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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

KERA SALTER, individually, and on behalf of all others similarly situated, *Plaintiff*, vs. BEACON HOME CARE GROUP INC., a California corporation; and DOES 1 through 10, inclusive, *Defendants*.	Case No.: 22CV011847 [Assigned for all purposes to: Hon. Michael Markman] CLASS ACTION **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** Date: December 5, 2024 Time: 10:00 a.m. Courtroom: Dept. 23 Judge: Hon. Michael Markman Action Filed: May 26, 2022 Trial Date: Not Set

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

PLEASE TAKE NOTICE that on December 5, 2024, at 10:00 a.m., or as soon thereafter as the matter may be heard, in Department 23 of the above-captioned Court, located at 1221 Oak Street, Oakland, CA 94612, Plaintiff KERA SALTER ("Plaintiff") will and hereby does move this Court for an order:

1. Granting class certification of the Class, solely for settlement purposes pursuant to Code of Civil Procedure § 382;
2. Finally approving the FIRST AMENDED CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE ("Settlement" or "Agreement");
3. Appointing counsel for Plaintiff, Moon Law Group, PC, as Class Counsel;
4. Appointing Plaintiff as the Class Representative;
5. Approving PHOENIX SETTLEMENT ADMINISTRATORS as the third-party administrator;
6. Ruling that Settlement Class Members who did not timely submit requests for exclusion from the settlement as set forth in the Agreement have released their claims against Defendant and the other releasees as set forth in the Agreement;
7. Awarding the sums requested in the Motion;
8. Entering a Final Judgment; and,
9. Without affecting the finality of the final judgment, reserving continuing jurisdiction over the parties for the purposes of implementing, enforcing and/or administering the settlement as set forth in the Agreement or enforcing the terms of the Final Judgment.

Good cause exists to grant this Motion because: (1) the Class meets all of the requirements for class certification for settlement purposes under Code of Civil Procedure § 382; (2) the Settlement Agreement is a fair, adequate, and reasonable compromise of the disputed wage and hour claims asserted by Plaintiff; (3) Plaintiff and Class Counsel are adequate to represent the Class; (4) the notice procedures and related forms complied with California Rules of Court ("Rule"), Rule 3.766(d) and (e), and this Court's Order granting preliminary approval of the Settlement, and adequately apprised Class Members of their rights and fully comport with due process.

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

TENTATIVE RULINGS: Pursuant to Local Rule 3.30, the court has adopted the tentative ruling procedure set out in California Rules of Court, Rule 3.1308(a)(1). The tentative ruling or notice to appear will generally be available by 4:00 p.m. two court days prior to the scheduled hearing and no later than 3:00 p.m. the court day before the hearing. Unless the court directs otherwise, the court's tentative ruling will be available online or by calling (866) 223-2244. The process for viewing a tentative ruling online are subject to change. Instructions for access to tentative rulings online can be found at http://www.alameda.courts.ca.gov/Pages.aspx/Tentative-Rulings. Whenever a tentative ruling has not been issued, the parties are to appear at the hearing unless otherwise ordered.

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

Respectfully submitted,

Dated: November 8, 2024

MOON LAW GROUP, PC

By: H. S. Leviant

Kane Moon
H. Scott Leviant
Mariam Ghazaryan

Attorneys for Plaintiff

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I. INTRODUCTION

Pursuant to California Rules of Court, Rules 3.769, Plaintiff requests that this Court finally approve the class action settlement set forth in the CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE ("Settlement" or "Agreement") with BEACON HOME CARE GROUP INC. ("Defendant").

After the exchange of documents and data, and an arm's-length mediation session with mediator Jeffrey A. Ross, Esq., Plaintiff and Defendant (collectively referred to herein as the "Parties") reached a proposed class action settlement with a gross settlement amount ("GSA") of **$200,000.00** in compromise of disputed claims asserted on behalf of the below-defined Class consisting of **627** members (626 are Participating Class Members after one Request for Exclusion).[1] Plaintiff believes this settlement is a fair, adequate, and reasonable compromise of disputed claims for alleged wage and hour violations and penalties asserted in this case, based, substantially, on Defendant's financial condition.

Plaintiff now submits this Motion for Final Approval of Class Action Settlement, along with the Settlement (attached to the Declaration of H. Scott Leviant ["Leviant Decl."], Exhibit 1 thereto). For the Court's convenience, below is a summary of the key provisions of the Settlement.

II. THE NOTICE PROCESS WAS COMPLETED WITHOUT ISSUE

Plaintiff and Defendant have fulfilled the class notice procedures set forth in the Settlement. The Settlement Administrator, Phoenix Settlement Administrators ("Phoenix"), sent individual Notices to 627 Class Members on July 19, 2024. (Declaration of Taylor Mitzner, ¶ 5.) There has been **one** opt out, **zero** objections, and **zero** workweek disputes received. (*Id*., at ¶¶ 7-9.)

III. THE MAJOR TERMS OF SETTLEMENT

The provisions of the proposed Settlement include the following:

- Defendant agrees not to oppose certification for purposes of Settlement (Settlement, ¶ 12.1);
- Class: All current and former employees who were hourly paid, nonexempt employees of

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[1] The total settlement amount (called the "Maximum Settlement Amount" in the Agreement) is $205,000, which includes $5,000 to settle Plaintiff's separate, individual employment claims not included within the settlement of wage and hour claims that are the focus of this Settlement.

Defendant who worked for Defendant in California during the Class Period (the "Class Period" is the period from May 26, 2018, to June 21, 2024). "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Class portion of the Settlement. (Settlement, ¶¶ 1.5, 1.9, 1.12, 1.35.)

- Settlement Amount: Defendant will pay a maximum of **$200,000.00**, referred to as the Gross Settlement Amount (or GSA herein), resulting in an average **gross** benefit per Class Member of about **$319.49** (Settlement, ¶ 1.21; 3.1; Leviant Decl., ¶ 17.);
- Funding of Gross Settlement Amount: Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator within thirty (30) days after the Administrator has calculated and informed Defendant of the employer's share of payroll taxes on the Wage Portion. (Settlement, ¶ 4.3.)
- Class Size: **626** individuals who worked 25,810 workweeks (Mitzner Decl., ¶ 10);
- PAGA Group Size: **372** aggrieved employees who worked 15,845 pay periods during the PAGA Period. (Mitzner Decl., ¶¶ 2, 13);
- PAGA Period: May 26, 2021, to the date Court grants Final Approval. (Settlement, ¶ 1.31);
- *Kullar/Munoz* Analysis: Plaintiff addresses the claims analysis herein, at Part V.B.3, and in the Declaration of Leviant, at Paragraph 18;
- No Reversion: The Settlement is a ***non-reversionary*** settlement (Settlement, ¶ 3.1);
- Certification: Plaintiff addresses certification requisites herein, at Part V.A., and in the Declaration of Leviant, at Paragraphs 34-40;
- No Claim Form: No claim form is required (Settlement., ¶ 3.1);
- Class Release: The Settlement will release wage-and-hour claims for Participating Class Members (those Class Members who do not opt out of the Settlement) all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint (Settlement, ¶ 5.2);
- PAGA Release: Aggrieved Employees and the LWDA will release all PAGA penalties that were alleged, or could have been alleged, based on the facts stated in the PAGA Notice,

regardless of whether they opt out of the class portion of the Settlement (Settlement, ¶ 5.3);

- Net Settlement Amount Available to the Class: After deducting Class Counsel's attorneys' fees and costs, service payment to Plaintiff, administration costs, and the PAGA penalty, the remainder will be available for distribution to Class Members who do not opt out, with each Class Member receiving a share based on the number of Workweeks each Class Member worked for Defendant within the Class Period. Assuming all awards are granted as requested, the Net Settlement Amount will be **$75,698.34**, resulting in an average **net** payment per Class Member of at least **$120.92,** before any tax withholdings.[2] (Settlement, ¶ 1.27.)
- Tax Allocation: The amounts distributed to Class Members will be characterized as 10% alleged unpaid wages, 90% to interest and penalties, and PAGA Settlement payments to Aggrieved Employees will be allocated as 100% penalties. (Settlement, ¶¶ 3.2.4.1, 3.2.5.)
- Employer's Portion of Payroll Taxes Paid Separately: Defendant's portion of payroll taxes (e.g., FICA, FUTA, etc.) owed on any settlement payments to Class Members that constitute wages will be paid separate and apart from the GSA (Settlement, ¶ 3.1);
- Settlement Administrator: The notice portion of the Settlement was administered by a third-party Administrator, Phoenix Settlement Administrators, with the costs of administration at a flat rate of up to $15,000.00. Phoenix's costs for settlement administration services are **$8,750.00**. (Settlement, ¶ 3.2.3; Mitzner Decl., ¶ 15)
- Class Data for Administration: The Settlement Administrator received the Class Data, used the National Change of Address ("NCOA") database to update the Class Data, and then used skip tracing on returned Notices (Settlement, ¶¶ 4.2; 1.10);
- Notice: The Notice was issued within 14 days of receipt of the Class List (Settlement, ¶ 7.4.2). The Notice described how to dispute workweeks, submit an objection in writing, in person, or through an attorney, or request exclusion (Settlement, ¶¶ 7.5 – 7.7);

[2] The Administrator's declaration assumes the full cost cap allocation is awarded. Since costs are less than the estimated cap, the Net Settlement Amount is higher.

- Notice Language: Notice was issued in English only, since all Class Members are English speakers (Settlement, ¶ 1.11; 7.4.2);
- Objections: Objections could have been submitted in person, through an attorney, or in writing to the Settlement Administrator, with no pre-requisite to being heard (Settlement, ¶¶ 7.7.1 – 7.7.3);
- Exclusion Requests: The procedure for exclusion requests, mailing a request to the Settlement Administrator, is the same as the procedure for submitting a written objection (Settlement, ¶¶ 7.5.1 and 7.7.2);
- PAGA Allocation: From the GSA, **$16,000.00** will be allocated to settle claims brought pursuant to the California Private Attorneys General Act, Labor Code § 2699 *et seq*. ("PAGA"), and seventy-five percent (75%), or **$12,000.00**, will be paid to the California Labor & Workforce Development Agency. (Settlement, ¶ 1.34; 3.2.5);
- Notice to LWDA: Notice was provided prior to the filing of this Motion. Evidence is attached to the Leviant Declaration;
- Enhancement/Service Award to Plaintiff: Defendant will not oppose the application for Class Representative Service Payment of up to **$7,500.00** for Plaintiff, to be paid from the GSA (Settlement, ¶ 3.2.1);
- Fees and Costs: Defendant will not oppose Class Counsel's application for fees not to exceed 33 1/3% of the GSA **($66,666.67**), and actual costs of **$25,384.99**, to be paid out of the GSA (Settlement, ¶ 3.2.2);
- Check Void Period: Settlement checks will be valid for 180 days (Settlement, ¶ 4.4.1);
- Uncashed Checks: Any settlement checks that are mailed to the Class Members and remain uncashed after 180 days of the date of issuance will be cancelled, and the moneys will be directed to the State Controller's Office, Unclaimed Property Division in the name of the Class Member (Settlement, ¶ 4.4.3);
- Judgment Notice: Judgment will be posted on the Settlement Administrator's website after entry (Settlement, ¶ 7.8.1);
- Confidentiality Provisions: The Settlement permits Class Counsel to discuss the Settlement

with Class Members (Settlement ¶ 12.2).

(Leviant Decl., ¶¶ 11-12 and Exhibit 1 thereto.)

IV. FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiff's Claims

Plaintiff worked for Defendant as nonmedical home care worker. On May 26, 2022, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for: failure to pay minimum and regular rate wages, failure to pay overtime compensation, failure to provide meal periods, failure to authorize and provide rest breaks, failure to timely pay final wages at termination, failure to provide accurate itemized wage statements, failure to indemnify for necessary business expenses, and Unfair Business Practices. (Leviant Decl., ¶ 4.)

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

B. Pre-Mediation Discovery: Data Production and Analysis, and Plaintiff's Deposition

The Parties conducted informal discovery and investigation of the facts and law. Such investigation included, *inter alia*, the exchange of extensive data and discoverable information in preparation for the mediation sessions. (Leviant Decl., ¶ 6.) The Parties have analyzed time clock, pay and other data pertaining to Plaintiff and the Class during the relevant Settlement Period, including but not limited to the numbers of former and current members of the Class, average workweeks and pay periods, and average rate of hourly pay. (*Id.*) In addition, Defendant also provided documents reflecting wage and hour policies and practices during the Settlement Period and information regarding the total number of current and former employees in the Class. (*Id.*) Defendant's policies included timekeeping requirements, payment of wages, attendance and punctuality, electronic communication and internet use, business usage of personal automobiles, and separation of employment. The handbook and policies were provided to all putative class members and applied to all putative class members. Further, Plaintiff was deposed by Defendant on May 10, 2023. A first deposition was scheduled for Plaintiff on May 4, 2023, but due to technical issues, the deposition was moved to May 10, 2023. (*Id.*)

After reviewing documents regarding Defendant's wage and hour policies and practices and other information obtained during the exchange of discovery and the deposition of the Plaintiff, Class Counsel were able to evaluate the probability of class certification, success on the merits, and the reasonably obtainable maximum monetary exposure for all claims. Class Counsel reviewed these records and prepared a damage analysis prior to mediation. Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (Leviant Decl., ¶ 7.)

C. Settlement

On May 24, 2023, the Parties participated in mediation with Jeffrey A. Ross, Esq., which ultimately led to a proposed settlement, subject to review of financial data by Plaintiff's Counsel and an accountant. (Leviant Decl., ¶ 8.) The Parties discussed at length the burdens and risks of continuing with the litigation as well as the merits of claims and defenses. (*Id.*) After the mediation, and the eventual settlement, the Parties then signed a long form settlement agreement (the "Agreement"). (*Id.*)

Plaintiff and Class Counsel are aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, both generally and in response to Defendant's defenses thereto. (Leviant Decl., ¶ 9.) Plaintiff and Class Counsel have also taken into account Defendant's agreement to enter into a Settlement that confers substantial relief upon the Class. (*Id.*) The Settlement in this matter is constrained by Defendant's financial circumstances. (*Id.*) The accountant for Plaintiff's Counsel provided an opinion about the financial condition of Defendant to Plaintiff's Counsel, including a recommendation about Defendant's realistically available cash resources.[3] (*Id.*) That opinion was considered as part of this proposed Settlement, as it presented a very serious risk factor.

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[3] A declaration from Kenneth Creal, CPA, was submitted as part of the supplemental materials filed in support of the Motion for Preliminary Approval. (*See,* DECLARATION OF KENNETH L. CREAL IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT, filed June 10, 2024.)

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

D. Defendant's Financial Data

As noted above, the Settlement in this matter is constrained by Defendant's financial circumstances. Plaintiff's Counsel reviewed tax returns for 2020 and 2021 (the last complete return), and profit and loss and balance sheets for 2022 and 2023. (Leviant Decl., ¶ 9.) These financial documents were then provided to an accountant. (*Id.*) The accountant employed by Plaintiff's Counsel then spoke directly to the accountant for Defendant, with all counsel present, to obtain answers to questions about the documents. (*Id.*) After that discussion, the accountant for Plaintiff's Counsel provided the above-noted opinion about the financial condition of Defendant to Plaintiff's Counsel, including a recommendation about Defendant's realistically available cash resources. (*Id.*)

V. CLASS DEFINITION

The Class is defined as follows:

> All current and former employees who were hourly paid, nonexempt employees of Defendant who worked for Defendant in California during the Class Period (the "Class Period" is the period from May 26, 2018, to June 21, 2024). "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Class portion of the Settlement. (Settlement, ¶¶ 1.5, 1.9, 1.12, 1.35.)

(Leviant Decl., ¶ 11 and Exhibit 1.)

VI. DISCUSSION

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

Under Code of Civil Procedure § 382, class certification is warranted so long as there is a numerous and ascertainable class with a well-defined community of interest and that a "class action proceeding is superior to other means for a fair and efficient adjudication of the litigation." *See, e.g.*, *Sav-on Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 326, 332 (2004). For purposes of this Settlement *only*, Defendants stipulate to conditional certification. (Settlement ¶ 12.1.)

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

B. <u>The Court Should Approve the Settlement Because It Is a Fair, Adequate, and Reasonable Compromise of Disputed Wage Claims</u>

California courts favor settlement. *See, e.g.*, *Stambaugh v. Superior Court*, 62 Cal. App. 3d 231, 236 (1976). Unlike most settlements, class action settlements involve a court approval process that exists to prevent fraud, collusion, and unfairness to class members. *Malibu Outrigger Bd. of Governors v. Superior Court*, 103 Cal. App. 3d 573, 578–79 (1980). For the reasons discussed below, this Court should finally approve the Settlement and enter Judgment.

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

Any settlement of class litigation must be reviewed and approved by the presiding court. Rules of Court, Rule 3.769(a). Approval occurs in two steps: (1) an early (preliminary) review and (2) a subsequent (final) review after notice has been distributed to the class members. The present motion seeks *final approval* and the entry of a Judgment.

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

2. The Parties Reached the Settlement Through Arms' Length Negotiations Between Experienced Counsel with the Assistance of a Highly Qualified Mediator After Sufficient Data Was Exchanged to Evaluate Settlement.

A settlement is presumptively fair where it is reached through arms' length bargaining, based on sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is experienced in similar litigation, and the percentage of objectors is small. *Dunk*, 48 Cal. App. 4th at 1802; *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *7-Eleven Owners for Fair Franchising v. Southland Corp*., 85 Cal. App. 4th 1135, 1146 (2000). In exercising the power to approve a settlement, the overriding concern is to ensure that a proposed settlement is "fair, adequate, and reasonable," *Dunk*, 48 Cal. App. 4th at 1801, considering "the complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement. *Id*. These factors require balancing, are non-exhaustive, and, as such, trial courts should tailor the factors considered to each case and give due regard to "what is otherwise a private consensual agreement between the parties." *Id.*

Here, the Settlement resulted from thorough, arms' length negotiations between experienced counsel with the assistance of a skilled mediator, Jeffrey A. Ross, Esq. (Leviant Decl., ¶¶ 8-10.) Plaintiff obtained data from Defendant and then carefully reviewed that information. Counsel for Plaintiff also examined relevant policies and interviewed witnesses in detail about their work experiences and Defendant's practices. Following the mediation, Plaintiff's Counsel reviewed financial documents that were offered to support financial condition representations.

Based on the review of data before mediation and financial condition documents after mediation, Plaintiff estimated potential exposure and then estimated risk factors to adjust the reasonable expected outcome. The investigation that Plaintiff's counsel conducted was sufficient to provide them with enough information to intelligently evaluate the estimated exposure for purposes of negotiating the Settlement in view of the risks discussed below and was sufficient to allow this Court to do the same. *See, e.g.*, *Wershba v. Apple Computer*, *Inc.,* 91 Cal. App. 4th 224, 245 (2001). Finally, the number of objections is zero, as of the time of filing this motion. Thus, the Settlement is presumed fair.

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

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

With respect to the claims asserted on behalf of the Class in this case, there are serious risks that support this compromise amount. These risks include, but are not limited to: (i) the risk that Plaintiff would be unable to establish liability for unpaid wages, *see Duran v. US Bank Nat'l Ass'n*, 59 Cal. 4th 1, 39 & n. 33 (2014) ("*Duran*"); (ii) the risk that Defendant's meal and rest period policies might not support class certification or a class-wide liability finding; (iii) the risk that uncertainties about the legality of Defendant's policies and practices could preclude class-wide awards of statutory penalties; (iv) the risk that individual differences between Class Members could be construed as pertaining to liability and not just damages; (v) the risk that any penalty award under PAGA could be reduced by the Court in its discretion; (vi) the risk that lengthy trial or appellate litigation could ensue; (vi) the risk that violation rates could prove lower than expected; (vii) ***the risk that Wage Order exemptions for personal attendants or other exemptions could eliminate many of the claims for many of the putative class members***; and, (viii) ***the extreme risk of Defendant's failure or inability to pay any significant judgment***. (Leviant Decl., ¶ 16.) These risks are non-exhaustive.

In light of the uncertainties of protracted litigation, the settlement amount reflects a fair and reasonable recovery for the Class Members. (Leviant Decl. ¶¶ 13-20.) The settlement amount is, of course, a compromise figure. (Leviant Decl. ¶ 17.) By necessity it took into account risks related to liability, damages, and the defenses asserted by Defendant. (*Id.*) Moreover, each Class Member was given the opportunity to opt-out of the Settlement, allowing those who feel they have claims that are greater than the benefits they can receive under this Settlement to pursue their own claims. (*Id.*) For the approximately **626** members of the Class, the average ***gross*** benefit is **$319.49** per class member, and the average ***net*** recovery for each Class Member is approximately **$120.92**. (*Id.*) Given that Defendant could challenge certification and liability, and in light of the financial concerns verified by an accounting review, this is the best result that could have been achieved in settlement. Moreover, <u>a Class Member who worked a greater number of workweeks will receive a larger Settlement share</u> than a Class Member who worked for a shorter time during the class period. (*Id.*)

The maximum calculated plausible exposure is **$4,469,589.40**, *including* PAGA penalties. (Leviant Decl., ¶ 18.) However, after analyzing the claims in this matter, Plaintiff has concluded that the Gross Settlement Amount of <u>**$200,000**</u> is about 30% of the **$666,254.28** estimate of *risk-adjusted* recovery (excluding interest) at this stage in the litigation. (*Id.*) This assessment is based on a carefully constructed model of the current fair value of the case, using estimated risks, average wage rates, numbers of employees, and the amount of time covered by the class period. (*Id.*)

- A reasonably estimated exposure for unpaid off-the-clock wages was calculated, with the assistance of an expert, to be approximately **$90,021.20**. However, with the risk factor discounts for certification and liability proof, the value of that claim is estimated by Plaintiff's counsel to be approximately **$8,101.91**, assuming certification probability of 30% and merits success at 30%. The off-the-clock time resulted from alleged contacts during off-the-clock times. The data analyst was instructed to assume 3 minutes for every shift of off-the-clock time, which included employees having to go through a COVID-19 screening process. The exposure was calculated to be $90,021.20, as set forth above. Here, a **$90,021.20** exposure has a value of just under 10% of its maximum, given a likelihood of success on both events, which is an approximation of the chain probability of certification multiplied by merits chances: $0.3 \times 0.3 = 0.09$. However, this assumption (1) also ignores the fact that this did not affect every employee, and (2) also assumes the off-the-clock contacts happened every day *and* took an average of at least 3 minutes, an assumption that is likely far too optimistic. This theory of recovery also has a high degree of risk because it depends on Class Member estimates of the frequency and duration and is testimony dependent.

- A reasonably estimated exposure for unpaid wages due to rounding was calculated, with the assistance of an expert, to be approximately **$17,816.50**. Defendant's practice of rounding dropped significantly in 2023. The data showed that 46% of pay periods had underpayment due to rounding, and 54% had overpayment or were unaffected by rounding. The question of whether the underpaid employees have a viable claim is currently uncertain. Rounding is now before the California Supreme Court, in the case of *Camp v. Home Depot* (Plaintiff's Counsel represents plaintiff Camp in that matter). It is unclear whether the *Camp* appellate Court rule will prevail or whether the prior rounding decisions will be found to correctly interpret California law. Due to the above, the maximum exposure was then discounted by 75% due to the chances of prevailing at certification and by 75% for success on the merits. The maximum exposure multiplied by the discounted rates results in a risk-adjusted exposure of **$10,021.78**.

- A reasonably estimated exposure for rest break violations over the class period was calculated at **$219,307.20**, but with chances of certification and proof of liability (20% and 20% respectively) for a risk-adjusted exposure of **$8,772.29**. The data analyst was directed to assume one rest break violation per week for 100% of the Class Members. Using this assumption that 100% of the Class missed one rest break per week due to the demands of work assignments, an aggressive assumption, the exposure was calculated, using average pay rates, to be $219,307.20, as noted above, before high risk reductions. While we aggressively advocated for this theory of liability at mediation, our investigation suggests that Defendant's contentions may be accurate about this claim – it is possible that some employees chose, voluntarily, to work through their rest breaks instead of taking their required rest break. Assuming this is true, then the fact of employee choice overrides the Defendant's obligation to provide rest breaks. The rest break claim has, realistically, a very low likelihood of certification.

- A reasonably calculated exposure for meal break violations over the class period was calculated at **$181,510.25**, with chances of certification and liability risks (50% and 25% respectively) resulting in a risk-adjusted exposure of **$22,688.78**. This exposure is based upon facial violations. The exposure valuation was still susceptible to attack. Employee choice is a serious issue in the context of a meal period claim. The exposure attributed to the meal break claim is based entirely on observed meal period violations within the time records. The two largest categories of violations were seen, overwhelmingly, in shifts with a missed first recorded meal period over 5 hours, and in shifts with a missed first recorded meal period over 6 hours. This does not however mean that this claim would be easy to certify or prove on the merits if certified. Again, the major issue here is employee choice. So long as an employee has the opportunity to take a lawful meal period, an employee can choose to take it late, cut it short, or skip it. We considered there to be high risk that, in a war of declarations, Defendant could supply far more showing that class members decided each day when they wanted to break for lunch, and/or signed a meal period waiver. With this in mind, we believe that a risk-adjusted exposure of **$22,688.78** is a reasonable valuation for this claim, at the pre-certification stage.

- Risk-adjusted penalty recoveries for wage statement penalties was estimated to be approximately **$74,616.75**, on a maximum exposure of **$829,075.00** (with certification and merits success chances of 30% and 30%, based on the off-the-clock theory of unpaid wages, adjusted for the additional risk of needing to prove other elements in addition to the underlying wage claim). While rounding issues are usually potent claims due to the associated penalties (wage statement penalties under Labor Code § 226), this issue impacted about 5% of the Class, rendering the impact negligible. The value of this claim was just dealt a severe blow by the recent California Supreme Court decision of *Naranjo v. Spectrum Security Services, Inc*. (May 6, 2024), which significantly strengthened the good faith defense to Labor Code § 203 penalties. The uncertainty regarding the legality of rounding would make proof of a knowing and intentional violation almost impossible. Thus, the off-the-clock theory, while much harder to prove, generates a higher exposure value on these derivative claims.

- Risk-adjusted penalty recoveries for Labor Code § 203 penalties was estimated to be approximately **$73,502.15**, on a maximum exposure of **$816,690.50**, (with certification and merits success chances of 30% and 30%, based on the off-the-clock theory of unpaid wages, adjusted for the additional risk of needing to prove other elements in addition to the underlying wage claim). While rounding issues are usually potent claims due to the associated penalties (late pay under Labor Code § 203), this issue impacted about 5% of the Class, rendering the impact negligible. The value of this claim was just dealt a severe blow by the recent California Supreme Court decision of *Naranjo v. Spectrum Security Services, Inc*. (May 6, 2024), which significantly strengthened the good faith defense to Labor Code § 203 penalties. The uncertainty regarding the legality of rounding would make proof of a knowing and intentional violation almost impossible. Thus, the off-the-clock theory, while much harder to prove, generates a higher exposure value on these derivative claims

- A reasonably calculated exposure for unreimbursed expenses was estimated to be **$55,168.75**, but with chances of certification and proof of liability (60% and 50% respectively) for a risk-adjusted exposure of **$16,550.63**. The allegation is that Defendant occasionally contacted employees by cell phone regarding patient issues when the Class Members were off-the-clock. This did not happen with a high degree of regularity and it did not happen to every Class Members on a consistent basis. The unadjusted exposure is likely too high. Based on the inconsistency, the exposure was then discounted by 60% due to the chances of prevailing at certification and by 50% due to liability risks. The maximum exposure multiplied by the discounted rates results in a risk-adjusted exposure of **$16,550.63**.

- Performing risk-adjusted valuations for all claims yields a total value in the range of **$508,655.15**, excluding PAGA.[4]

- PAGA penalties were calculated as having a maximum realistic exposure of **$2,260,000.00**, but a risk adjusted value of **$452,000.00**, after factoring in risks of reduction in penalties pursuant to Court discretion and the high risk of the inability to prove violations for all aggrieved employees.[5] PAGA penalty exposures are commonly calculated two ways, primarily to address the issue of "stacking," which is the argument that a single incorrect act cannot result in multiple penalties all based on that one violation. Here, using the "catch-all" $100 penalty, and assuming one violation for every single PAGA Pay Period, the maximum exposure would be **$2,260,000.00**. Plaintiff's Counsel then had to determine a viable current value for this claim. The PAGA claim would require the participation of a large percentage of the job workforce of about 327 current and former aggrieved employees. Many of the claims are testimony dependent. In addition, the Court could, in the interest of justice, reduce any penalty further, once the violation was proven. A 20% adjustment is a very reasonable recovery percentage rate, based, primarily, on the substantial difficulty of obtaining cooperation of a large percentage of Aggrieved Employees who would gain relatively little for doing so. The resulting, risk-adjusted exposure is **$452,000.00**.

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

[5] Alternatively, using a simpler approach, if the default $100 penalty per pay period were applied to the approximately 20,138 pay periods, the exposure would be roughly $2,138,000, slightly less than the calculated exposure that assumes full participation by all aggrieved employees and some viable mechanism for "proving" violations for each employee for each pay period.

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

The result here is fully supportable as reasonable. First, it is important to recognize the wilfulness finding required for Labor Code §§ 203 and 226 is challenging to establish. (Leviant Decl., ¶ 19.) Second, rest break and meal period claims have been challenging to certify for many years, even after *Brinker*. (Leviant Decl., ¶ 19.) The Judicial Council's Class Certification in California: SECOND INTERIM REPORT FROM THE STUDY OF CALIFORNIA CLASS ACTION LITIGATION - FEBRUARY 2010 ("Second Interim Report"), at page 5, states that "less than a quarter of disposed cases in the study sample were certified, either through a litigated motion for certification ***or*** as part of a classwide settlement agreement." *See*, Second Interim Report, at 5 (emphasis added).[6] That "***or***" is significant. The certification rates identified in the study of less that 25% includes ***both*** contested certifications and settlement certifications, which are the majority of certifications. In other words, one must assume in any wage and hour class action prior to certification that a contested certification motion will have a success rate of well under 25%, and probably closer to 10% as a starting point for risk evaluation. The facts of each case have significant bearing on these percentages. But it cannot be disputed that certification is an exceptionally difficult procedural hurdle to successfully overcome. Thus, it is not unreasonable to start from the proposition that a pre-certification settlement that is 10% to 15% of the maximum plausible exposure is a valid starting point for valuation. If roughly 10% of class actions are certified on a contested basis, then, on average, 90% of the time a class will not be certified and the result for the class is *zero* dollars.

Here, the estimated certification probabilities are ***above*** the average rate at which cases were certified in California over the study years, based upon data available through the California Courts websites. (Leviant Decl., ¶ 19.) In sum, well *under* 20% of all cases filed as proposed class actions are ultimately certified by way of a *contested* motion. (*Id.*) The recovery is roughly **4%** of the maximum plausible recovery (estimated to be approximately **$4,469,589.40**, including PAGA), which falls within

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

the expected outcome under the likelihood of success metric. (*Id.*) It would also be appropriate to evaluate the result by examining only the premium wages at issue (approximately $508,655.15, with no risk reduction), excluding penalties and interest; the settlement is about 39% of the premium wages (unpaid wages, meal period premiums, and rest break premiums) at maximum realistic exposure value.[7] This Settlement achieves the goals of the litigation.

4. The Proposed Method for Allocating Settlement Funds Is Fair.

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

5. The Proposed Enhancement Award to Plaintiff Warrants Approval.

The proposed enhancement of $7,500 to Plaintiff is intended to recognize substantial initiative and significant efforts on behalf of the Class. Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation, often in much higher amounts than that sought here. Factors considered when awarding an incentive include the actions the plaintiff has taken to protect the class, the degree to which the class has benefitted, the amount of time and effort the plaintiff expended in the litigation, the risk to the class representative in

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[7] The exclusion of interest and penalties from the fairness evaluation is proper because, first, PAGA penalties are discretionary (*see* Lab. Code § 2699(e)(2) (the court in its discretion "may award a lesser amount than the maximum civil penalty amount specified by this part…")), and, second, courts evaluate the strength of a proposed settlement without taking potential penalties or interest into consideration. *See Rodriguez v. West Publishing Corp.,* 563 F.3d 948, 955 (9th Cir. 2000); *see also Miller v. CEVA Logistics U.S.A., Inc.*, 2015 WL 729638, at *7 (E.D. Cal. Feb. 19, 2015) (court utilized calculation of a defendant's exposure exclusive of interest and penalties to determine whether the settlement fell within the range of possible approval).

commencing suit (financial and otherwise), the notoriety and personal difficulties encountered, the duration of the litigation, and the personal benefit (or lack thereof) enjoyed by the plaintiff as a result of the litigation. *Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 804 (2009). Here, Plaintiff contributed time to the prosecution of this matter, including assistance prior to the mediation with information, attending a full day deposition, and substantial time conferring with counsel over the course of this litigation and before it was filed. (Salter Decl,. ¶¶ 5-21; Leviant Decl., ¶ 33.) The enhancement also recognizes risks Plaintiff took to be personally liable for costs regardless of the success of the litigation, as well as the personal risk of facing intrusive discovery and potential disclosure to future employers that Plaintiff sued an employer, making future employment less certain. Plaintiff's Declaration supports the requested enhancement.

6. The Proposed Award of Attorneys' Fees and Costs Is Also Fair, Adequate, and Reasonable and Merits Preliminary Approval.

a) Plaintiff's Counsel Should be Awarded Fees Based on a Percentage of the Fund Recovered, Consistent with the Common Fund Method

The request for fees as a percentage of a settlement is supported by the "common fund theory," where "one who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs." *Serrano v. Priest*, 20 Cal. 3d 25, 35 (1977). The common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." *City and County of San Francisco v. Sweet*, 12 Cal. 4th 105, 110 (1995). The lodestar may be cross-checked against the percentage. *See In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-58 (2009).

The California Supreme Court removed any lingering doubt about the use of the percentage of the fund method to award attorney's fees in California Courts. *Laffitte v. Robert Half Intern. Inc*., 1 Cal. 5th 480, 503 (2016).[8] Thus, this Court may and, as strongly encouraged by the California Supreme

[8] The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing doubt about the use of the percentage method: "The *Dunk* court, while finding the percentage method inapplicable to the settlement before it due to the lack of a readily valued common fund, did not purport to bar its usage generally in common fund cases." *Laffitte*, 1 Cal. 5th at 501.

Court, *should* award fees to Plaintiff's counsel based upon the percentage of the fund methodology.

"Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery." *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 47 n. 11 (2008). This is consistent with counsels' experience in class cases. Here, Plaintiff's attorneys intend to request attorneys' fees of **$66,666.67** (33 and 1/3% of the GSA), and costs of **$25,384.99** (which includes payment for mediation, filing fees, service of process fees, and other standard expenses). (Leviant Decl., ¶ 31.) Given the efforts and risks involved in this case, as well as the results achieved, these amounts are within the range of reasonableness and warrant *final approval*.

b) A Lodestar Cross Check Confirms that Class Counsel's Requested Attorneys' Fees Are Reasonable

Plaintiff's fee application is also reasonable based on lodestar. Under the lodestar method, the court considers a compilation of the time spent and a reasonable hourly compensation of each attorney to evaluate the reasonableness of the fee. *Ramos v. Countrywide Home Loans, Inc*., 82 Cal. App. 4th 615, 622 (2000). The moving party meets its burden by submitting "declarations evidencing the reasonable hourly rate for their services and establishing the number of hours spent working on the case" as "California case law permits fee awards in the absence of detailed time sheets." *Wershba*, 91 Cal. App. 4th at 254-55; *Dunk*, 48 Cal. App. 4th at 1810; *Nightengale v. Hyundai Motors America*, 31 Cal. App. 4th 99, 103 (1994). The hours spent and the reasonable hourly compensation are used to arrive at a "lodestar" figure which may then be augmented or diminished taking into account various "multiplier" factors. *See Ramos*, 82 Cal. App. 4th at 622 (*citing Serrano*, 20 Cal. 3d at 48-49).

Here, Class Counsel's *total* lodestar is **$100,722.50** (including about 10 hours of past and future time not billed by Mr. Leviant). (Leviant Decl., ¶ 32.) The billed lodestar to date is **$96,097.50**. (Leviant Decl., ¶ 32.) The request for **<u>$66,666.67</u>** in attorneys' fees, which is **0.66** times the estimated total lodestar (a "negative" multiplier), is reasonable under the lodestar method.

(1) Class Counsel's Hours Are Reasonable

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

(2) Class Counsel's Hourly Rates Are Reasonable

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

Class Counsel are experienced litigators who specialize in employment law, with a substantial wage and hour practice. (Leviant Decl., ¶¶ 21-27.) A number of courts, including this Court, have approved Class Counsel's hourly rates. (Leviant Decl., ¶ 21.) Given the skill and experience of Class Counsel, and the excellent result achieved, Class Counsel's hourly rates are reasonable.

c) Class Counsel's Costs Are Reasonable

The Settlement Agreement provides for reimbursement of costs not to exceed $26,000.00. Moon Law Group, PC seeks costs in the amount of $25,384.99. (Leviant Decl., ¶ 32, Exh. 2.) These costs were reasonably incurred in prosecuting the Action on behalf of the Class Members and should be approved by the Court. Accordingly, Class Counsel respectfully requests the Court approve total costs in the amount of **<u>$25,384.99</u>**. (*Ibid.*)

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

Phoenix Settlement Administrators, which has been selected due to its competitive bid, states that administration can be performed for a flat rate of **$9,000.00**. In counsel's experience, based on similar wage-and-hour actions, an estimated cost of **$9,000.00** is a fair and reasonable amount for administration fees and should be preliminarily approved, and it is below the Parties' original estimated cost of $15,000 to administer the Settlement. (Leviant Decl., ¶ 33.) Phoenix has also confirmed it capabilities and security protocols in the accompanying declaration.

8. The PAGA Allocation is Reasonable

The ultimate decision as to the amount of penalties is always up to the discretion of the Court. Labor Code § 2699(e)(2) states: "In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."

Prior to the issuance of *Moniz v. Adecco USA, Inc*., 72 Cal. App. 5th 56 (2021), the only sources of persuasive guidance as to how to assess the reasonableness of a PAGA allocation were found in federal court decisions. In their view, a PAGA allocation, even if a small portion of the total settlement, could be reasonable if the settlement of the wage and hour claims is robust and ***serves the deterrent purpose of PAGA***. *O'Connor v. Uber Technologies, Inc*., 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016) ("By providing fair compensation to the class members as employees and substantial monetary relief, a settlement not only vindicates the rights of class members as employees, but may have a deterrent effect upon the defendant employer and other employers, an objective of PAGA."). *Moniz* provided explicit confirmation that this was an appropriate yardstick by which to measure reasonableness of a PAGA settlement. *Moniz*, 72 Cal. App. 5th at 77. *Moniz*, in agreeing with federal courts that have considered how to evaluate a PAGA settlement, concluded that the class action factors are appropriately considered, along with a consideration of whether the settlement furthers "PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws."

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

The second element (the PAGA purposes element) is also satisfied here. As held by *Moniz*, PAGA's purposes include (1) remediation of present labor law violations, (2) deterrence of future violations, and (3) maximization of enforcement of state labor laws. Here, the allocation of a major portion of settlement funds to class members still advances the goal of labor law violation remediation.

The allocation of a major portion of settlement funds to class members also deters future violations. This is a $200,000.00 settlement, the best outcome possible, given the significant financial constraints limiting Defendant. Deterrence is fulfilled. Finally, allocation of a major portion of settlement funds to class members still advances the goal of enforcement of state labor law. This settlement is, by definition, a response to alleged violations of labor laws, balanced against risks.

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

Finally, the PAGA allocation is fair. The LWDA is receiving $12,000.00. The Class is receiving, net, an estimated $75,698.34 for the releases of all other claims (excluding the $4,000.00 as the aggrieved employees' share of the PAGA Allocation). While the proportion is tipped in favor of the employees, the allocation is not unfair because it satisfies California's wage and hour policies.

VII. CONCLUSION

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

Respectfully submitted,

Dated: November 8, 2024

MOON LAW GROUP, PC

By: H. S. Leviant

Kane Moon
H. Scott Leviant
Mariam Ghazaryan

Attorneys for Plaintiff

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 725 S. Figueroa St., Suite 3100, Los Angeles, CA 90017.

On the date indicated below, I served the document described as: **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties in this action by sending [ ] the original [or] [✓] a true copy thereof [✓] to interested parties as follows [or] [ ] as stated on the attached service list:

Denis S. Kenny
Email: denis@sfcounsel.com
John B. Lough, Jr.
Email: john@sfcounsel.com
SCHERER SMITH & KENNY, LLP
140 Geary Street, Seventh Floor
San Francisco, California 94108
Facsimile: (415) 433-9434

Counsel for Defendant

[ ] **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

[✓] **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

[ ] **BY ELECTRONIC SERVICE:** Pursuant to the Court's Order directing Electronic Service, the above-named document(s) has (have) been electronically served on counsel of record by an approved electronic service provider. The transmission of these documents was reported complete and a copy of the service confirmation will be maintained, along with the original document(s) and proof of service in our office.

[ ] **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the offices of the addressee(s) named herein.

[ ] **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed this **November 8, 2024** at Los Angeles, California.

H. Scott Leviant	H. S. Leviant
Type or Print Name	Signature