Wilson v. Pacific Bell Telephone Company*, Alameda County Superior Court, Case No. 23CV046794.

28. As noted above, the Settlement in this action *excludes* anyone who has filed their own separate action as a named plaintiff alleging the same or similar claims being released by the Settlement (including the named plaintiffs in the above actions) and/or who has previously released such claims. Ex. 1, ¶ 1.49.

FAIRNESS OF SETTLEMENT & RISK OF CONTINUED LITIGATION

29. Prior to negotiating the Settlement, Plaintiff requested and obtained, through informal discovery, documents and information, including, *inter alia*, data points regarding the Settlement Class Members and Aggrieved Employees. These documents include relevant wage and hour policies, timekeeping procedures and practices, technician guidelines, and training materials on California wage and hour requirements as well as documents regarding Plaintiff's employment. I closely scrutinized and considered all of this information during settlement negotiations.

30. In reaching the proposed settlement, my negotiation efforts took into consideration

relevant factors such as the size of the class; the releases Defendant secured through its Individual Settlement Program; the information, data, and documents obtained in the litigation and/or otherwise exchanged pursuant to the mediation privilege; the experience of the named Plaintiffs; the strengths and weaknesses of the case; the uncertain outcome and risk of litigating complex action; the time and expense of litigation a case through trial; Defendant's defenses; and the non-revisionary nature of the Settlement.

31. The theoretical recovery at trial spans a large range: from zero up to many thousands of dollars per Class Member. And while Plaintiff recognizes that this Court's checklist request that these papers "specify the maximum realistic recovery of each claim asserted in the operative complaint," providing even that estimate is extraordinarily difficult. Defendant maintains the realistic recovery for this action is nothing, and Plaintiff strongly disagrees. Nevertheless, Plaintiff provides such estimates below; though note a significant portion of the potential range of recovery is at serious risk given the releases secured through Defendant's Individual Settlement Program:

Plaintiff's Estimated Potential Recovery		
Assumptions During Class Period (based on data points provided by Defendant)		
<u>Estimated number of class members = 10,945</u>		
<u>Total workweeks = 808,428</u>		
<u>Estimated number of shifts with meal break violations = 808,432</u>		
<u>Average pay rate = \$23</u>		
Total number of pay periods within 1-year Statute of Limitations = 194,854		
Cause of Action	Estimated Potential Recovery	Calculations for Estimated Potential Recovery
Meal Period Claim	\$18,593,936	\$23 (hourly rate) x. 1 days per workweek x. 808,432
Unpaid Minimum Wages Claim	\$7,372,899.84	808,432 workweeks x \$9.12 (unpaid wages per workweek)
Unpaid Overtime Wages Claim	\$3,686,449.92	808,432 workweeks x 4.56 (unpaid overtime per workweek)

Reimbursement Claim	\$8,084,320	\$10 estimated total reimbursement for “home office expenses” x 808,432 workweeks ⁵
Unfair Competition Law	Extends Statute of Limitations, so Subsumed in Above Calculations.	
Sub-Total Unpaid Wages (assuming the ISPs are not valid)⁶	\$38,737,632.70	
Sub-Total (assuming the ISPs are valid)⁷	\$18,167,949.70	
Labor Code § 210 Penalties	26,197,700.28	10,945 Class Members x 322,014 pay periods x \$100 ⁸
Labor Code § 226 Penalties	\$19,102,510	261,977.28 initial pay periods x \$50) + (60,036.46 subsequent pay periods x \$100)
TOTAL (assuming the ISPs are not valid)	\$84,037,842.88	

⁵ Plaintiff alleges that Defendant “required” her to work from home when the COVID pandemic began in March 2020. FAC, ¶ 18. She further alleges that she “had to set up and provide everything for her home office including but not limited to high-speed Internet service, desk, chair, and other home office supplies.” *See id.* Plaintiff claims that, even if she was responsible for the home office set-up, Defendant still refused to reimburse “all business-related home office expenses.” *Id.*; *see also id.*, ¶ 43 (same). However, Defendant maintains that employees who voluntarily elected to work from home were provided with **everything** that they needed to perform their job duties—including a mouse, headset, keyboard, monitors, computer, and company-owned device. Accordingly, Plaintiff has estimated a heavily discounted total reimbursement amount that accounts for these factual disputes.

⁶ This value is the exposure of the entire class.

⁷ This value is the exposure of only the non-ISP employees based on Defendant’s representation of how many ISPs were accepted. Based on Defendant’s representations, 2,462 Settlement Class Members accepted the ISP, representing 428,887 workweeks and 8,363 Settlement Class Members, representing 379,425 did not. Therefore, the exposure was calculated proportionately.

⁸ Lab. Code § 210 provides for a higher \$200 penalty “for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld,” for “each subsequent violation, or any willful or intentional violation.” Lab. Code § 210(a)(2). Courts often find that the lower \$100 per pay period penalty rate applies *unless* the employer was previously put on notice that its conduct violated the Labor Code by a citation from the Labor Commissioner or a court judgment. *See, e.g., Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207-08 (2008); *see also Gunther v. Alaska Airlines, Inc.*, 72 Cal.App.5th 334, 356 (2021) (“[T]he increased \$200 civil penalty for ‘subsequent violation[s]’ does not apply unless [the plaintiff] presents evidence that the Labor Commissioner or a court notified [the defendant] that it was in violation of the Labor Code.”). To Plaintiff’s knowledge, Defendant has received neither. Accordingly, Plaintiff has calculated the potential exposure on this claim using only the lower initial violation penalty amount. It should also be noted that §210 claims independent of PAGA are legally dubious.

**TOTAL (assuming the
ISPs are valid)⁹**

\$39,413,748.08

32. Based on my analysis of the information and documents exchanged in this matter, I am of the opinion that the proposed settlement is reasonable in light of the facts surrounding the claims and defenses raised in this Action.

33. Indeed, the average payments for both the ISP Participants and Non-ISP participants is a significant recovery for the putative class members in this action. In *Jason Hudson v. Pacific Bell Telephone Company* (Sacramento Superior Court, Case No. 34-2016-00202203-CU-OE-GDS), the court found a \$1,900,000 settlement of similar claims brought on behalf of 6,340 employees who worked a collective 1,302,531 workweeks—making the value of each workweek ~\$1.46—was “fair, adequate, and reasonable.” **Exhibit 5.** More recently, in the *In Re Pacific Bell Wage and Hour Cases* proceedings, a settlement of \$12.1 million covering 5,091,132 workweeks—making the value of each workweek ~\$2.37—was likewise approved as being fair, adequate, and reasonable. **Exhibit 6.** And here, the class is receiving approximately \$2.69 per workweek¹⁰ which is significantly higher than the settlement class received in *Hudson* and more than was obtained by the settlement class more recently in the *In Re Pacific Bell Wage and Hour Cases*.

34. Additionally, as described in the Settlement Agreement and the Class Notice, Class Members will receive notice of the proposed settlement. (Settlement Agreement Exs. A–B). Each Class Member will have the opportunity, upon reviewing the Class Notice, to either exclude themselves from the settlement or object to the terms of the settlement. *Id.* Therefore, Class Members will be provided with the opportunity to express their views and opinions regarding the proposed settlement. Accordingly, the Court will have all information necessary at the Final Approval/Fairness Hearing to finally determine whether the settlement is fair, adequate and reasonable.

35. Additionally, Plaintiff will apply to the Court for a service award in the amount of \$20,000 in consideration for services she rendered on behalf of the settlement class. The requested class

⁹As with above, the total exposure was reduced based on the number of proportional reduction of the workweeks. 449,561 workweeks represents 51% of the 808,432 workweeks.

representative service award is well within the accepted range of awards.¹¹ As explained in *Glass*, service awards are routinely awarded to class representatives to compensate the employees for the time and effort expended on the case, for the risk of litigation, for the fear of suing an employer and retaliation therefrom, and to serve as an incentive to vindicate the statutory rights of all employees. See *Glass*, 2007 WL 221862, at *16-17.

36. By being the named representative in the Action, Plaintiff put her name forward on the public record at the risk of future or potential employers choosing not to hire her based on the fact that she took the lead in this Action. Plaintiff also risked liability for Defendant's attorneys' fees and costs due to the two-way fee shifting provisions in the Labor Code. See Lab. Code §§ 218.5, 226. Plaintiff also performed her duties admirably by working with her counsel, including, without limitation, review and analysis of documents produced by Defendant, communicating with class members, participating in numerous meetings and discussions, significant time searching for employment-related documents, discussing her experience with Class Counsel, reviewing settlement documents, and providing consistent support to PH. Accordingly, Plaintiff has risked and surrendered more than any Class Member. Moreover, if preliminary approval is granted, the requested service award amount will be clearly disclosed in the Class Notice and all Class Members will have the opportunity to object or otherwise comment on the proposed amounts.

37. Based on the foregoing, I believe the proposed settlement represents a favorable resolution for the members of the Settlement Class and is in the best interest of the parties in light of all known facts and circumstances.

QUALIFICATIONS

38. I was admitted to the California Bar in 2003. I received my Bachelor of Arts degree in Government from College of William & Mary in 1998 and my Juris Doctor degree from the University

¹⁰ \$2,175,000 ÷ 808,432 Workweeks

¹¹ See e.g. *Louie v. Kaiser Found. Health Plan, Inc.*, 2008 WL 4473183, at *6 (S.D. Cal. Oct. 6, 2008) (awarding \$25,000 service award to each of six plaintiffs in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, at *16-17 (N.D. Cal. Jan. 26, 2007) (awarding \$25,000 enhancement award in overtime class action and a pool of \$100,000.00 in enhancements over objections); *Van*

of San Diego in 2003. From 2003 through 2006, I was the staff attorney for the Fair Housing Council of San Diego, where I specialized in housing discrimination enforcement. In 2007, I joined the law firm of Clark & Markham, LLP, where I specialized in consumer and wage and hour class actions, which has comprised my practice of law ever since. In 2012, the law firm of Clark & Markham, LLP into the Clark Law Firm and the Markham Law Firm. I stayed with the Clark Law Firm, and in 2015, the firm became Clark & Treglio after I was made partner. By 2013, my work with the Clark Law Firm, Clark & Markham, LLP, and Clark & Treglio resulted in nearly 5% of all recoveries made by the LWDA up to that point.

39. In 2017, I joined Keegan & Baker, LLP, which was also a class action firm. Whereas my work at Clark & Markham, LLP and the Clark Law Firm was primarily focused on wage and hour class actions, my work at Keegan & Baker, LLP involved more consumer actions, including data breach class actions, and actions brought under the Fair Credit Reporting Act.

40. In 2018, I left Keegan & Baker, LLP and joined the Melmed Law Group, P.C. The Melmed Law Group, P.C., is an employment law firm with a focus on class and PAGA representative actions. I began my representation of the Plaintiff in this action when I was employed by the Melmed Law Group, P.C.

41. In 2019, I joined my current firm, Potter Handy, LLP, to become head of its new class action division. In that capacity, I litigate both consumer and employment class actions throughout the State of California.

42. Since 2007, I have specialized in complex wage and hour and consumer class action litigation. I have been involved in every stage of class action litigation as both a lead counsel, the lead and primary associate, and as co-counsel. A summary of my experience, including representative class action litigation is attached hereto at **Exhibit 7**.

43. In connection with these prior class actions, I have conducted discovery, argued motions, drafted pleadings, drafted class notices, drafted appellate briefs, examined witnesses, represented class members at settlement conferences and mediations, deposed defendants and third-party witnesses,

Vranken v. Atl. Richfield Co., 901 F.Supp.294, 299-300 (N.D. Cal. 1995) (awarding enhancement award

1 defended class representative depositions and participated in final disposition hearings. I have also tried
2 PAGA representative actions.

3 44. Based on my and my firm's experience, we did and will adequately and competently
4 represent Plaintiff, the Settlement Class, and the PAGA collective in this matter. We have fought for
5 and negotiated a settlement that I believe is fair, reasonable, adequate and in the best interest of the
6 Settlement Class and the PAGA collective in light of all known facts and circumstances including, but
7 not limited to, the risk of continued litigation. Thus, I along with Plaintiff respectfully request that this
8 Court preliminarily approve the settlement.

9 45. I am not aware of any actual or potential conflict of interest with the Settlement
10 Administrator, Atticus Administration, in this case. I do not have any financial interest in Atticus
11 Administration.

12 46. I have no knowledge of the existence of any conflicting interests between my firm and
13 any of its attorneys, on the one hand, and Plaintiffs or any other Class Member, on the other.

14
15 I declare under penalty of perjury under the laws of the United States and the State of California
16 that the foregoing is true and correct.

17 Executed on this October 30, 2023 in San Diego, California.

18
19
20 By: /s/ James M. Treglio
21 James M. Treglio, Esq.

22
23
24
25
26
27
28 of \$50,000).