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SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

STEPHANY CLUCK, as an individual on behalf of herself and on behalf of all others similarly situated Plaintiff, v. CHILDHELP, INC., A CALIFORNIA NON-PROFIT CORPORATION; AND DOES 1-100, INCLUSIVE, Defendants.	Case No.: CVRI2202276 Assigned for All Purposes to: Hon. Harold Hopp Dept. 1 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND REQUEST FOR ATTORNEY'S FEES AND COSTS, AND JUDGMENT THEREON Date: July 30, 2025 Time: 8:30 a.m. Dept.: 1

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I. INTRODUCTION

Plaintiff Stephany Cluck seeks final approval of a non-reversionary class action and PAGA settlement resolving wage and hour claims on behalf of 343 individuals who worked for Defendant Childhelp, Inc. ("Childhelp" or "Defendant"), and were classified as an hourly paid, non-exempt employee during the Class Period of January 16, 2021 to April 2, 2025. The proposed $315,000 total settlement provides about $154,119 in cash payments to the Class, with an average award of about $449, plus additional amounts payable under PAGA. The remaining balance will cover a modest service award to Plaintiff, settlement administration costs, civil penalties to the state, and reasonable attorney's fees and costs. The parties and their counsel finalized the settlement after extensive and difficult arms-length negotiations overseen by an experienced and highly-regarded mediator. The Court conditionally certified the Class and preliminarily approved the settlement on April 2, 2025. Since then, the Court-approved notice form was mailed to the Class Members, and they reacted very favorably to the settlement. There are no objections, and no class members requested exclusion, for a 100% participation rate.

Class Counsel secured an excellent settlement with Defendant after some two years of investigation, litigation, and settlement negotiation and administration, all without any compensation for services rendered or costs expended. The class notice duly informed the class members that Class Counsel would request attorney's fees not to exceed 33.3% of the Gross Settlement Amount, or $105,000, along with reimbursement of no more than $25,000 for actual costs incurred litigating this matter. As of the filing of this motion, *not one Class Member objected* to the proposed fee award. Consistent with the Settlement and notice, Plaintiff now respectfully requests the Court award Class Counsel's fees in the amount of $105,000 and costs in the amount of $22,480.52, as described in the Declaration of Nikki Trenner ("Trenner Decl.") filed herewith. The requested attorney's fees are well within the range of reasonableness, especially considering the complex and risky nature of this litigation, the contingent risk assumed, the three-plus year delay in payment and, when subjected to a lodestar crosscheck, result in a fee that is slightly lower than the base lodestar.

Accordingly, on behalf of themselves and the Settlement Class, Plaintiff respectfully requests the Court grant this motion, give full and final approval to the settlement, grant Class Counsel's request for attorney's fees and costs, and enter judgment

II. FACTUAL BACKGROUND AND PROCEDURAL POSTURE

The details of the procedural and factual background of this matter were outlined in the Plaintiff's Motion for Preliminary Approval of Class Action Settlement (filed on or about February 7, 2025). To refresh the Court's recollection, defendant ChildHelp is a non-profit organization dedicated to the prevention and treatment of child abuse throughout the United States, offering a variety of services including a national hotline, advocacy centers, treatments, and community outreach. Plaintiff was employed by ChildHelp as a nonexempt instructional aid and driver from August 5, 2019 to September 23, 2021 at ChildHelp's Beaumont location. [Declaration of Nikki Trenner ("Trenner Decl."), ¶ 2.]

Plaintiff alleges Childhelp violated California wage and hour law in several respects. First, she alleges a failure to pay all wages due, including failing to incorporate non-discretionary bonuses and shift differential pay into the regular rate of pay when calculating overtime wages and failed to pay employees for all hours worked by requiring "off the clock" work. Next, Plaintiff alleges Childhelp also failed to provide compliant meal and rest periods by requiring employees to perform work while clocked out for meal periods and not relieving employees of all employer control while on a break. Plaintiff also claims employees had to use their personal phones on company business and without reimbursement and, as a result of the above allegations, Plaintiff also alleges Defendant failed to provide accurate, itemized wage statements and failed to pay all wages owed upon separation of employment. [Trenner Decl., ¶ 3.]

Based on these allegations, on June 6, 2022, Plaintiff filed the underlying class action on behalf of herself and the Class Members, asserting claims for (1) failure to pay minimum wages; (2) failure to pay overtime; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) failure to reimburse expenses, (6) failure to provide itemized wage statements; (7) failure to pay all wages due at termination; and (8) unfair competition. After exhausting administrative remedies, Plaintiff later filed a First Amended Complaint adding a cause of action under the

PAGA on October 4, 2022 [Trenner Decl., ¶ 4.]

Childhelp has at all times denied Plaintiff's allegations and maintained its meal and rest break and payroll policies and procedures comply with California law, and that it provided the class members with required meal and rest breaks. Additionally, Childhelp contends its timekeeping and payroll policies accurately track and pay for all hours worked by its employees and at the correct rates of pay. It also strongly contends the case cannot be maintained as any kind of class or representative action, arguing for example that to the extent class members missed meal and/or rest breaks, or that such breaks were non-compliant, it was intermittent and infrequent and evidence of such missed breaks would be purely anecdotal, and therefore individualized issues predominate and trial on a representative basis would be unmanageable. [Trenner Decl., ¶ 5.]

Since the filing of the initial complaint, the Parties engaged in formal and informal discovery as well as various meet and confer discussions regarding discovery, potential law and motion, and the merits of the case. Ultimately, the Parties agreed to mediation, and engaged the Daniel Buckley (Ret.), a respected mediator with extensive wage and hour class action experience. In March 2024, the Parties participated in a full day mediation with Judge Buckley that resulted in this settlement. [Trenner Decl., ¶¶ 6-7.] This Court preliminarily approved the settlement on April 2, 2025.

Class Notices were mailed to class members on May 8, 2025, with a 45-day window (to June 23, 2025) for class members to opt out or object to the proposed settlement. [Declaration of Stacey Shim ("Shim Decl."), ¶¶ 7, 11-13.]

III. <u>THE PROPOSED SETTLEMENT TERMS</u>

Under the settlement, Childhelp will pay $315,000.00 into a common fund, the Gross Settlement Amount. Reasonable attorney's fees of up to $105,000.00 (33.3% of the GSA), litigation costs of up to $25,000 (only $22,480.56 is requested), an enhancement award to Plaintiff of up to $10,000, settlement administration costs of $8,400.50, and $15,000 for civil penalties under PAGA (of which 75%, or $11,250, will go to the Labor & Workforce Development Agency, and 25%, or $3,750 will go to the Aggrieved Employees) all will be paid from the Gross Settlement Amount. The remainder of approximately _____ will be allocated among the Participating Class Members based on their total workweeks worked during the Class Period. No portion of the Gross Settlement Amount will revert to Childhelp. [Trenner Decl., ¶ 8.]

A. <u>Certification of the Settlement Class</u>

The Court conditionally certified a settlement class including all persons employed by Defendant and classified as an hourly paid, non-exempt employee during the Class Period of January 16, 2021 to April 2, 2025. The Settlement Administrator ultimately mailed class notices to 343 individuals identified as members of the Class. [Shim Decl., ¶ 7.] Nothing has changed to require reconsideration of the Court's certification of the Settlement Class.

B. <u>The Benefit Conferred on the Settlement Class</u>

This is a cash settlement that <u>does not</u> require Participating Class Members to submit a claim form to receive their settlement share. Participating Class Members will receive their settlement checks automatically via First Class U.S. Mail. Eighty percent of each settlement share will be allocated to wages and the remaining twenty percent will be allocated to penalties and interest. Childhelp will pay any and all applicable employer-side payroll taxes separately and in addition to the Gross Settlement Amount. Subject to the Court's approval, any amounts not claimed (because a class member does not cash his or her settlement check) will be forwarded to the State Controller's Unclaimed Property Fund. [Trenner Decl., ¶ 9.]

Each Participating Class Member will receive a share of the Net Settlement Amount based on his or her total weeks worked for Childhelp during the Class Period while employed in a non-exempt position. Thus, each Class Member's Individual Settlement Payment will be calculated using criteria typically used in determining appropriate amounts of unpaid wages, unpaid premium wages for missed meal and rest breaks, and potential statutory penalties under applicable law. These methods are intended to ensure each Class Member receives a portion of the available settlement funds corresponding to the relative value of his or her potential claims. The proposed allocation provides a reasonable way to compensate Class Members based on the amount of time they worked for Childhelp and the number of instances they missed a meal break and/or rest break, were not provided compensation in lieu of such missed breaks, or lost pay due to the alleged rounding. [Trenner Decl., ¶ 10.]

The average class award will be approximately $449.33, and the awards will range from about $8.80 on the low end to over $1,900 on the high end. The average PAGA award will be about $10.93, and PAGA awards will range from about $0.48 to about $49.68. [Shim Decl., ¶¶ 16, 18.]

C. Settlement Administration

Apex Class Action, as the Court-approved Settlement Administrator, mailed the Notice Packet to the Class members after making all reasonable effort to ascertain the best mailing address, including running each address through the National Change of Address database and "skip-tracing" any Notice Packets returned as undeliverable. [Shim Decl., ¶¶ 3-10.] The Class Notice, previously approved by the Court, duly informed Class Members of the settlement terms, including the estimated relief each Class Member will receive, the amounts to be requested for attorney's fees and the class representative enhancement awards, and the right to opt out of or object to the settlement. [Shim Decl., Exh. A.] Apex mailed 343 Notice Packets on May 8, 2025. [Shim Decl., ¶ 7.] Ultimately, only seven Notice Packets were deemed undeliverable, representing a 97.9% success rate. [Shim Decl., ¶ 10.] The 45-day response window for opting out of or objecting to the settlement expired on June 23, 2025. [Shim Decl., ¶¶ 11-13.] As of the filing of this motion, Apex has received zero requests for exclusion (for a 100% participation rate), and zero objections to the settlement. No disputes have been submitted regarding the information used to calculate class member settlement shares. [Shim Decl., ¶¶ 11-13.]

D. Release of Claims

All Participating Class Members will release Childhelp from all claims alleged in the operative complaint, or that could have been brought based on the factual allegations in the FAC and PAGA Notice during the Class Period. Plaintiff, the LWDA, and the State of California through Plaintiff as its agent and/or proxy, will release all claims for civil penalties under PAGA that were alleged, or could have been alleged, based on the facts asserted in the FAC and in the PAGA Notice,. The Class and PAGA releases are limited to the claims that were actually pleaded or could have been pleaded based on the alleged facts in the FAC, and PAGA notice. Only Plaintiff is entering into a full general release of all claims and waiver of Civil Code section 1542. [Trenner Decl., ¶ 11.]

E. <u>PAGA Penalties and Notice to the LWDA</u>

As noted above, the Parties allocated $15,000 from the GSA to civil penalties under PAGA, and submit that amount is fair, reasonable and adequate, and consistent with PAGA's underlying purposes. Per Labor Code section 2699(*l*)(2), Plaintiff gave notice of the settlement and the approval hearing to the LWDA via its online portal. [Trenner Decl., ¶ 12; Exh. 1.]

IV. <u>ARGUMENT</u>

The law favors settlement, particularly in class actions where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. H. Newberg & A. Conte, 4 <u>Newberg on Class Actions</u> (4th ed. 2002), § 11.41; <u>Class Plaintiffs v. City of Seattle</u> (9th Cir. 1992) 955 F.2d 1268, 1276, <u>cert. denied</u>, 506 U.S. 953; <u>Van Bronkhorst v. Safeco Corp.</u> (9th Cir. 1976) 529 F.2d 943,950; <u>Potter v. Pacific Coast Lumber Co.</u> (1951) 37 Cal.2d 592, 602. Nevertheless, to make certain the rights of absent parties are not unjustly compromised, the settlement of a class action requires court approval. Cal. Rule of Court 3.769; <u>Dunk v. Ford Motor Co.</u> (1996) 48 Cal.App.4th 1794, 1801; <u>Wershba v. Apple Computer</u> (2001) 91 Cal.App.4th 224, 245. The purpose of that judicial review is to protect against fraud or collusion, and to ensure fairness to absent class members. <u>Dunk</u>, 48 Cal.App.4th at 1800-01; Newberg, at §§ 11.22, *et seq.* Review is accomplished through a two-step process intended to determine whether, under the totality of circumstances, the settlement is fair, reasonable and adequate. <u>Dunk</u>, 48 Cal.App.4th at 1801; <u>Wershba</u>, 91 Cal.App.4th at 245.

On a motion for final approval, the trial court is charged with determining whether, in light of the total circumstances of the action and the response of the class members to the proposed settlement, the settlement is fair, reasonable, and adequate. <u>Dunk</u>, 48 Cal.App.4th at 1801-02; <u>Wershba</u>, 91 Cal.App.4th at 244-45. The court has broad discretion in making that determination and may consider a number of relevant factors, including: the strength of plaintiff's case; the likelihood of potential recovery; the risk, expense and likely duration of further litigation; the amount offered in settlement; the extent of discovery and stage of the proceedings; the experience and opinion of counsel; and the reaction of class members to the settlement. Id. In light of the strong judicial policy favoring the settlement of class actions, courts·generally apply a presumption of fairness to a proposed class action settlement when: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. Dunk, 48 Cal.App.4th at 1802; Wershba, 91 Cal.App.4th at 245.

A. The Proposed Settlement Merits Final Approval

The proposed settlement of this action warrants final approval under the standards summarized above. The settlement is fair, reasonable and adequate, and represents a favorable resolution of highly disputed claims. Further, the settlement was overwhelmingly approved by the class members, as there were no objections and no opt outs.

1. The Settlement Is the Product of Arm's-Length, Informed Negotiations

The settlement is not the result of fraud or collusion. Rather, the proposed settlement was reached following arm's-length negotiations presided over by the Hon. Daniel Buckley (Ret.), a highly respected and well-known mediator with extensive experience mediating wage and hour class actions. [Trenner Decl., ¶ 7.] Moreover, Plaintiff and her counsel were well-informed about the facts and the law, and counsel Zachary M. Crosner, Jamie Serb, and Nikki Trenner of Crosner Legal, PC, have years of litigation experience, including litigating wage and hour class actions. Plaintiff's counsel are well-qualified to evaluate the risks and benefits of pursuing further litigation or settling the matter. [Trenner Decl., ¶¶ 28-36.] Defendant likewise was represented by highly-qualified and experienced defense counsel. Both sides advocated vigorously for their clients, and nothing was "left on the table."

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2. The Class Reacted Favorably to the Settlement

The settlement was well-received by the class. As of the filing of this motion, no objections have been filed, and no Class Members requested exclusion. [Shim Decl., ¶¶ 11-12.] As many courts recognize, class member reaction to the settlement is one of the most important factors to consider in determining if final approval should be granted. Mandujano v. Basic Vegetable Prods., Inc., 541 F.2d 832, 837 (9th Cir. 1976); see also In re: American Bank Note Holographics, 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001) ("It is well-settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy") (internal quotation marks omitted).

3. The Settlement Is Fair and Reasonable Considering the Benefits Conferred, the Case Value, and Significant Litigation Risks

The proposed settlement involves a substantial sum of money that, when distributed, will confer meaningful monetary benefits on the Class members. As described above, each individual award will be based on an allocation consistent with the nature of the claims asserted and will fairly and equitably allocate the available funds in relation to the degree of damage each Class member incurred. While Class members who worked for only a short period of time will receive relatively small sums, those with longer tenures and who worked more hours and shifts throughout the class period will receive appropriately larger awards.

Prior to mediation, the parties engaged in both formal and informal discovery to facilitate settlement discussions. As a result, Plaintiff reviewed documents and information regarding Childhelp's payroll practices, a representative sampling of class member pay stubs and time records, applicable compensation plans, meal and rest break policies, etc., and information from Defendant regarding class size and breakdown, number of work weeks/pay periods, average rates of pay, and other information used to formulate a damages model with the assistance of a consulting expert. Plaintiff's counsel are confident they obtained sufficient information to understand the law and facts of this case and make an informed decision regarding the proposed settlement and whether it is fair and reasonable. [Trenner Decl., ¶¶ 6, 13.]

Next, the proposed settlement falls within the range of reasonableness warranting preliminary approval. The proposed settlement involves a significant sum that, when distributed, will confer direct monetary benefits on the class members. As described above, each class member will be entitled to a monetary payment without having to file a claim and each payment will be relative to the value of his or her potential claims. Through the information exchanged and analysis undertaken, Plaintiff weighed the risks of continued litigation against the benefits of the proposed settlement and determined settlement to be the most reasonable option.

First, on their unpaid wage claims, Plaintiff alleged Childhelp failed to pay for all hours worked by requiring employees to work "off the clock." Here, Plaintiff alleged employees lost a few minutes of compensable time each shift getting from the facility entrance to/from the time clocks at the rear of facility, and further had to perform For example, Plaintiff alleged that if an employee was assisting with care at the end of their shift, they were forced to clock out at their scheduled time and then return to assisting with the task at hand. These tasks typically included supervising children, assisting with laundry, and preparing meals. According to Plaintiff's expert's analysis, this resulted in the loss of some **$257,600** in pay over the Class Period. Plaintiff also alleges that she and the Class Members also were paid nondiscretionary bonuses and shift differentials that were not incorporated into the regular rates of pay for purposes of calculating overtime wages and sick pay. Alvarado v. Dart Container Corp. (2018) 4 Cal.5th 542, 553; Ferra v. Loews Hollywood Hotel, LLC (2021) 11 Cal.5th 858. Per Plaintiff's experts, this resulted in an underpayment of overtime and sick time wages to Class Members in the amount of about **$10,100**. On the other hand, Defendant argued its timekeeping and payroll policies accurately tracked and paid for all employee time at the correct hourly rate, and that is policies strictly prohibited "off the clock" work. Thus, per ChildHelp, if any off the clock work occurred it was in violation of company policy and done voluntarily by employees and without the company's knowledge or consent. White v. Starbucks Corp. (N.D. Cal. 2007) 497 F.Supp.2d 1080, 1083 (employer must have actual or constructive knowledge of the off the clock work). [Trenner Decl., ¶ 14.]

On the meal period claims, Plaintiff argued employees were not relieved of all job duties while on a meal period and frequently had lunches interrupted by work. Per Plaintiff, understaffing and the nature of the work required employees to remain alert and to monitor the needs and actions of the children in the facilities, and employees frequently were only able to grab a quick bite during their shifts instead of receiving a full, uninterrupted meal break. Plaintiff contended these policies resulting in numerous “de facto” meal break violations for short, late and missed meal periods. Plaintiff further alleged other policies, such as prohibiting employees from napping or leaving the premises on a rest break, prevented employees using their break time as they saw fit and thus they were subject to employer control. Plaintiff’s expert’s analysis suggested about 81% of shifts had a least one unique meal violation, and estimated the potential exposure at about **$905,680** in meal period premiums. [Trenner Decl., ¶ 15.]

In response, Defendant argued the break policies were fully compliant with California law, and that it provided all required meal periods and thereby met its obligations under the Labor Code and applicable Wage Order. Further, Defendant argued to the extent employees missed a break or records showed a non-compliant break, any such discrepancies were aberrational and against company policy and a myriad of individual issues would be required to determine whether the potential violation resulted from employee choice or some other reason. Consequently, per the Defendant, individualized inquiries would dominate on this issue and render class certification inappropriate. [Trenner Decl., ¶ 16.]

For the rest break claim, Plaintiff argued that Defendant frequently provided non-compliant rest breaks, as once again Class Members often had to skip rest breaks or received shortened rest breaks due to the hectic nature of the work and need to monitor the children. As with meal breaks, Defendant argued its rest break policies complied with California law and that it authorized and permitted employees to take all required rest breaks. Defendant further contended that, in light of the fact that it is not required to maintain a record of rest breaks, any evidence of failure to authorize and permit rest breaks and/or discouragement from taking rest breaks would be purely anecdotal and individual issues would predominate on liability. Assuming a 75% violation rate, Defendant’s exposure here was estimated at about **$877,877**. [Trenner Decl., ¶ 17.]

On the expense reimbursement issue, Plaintiff alleged ChildHelp managers and representatives frequently contacted Plaintiff and the Class Members on their personal cell phones with various work-related reminders and memoranda, all without reimbursement. Cochran v. Schwan's Home Service, Inc. (2014) 228 Cal. App. 4th 1137, 1140. Based on $5 per week in reimbursement, Plaintiff estimated the exposure at about $97,215. Here, Defendant argued its policies prohibited use of cell phones while working, and that there would be no real need for employees to use a cell phone while performing their duties. Thus, per Childhelp, any use of personal phones was not a necessary requirement of the job and therefore not reimbursable under Labor Code § 2802. Defendant also argued that such claims were not suitable to class treatment, as individualized issues predominate. [Trenner Decl., ¶ 18.]

Finally, Plaintiff also alleged derivative claims under Labor Code § 226 (alleged inaccurate wage statement violations) and §§ 201-203 (waiting time penalties). These claims are based on the unpaid wage claims and will rise or fall along with those primary claims, in addition to being subject to "good faith" and other defenses available to Defendant. E.g., Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-04 (holding employer did not willfully fail to pay wages under Labor Code § 203 even though the class prevailed on the merits on the underlying claim for failing to pay living wages). Defendant argued further that the wage statements accurately contained all required information, and that acted in good faith all times with respect to payment of wages. Although Plaintiff's experts estimated the exposure on these claims at about **$511,620** on the wage statement claims, and about **$730,825** on the waiting time penalties claim, Plaintiff also discounted the derivative claims significantly in light of these multiple potential defenses. [Trenner Decl., ¶ 19.]

As far as potential PAGA liability, the alleged aggrieved employees theoretically are entitled to penalties totaling about $1,900,000 should Plaintiff prevail on all claims, establish violations of the multiple Labor Code sections at issue, and secure the maximum allowable civil penalties. [Trenner Decl., ¶ 20.] As with the class claims, Plaintiff discounted the potential PAGA penalties based on Defendant's various defenses on the merits and also accounted for the Court's wide discretion to reduce such penalties, or to decline to award penalties at all. Labor Code § 2699(e)(2); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (trial court awarded penalties of $5 per pay period after a bench trial, which decision was upheld on appeal); In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 (PAGA penalties denied after trial). Accordingly, the Parties allocated $15,000 to PAGA penalties.

Plaintiff submits this amount is reasonable under the circumstances and in line with comparable settlements in other wage and hour class actions in California. *E.g.*, Van Kempen v. Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final approval of $5,000 PAGA penalty from $370,000 settlement, or 1.4 percent of total settlement); Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303 (finding a $7,500 PAGA payment reasonable when measured against the overall settlement of $345,000 and the possible weaknesses in plaintiff's case, or 2.2 percent of total settlement). Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement, and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6% where "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has not objected to the settlement.

Taking into account all of the above-discussed risk factors, Plaintiff calculated Defendant's exposure on the class claims at around **$402,850** on a risk-discounted basis and, accordingly, the settlement represents about 70% of the estimated recovery after trial after accounting for the multiple risks of continued litigation as addressed above. Given Defendant's multi-layered defenses and all other potential risks of continued litigation, a total recovery for the class of $315,000, which will result in average award of about $449 per class member, is a significant result well within the range of reasonableness considering all potential outcomes, and will provide monetary awards to the Class without further delay. [Trenner Decl., ¶¶ 21-23.]

Importantly, the mere fact that a settlement does not provide the same recovery as might be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and adequate. Wershba*,* 91 Cal.App.4th at 246, 250 ("Compromise is inherent and necessary in the settlement process…even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation"); 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 ("The fact that a proposed settlement may amount to only a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved"); White v. Experian Information Solutions, Inc. (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even though it represented 99% discount off the maximum value of the claims); Lane v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 ("[T]he question whether a settlement is fundamentally fair . . . is different from the question whether the settlement is perfect in the estimation of the reviewing court"). Importantly as well, the proposed settlement is non-reversionary and will provide immediate benefits to the Class Members without a claims process. White, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing Class Action Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at http:// www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome claims process may indicate lack of fairness). Plaintiff and her counsel submit the settlement is within the "range of reasonableness," and is fair and adequate for the Class.

V. PLAINTIFF'S ENHANCEMENT AWARDS

Under to the terms of the settlement, Plaintiff seeks a modest incentive award of $10,000 for her service in bringing these claims on behalf of the Class. The requests are reasonable given the risks each undertook on behalf of the Class Members. By contacting and retaining counsel to pursue these claims, Plaintiff helped make this settlement possible for the absent Class Members, while shouldering the risk of being liable for Defendant's litigation costs. Plaintiff also exposed herself to unwanted notoriety related to filing a public lawsuit (discoverable even through a simple google search) for the benefit of other employees, placing themselves at risk of discrimination by future prospective employers. As set forth in more detail in their respective declarations submitted with the preliminary approval motion, among taking many other actions assisting in the successful litigation of this case, Plaintiff provided substantial factual information and documents to counsel, attended numerous meetings/phone conferences with counsel to discuss the case, and kept abreast of all significant developments. [Declaration of Stephany Cluck (filed at preliminary approval), ¶¶ 2-9; Trenner Decl., ¶ 24.] Finally, there are no class member objections submitted with respect to the amounts Plaintiff proposes to receive. [Shim Decl., ¶ 12.] Accordingly, the requested enhancement payments to Plaintiff is appropriate and justified as part of the settlement. Staton v. Boeing (9th Cir. 2003) 327 F.3d 938, 977 (collecting cases awarding class representatives service and incentive payments ranging from $2,000 to $25,000).

VI. SETTLEMENT ADMINISTRATION COSTS

The settlement provides for a payment to Apex for its services as the Settlement Administrator. As set forth in the Declaration of Stacey Shim, Apex has performed and will continue to perform its required duties through final distribution of the settlement funds and incurred $8,400.50 in fees and expenses. [Shim Decl., ¶ 19.] Accordingly, Plaintiff respectfully requests the Court approve payment of $8,400.50 to Apex from the GSA. [Trenner Decl., ¶ 25.]

VII. ATTORNEY'S FEES AND COSTS

A. The Attorney's Fees Requested Are Fair and Reasonable and Should Be Approved

This Court has discretion over the amount of attorneys' fees awarded and court approval is required for Class Counsel's fees. Cal. Rule of Court 3.769; Levy v. Toyota Motor Sales, U.S.A. (1992) 4 Cal.App.4th 807, 813; Lealao v. Beneficial Cal., Inc. (2000) 82 Cal.App.4th 19. In defining a reasonable fee, the Court should attempt to mimic the marketplace for cases involving significant contingent risk, such as this one. Deposit Guaranty Nat'l Bank, Jackson, Miss. v. Roper (1980) 445 U.S. 326, 338, rehg. den. 446 U.S. 947; Lealao, 82 Cal.App.4th at 49-50 (court should attempt "to award the fee that informed private bargaining, if it were truly possible, might have reached" in determining a reasonable fee, and a fee award should approximate a "range of fees freely negotiated in comparable litigation"). Here, Class Counsel's request for attorney's fees and costs is reasonable and justified by the work performed, the benefits obtained, and the contingent risk assumed.

As addressed in detail above, at the time the parties reached the tentative settlement success for Plaintiff and the putative class was far from certain. Plaintiff faced a real risk that some or all the claims would not be certified for class treatment, as Defendant had strong arguments that its compensation policies were legal and properly compensated the class members. Even if Plaintiff certified some or all of the claims and ultimately prevailed on the merits, it undoubtedly would have taken several years to realize any recovery while they pursued trial, and an almost certain appeal. [Trenner Decl., ¶¶ 14-23.]

Nonetheless, Plaintiff succeeded and expeditiously obtained the relief she set out to obtain, and the settlement provides substantial cash payments to Class Members, with an average award of about $449, and with a maximum award of over $1,900. Importantly as well, the Class Members have been overwhelmingly supportive of the Settlement – as of the filing of this motion, there are no objections and no opt outs to the settlement. [Shim Decl., ¶¶ 11-12.]

B. <u>The Requested Fee Award Is Reasonable and Appropriate</u>

The United States Supreme Court has ruled the parties to a class action properly may negotiate not only the settlement of the action itself but also the payment of attorney's fees. <u>Evans v. Jeff D.</u> (1986) 475 U.S. 717, 734-35, 738, fn. 30.) In <u>Hensley v. Eckerhart</u> (1983) 461 U.S. 424, 437, the Supreme Court explained that negotiated, agreed-upon attorney's fee provisions are the ideal towards which the parties should strive: "A request for attorney's fees should not result in a second major litigation. Ideally, of course, litigants will settle the amount of a fee." The United States Supreme Court has reemphasized this policy and further stressed trial courts have “a responsibility to encourage agreement" on fees. <u>Blum v. Stenson</u> (1984) 465 U.S. 886, 902 n.19.

As part of the Settlement, Defendant agreed not to object to an award of no more than 33.3% of the GSA for attorney's fees, or $105,000, and up to $25,000 in reimbursement for litigation costs and expenses (although only $22,480.56 is requested). Such a fee is commensurate with what the market would provide for similar services and the Court therefore can most certainly enforce the agreement. As California's Court of Appeal has instructed:

> Given the unique reliance of our legal system on private litigants to enforce substantive provisions of law through class and derivative actions, attorneys providing the essential enforcement services must be provided incentives roughly comparable to those negotiated in the private bargaining that takes place in the legal marketplace, as it will otherwise be economic for defendants to increase injurious behavior.

Lealao, 82 Cal.App.4th at 47.

Here, the parties did not negotiate the inclusion of attorney's fees until after extensive arms-length bargaining regarding relief to the Class was completed. [Trenner Decl., ¶ 26.] The requested fee and cost award was a product of these arms-length negotiations and fairly reflects the marketplace value of the services rendered by Class Counsel in this case. As a result, the fee agreed to by the parties should be approved.

C. Class Counsel's Fees are Justified When Calculated as a Percentage of the Common Fund

In approving fee applications, courts typically apply either a percentage-of-recovery method or the lodestar method. Laffitte v. Robert Half Int'l., Inc. (2016) 1 Cal.5th 480, 489; Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 254, disapproved on other grounds, Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260. The California Supreme Court recently recognized the advantages and equities of calculating attorney's fees using the percentage-of-the-common-fund method in another wage-and-hour case:

> The recognized advantages of the percentage method-including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation convince us the percentage method is a valuable tool that should not be denied our trial courts.

Laffitte, 1 Cal.5th at 503 (citations omitted).

Indeed, both California and federal courts have long recognized an appropriate method for determining the award of attorney's fees is based on a percentage of the total value of benefits afforded to class members by the settlement. Serrano v. Priest (1977) 20 Cal.3d 25, 34; Boeing Co. v. Van Gernert (1980) 444 U.S. 472, 478; Vincent v. Hughes Air West, Inc. (9th Cir. 1977) 557 F.2d 759, 769. Awarding a fee based on a percentage of the common fund recovered operates to "spread litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." Vincent, 557 F.2d at 769.

In determining a reasonable common fund fee award, courts should also consider the fact that fees serve as an economic incentive for lawyers to bring class action litigation to achieve increased access to the judicial system for meritorious claims and to enhance deterrents to wrongdoing. Conte, Attorney Fee Awards (2d ed. 1993) § 104. Without prosecution on a contingent basis and use of the class action mechanism, the courthouse door would effectively be closed to most class members due to the relatively small size of their individual claims in relation to the enormous time and cost associated with class action litigation.

Here, Class Counsel seek a fee award for their successful prosecution and resolution of this action of no more than 33.3% of the GSA, or $105,000. The percentage requested is justified for the reasons set forth further below, and comports with fee awards calculated on a percentage-of-the-benefit basis. Indeed, review of class action settlements shows that courts have historically awarded fees in the range of 20 to 50 percent, depending upon the circumstances of the case. In re Warner Communications Sec. Litig. (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in common fund cases range from 20 to 50 percent); Newberg, Newberg on Class Actions (3d ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented.")

D. A Lodestar Cross-Check Also Supports Class Counsel's Fee Request

To ensure the fairness of an attorney's fee award, courts frequently conduct a lodestar cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for bringing an objective measure of the work performed into the calculation of a reasonable attorney fee." Laffitte, 1 Cal.5th at 504. Here, Class Counsel spent 184.7 hours of time on this matter over the past 2 years, resulting in a modest and very reasonable lodestar of $135,385.00.

As is fully detailed in the Trenner Declaration, Class Counsel's efforts included: (1) extensive pre-lawsuit investigation of the claims of Plaintiff and the putative class, including legal research, research into similar claims and claims against other employers in the same industry, and attempts to locate and contact other employees of the Defendant; (2) drafting PAGA notice letters; (3) drafting the initial complaints and related documents; (4) case management, including communications with defense counsel, meeting and conferring/preparing case management statements, etc.; (5) propounding and responding to extensive written discovery, (6) meeting and conferring re discovery responses, (7) lengthy discussions with defense counsel regarding settlement/mediation and informal discovery needed for meaningful settlement discussions; (8) engaging in substantial informal discovery, including propounding informal discovery “requests” and reviewing documents and other information produced; (9) working with a consulting expert on the analysis of Defendant’s production; (10) drafting a mediation brief and accompanying damages model after review and analysis of defendant’s formal and informal discovery production; (11) attending an all-day mediation; (12) negotiating and drafting the settlement agreement and related documents; (13) drafting the motion for preliminary approval, and attending the hearing; (14) administration of the settlement, including communications with the Settlement Administrator and settlement class members; (15) drafting the motion for final approval and attorney’s fees, and attending the final approval hearing; and (16) extensive communications with the Plaintiff regarding case status, case investigation and document review, mediation, and settlement terms. Additionally, Class Counsel will incur additional time following final approval to, inter alia, respond to class member inquiries, work with the Settlement Administrator on the distribution of settlement funds, and on the compliance hearing and amended judgment. [Trenner Decl., ¶ 27, Exh. 2.]

In pursuing this matter, Class Counsel incurred total attorney’s fees of $135,385.00, the lodestar is based on an eminently reasonable number of hours (184.7 attorney hours) worked to litigate this matter to a successful conclusion over the course of the past two years, and the requested attorney hourly rates are reasonable and comport with hourly rates charged by other attorneys with similar experience in this practice area in California. [Trenner Decl., ¶¶ 28-41.]

On a lodestar basis, the base lodestar is actually higher than the fee request of $105,000 and accordingly there is no request for a lodestar enhancement. Class Counsel submits this effectively operates to show that the percentage fee request is reasonable, and shows the fees requested are actually lower than the market value of the services rendered when those services are valued via traditional hourly billing.

E. The Award is Supported By 1) the Results Achieved; 2) the Risk, 3) the Skill Required, 4) the Contingent Nature of the Fee and 5) Awards in Similar Cases

What has now emerged in most fee award decisions is the recognition that fee determinations in both common fund and statutory fee situations are incapable of mathematical precision because of the intangible factors that must be resolved in the court's discretion based on the circumstances of each particular case. Conte, § 207, p. 44. In determining an appropriate fee in a common fund case, a Court must decide, based on the unique posture of each case, what percentage of the common fund would most reasonably compensate Class Counsel given the nature of the litigation and the performance of counsel. Paul, Johnson, Alston & Hunt v. Graulty (9th Cir. 1989 886 F.2d 268, 272) (the benchmark percentage fee may be adjusted to account for the circumstances involved in a case).

Courts apply a five-part test in calculating a reasonable percentage fee in common fund cases: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made in similar cases. Laffitte, 1 Cal.5th at 489.

1. The Results Achieved.

Class Counsel obtained an excellent result in this case for the Class Members. The Settlement provides real monetary benefits to the Class Members, and the Settlement is particularly advantageous to the Class Member because the proceeds will be distributed shortly as opposed to waiting additional years for a similar, or possibly, less favorable result. Considering many individual claims would be very modest and would not be cost-effective to pursue successfully, the Settlement provided them with fair compensation for their claims. Moreover, the absence of any objection to either the Settlement or the attorney's fee request bolsters the excellent results. Indeed, the approval of the Class is overwhelming as indicated by the fact that not one class member opted out. Additionally, the settlement amounts to a substantial percentage of the maximum value of the amount the Class might have obtained if it had tried the case and recovered on all theories seeking recovery of wages and penalties. "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." In re Omnivision Techs., Inc., 559 (N.D. Cal. 2008) F.Supp.2d 1036, 1042.

2. Class Counsel Bore Considerable Risk.

At the time of filing the complaint, Class Counsel recognized that they would have to expend a substantial amount of time and advance significant costs to prosecute a statewide class action suit with no guarantee of compensation or reimbursement, in the hope of prevailing against a sophisticated company represented by first-rate attorneys. Despite their belief in the validity of Plaintiff's claims, they also knew they faced substantial risks of class certification and the ability to prove class-wide and individual damages. In light of the highly uncertain nature of this suit, Class Counsel also bore the risk that Defendant would dig in and attempt to bury their small firm in work. Given the small size of Class Counsel's firm, not receiving any compensation for several years while simultaneously advancing litigation costs posed considerable risk and difficulty. [Trenner Decl., ¶¶ 42-43.]

3. The Skill Required and the Quality of Work.

Practice in the narrow area of wage and hour litigation requires skill, knowledge and experience. The issues presented in this case required more than just a general appreciation of wage and hour law and class action procedure. This Settlement was possible only because counsel persuaded Defendant that Plaintiff and the putative class had a realistic chance of prevailing on their claims despite Defendant's contrary arguments, and that the case would be pursued through class certification and trial if necessary. In successfully navigating these hurdles, Class Counsel displayed appropriate skill while pursuing a risky and difficult case.

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4. The Contingent Nature of the Fee and Risk Assumed

There is a substantial difference between the risk assumed by attorneys being paid by the hour and attorneys working on a contingent fee basis. The attorney being paid by the hour can go to the bank with his fee. Powers v. Eichen (9th Cir. 2000) 229 F.3d 1249, 1256. The attorney working on a contingent basis can only log hours while working without pay towards a result that will hopefully entitle him to a market fee considering the risk and other factors of the undertaking. Id. at 1257. Otherwise, the contingent fee attorney receives nothing. Id. In this case, Class Counsel subjected themselves to this risk in this all or nothing contingent fee case wherein the necessity and financial burden of private enforcement makes the requested award appropriate.

Counsel retained on a contingency fee basis, whether in private matters or in class action litigation, is entitled to a premium beyond their standard, hourly, non-contingent fee schedule to compensate for both the contingent risk assumed and the delay in payment. The simple fact is that despite the most vigorous and competent of efforts, success is never guaranteed. McKittrick v. Gardner (4th Cir. 1967) 378 F.2d 872, 875. Indeed, if counsel is not adequately compensated for the risks inherent in difficult class actions, competent attorneys will be discouraged from prosecuting similar cases. Ketchum v. Moses (2001) 24 Cal.4th 1122, 1132-33; Cazares v. Saenz (1989) 208 Cal.App.3d 279, 287.

Here, the contingent fee practice of Plaintiff's counsel simply does not accommodate the investment of unnecessary time in a case, and the adverse resolution of any one of several difficult issues present in this matter could have doomed the entire effort. As discussed, the attorney's fees in this case were not only contingent but fairly risky, and there was always a chance Plaintiff's counsel would receive nothing for any number of reasons. [Trenner Decl., ¶¶ 42-43.] Accordingly, the contingent nature of the fee and the financial burdens on Class Counsel and Plaintiff also support the fee requested.

5. Awards in Other Cases

As discussed, the attorney's fees requested by Class Counsel are within the range of fees awarded in comparable cases, as California courts regularly approve class action fee awards amounting to 1/3 of a common fund, as approved by the California Supreme Court in Lafitte. Additionally, review of class action settlements over the past 10 years shows that the courts have historically awarded fees in the range of 20 to 50 percent, depending upon the circumstances of the case. In re Warner Communications Sec. Litig. (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in common fund cases range from 20 to 50 percent); Newberg, Newberg on Class Actions (3d ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented."). Class Counsel's requested fees equal to 33.3% of the gross amount recovered on behalf of the class and are well within the range of reasonableness under either the percentage of the recovery or the lodestar method in light of the contingent risk assumed, the delay in payment, the result achieved, and the overall quality of the representation.

F. Class Counsel’s Costs and Expenses are Reasonable

Plaintiff’s counsel also requests reimbursement of actual out-of-pocket expenses incurred to prosecute this action. These expenses were incidental and necessary to the effective representation of the employees, and Plaintiff’s counsel is permitted to recover litigation costs and expenses under the common fund doctrine and the Settlement Agreement. Serrano, 20 Cal.3d at 35 (common fund doctrine permits recovery of fees and costs from the fund); Rider v. County of San Diego (1992) 11 Cal.App.4th 1410, 1424 n.6 (costs are recoverable from the common fund “[o]f necessity, and for precisely the same reasons discussed above with respect to the recovery of attorneys’ fees by ... [Plaintiffs’] attorneys”). Plaintiff’s counsel also is entitled to recover “those out-of-pocket expenses that would normally be charged to a fee-paying client.” Harris v. Marhoefer (9th Cir. 1994) 24 F.3d 16, 19.

As explained in the Trenner Declaration, Class Counsel incurred a total of $22,480.56 in expenses incurred in connection with this litigation. These expenses include the amounts paid for court filing fees, service of process, expert fees, postage, and mediation fees, all of which are costs normally billed to and paid by the client. These costs were reasonably incurred in the prosecution of this matter, and should be reimbursed in full. [Trenner Decl., ¶¶ 44-45.]

VIII. CONCLUSION

For all the foregoing reasons, Plaintiff Stephany Cluck respectfully request that the Court grant this motion and grant final approval of the proposed class action settlement and approve the payment of PAGA penalties to the State. Plaintiff further requests the Court approve payment of the Settlement Administrator's fees and expenses, approve the requested class representative enhancement payments, approve the award of attorney's fees and costs as requested, and enter judgment in this action. Finally, Plaintiff requests the Court set a final compliance review for July 30, 2026, or a later date convenient for the Court.

Dated: July 7, 2025

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