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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

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

Plaintiff,

v.

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

Defendants.

CASE NO: 22STCV13800

CLASS & REPRESENTATIVE ACTION

**PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT:**

(1) NOTICE OF MOTION

**(2) MEMORANDUM OF POINTS AND
AUTHORITIES**

Filed Under Separate Covers:

**(3) DECLARATION OF JAMES M.
TREGLIO**

(4) DECLARATION OF JOY MACOPSON

(5) [PROPOSED] ORDER

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

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NOTICE OF MOTION

**TO THE HONORABLE STUART M. RICE, JUDGE OF THE LOS ANGELES COUNTY
SUPERIOR COURT, AND TO DEFENDANT AND ITS COUNSEL OF RECORD:**

PLEASE TAKE NOTICE that, on November 8, 2023, at 10:30 a.m. or as soon thereafter as this matter may be heard in Department 1 of the above-entitled Court, located at 312 N. Spring Street, Los Angeles, CA 90012, Plaintiff Joy Macopson, on behalf of herself and all others similarly situated, by and through her counsel of record, will and hereby does move the Court for an Order:

1. Granting preliminary approval of the class action settlement reached in this matter;
2. Appointing Atticus Administration as the Settlement Administrator;
3. Provisionally certifying the Settlement Class for settlement purposes only;
4. Approving as to form the Notices of Class Action Settlement and Hearing Date for Final Court Approval (collectively, the “Class Notices”) and ordering that the Class Notices be distributed to the Settlement Class;
5. Appointing Plaintiff as the Class Representative for settlement purposes only;
6. Appointing Mark D. Potter and James M. Treglio of Potter Handy LLP as Class Counsel for settlement purposes only;
7. Setting this matter for hearing on the issues of final approval of the class action settlement, approval of the Class Representative Service Payment to Plaintiff, and approval of Plaintiff’s Counsel’s Attorneys’ Fees and Litigation Expenses;
8. Granting all other and further relief as the Court deems just and proper.

This Motion is made pursuant to Rule 3.769 of the California Rules of Court and on the grounds that the settlement reached between Plaintiff and Pacific Bell Telephone Company was achieved as the result of informed arm’s length negotiations; is reasonable, fair, and adequate; and is deserving of approval for the benefit of the Settlement Class.

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1 This Motion is based upon this Notice; the accompanying Memorandum of Points and
2 Authorities in Support Thereof; the concurrently-filed declaration of James M. Treglio and any exhibits
3 thereto; all pleadings and papers filed in this action; and upon any such other evidence and/or oral
4 argument that may be presented to the Court at the time of the hearing.

5
6 DATED: October 29, 2023

POTTER HANDY LLP

7
8 By: _____

Mark D. Potter, Esq.
James M. Treglio, Esq.

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10 *Attorneys for Plaintiff JOY MACOPSON*
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Joy Macopson seeks approval of a non-reversionary, direct-mail class and representative
4 action settlement of wage-and-hour claims against Defendant Pacific Bell Telephone Company. Subject
5 to Court approval, Plaintiff and Defendant (collectively referred to as the “Parties”) have agreed to a
6 class-wide, non-reversionary settlement of this Action on behalf of all persons who are or were employed
7 in California from April 26, 2018 through the date of Preliminary Approval of the Settlement by
8 Defendant as hourly, non-exempt employees or by AT&T Services, Inc. in an hourly, non-exempt
9 technician position – excluding anyone who has filed their own separate action as a named plaintiff
10 alleging the same or similar claims being released by the Settlement and/or who has previously released
11 such claims – in exchange for a release of claims as outlined in the Class Action and PAGA Settlement
12 Agreement (the “Settlement Agreement” or “Agreement”).¹

13 The Parties have reached the proposed settlement after an in-depth investigation and analysis into
14 the facts and legal issues raised in this Action. At all times, the Parties’ negotiations were adversarial,
15 non-collusive, and at arm’s length. Plaintiff now moves for an order provisionally certifying a settlement
16 class and granting preliminary approval of the Parties’ Settlement. Plaintiff’s Counsel submits that the
17 proposed settlement is patently fair and reasonable for myriad reasons, not the least of which is that
18 approximately one-fourth of the putative class members have already released their claims against
19 Defendant through an Individual Settlement Program—an initiative that began in December 2022 while
20 this case was in active litigation. This Settlement provides meaningful monetary compensation to all
21 putative class members, including those who already have received and cashed settlement checks
22 through Defendant’s Individual Settlement Program.

23 Accordingly, Plaintiff respectfully requests that this Court (1) grant preliminary approval of the
24 proposed Settlement; (2) appoint Atticus Administration (“Atticus” or the “Settlement Administrator”)
25

26 ¹ The Settlement Agreement is attached as Exhibit 1 to the Declaration of James M. Treglio (the
27 “Treglio Decl.”) that is filed and served concurrently herewith. This Motion incorporates by reference
28 the definitions in the Settlement Agreement. To the extent the terms are defined in the Settlement
Agreement, all defined terms contained herein shall have the same meaning as set forth in the Settlement
Agreement.

1 as the Settlement Administrator; (3) provisionally certify the Settlement Class for settlement purposes
2 only; (4) order the mailing of the proposed Notices of Class Action Settlement and Hearing Date for
3 Final Approval (collectively, the “Class Notices”) to the Settlement Class; (5) appoint Plaintiff as the
4 Class Representative for settlement purposes only; (6) appoint Mark D. Potter and James M. Treglio of
5 Potter Handy LLP as Class Counsel for settlement purposes only; and (7) schedule a final
6 approval/fairness hearing.

7 **II. SUMMARY OF THE LITIGATION**

8 **A. Identity Of The Parties**

9 Plaintiff is Joy Macopson. Defendant is Pacific Bell Telephone Company. Macopson has worked
10 for Defendant in California as an hourly, non-exempt employee since in or around April 1998 to the
11 present.

12 **B. Brief Procedural History**

13 On April 26, 2022, Plaintiff commenced this action against Defendant. Treglio Decl., ¶ 3. On
14 June 21, 2022, Plaintiff filed a First Amended Class and Representative Action Complaint (the “FAC”).
15 *Id.* The FAC is the operative complaint in the Action (the “Operative Complaint”).²

16 The Operative Complaint is brought on behalf of “all individuals who are or were employed by
17 Defendants, or their predecessor or merged entities in California as hourly, non-exempt employees...
18 during the Class Period.” Treglio Decl., Exh. 2 (FAC), ¶ 4. The Operative Complaint alleges six causes
19 of action under the California Labor Code predicated on Defendant’s alleged failure to: (1) pay at least
20 minimum wage for all hours worked; (2) pay all overtime wages owed; (3) provide meal periods and
21 pay missed meal period premiums; (4) provide accurate wage statements; (5) timely pay wages during
22 employment; and (6) reimburse business expenses. *Id.* It also alleges that Defendants failed to pay
23 putative class members all wages due at termination. It further alleges causes of action pursuant to
24 California’s Unfair Competition Law (“UCL”) and the California Labor Code Private Attorneys General
25 Act (“PAGA”), which are predicated on the foregoing alleged Labor Code violations. *See id.*

26 Defendant denies the allegations in the Operative Complaint, denies any failure to comply with
27

28 ² The Complaint and FAC are referred to herein collectively as the “Complaints.”

1 the laws identified in the Operative Complaint, and denies any and all liability for the causes of action
2 alleged.

3 Under PAGA, “an aggrieved employee or representative” is required to “give written notice by
4 online filing with the Labor and Workforce Development Agency and by certified mail to the employer
5 of the specific provisions of this code alleged to have been violated, including the facts and theories to
6 support the alleged violation” before that employee may pursue claims under PAGA. Lab. Code §
7 2699.3(a)(1)(A). Plaintiff provided such notice to Defendant and the LWDA on April 10, 2022 (*i.e.*, the
8 PAGA Notice), and has since amended that notice in accordance with the parties’ Settlement Agreement.
9 Treglio Decl., ¶ 5.

10 1. As required by the Labor Code, the PAGA Notice informed Defendant and the LWDA
11 that Plaintiff intended to, on behalf of herself and all other aggrieved employees, assert legal rights
12 granted by PAGA. The aggrieved employee population encompasses “all individuals who are or were
13 employed by Defendants or AT&T Services, Inc. or their predecessor or merged entities in California
14 in an hourly, non-exempt position... from April 10, 2021 through the date of trial and/or approval of
15 settlement.” *Id.*, Exh. 2 (FAC), ¶ 6. And the PAGA Notice, as amended, gives notice that Plaintiff
16 intended to seek PAGA penalties for Defendant’s alleged failure to (1) pay all wages; (2) provide
17 compliant meal periods and pay missed meal period premiums; (3) pay overtime wages; (4) timely pay
18 wages; (5) timely pay all wages due on separation; (6) provide accurate, itemized wage statements; (7)
19 reimburse necessary business expenses; and (8) comply with its obligations to provide employees with
20 paid sick leave and/or kin care leave. *Id.*, Exh. 3 (PAGA Notice).

21 **C. Settlement Efforts & Negotiations**

22 On December 22, 2022, Defendant launched an Individual Settlement Program (ISP - also known
23 as a *Pick-Up Stix* campaign),³ unilaterally issuing checks to putative class members. *Id.*, ¶ 7. On March
24 20, 2023—while the *Pick-Up Stix* campaign was ongoing—the Parties participated in a mediation
25 presided over by well-respected Mediator, Hon. Gail Andler (Ret.). *Id.*, ¶ 8. Prior to mediation, Plaintiff
26

27 ³ This name comes from the seminal case on the issue—*Chindarah v. Pick Up Stix, Inc.*—in
28 which California’s Fourth Appellate District concluded nothing in California law prohibited an employer
from “obtaining releases of wage claims directly from employees, including claims that are the subject
of a bona fide dispute.” 171 Cal. App. 4th 796, 802 (2009)

1 obtained, through informal discovery, documents and information, including, *inter alia*, data points
2 regarding the Settlement Class Members and Aggrieved Employees. *Id.*, ¶ 8. Following that mediation,
3 the Parties agreed to settle this case on a class wide basis and entered into a Memorandum of
4 Understanding. *Id.*, ¶ 8. At all times, the Parties' negotiations were adversarial, non-collusive and at
5 arm's length. *Id.*, ¶ 8.

6 **D. Summary Of Settlement Terms.**

7 **1. Size of Settlement Class & Aggrieved Employee Population.**

8 Based on a review of its records to date—and excluding anyone who has filed their own separate
9 action as a named plaintiff alleging the same or similar claims being released by the Settlement and/or
10 who has previously released such claims—Defendant estimates that there are approximately 10,945
11 Settlement Class Members who collectively worked a total of approximately 808,632 Workweeks from
12 the start of the Class Membership Period to September 30, 2023. However, approximately 2,462
13 Settlement Class Members had participated in Defendant's Individual Settlement Program covering
14 approximately 428,887 Workweeks. Accordingly, there are approximately 8,483 Settlement Class
15 Members and 379,745 Workweeks for which Defendant's Individual Settlement Program has not
16 secured releases. Treglio Decl., ¶ 11.

17 Based on a review of its records to date, Defendant also estimates that there are approximately
18 9,879 Aggrieved Employees who worked a total of 194,854 PAGA Pay Periods from the start of the
19 PAGA Period to September 30, 2023. Treglio Decl., ¶ 12.

20 **2. Monetary Terms.**

21 Except as otherwise set forth herein, the Parties have agreed to settle this case for a total of
22 **\$2,235,000.00**. Treglio Decl., Exh. 1 (Settlement Agreement), ¶ 3.1. Defendant has already paid
23 \$481,208 to certain Settlement Class Members pursuant to its Individual Settlement Program, which
24 amount will be deducted from its payment of the total gross settlement amount. *Id.*, ¶ 3.1.1. With this
25 Court's approval, the Administrator will make and deduct the following further payments from the
26 remaining Gross Settlement Fund (*i.e.*, \$1,753,792):
27
28

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.⁴
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.
To the Administrator:	No more than <u>\$75,000</u> 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

⁴ 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.

1		Settlement Fund. <i>Id.</i>
2	To the	\$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.
3	LWDA/Aggrieved	
4	Employees:	
5		
6		
7		
8		

9 Treglio Decl., ¶ 13.

10 Settlement class members will have 180 days to cash their checks. Settlement Agreement,
11 ¶ 4.3.1. The Settlement Administrator will transmit the funds for any Participating Class Member whose
12 Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the
13 void date to the California Controller's Unclaimed Property Fund in the name of the Participating Class
14 Member; thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil
15 Procedure Section 384, subd. (b). *Id.*, ¶ 4.4.3; *see also* Treglio Decl., ¶ 14.

16 3. Scope of Applicable Releases.

17 All Participating Class Members will release the Released Parties⁵ from "any and all allegations,
18 claims, debts, rights, demands, charges, complaints, actions, causes of action, guarantees, costs,
19 expenses, attorneys' fees, economic damages, non-economic damages, restitution, civil penalties,
20 statutory penalties, liquidated damages, punitive damages, interest, obligations, liabilities, or other
21 monies and remedies, of any and every kind, contingent or accrued, that have been or reasonably could
22 have been alleged or asserted in the Complaints and/or any of the other pleadings filed in the Action
23 based on the facts and/or legal violations alleged therein, and in any notice Plaintiff sent to the LWDA
24 pursuant to PAGA based on the facts and theories alleged in such notice, from April 26, 2018 through
25 the date of Final Approval of the Settlement. This includes, but is not limited to, claims for statutory,
26

27 ⁵ "Released Parties" means "Defendant and AT&T Services Inc. and any of their respective
28 present and former parents (including AT&T Inc.), subsidiaries, successors, and affiliated companies or
entities, and their respective directors, employees, officers, partners, shareholders, owners, agents,
attorneys, insurers, and assigns." Settlement Agreement, ¶ 1.45.

1 constitutional, contractual or common law claims for wages, damages, unpaid costs or expenses,
2 penalties, liquidated damages, punitive damages, interest, attorneys’ fees, litigation costs, restitution, or
3 equitable relief for violations of the California Labor Code, California Industrial Welfare Commission
4 Wage Orders, and Bus. & Prof. Code § 17200, *et seq.*, and claims for or based on any type of unpaid
5 minimum, regular, overtime or other wages; failure to provide, authorize or permit compliant meal and
6 rest periods; failure to pay any wages timely or at all during and/or upon termination of employment;
7 failure to provide accurate itemized wage statements; failure to reimburse any business expenses; and
8 derivative violations of the California Unfair Competition Law and/or relief available under PAGA.”
9 Settlement Agreement, ¶ 5.2; *see also* Treglio Decl., ¶ 15.⁶ The Class Membership Period runs from
10 April 26, 2018 through the date the Court grants preliminary approval of this Settlement. Settlement
11 Agreement, ¶ 1.10; *see also* Treglio Decl., ¶ 16.

12 Plaintiff—on behalf of the State of California, the LWDA, and the Aggrieved Employees⁷— will
13 “release[] and discharge[] the Released Parties of any and all claims for civil penalties that have been
14 alleged, or that reasonably could have been alleged based on the violations, facts and/or theories asserted
15 in the Complaints and/or PAGA Notice and/or ascertained in the course of the Action through the date
16 of Final Approval of the Settlement.” Settlement Agreement, ¶ 5.3; *see also* Treglio Decl., ¶ 17. “All
17 Aggrieved Employees are therefore deemed to release, on behalf of themselves and their respective
18 former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the
19 Released Parties, from all claims for civil penalties that (1) were alleged, or that reasonably could have
20 been alleged based on the violations, facts and/or theories asserted, in the Complaints and/or PAGA
21 Notice and/or (2) ascertained in the course of the Action through the date of Final Approval of the

22 _____
23 ⁶ Class Counsel do not contest Defendant’s assertion that any putative Class Member who
24 negotiated a check representing his or her Individual Settlement Share will remain bound by his or her
release of claims through Defendant’s Individual Settlement Program, regardless of whether or not they
choose to participate in this Settlement.

25 ⁷ Litigants who sue under PAGA do not sue for themselves; they sue on behalf of California.
26 *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
27 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*
28 *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).

Settlement.” Settlement Agreement, ¶ 5.3; *see also* Treglio Decl., ¶ 17. The PAGA Period runs from April 10, 2021 through the date the Court grants preliminary approval of this Settlement. Treglio Decl., ¶ 18 Settlement Agreement, ¶ 1.35; *see also* Treglio Decl., ¶ 18.

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.” Settlement Agreement, ¶ 5.1. This release will include a waiver of provisions, rights, and benefits (if any) of Civ. Code § 1542. *Id.*, ¶ 5.1.1; *see also* Treglio Decl., ¶ 19.

4. Settlement Administration

The Parties have agreed, subject to Court approval, to appoint Atticus Administration as the Settlement Administrator. Settlement Agreement, ¶ 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; *see also* Treglio Decl., ¶ 20.

5. Providing Class Notice.

All Class Members will be mailed one of two Class Notices, depending on whether they participated in Defendant’s Individual Settlement Program. Settlement Agreement, ¶ 7.4.2 & Exh. A–B. These Notices have been drafted using the template provided by the Los Angeles Superior Court Complex Panel. Each Notice includes information regarding the nature of the litigation; a summary of

1 the terms of the Settlement Agreement; the definition of the Settlement Class; the estimated cost for
2 administration of the settlement; information regarding the Settlement Payments to be paid from the
3 Gross Settlement Fund; the total number of Workweeks worked by the Class Member; the Class
4 Member's estimated Individual Settlement Share; the formula for calculating Individual Settlement
5 Shares; the dates of the Class Period; instructions for requesting exclusion from or objecting to the
6 settlement, as well as the deadlines by which Class Members must postmark such requests or objections;
7 the date, time and location of the Final Approval/Fairness Hearing; and the claims to be released by
8 Participating Class Members. *Id.* Counsel for the Parties have agreed to the language of the Class
9 Notice. Treglio Decl., ¶ 21.

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

16 Additionally, per the Settlement Agreement, the Administrator “will establish and maintain and
17 use an internet website to post information of interest to Class Members” and “also maintain and monitor
18 an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.” *Id.*,
19 ¶ 7.8.1; *see also* Treglio Decl., ¶ 23.

20 **6. Exclusions, Objections, and Challenges**

21 Under the terms of the Settlement Agreement, Class Members will have the opportunity to
22 exclude themselves from the settlement by timely submitting a valid Opt-Out Notice to the Settlement
23 Administrator. Settlement Agreement, ¶ 7.5. The Opt-Out Notice must “reasonably communicate [] the
24 Class Member's election to be excluded from the Settlement and includes the Class Member's name,
25 address and email address or telephone number.” *Id.*, ¶ 7.5.1. “To be valid, a Request for Exclusion
26 must be timely faxed, emailed, or postmarked by the Response Deadline”—which is no later than “forty-
27 five (45) days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for
28

1 Class Members whose Class Notices are re-mailed).” *Id.*

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

10 Finally, the Agreement also permits Class Members to “challenge whether he or she participated
11 in the Individual Settlement Program by cashing or otherwise depositing the check representing their”
12 payment through the Program, “and/or the number of Workweeks and PAGA Pay Periods (if any)
13 allocated to the Settlement Class Member in the Class Notice.”⁸ *Id.*, ¶ 7.6. They may do so “by
14 communicating” their challenge to “the Administrator via fax, email, or mail” within “forty-five (45)
15 days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for Class
16 Members whose Class Notice is re-mailed).” *Id.* The Administrator “must encourage the challenging
17 Settlement Class Member to submit supporting documentation” and, absent such documentation, “is
18 entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are
19 consistent with the Class Data.” *Id.* “The Administrator’s determination of each Settlement Class
20 Member’s participation in the Individual Settlement Program, as well as allocation of Workweeks and/or
21 Pay Periods shall be final and not appealable or otherwise susceptible to challenge” *Id.*; Treglio
22 Decl., ¶ 26.

23 7. Effect on Related Cases.

24 As noted in Section 2.7 of the Agreement, neither the Parties nor their Counsel are aware of any
25 pending actions brought prior to the filing of this Action by anyone who would be a Settlement Class
26

27 ⁸ Class Members are only able to challenge whether they participated in the Individual Settlement
28 Program by cashing or depositing the individual payment they received. They cannot nullify their
participation via such challenge.

1 Member asserting claims in such matters that may or will be extinguished or affected by the Settlement.

2 Notwithstanding, the Parties identified the following potentially related actions:

- 3 • *In Re Pacific Bell Wage and Hour Cases*, Los Angeles County Superior Court, JCCP
4 Case No. 5017.
- 5 • *Meza v. Pacific Bell Telephone Company*, Kern County Superior Court, Case No.
6 BCV-15-101572.
- 7 • *Garcia v. Pacific Bell Telephone Company*, Tulare County Superior Court, Case No.
8 VCU276232.
- 9 • *Jones v. Pacific Bell Telephone Company*, Los Angeles County Superior Court, Case
10 Nos. 22STCV2949 and 22STCV35974.
- 11 • *Hicks v. AT&T Inc. et al.*, Orange County Superior Court, Case No. 30-2023-
12 01326712-CU-OE-CXC.
- 13 • *Rumenapp v. Pacific Bell Telephone Company*, El Dorado County Superior Court,
14 Case No. 23CV1230.
- 15 • *Wilson v. Pacific Bell Telephone Company*, Alameda County Superior Court, Case
16 No. 23CV046794.

17 As noted above, the Settlement in this action *excludes* anyone who has filed their own separate action as
18 a named plaintiff alleging the same or similar claims being released by the Settlement (including the
19 named plaintiffs in the above actions) and/or who has previously released such claims. Treglio Decl.,
20 ¶ 28.

21 **III. DUNK/KULLAR ANALYSIS**

22 This Court “has a fiduciary responsibility as guardians of the rights of the absentee class
23 members” to ensure a settlement if fair, adequate, and reasonable. *Kullar v. Foot Locker Retail, Inc.*,
24 168 Cal.App.4th 116, 129 (2008) (quotation omitted). And there is an initial presumption of fairness
25 “where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery
26 are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
27 litigation; and (4) the percentage of objectors is small.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
28 1802 (1996). Plaintiff thus provides the information below so this Court can fulfill its fiduciary
responsibilities and evaluate whether the settlement is a reasonable compromise of disputed claims.

1 **A. Summary Of The Case, Including Legal And Factual Basis For Each Claim.**

2 **1. Failure to Pay All Wages Owed / Failure To Pay All Overtime Wages Owed**

3 Plaintiff's First Cause of Action alleges Defendant failed to pay its non-exempt employees for
4 all hours worked. She alleges that she and other Class Members spend "as much as 10 minutes" booting
5 up and shutting down her computer each workday and that she was and is not compensated for that time.
6 Treglio Decl., Exh. 2 (FAC), ¶ 17. She alleges that this time is uncompensated "since [employees] have
7 yet to clock in before turning on their computers and they have already clocked out as they wait for their
8 computers to shut down." *Id.* Plaintiff contends that she incurs "[a]t least five minutes" of additional
9 uncompensated time during her meal breaks "for this clocking in and out procedure." *Id.* Altogether,
10 she alleges that she incurs "around two hours of uncompensated time" each week booting up and shutting
11 down her computer "due to" PacBell's "policies." *Id.* She also alleges that these additional "hours
12 worked" often resulted in overtime for which she was never compensated. *See id.*, ¶¶ 22, 32.

13 Defendant has consistently denied all of the above allegations. It maintains that Plaintiff's
14 theories of liability are either based on inaccurate information or a misunderstanding of Defendant's
15 timekeeping and reporting systems. Contrary to Plaintiff's allegations, Defendant's "Reporting Time
16 Worked Policy," requires all non-exempt employees to "accurately report all information required by
17 their work group's timekeeping method for AT&T to determine all time worked (including any overtime)
18 during each day and each week." That includes any time worked during meal-and-rest breaks.
19 Moreover, Defendant's Reporting Time Worked Policy states that "[p]reparatory work before the start
20 of shift that is necessary for [an employee's] job" and "[p]erformed work before or after scheduled
21 hours" are just *some* "examples of time worked that must be reported and paid.

22 Defendant maintains that Plaintiff was paid based on the time she reported as well as any "boot
23 up" time that occurred at the start of her shift, and her own time records show that she was paid overtime.
24 To the extent that Plaintiff was booting up or shutting down her computer "off the clock," she failed to
25 report any such time to Defendant.

26 **2. Failure to Provide Meal Periods And Pay Missed Meal Period Premiums**

27 Plaintiff's meal period violation claim is also predicated on her boot up theory. She alleges that
28

1 she had to spend at least 5 minutes of her meal period each day waiting for her computer to restart before
2 she could clock back in at the end of her meal period. *See* FAC, ¶ 17; *id.*, ¶ 28. She further alleges that
3 Defendant “unlawfully retained control” of her during her meal period for the 5 minutes that she spent
4 waiting for her computer to “restart up” at the end of her meal period. *Id.*, ¶ 29. As such, she alleges
5 that she did not receive a 30-minute duty-free meal period. *Id.* She also alleges that Defendant did not
6 pay meal period premiums for each workday on which she did not receive a compliant meal period. *Id.*

7 Defendant contends its meal-and-rest break policies are facially lawful. Throughout the relevant
8 time period, their “California Meal & Rest Periods” policy has required employees to “record or report
9 the actual beginning and ending times of the meal period in [their] time reporting every day.... If a meal
10 period is unable to be taken as required by this policy because of your work duties, [employees] must
11 record any time worked and the non-compliant meal period in [their] time reporting and advise [their]
12 supervisor or group time reporter to ensure proper pay treatment.” Moreover, Plaintiff’s (and other
13 Service Representatives’) breaks were scheduled, and her adherence records show that she regularly took
14 timely, 30-minute meal breaks. Moreover, contrary to Plaintiff’s allegations, she and other Service
15 Representatives do *not* shut down their computers or log out of their applications for meal breaks. As
16 such, Plaintiff would not have had to “restart up” her computer when returning from a meal break.

17 Further, Defendant argues that, even assuming that misconstrued policies or erroneous
18 instructions from supervisors led Plaintiff to forego her meal breaks or take a shortened break, that is an
19 individualized issue precluding class treatment.

20 **3. Failure to Reimburse Necessary Business Expenses.**

21 Plaintiff alleges that Defendant “required” her to work from home when the COVID pandemic
22 began in March 2020. FAC, ¶ 18. She further alleges that she “had to set up and provide everything for
23 her home office including but not limited to high-speed Internet service, desk, chair, and other home
24 office supplies.” *See id.* Plaintiff claims that, even if she was responsible for the home office set-up,
25 Defendant still refused to reimburse “all business-related home office expenses.” *Id.*; *see also id.*, ¶ 43
26 (same). She also alleges that Defendant did not have a reimbursement policy in place for her reasonable
27 and necessary business expenses. *Id.*, ¶ 46.

1 Defendant denies that Plaintiff was ever “required” to work from home. To the contrary, it
2 contends that she and her co-workers were given the option to work from home during the pandemic.
3 Indeed, Defendant contends that at least one such co-worker who was also supervised by Plaintiff’s same
4 supervisor continued to report to work *in person* at the same location to which Plaintiff was assigned
5 throughout the pandemic. Moreover, Defendant maintains that employees who voluntarily elected to
6 work from home were provided with everything that they needed to perform their job duties—including
7 a mouse, headset, keyboard, monitors, computer, and company-owned device. In any event, it is
8 Defendant’s position that any purported failure to reimburse Plaintiff for “business-related home office
9 expenses” did not violate Lab. Code § 2802 because the work-from-home program was optional and was
10 not required by Defendant and Plaintiff voluntarily *chose* to work from home as soon as Defendant
11 announced that it was giving her (and other employees) the option to do so.

12 **4. Derivative Claims.**

13 Plaintiff’s claims for Failure to Provide Accurate Wage Statements (Lab. Code § 226), Failure
14 to Pay All Wages Owed in a Timely Manner (Lab. Code §§ 201, 202, 203, 204, 210), Unfair Competition
15 (Bus. & Prof. Code §§ 17200 *et seq.*), and Penalties under PAGA (Lab. Code § 2699 *et seq.*)⁹ are all
16 derivative of the above claims.

17 Defendant argues that, because all of the above claims fail, so too do these derivative claims.

18 **B. Summary of Investigation And Discovery Conducted.**

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

27 ⁹ Moreover, Plaintiff’s request for civil penalties for Defendant’s alleged violations of Lab. Code
28 § 203 are similarly derivative of her claims for unpaid wages and unpaid meal break premiums. FAC,
¶¶ 110, 114.

1 **C. Summary Of Settlement Negotiations.**

2 As noted above, Defendant has secured releases from approximately one-quarter of the
3 approximately 10,945 Settlement Class Members through a *Pick-Up Stix* campaign it initiated on
4 December 22, 2022. On March 20, 2023—while the *Pick-Up Stix* campaign was ongoing—the Parties
5 participated in a mediation presided over by well-respected Mediator, Hon. Gail Andler (Ret.). Treglio
6 Decl., ¶ 8. Following that mediation, the Parties agreed to settle this action on a class wide basis and
7 entered into a Memorandum of Understanding. *Id.*, ¶ 8. At all times, the Parties’ negotiations were
8 adversarial, non-collusive and at arm’s length. *Id.*, ¶ 8.

9 **D. Summary of The Risks, Expenses, Complexity, And Duration Of Further Litigation**
10 **If The Settlement Is Not Approved—including The Risks Of Achieving And**
11 **Maintaining Class Action Status.**

12 This is a complex wage-and-hour action brought against a defendant that has demonstrated a
13 tenacious drive to litigate nearly every issue aggressively. Should this settlement not be approved, the
14 Parties and the Court thus face the prospect of a **significant** expansion of time and resources in this case,
15 likely requiring lengthy informal discovery conferences and hearings on formal motions to compel
16 depositions and discovery. Further—even if all that work is done—there is no guarantee this Court
17 would certify a class, or a jury would rule in Plaintiff’s favor on the claims at-issue. As detailed above,
18 Defendant denies all of Plaintiff’s allegations. *See supra* § III(A)(1)–(5). It maintains that many of
19 Plaintiff’s theories of liability are either based on inaccurate information or a misunderstanding of
20 Defendant’s systems, policies, and practices. *Id.*

21 Defendant thus maintains that this action is not one that involves “a uniform policy consistently
22 applied to a group of employees [that] is in violation of the wage and hour laws.” *Brinker Rest. Corp.*
23 *v. Super. Ct.*, 53 Cal.4th 1004, 1033 (2012). Rather, it contends liability will turn on the individualized
24 experiences of, and instructions received by, each member of the putative class. Without that common
25 thread, Defendant argues this case will devolve into 8,483 mini-trials where each settlement class
26 member not bound by an Individual Settlement Program release is left to explain whether they failed to
27 report any time worked off-the-clock to Defendant (notwithstanding Defendant’s procedures for
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1 reporting and requirement that all employees report any such time), whether they chose to shut down
2 and restart their computers before and after meal breaks (notwithstanding that they could and were
3 instructed to simply code themselves as being on a break without shutting down their computer), or
4 received some other instruction from a supervisor or manager that was contrary to Defendant’s lawful
5 policies regarding timekeeping and breaks—making the case unsuitable for class treatment. *See, e.g.,*
6 *Morgan v. Wet Seal, Inc.*, 210 Cal.App.4th 1341, 1365-68 (2010) (denying certification because, without
7 a clear company policy, there was no common method to prove class wide liability because each plaintiff
8 would have their own story and individual interpretation of what they had been told by a supervisor);
9 *Wilson v. La Jolla Grp.*, 61 Cal.App.5th 897, 915 (2021) (affirming denial of certification of meal period
10 claims where plaintiffs did “not address the relevant issue, i.e., whether plaintiffs’ theory of liability is
11 common to the class by, for example, relying on ‘a uniform policy or practice by the employer that has
12 the effect on the group of making it likely that group members will work overtime hours without overtime
13 pay, or to miss rest/meal breaks.’”).

14 Defendant also points out that—in *Koval v. Pacific Bell Telephone Company*—the First
15 Appellate District affirmed the denial of certification in a similar case brought by a similarly constituted
16 putative class of employees against Pacific Bell. *Koval*, 232 Cal.App.4th 1050 (2014). *Koval* involved
17 claims for unpaid time worked and on-duty meal-and-rest periods premised on restrictions on meal and
18 rest breaks, as well as allegedly “systematic company guidelines” that the plaintiffs argued were contrary
19 to lawful, written policies. *Id.* at 1055. However, the method by which supervisors and managers shared
20 those “guidelines,” and how they specifically instructed employees to follow them, varied from
21 employee-to-employee. *Id.* at 1062. Indeed, it was undisputed that Defendant had facially compliant
22 meal and rest period policies and that there were no uniform *written* rules restricting Defendant’s
23 employees’ mealtime activities. *Id.* at 1056-57. The *Koval* Court thus agreed that the resulting interplay
24 of guidelines, instructions, and written policies “create[d] a shifting kaleidoscope of liability
25 determinations that render[ed] this case unsuitable for class action treatment.” *Id.*

26 Plaintiff disagrees, but recognizes that Defendant’s defenses and existing law adds an element of
27 uncertainty to this litigation; and there is thus a risk this Court will ultimately refuse to certify a class (or
28

any subclass). Even if this Court did ultimately grant class certification, Defendant would undoubtedly seek to appeal that decision (as it has successfully done on prior occasions), adding more delay and uncertainty to this case. Then, at the end of all of that, Plaintiff will—at best—only have a certified class. They still have to prove liability, which (as the defenses outlined above show) is not guaranteed either. A jury could ultimately rule in Defendant’s favor on all the claims at-issue, leaving the putative class with nothing after more than years of hard-fought litigation. After all, “nothing is assured when litigating against commercial giants with vast litigative resources, particular[ly] in such complex litigation as this.” *Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1140 (1990).¹⁰

“Avoiding such a trial and the subsequent appeals in this complex case strongly militates in favor of settlement rather than further protracted and uncertain litigation.” *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004). Thus, “unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.” *Id.* at 526. As explored below, this settlement is more than adequate.

E. The Consideration Received For The Class And Non-Class Claims Is Fair And Reasonable.

1. Class Claims.

There are several reasons for determining that the class-settlement portion of the Agreement—which constitutes the \$2,175,000 of the Gross Settlement Fund not allocated to PAGA—is fair and reasonable.

First, approximately one-quarter of the putative class—approximately 2,462 Settlement Class Members—have accepted \$481,208 in payments covering 428,887 workweeks for a similar release of wage-and-hour claims through Defendant’s Individual Settlement Program (ISP). That is evidence that approximately one-quarter of the class believed that even \$1.12 per workweek was/is sufficient consideration. Part of the settlement provides any Participating Class Member who also participated in the ISP will still get not less than an extra \$25.

¹⁰ *Disapproved by Hernandez v. Restoration Hardware, Inc.*, 4 Cal.5th 260, 269 (2018), only as to *Rebney*’s reliance on case law finding “unnamed class member objectors who informally object to settlement during fairness hearings [have] the right to appeal their overruled objection.”

1 **Second**, the average payments for both the ISP Participants and Non-ISP participants is a
2 significant recovery for the putative class members in this action. Indeed, in *Jason Hudson v. Pacific*
3 *Bell Telephone Company* (Sacramento Superior Court, Case No. 34-2016-00202203-CU-OE-GDS), the
4 court found a \$1,900,000 settlement of similar claims brought on behalf of 6,340 employees who worked
5 a collective 1,302,531 workweeks—making the value of each workweek ~\$1.46—was “fair, adequate,
6 and reasonable.” Treglio Decl., Exh. 5. More recently, in the *In Re Pacific Bell Wage and Hour Cases*
7 proceedings, a settlement of \$12.1 million covering 5,091,132 workweeks—making the value of each
8 workweek ~\$2.37—was likewise approved as being fair, adequate, and reasonable. And here, the class
9 is receiving approximately \$2.69 per workweek¹¹ which is nearly *twice* as much money as the settlement
10 class received in *Hudson* and more than was obtained by the settlement class more recently in the *In Re*
11 *Pacific Bell Wage and Hour Cases*.

12 But even aside from *Hudson* and *In Re Pacific Bell Wage and Hour Cases*, the value of this
13 settlement is clear given the substantial risks imperiling **any** recovery for the class members even if this
14 case were ultimately certified (which is certainly not guaranteed for the reasons noted above) and
15 proceeded to trial. There is, again, no guarantee the jury will agree with Plaintiff on any of the issues
16 impacting liability; particularly if they agree with Defendant’s arguments that it maintained valid wage
17 and hour policies, had a time reporting system that permitted Plaintiff and Class Members to accurately
18 report all time worked, and provided compliant meal periods by, among other things, scheduling
19 employees’ breaks and instructing them to “close” early to ensure that they can take timely breaks. And,
20 even if a jury found liability, specifying damages at trial is no easy task. It will require expert testimony,
21 given how impracticable it is to have thousands of employees testify as to their specific damages, which
22 means the jury will end up sitting through a battle-of-the-experts as Defendant inevitably challenges the
23 conclusions drawn by Plaintiff’s witnesses. See *Pebley v. Santa Clara Organics, LLC*, 22 Cal.App.5th
24 1266, 1281 (2018) (“The credibility of battling experts is within the jury’s province.”).

25 The theoretical recovery at trial thus spans a large range: from zero up to many thousands of
26 dollars per Class Member. And while Plaintiff recognizes that this Court’s checklist requires that these

27 ¹¹ \$2,175,000 ÷ 808,432 Workweeks
28

papers “specify the maximum realistic recovery of each claim asserted in the operative complaint,”¹² 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>		
<u>Total number of pay periods within 1-year Statute of Limitations = 194,854</u>		
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 ¹³

¹² Los Angeles Superior Court: Complex Civil Department, CHECKLIST FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, (available at <https://www.lacourt.org/division/civil/pdf/PreliminaryApprovalOfClassActionSettlement.pdf>). But see *Munoz*, 186 Cal.App.4th at 409 (noting courts do **not** need “a statement of the maximum value of all claims” to gain an understanding of the amount in controversy).

¹³ 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,

Unfair Competition Law	Extends Statute of Limitations, so Subsumed in Above Calculations.	
Sub-Total Unpaid Wages (assuming the ISPs are not valid)¹⁴	\$38,737,632.70	
Sub-Total (assuming the ISPs are valid)¹⁵	\$18,167,949.70	
Labor Code § 210 Penalties	26,197,700.28	10,945 Class Members x 322,014 pay periods x \$100 ¹⁶
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	

keyboard, monitors, computer, and company-owned device. Accordingly, Plaintiff has estimated a heavily discounted total reimbursement amount that accounts for these factual disputes.

¹⁴ This value is the exposure of the entire class.

¹⁵ 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.

¹⁶ 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)¹⁷**

\$39,413,748.08

See Treglio Decl., ¶ 31.

The \$2,175,000 class settlement (*i.e.*, the Gross Settlement Fund less the PAGA allocation) thus represents 5.6% of the putative class's potential recovery of their unpaid wages (absent penalties) in this action. That falls well within the range of reasonableness. *See, e.g., In Re Mego Fin. Corp. Sec. Litig.* (9th Cir. 2000) 213 F.3d 454, 459 (“It is well settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair.”). Moreover, considering that ISPs are valid, and therefore, are excluded from the settlement, the \$2,175,000 resulting class settlement represents 12% of the non-ISP putative class's potential recovery of their unpaid wages in this action. This 6.4%¹⁸ increase in recovery further evidences the great result that Plaintiff has obtained for the class.

With respect to the claims asserted on behalf of the Settlement Class in this case, there are significant risks that support the reduced compromise amount. These risks include, but are not limited to, the following:

(i) The risk that Plaintiff would be unable to establish liability for allegedly unpaid overtime wages. *See, e.g., Duran v. US Bank Nat'l Ass'n*, 59 Cal.4th 1, 39 & n.33 (2014) (citing *Dilts v. Penske Logistics LLC*, 2014 WL 205039 (S.D. Cal. 2014)) (dismissing certified off-the-clock claims based on proof at trial). Defendant contends, *e.g.*, that overtime was properly paid or not due or owing across the putative class as alleged by Plaintiff.

(ii) The risk that Plaintiff would not be able to prove liability for alleged failure to provide compliant meal breaks, or that establishing liability for the failure to provide compliant meal breaks would require individualized inquiries that would prevent such issues from being resolved on a class and/or representative basis. Plaintiff alleged employees were subject to meal break violations each day. FAC, ¶ 28. Defendant, however, alleges that employees were provided and took their meal breaks and that in order to prove *why* any employees did not take their meal break would require individualized inquiries that would

¹⁷As with above, the total exposure was reduced based on the number of proportional reduction of the workweeks. 379,425 workweeks represents 46.9% of the 808,432 workweeks.

¹⁸This value is based on the difference between the 5.6% recovery of the class members who did not accept ISP's and the 12% recovery of the total class members if ISPs are found to be invalid.

1 prevent this issue from being resolved on a class and/or collective basis.

2 (iii) The risk that Plaintiff would not recover untimely wage payment and wage statement
3 penalties pursuant to Lab. Code §§ 210 and 226. **First**, with respect to Plaintiff’s Lab. Code § 204 claim for
4 untimely wage payments, she can only “recover statutory penalties [for a violation of Section 204] through
5 a complaint to the Labor Commissioner [under Lab. Code § 98] or enforce a PAGA claim for civil
6 penalties”—not through a direct claim under Lab. Code § 204 as she attempts here. *See Hansber v. Ulta*
7 *Beauty Cosms., LLC*, 2021 WL 4553649, at *12 (E.D. Cal. Oct. 5, 2021). As such, Plaintiff cannot pursue a
8 direct claim under Section 204 and thus cannot certify any such claim. *See, e.g., Hubbs v. Big Lots Stores,*
9 *Inc.*, 2019 WL 12536594, at *19 (C.D. Cal. June 28, 2019). **Second**, Plaintiff might not prove that Defendant
10 acted with the intent necessary for the alleged claims for penalties under Lab. Code § 226. Penalties pursuant
11 to Lab. Code § 226 require a “knowing and intentional” violation. Lab. Code § 226(e). Defendant contends
12 that it would present several good faith defenses that would preclude a finding of “knowing and intentional”
13 conduct, especially given its position that Plaintiff never reported any allegedly unpaid time to Defendant.

14 (iv) The risk that Defendant’s challenged employment policies might not ultimately support class
15 certification or a class-wide liability finding. Defendant has contended, for example, that it was at all times
16 unaware of any off-the clock work that Plaintiff alleges was happening during clocked-out meal breaks or
17 before or after shifts, and therefore had no reason to know or suspect that such off-the clock work was
18 occurring. *See, e.g., Morillion v. Royal Packing Co.*, 22 Cal.4th 575, 585-86 (2000) (employer not required
19 to pay employees for time spent performing work of which the employer had no knowledge). Even if such
20 a problem did exist (which Defendant denies), misconstrued policies and erroneous instructions from
21 supervisors or managers leading Plaintiff or other employees to shut down their computer prior to meal
22 breaks or to not report time spent on work-related tasks off-the-clock does not represent a systematic problem
23 across Defendant’s entire California workforce (especially given that Plaintiff was only ever employed in
24 Defendant’s Van Nuys, California call center).

25 (v) For the same reasons, liability, damages recovery, and certification risks are heightened
26 given, among other things: (1) the risk that uncertainties pertaining to the ultimate legality of Defendant’s
27 policies and practices could preclude class-wide awards of statutory penalties under Labor Code § 226(e);
28

(2) the risk that individual differences between Settlement Class Members could be construed as pertaining to liability, and not solely to damages, *see, e.g., Duran*, 59 Cal.4th at 19; and (3) the risk that class or representative treatment could be deemed improper as to one or more claims except for settlement purposes.

(vi) The risk that lengthy appellate litigation could ensue as to both liability and certification issues, with associated litigation risk and costs, further enhances the value of a confirmed settlement as opposed to unpredictable litigation. The Settlement thus strikes the appropriate balance between the risks of continued litigation and the vindication of Settlement Class Members' rights under the Labor Code.

Accordingly, the proposed Class settlement is fair, adequate, and reasonable; and Plaintiff respectfully requests that the Court approve it in full. Treglio Decl., ¶ 37.

2. PAGA Claims

Valuing the potential range of PAGA penalties presents an even greater challenge than estimating the Class Claims, particularly since the Labor Code vests the Court with discretion to “award a lesser amount than the maximum civil penalty amount” if it believes, “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.” Lab. Code § 2699(e)(1). While in theory Defendant's potential PAGA exposure could exceed tens of millions of dollars, as a practical matter Plaintiff is likely to recover far less than that even if they were to prevail at trial.

Carrington v. Starbucks Corp., 30 Cal.App.5th 504 (2018), illustrates this well. In *Carrington*, while the plaintiff prevailed on his PAGA claim at trial, the trial court reduced the maximum PAGA penalty amount by **90%**, citing the employer's good faith attempt to comply with the law. *Id.* at 517. Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539. Again, the *Carrington* decision was after plaintiff actually prevailed at trial—and, even then, the PAGA penalties were reduced by **90%**. A possible reduction is not the only risk either. There is a chance that the PAGA claims never even get to trial. “[C]ourts have inherent authority to ensure that a PAGA claim will be manageable at trial.” *Wesson v. Staples the Office Superstore, LLC*, 68 Cal.App.5th 746, 762-63 (2021). And, as noted above, there are several potential issues impacting the manageability of this case, creating a risk that this Court strikes the PAGA claim, in whole or in part, as unmanageable.

At any rate, “[r]elief under PAGA is designed primarily to benefit the general public, not the party bringing the action.” *Kim v. Reins Int’l Cal., Inc.*, 9 Cal. 5th 73, 81 (2020). As a result, “in wage and hour class action cases that settle, which are the overwhelming majority of such cases, very little of the total settlement is paid to PAGA penalties in order to maximize payments to class members.” *Magadia v. Wal-Mart Assocs., Inc.*, 384 F.Supp.3d 1058, 1101 (N.D. Cal. 2019), *reversed in part on other grounds* 999 F.3d 668 (9th Cir. 2021). The Parties have allocated \$60,000—or roughly 2.7% of the Gross Settlement Fund—towards PAGA. Given the risks noted above, and the general policies underlying PAGA, there is no reason to find that allocation unreasonable.

Indeed, other courts have consistently found even lower allocations reasonable. *See, e.g., Smith v. Am. Greetings Corp.*, 2016 WL 2909429, at *11 (N.D. Cal. May 19, 2016) (granting final approval of class action settlement allocating \$37,500 of \$4 million settlement (*i.e.*, 0.9%) to PAGA); *Willner v. Manpower Inc.*, 2015 WL 3863625, at *1 (N.D. Cal. June 22, 2015) (granting final approval of a class settlement allocating \$65,625 of \$8.75 million settlement (*i.e.*, 0.75%) to PAGA); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, at *1 (N.D. Cal. Feb. 16, 2011) (approving \$10,000 PAGA allocation in \$6.9 million settlement (*i.e.*, 0.14%)). Courts have even held that no part of the settlement must necessarily be allocated and distributed to the LWDA. *See, e.g., Nordstrom Commissions Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming a settlement allocating \$0 of \$6.4 million settlement to PAGA).

Accordingly, the proposed allocation of \$60,000 to PAGA—\$45,000 of which is being paid to the LWDA—strikes a balance between the interest of all the parties, including the LWDA and the general public, by penalizing Defendant and providing relief to the Settlement Class Members. As such, the proposed PAGA settlement is fair, adequate, and reasonable. Plaintiff thus respectfully requests that the Court approve the proposed LWDA payment.

IV. CLASS CERTIFICATION

“[T]wo requirements must be met in order to sustain any class action:” (1) “there must be an ascertainable class” and (2) “a well-defined community of interest.” *Dunk*, 48 Cal.App.4th at 1806; *see also* Cal. R. Ct. 3.769(d) (trial courts are empowered to certify “a provisional settlement class after the

preliminary settlement hearing”). While litigation and settlement classes must both meet these same requirements, there is “a lesser standard of scrutiny for settlement cases.” *Dunk*, 48 Cal.App.4th at 1807 n.19; *see also Glob. Minerals & Metals Corp. v. Super. Ct.*, 113 Cal.App.4th 836, 859 (2003) (“[I]t is well established that trial courts should use different standards to determine the propriety of a settlement class” and thus “a lesser standard of scrutiny is used for settlement cases”).¹⁹

A. The Class Is Sufficiently Numerous And Ascertainable.

A “class [is] ascertainable when it is defined in terms of objective characteristics and common transactional facts that make the ultimate identification of class members possible when that identification becomes necessary.” *Noel v. Thrifty Payless, Inc.*, 7 Cal.5th 955, 967 (2019). That standard is easily met here. The proposed Settlement Class is “all individuals who are or were employed in California from April 26, 2018 through the date of Preliminary Approval of the Settlement by Defendant as hourly, non-exempt employees or by AT&T Services, Inc. in a technician position, but 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.” Settlement Agreement, ¶ 1.49. Those people are easily identified—and, indeed, have already been identified—using Defendant’s personnel and similar records.

Based on a review of data extrapolated from to date, Defendant estimate there are 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. The proposed class is thus not only easily ascertained; it is sufficiently numerous. *See* Civ. Proc. Code § 382 (“[O]ne or more may sue or defend for the benefit of all” where “the parties are numerous, and it is impracticable to bring them all before the court”).

B. There Is A Well-Defined Community of Interest.

“The community of interest requirement involves three factors: ‘(1) predominant common

¹⁹ Per the Agreement, “class certification and representative treatment is for purposes of this Settlement only.” Settlement Agreement, ¶ 13.1. “If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserve the right to move for class certification on any grounds available and to contest Defendant’s defenses.” *Id.*

1 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
2 class representatives who can adequately represent the class.” *Noel*, 7 Cal.5th at 968. A court evaluating
3 predominance “must determine whether the elements necessary to establish liability ... are susceptible
4 of common proof.” *Ayala v. Antelope Valley Newspapers, Inc.*, 59 Cal. 4th 522, 533 (2014).

5 Here, the Parties have stipulated to resolving the asserted claims on a class-wide basis, and thus
6 to the certification of a class under Civ. Proc. Code § 382, for purposes of this settlement. Settlement
7 Agreement, ¶ 13.1. That alone satisfies the “predominant questions of law or fact” prong for purposes
8 of approval. *See Luckey v. Super. Ct.*, 228 Cal.App.4th 81, 93 n.12 (2014) (noting “class certification
9 may be resolved by stipulation of the named parties” provided it receives court approval).²⁰ All that
10 remains is determining whether the settlement is fair, adequate, and reasonable; an issue that this Court
11 can determine on a class-wide basis.

12 **1. Plaintiff’s Claims Are Typical Of The Rest Of The Class.**

13 Since April 1998, Plaintiff has worked as a non-exempt employee for Defendant. Her claims are
14 typical of those of the class, and her interests in this litigation are co-extensive with the interests of the
15 class she seeks to represent. Plaintiff has submitted a sworn declaration herewith testifying that she
16 shares a community of interest with the class members, namely: she worked for Defendant in a non-
17 exempt, hourly paid position; has been injured in the same manner and by the same practices as the other
18 Class Members; and seeks the same relief as the other Class Members. Macopson Decl., ¶5. As Plaintiff
19 and the proposed Class Members all suffered “a common alleged wrong” by Defendant, typicality is
20 established. *See Wershba v. Apple Comput., Inc.*, 91 Cal.App.4th 224, 238-39 (2001), *disapproved on*
21 *other grounds by Hernandez*, 4 Cal.5th at 26.

22 **2. Plaintiff Is An Adequate Class Representative.**

23 “Adequacy of representation depends on whether the plaintiff’s attorney is qualified to conduct
24

25 ²⁰ Of course, even putting that stipulation aside, Plaintiff maintains that common questions of
26 law and fact are present in this case, including whether Defendant (1) failed to pay Class Members for
27 all hours worked; (2) failed to pay Class Members for all overtime hours worked; (3) required Class
28 Members to use their meal period to boot up and boot down their computer without paying the required
meal period penalties; (4) failed to timely pay wages to Class Members; (5) willfully failed to provide
accurate and complete wage statements; and (6) failed to reimburse Class Members for home-office
expenses incurred when working from home.

1 the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the class.”
2 *McGhee v. Bank of Am.*, 60 Cal.App.3d 442, 450 (1976). That standard is met here. Plaintiff is
3 represented by Potter Handy LLP, which is highly experienced in complex and class action litigation,
4 having been appointed class counsel and lead counsel through both certification and settlement of
5 numerous wage and hour class actions. Treglio Decl., ¶ 42. Thus, Plaintiff's counsel are qualified to
6 conduct these proceedings.

7 As for Plaintiff, there is no conflict between her and the rest of the class. Plaintiff's claims are
8 in line with those of the Settlement Class, and Plaintiff has prosecuted this case with the interests of the
9 Settlement Class in mind. Further, Plaintiff has filed a sworn declaration herewith testifying that she
10 understands the obligations of being an adequate class representative and outlining what she has done to
11 advance this case for the benefit of the Class Members. Macopson Decl., ¶ 5.

12 According, as all the requirements for class certification have been met, this Court should
13 provisionally certify a settlement-only class, as defined in the Agreement, and appoint Potter Handy LLP
14 as Class Counsel.

15 **V. NO CLAIM REQUIREMENT**

16 This is not a claims made settlement. All class members will be sent their allocated share of the
17 Net Settlement Fund. There is no possible reversion. Treglio Decl., ¶ 14; Settlement Agreement, ¶ 3.1,
18 3.2.4–3.2.5, 4.3.3.

19 **VI. MISCELLANEOUS**

20 **A. Appropriateness Of Scope Of Release.**

21 The Settlement does not include any terms outside the scope of the Operative Complaint or
22 PAGA Notice, as amended and applicable.

23 **B. Language Of Notices.**

24 Notices will be given in English only because Class Members worked with members of
25 Defendant's team and the general public, which required fluency in English. There is no indication that
26 providing notice in only English is insufficient
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28

1 **C. Affirmative Obligations Of Class Members/Class Counsel.**

2 There are no other affirmative obligations to be undertaken by Class Members or Class Counsel
3 beyond those already discussed above.

4 **D. Requests For Injunctive Relief**

5 There is no agreement regarding injunctive relief.

6 **E. Reasonableness Of Class Representative Enhancement**

7 Plaintiff will apply to the Court for a service award in the amount of \$20,000 in consideration for
8 the services rendered on behalf of the settlement class. The requested Class Representative Service
9 Payment is well within the accepted range of awards.²¹ As explained in *Glass*, service awards are
10 routinely awarded to class representatives to compensate the employees for the time and effort expended
11 on the case, for the risk of litigation, for the fear of suing an employer and retaliation therefrom, and to
12 serve as an incentive to vindicate the statutory rights of all employees. *See Glass*, 2007 WL 221862, at
13 *16-17.

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

25 _____
26 ²¹ *See e.g. Louie v. Kaiser Found. Health Plan, Inc.*, 2008 WL 4473183, at *6 (S.D. Cal. Oct. 6,
27 2008) (awarding \$25,000 service award to each of six plaintiffs in overtime class action); *Glass v. UBS*
28 *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*
Vranken v. Atl. Richfield Co., 901 F.Supp.294, 299-300 (N.D. Cal. 1995) (awarding enhancement award
of \$50,000).

1 otherwise comment on the proposed amounts. Treglio Decl., ¶ 36.

2 Therefore, the Class Representative Service Payment to Plaintiff is reasonable given the work
3 and risks that she took and bore for the benefit of other members of the Settlement Class, the State of
4 California, and all other Aggrieved Employees.

5 **VII. CONCLUSION**

6 For the reasons discussed herein, Plaintiff respectfully requests that the Court grant preliminary
7 approval of the proposed settlement; appoint Atticus Administration as the Settlement Administrator;
8 authorize the mailing of the proposed Class Notices; provisionally certify the Settlement Class; appoint
9 Plaintiff as the Class Representative; appoint Mark D. Potter and James M. Treglio of Potter Handy LLP
10 as Class Counsel; and schedule a final approval/fairness hearing.

11
12 DATED: October 30, 2023

POTTER HANDY LLP

13
14 By: /s/ James M. Treglio

15 Mark D. Potter, Esq.

16 James M. Treglio, Esq.

17 *Attorneys for Plaintiff JOY MACOPSON*
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