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Attorneys for Plaintiff Veronica Cusimano

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

VERONICA CUSIMANO, on behalf of herself and all "aggrieved employees" pursuant to Labor Code § 2698 *et seq*.,

Plaintiff,

v.

BRILLIANT EARTH, LLC, a Delaware limited liability company, and DOES 1 through 10, inclusive,

Defendants.

Case No: 22SMCV02621

Assigned to the Hon. Edward B. Moreton, Jr., Dept. 205

CLASS ACTION

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date: July 28, 2026
Time: 8:30 a.m.
Dept: 205

Complaint Filed: December 8, 2022
FAC Filed: December 8, 2025
Trial Date: TBD

Reservation ID: 635264219399

PLEASE TAKE NOTICE THAT on July 28, 2026 at 8:30 a.m., or as soon thereafter as the matter may be heard, in Department 205 of the above-entitled court, located at 9355 Burton Way, Beverly Hills, California 90210, Plaintiff Veronica Cusimano will and hereby does move for an Order: (1) preliminarily approving the proposed class action settlement in the above-captioned putative class action, (2) provisionally certifying the settlement class, (3) approving the appointment of settlement class counsel, the settlement class representative, and the settlement administrator, (4) approving and directing distribution of the Notice of Class and PAGA Action Settlement to the settlement class, and (5) setting a final fairness and approval hearing.

This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for court approval of the settlement of a class action. The basis for this Motion is that the proposed settlement is fair, adequate, and reasonable and in the best interests of the settlement class as a whole, and that the procedures proposed are adequate to ensure the opportunity of the proposed settlement Class Members to participate in, opt out of, or object to the settlement.

This Motion will be based on the Memorandum of Points and Authorities set forth herein, the Joint Stipulation of Class and PAGA Action Settlement and Release of Claims, the Declarations of Eric A. Grover and Robert Spencer and such evidence or oral argument as may be presented at the hearing, and on the complete records and file herein.

Respectfully submitted,

Dated: June 4, 2026

KELLER GROVER LLP

By: ______________________________

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Veronica Cusimano ("Plaintiff") filed this putative class action against Brilliant Earth, LLC ("Defendant") on behalf of herself and a putative class of approximately 195 persons who are or were working as non-exempt employees for Defendant in California during the Class Period (the "Class Members").[1] Plaintiff alleged that Defendant failed to properly compute bonuses into employees' regular rate of pay, leading to the underpayment of meal and rest period premiums, overtime wages, and sick pay wages, failed to provide meal and rest periods, provide accurate wage statements, and pay final wages, and failed to reimburse business expenses.[2] Plaintiff alleges that Defendant violated various provisions of the California Labor Code and Business and Professions Code §§ 17200, *et seq.*[3] Plaintiff also alleges that Defendant violated the Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* ("PAGA"), and seeks PAGA penalties on behalf of all Aggrieved Employees and California's Labor and Workforce Development Agency ("LWDA").[4]

Plaintiff now seeks the Court's preliminary approval of a proposed class and PAGA action settlement, the terms of which are set forth in the Stipulation executed by Plaintiff and Defendant (the "Parties").[5] The Stipulation was reached after the Parties engaged in arm's-length settlement negotiations through their experienced counsel.[6] The negotiations included a formal mediation session with the Hon. Angela Bradstreet, Ret., a well-respected mediator experienced in wage and hour class actions.[7] The Parties exchanged informal discovery prior to the mediation to enable productive discussions.[8]

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[1] Declaration of Eric A. Grover submitted herewith, at ¶¶ 6, 9; Ex. A (the Joint Stipulation of Class and PAGA Action Settlement and Release of Claims ("Stipulation") and Ex. B (the operative First Amended Complaint ("FAC")). Hereinafter, all "Ex." references are to the exhibits attached to the Grover Declaration. The Stipulation defines the "Class Period" as the time period from and including March 13, 2021 through November 13, 2025. Ex. A at § I.I.
[2] Grover Decl. at ¶ 9, Ex. B.
[3] Ex. B at ¶¶ 48-57
[4] Ex. B at ¶¶ 58-62.
[5] Grover Decl. at ¶ 5, Ex. A (the Stipulation).
[6] Grover Decl. at ¶¶ 13, 40.
[7] Ex. A at § II.B; Grover Decl. at ¶ 13.
[8] Ex. A at § II.B; Grover Decl. at ¶¶ 11, 39.

The Settlement represents a good result for the putative Class Members. To settle the matter, Defendant is required to make a non-reversionary payment of $182,000, plus the employer's share of employer-side payroll taxes, referred to as the Maximum Settlement Amount ("MSA").[9] The Settlement will result in an average gross payment of approximately $414.52 to those Class Members who do not opt out of the settlement, on terms that Plaintiff believes to be fair, reasonable and adequate.[10]

The Settlement also provides that the representative PAGA claims will be settled for $15,000, referred to as the PAGA Payment.[11] As Labor Code § 2699(i) requires, the PAGA Payment will be distributed 75% ($11,250) to the California Labor and Workforce Development Agency ("LWDA") and 25% ($3,750) to Aggrieved Employees.[12] From the $3,750 allocated to Aggrieved Employees, each Aggrieved Employee will receive an Individual PAGA Payment based the number of Qualified Pay Periods worked.[13] All Aggrieved Employees are also Class Members unless they opt-out of participation in the class action portion of the Settlement.[14]

For the foregoing reasons, Plaintiff respectfully requests that the Court take the following actions solely for the purposes of settlement: (a) grant preliminary approval of the Stipulation, (b) conditionally grant certification of the proposed settlement Class, (c) appoint Plaintiff Veronica Cusimano as settlement Class Representative, (d) appoint Eric A. Grover and Robert W. Spencer of Keller Grover LLP as Class Counsel, (e) approve the appointment of Phoenix Settlement Administrators ("Phoenix") as the Settlement Administrator,[15] (f) authorize the mailing of the Notice of Class and PAGA Action Settlement, and (g) schedule a final fairness and approval hearing.

II. SUMMARY OF PROCEDURAL BACKGROUND AND CLAIMS

On December 8, 2022, Plaintiff filed the initial complaint in Los Angeles County Superior

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[9] Ex. A at § I.X; Grover Decl. at ¶ 20.
[10] *See Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801-02; Grover Decl. at ¶ 21 ($80,833.34 estimated Net Settlement Amount/195 Settlement Class Members = $414.52); Ex. A at §§ I.T, I.Y, I.SS, III.M.2.a.
[11] Ex. A at § I.BB, III.M.5; *see* Lab. Code § 2699(l)(2).
[12] Ex. A at §§ I.BB; III.M.2.b.
[13] Ex. A at § III.M.2.b; *see also*, §§ I.C, I.KK; Grover Decl. at ¶ 26.
[14] Ex. A at § I.C; Grover Decl. at ¶ 16.
[15] Ex. A at § I.RR.

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Court alleging PAGA violation claims on behalf of all aggrieved employees based on Defendant's alleged failure to properly compute bonuses into employees' regular rate of pay, which led to the failure to pay meal and rest period premiums, overtime wages, and sick pay wages at the correct rates, failure to authorize and permit meal and rest periods, failure to provide accurate wage statements, failure to pay final pay within required time frames, and did not reimburse employees' necessary business expenses. Plaintiff filed the initial Complaint without alleging class action claims due to an apparent arbitration agreement between Defendant and the employees that precluded class claims.[16]

Plaintiff propounded discovery on January 26, 2023. Defendant responded on March 2, 2023, asserting numerous objections, including that it filed a motion to compel arbitration as described below.

On February 10, 2023, Defendant filed a petition to compel arbitration of Plaintiff's individual PAGA claims. The Court denied Defendant's motion on April 27, 2023. Addressing Defendant's appeal, the Court of Appeal determined that the arbitration agreement included an unenforceable waiver of non-individual PAGA claims that could not be severed, which rendered the entire arbitration agreement unenforceable.[17]

After the appellate court issued its decision on February 24, 2025, the Parties stipulated that Plaintiff would file an amended complaint to add the putative class claims. With the Court's approval, Plaintiff filed the First Amended Complaint on December 8, 2025, adding class claims on behalf of Plaintiff and a putative class of approximately 195 non-exempt employees who work or worked for Defendant in California. Plaintiff alleged that Defendant's practices violated Labor Code §§ 201-203, 226, 226.3, 226.7, 246, 510, 512, 558, 1194, 2802 and related provisions of Industrial Welfare Commission Wage Order No. 7 and Business & Professions Code §§ 17200, *et seq.*[18]

Defendant denies all the allegations in their entirety. To date, no class has been certified and no court has made any findings that Defendant engaged in any wrongdoing or in any wrongful

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[16] Grover Decl. ¶ 6.
[17] Grover Decl. ¶ 8.
[18] Grover Decl. ¶ 9; *see also*, Ex. B at ¶¶ 23-62.

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conduct or otherwise acted improperly or in violation of any state law, rule or regulation, with respect to the issues presented in the litigation.[19]

After agreeing to a stipulation allowing Plaintiff to file the FAC adding class claims, the Parties decided to explore the possibility of settlement. Plaintiff provided Defendant with a detailed information request in response to which Defendant provided information and documents necessary for Plaintiff to engage in meaningful settlement discussions.[20]

At the time the final settlement was reached, Defendant had provided relevant documents and information, including:

(A) The number of Class Members:
- There are approximately 195 Class Members.

(B) The total work weeks worked by Class Members:
- Class Members worked a total of approximately 6,828 Qualified Workweeks during the Class Period.

(C) Class Members' average hourly wage:
- Class Members were hourly employees and the average hourly wage during the Class Period was approximately $22.00.

(D) The total pay periods during the PAGA Period:
- Aggrieved Employees worked a total of approximately 3,414 Qualified Pay Periods during the PAGA Period.[21]

On November 13, 2025, the Parties participated in an all-day mediation session with skilled mediator Hon. Angela Bradstreet, Ret., who has significant experience mediating wage and hour class actions.[22] The mediated negotiations resulted in the Parties reaching an agreement to settle the entire action, subject to the Court's approval.[23] All terms of the Parties' settlement are set forth in the Stipulation.[24]

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[19] Ex. A at § III.G; Grover Decl. ¶ 10.
[20] Grover Decl. ¶ 11.
[21] Grover Decl. at ¶ 12; *see* Ex. A at §§ I.KK (defining Qualified Pay Periods); I.MM (defining Qualified Workweeks).
[22] Ex. A at § II.B; Grover Decl. at ¶ 13.
[23] *Id.*
[24] Grover Decl. at ¶ 13; *see generally*, Ex. A.

III. SUMMARY OF THE SETTLEMENT TERMS

A. The Settlement Class and Aggrieved Employees.

The Parties agreed that, for purposes of settlement only, the settlement class should be defined as:

> All current and former non-exempt employees who worked for Defendant in California at any time or times during the Class Period.[25]

The Class Period is the period from and including March 13, 2021, through November 13, 2025.[26] In this brief, the proposed settlement class members are referred to as the "Class Members."

For the PAGA claims, the Settlement defines "Aggrieved Employees" to mean "all current and former non-exempt employees who worked for Defendant in California at any time or times during the PAGA Period."[27] The PAGA Period is the period from and including August 29, 2021, through November 13, 2025.[28] All Aggrieved Employees are also Class Members unless they opt-out of participation in the class action portion of the Settlement.[29]

B. Notice Procedure and Settlement Process.

The proposed Notice of Class and PAGA Action Settlement ("Notice") explains in plain language the nature of the lawsuit, terms of the settlement, Class Members' rights, the expected settlement payment that each Class Member can expect to receive, the steps necessary for a Class Member to dispute the information used to calculate his or her settlement payment, and the steps necessary to request exclusion from or object to the settlement.[30]

"PAGA has no notice requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA action."[31] Even so, the Notice will inform the Class Members and Aggrieved Employees of the PAGA Settlement and the amount of the Individual PAGA Payment that the Aggrieved Employee can expect to receive.[32]

The Parties agreed upon a notice procedure that is intended to ensure the highest number of

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[25] Ex. A at § I.H; Grover Decl. at ¶ 14.
[26] Ex. A at § I.I; *see also*, Grover Decl. at ¶ 15.
[27] Ex. A at § I.C.
[28] Ex. A at § I.CC.
[29] Ex. A at § I.C; Grover Decl. at ¶ 16.
[30] Ex. A at §§ I.Z, III.L.2, Stipulation Exhibit 1; Grover Decl. at ¶ 36.
[31] *Baumann v. Chase Inv. Servs. Corp.* (9th Cir. 2014) 747 F.3d 1117, 1122.
[32] Ex. A at § III.L.2; Grover Decl. at ¶¶ 36, 38.

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Class Members receive the Notice. Phoenix, the company that the Parties selected to handle the Notice and settlement administration, will mail the Notice to Class Members based on contact information Defendant will provide from its records.[33] In the event any Notices are returned by the post office as undeliverable, the proposed notice procedure requires Phoenix to perform reasonable searches to attempt to locate Class Members' correct addresses.[34]

The settlement provides all Class Members with the opportunity to request exclusion from the settlement or object to the settlement terms.[35] Class Members will have 60 days from the date the Settlement Administrator mails the Notices to opt out of or object to the Settlement.[36]

Class Members are not required to submit a claim in order to participate in the Settlement and receive an Individual Settlement Payment.[37] The Notices will be individualized to state each Class Member's number of Qualified Workweeks and Qualified Pay Periods.[38] The Notices also will state the Settlement Administrator's calculation of each Class Member's estimated gross Individual Settlement Payment if that Class Member does not request exclusion from the Settlement and each Aggrieved Employee's estimated Individual PAGA Payment.[39] Class Members will have the ability to dispute the number of Qualified Workweeks stated on the individualized Notices.[40]

C. Benefits to the Class.

Plaintiff believes the settlement provides fair and adequate benefits for the Class Members. Although the maximum theoretical damages of the remaining claims exceed the Net Settlement Amount, the defenses to those claims discussed in the Grover Declaration warrant a substantial discount.[41] Defendant also asserts that Plaintiff will not succeed at class certification.[42]

Further, recent California Supreme Court case law has interpreted the "good faith" defense in a manner that makes it more difficult for employees to obtain certain penalties, including Labor

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[33] Ex. A at § III.L.3.
[34] Ex. A at § III.L.4.
[35] Ex. A at §§ III.L.7, III.L.8.
[36] Ex. A at §§ I.PP, III.L.7, III.L.8,.
[37] *See* Ex. A at §§ I.SS, III.M.2.a; Grover Decl. at ¶ 29.
[38] Ex. A at § III.L.2.b, *see also,* §§ I.KK, I.MM.
[39] Ex. A at § III.L.2.b.
[40] Ex. A at § III.L.5.
[41] Grover Decl. at ¶ 19, 22-24, 27; *see also*, Ex. A at § I.Y.
[42] Grover Decl. at ¶ 19.

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Code §§ 203 waiting time and 226(e)(1) penalties.[43] *Naranjo II* found that, if an employer who reasonably believes that its conduct was lawful, it will not be subject to penalties that are intended to deter willful or intentional misconduct.[44] In other words, *Naranjo II* approved a relatively low bar for establishing a good faith defense to avoid Labor Code §§ 203 and 226(e)(1) penalties.[45]

Taking those factors into account, Class Counsel believes the proposed allocations of the Net Settlement Amount to be fair and reasonable and a good compromise for the damages of absent Class Members.[46]

The settlement provides that Defendant will pay a Maximum Settlement Amount of $182,000, plus the employer's share of employer-side payroll taxes, to resolve the claims covered by the settlement.[47] After subtracting out the amounts allocated to pay the Settlement Administration Costs (capped at no more than $6,000), the PAGA Payment ($15,000), the Class Counsel Award (estimated to be $60,666.66 in fees and actual out-of-pocket costs currently estimated to be no more than $15,000), and the Class Representative Incentive Award/General Release Payment (estimated to be $5,000) from the Maximum Settlement Amount, each of which is subject to the Court's approval, the Net Settlement Amount ("NSA") is an estimated $80,833.34.[48] The NSA will be distributed to all Settlement Class Members, *i.e.*, all Class Members who do not timely opt out, based on the formula set forth in the Stipulation, summarized below.[49] There is no reversion of the MSA to Defendant.[50]

D. Payments to Settlement Class Members.

The Stipulation provides that NSA will be distributed proportionally based on the number

[43] *Naranjo v. Spectrum Sec. Serv., Inc.* (2024) 15 Cal.5th 1056, 1077-81 ("*Naranjo II*"). Although the Court addressed whether a good faith defense exists for Labor Code § 226(e)(1)'s "knowing and intentional" requirement, the Court did so by analyzing the "willfulness" requirement for § 203 penalties, finding the two should be harmonized. *Id.*; *see* Grover Decl. at ¶ 23.
[44] *Naranjo II*, *supra*, 15 Cal.5th at 1077-81.
[45] *Id.* at 1078 ("'[s]o long as no other evidence suggests the employer acted in bad faith, presentation of a good faith defense, based in law or fact, will negate a finding of willfulness,'" quoting *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1204 and citing other cases).
[46] Grover Decl. at ¶¶ 17-41; *see also*, ¶¶ 42-47.
[47] Ex. A at §§ I.X, III.M.1; Grover Decl. at ¶ 20.
[48] Ex. A at § I.Y; Grover Decl. at ¶ 21.
[49] Ex. A at §§ I.Y, I.SS, III.M.2; Grover Decl. at ¶ 21.
[50] Ex. A at §§ I.X, III.M; *see also*, Grover Decl. at ¶ 20.

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of Qualified Workweeks each Settlement Class Member worked during the Class Period.[51] Each Settlement Class Member will be assigned a share calculated by dividing his or her total number of Qualified Workweeks by the total number of Qualified Workweeks for the entire Settlement Class, which is that person's Payment Ratio.[52] The Payment Ratio then will be multiplied by the NSA to determine that Settlement Class Member's Individual Settlement Payment, except that no gross Individual Settlement Payment will be less than $25.[53] Settlement Class Members are not required to submit a claim to receive an Individual Settlement Payment.[54]

If no Class Member opts out, the average Individual Settlement Payment would be approximately $414.52 ($80,833.34/195).[55] For the reasons explained above, including the various defenses and other risks of litigation, the proposed settlement amount is fair and reasonable under the circumstances.[56]

E. Payments to the Aggrieved Employees and State

The Parties have agreed to allocate $15,000 of the MSA to settle the PAGA claims, referred to as the PAGA Payment.[57] Labor Code § 2699(i) requires that the LWDA receive 75% ($11,250) of the PAGA settlement amount and Aggrieved Employees receive 25% ($3,750).[58]

To distribute the 25% allocated to the Aggrieved Employees, the Settlement Administrator will distribute Individual PAGA Payments according to the formula set forth in the Settlement Agreement.[59] The Settlement Administrator will divide the respective Qualified Pay Periods for each Aggrieved Employees by the total Qualified Pay Periods for all Aggrieved Employees, resulting in the Payment Ratio for each Aggrieved Employee.[60] Each Aggrieved Employee's Payment Ratio then will be multiplied by the $3,750 portion of the PAGA Payment allocated to the

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[51] Ex. A at § III.M.2.a, *see also*, § I.MM Grover Decl. at ¶¶ 25, 30-31.
[52] Ex. A at § III.M.2.a, *see also*, §§ I.GG, I.MM.
[53] Ex. A at § § III.M.2.a, *see also*, §§ I.T, I.GG.
[54] Ex. A at § III.M.2; Grover Decl. at ¶ 29.
[55] Grover Decl. at ¶ 21; *see* Ex. A at § I.Y.
[56] *See* Grover Decl. at ¶¶ 17-41; *see also*, ¶¶ 42-47.
[57] Ex. A at §§ I.BB, III.M.5; Lab. Code § 2699(f).
[58] Lab. Code § 2699(i); *see* Ex. A at §§ I.BB, III.M.5.
[59] Ex. A at § III.M.2.b; *see also*, §§ I.S, I.BB.
[60] Ex. A at § III.M.2.b; *see also*, §§ I.S, I.KK; Grover Decl. at ¶ 32. "Qualified Pay Periods" means and includes any and all pay periods, inferred from Defendant's records, during which one or more Aggrieved Employee performed work for Defendant in California during the PAGA Period. Ex. A at § I.KK.

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Aggrieved Employees to calculate each Individual PAGA Payment.[61]

F. The scope of the Release applicable to Settlement Class Members.

The scope of the release is narrowly tailored to the claims asserted in the operative FAC and factual or legal theories that reasonably could have been alleged based on the facts and legal theories contained in the FAC.[62] The release is also temporally limited to the Class Period.[63]

G. The PAGA Release.

The settlement provides a separate PAGA Release through which Plaintiff, individually and as representative acting as a proxy or agent of the LWDA, a State of California Executive Branch Agency, releases the Released Parties of and from any and all claims for civil penalties, attorneys' fees, and litigation costs under PAGA, as alleged in the operative Complaint for the PAGA Period (the "PAGA Released Claims").[64] No individual Class Members or Aggrieved Employees are providing a PAGA Release.[65]

H. The Class Representative Incentive Award/General Release Payment.

The Stipulation provides for a reasonable enhancement for Plaintiff Cusimano to compensate her for the risks she took and the time and effort she expended in coming forward to provide invaluable information in support of the claims alleged in the Complaint.[66] Plaintiff Cusimano also will provide a general release of her claims against Defendant that is much broader than the release that will apply to the Settlement Class Members.[67]

Subject to the Court's approval, the settlement provides that Plaintiff Cusimano will receive $5,000 as a Class Representative Incentive Award/General Release Payment.[68] The service award is slightly less than three percent of the overall Maximum Settlement Amount.[69] The settlement provides that any amount allocated to the service award that the Court does not approve will become

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[61] Ex. A at § III.M.2.b, *see also*, §§ I.S, I.BB; Grover Decl. at ¶ 32.
[62] Ex. A at § III.B, *see also*, §§ I.NN, I.OO; Ex. B at ¶¶ 3-6, 23-62 (FAC); Grover Decl. at ¶ 33.
[63] Ex. A at § III.B, §§ I.I, I.NN; Grover Decl. at ¶ 33.
[64] Ex. A at §§ III.D, *see also*, § I.CC, I.DD, I.OO; Grover Decl. at ¶ 34.
[65] Grover Decl. at ¶ 34; *see* Ex. A at § III.D.
[66] Ex. A at §§ I.J, I.K, III.M.3; Grover Decl. at ¶ 48.
[67] *Compare* Ex. A at § III.C and § III.B; Grover Decl. at ¶ 48.
[68] Ex. A at § III.M.3.a.
[69] *See* Ex. A at §§ I.X, III.M.3.a.

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part of the NSA.[70] With the application for final approval, Plaintiff will submit a declaration detailing the time and effort she put into this case.[71]

I. Attorneys' fees and costs.

The Stipulation also provides that, at final approval, Class Counsel will seek an award of attorneys' fees not to exceed one-third (33.33%) of the MSA, *i.e.*, $60,666.66 of the $182,000 MSA, and the actual costs and litigation expenses, which currently are estimated not to exceed $15,000, referred to collectively as the Class Counsel Award.[72] The fee request of 33.33% of the MSA is reasonable given the time invested in the case and the amount that will be paid to the 195 Class Members. With the final application, Class Counsel will provide information regarding the hours they have spent litigating this case.[73] The settlement provides that any amount allocated to the Class Counsel Award that the Court does not approve will become part of the NSA.[74]

J. Administration costs.

The Stipulation allocates up to $6,000 of the MSA for the costs of settlement administration, subject to the Court's approval.[75]

K. Residual funds.

All settlement checks issued to Settlement Class Members will be valid for 120 calendar days from the date of issuance.[76] The settlement provides that, after the check void date, the Settlement Administrator will send any funds from uncashed checks to Legal Aid at Work.[77] Legal Aid at Work provides pro bono representation in various areas including workers' rights.[78]

L. Overlapping cases.

There are no other known related pending cases that will be affected by this settlement.[79]

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[70] Ex. A at § III.M.3.b.
[71] Grover Decl. at ¶ 48.
[72] Ex. A at § III.M.4; *see also*, §§ I.E, I.F, I.X; *see* Grover Decl. at ¶ 21.
[73] Grover Decl. at ¶ 53.
[74] Ex. A at § III.M.4.c.
[75] Ex. A at § III.M.6.
[76] Ex. A at § III.M.2.e.
[77] Ex. A at § III.M.2.e; Grover Decl. at ¶ 49. *See* https://legalaidatwork.org.
[78] Grover Decl. at ¶ 78. *See* https://legalaidatwork.org.
[79] Grover Decl. at ¶ 50.

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M. Notice of the PAGA settlement to the LWDA.

Because the Parties have agreed to settle the PAGA claims in this action, Class Counsel has sent Plaintiff's motion for preliminary approval, this memorandum, the Grover Declaration, with its exhibits including the Stipulation, the Declaration of Robert Spencer and the proposed order to the LWDA.[80]

N. Tax treatment.

The Stipulation provides that the Individual Settlement Payments to be paid to Settlement Class Members are seventy-five percent (75%) as payment for alleged unpaid interest, alleged unpaid business expense reimbursement, and alleged unpaid statutory penalties; and 2) twenty-five percent (25%) as wages.[81] For tax purposes, Individual PAGA Payments shall be allocated and treated as 100% penalties.[82] The Settlement Administrator will be responsible for issuing and mailing all required IRS Form 1099s.[83]

IV. LEGAL ANALYSIS

A. Two-step approval process.

Any settlement of class litigation must be reviewed and approved by the Court.[84] This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after notice has been distributed to the Class Members for their comment or objections. The Manual for Complex Litigation (Third) § 30.41 states:

> Approval of class action settlements involves a two-step process. First, counsel submits the proposed terms of settlement and the court makes a preliminary fairness evaluation. If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of class representatives or of segments of the class, or excessive compensation for attorneys, and appears to fall within the range of possible approval, the court should direct that notice … be given to the class members of a formal fairness hearing, at which arguments and evidence may be presented in

[80] *See* Declaration of Robert Spencer filed with Plaintiff's motion for preliminary approval.
[81] Ex. A at § III.M.2.c; *see also*, § I.T.
[82] Ex. A at § III.M.2.c; *see also*, § I.S.
[83] Ex. A at § III.M.2.c; Grover Decl. at ¶ 51.
[84] Cal. Rules of Court 3.769; Fed. R. Civ. Pro. 23(e). The California Supreme Court has authorized California's trial courts to use Federal Rule 23 and cases applying it for guidance in considering class issues. *See Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146. Where appropriate, therefore, Plaintiff cites Federal Rule 23 and federal case law in addition to California law.

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> support of and in opposition to the settlement.[85]

Thus, the preliminary approval by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. As Professor Newberg comments, "[t]he strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court may find that the settlement proposal contains some merit, is within the range of reasonableness required for a settlement offer or is presumptively valid subject only to any objections that may be raised at a final hearing."[86]

The procedures for the submission of a proposed settlement for preliminary approval by the court also are discussed in 4 Newberg on Class Actions:

> When the parties to an action reach a monetary settlement, they will usually prepare and execute a joint Stipulation, which is submitted to the court for preliminary approval. The stipulation should set forth the essential terms of the agreement, including but not limited to, the amount of settlement, form of payment, manner of determining the effective date of settlement and any recapture clause.[87]

Here, the Parties have reached such an agreement, which Plaintiff now submits to this Court, in connection with this Motion. The Stipulation sets forth all terms of the agreement reached by the Parties.[88]

B. Procedures for Settlement Before Class Certification.

Pursuant to Cal. Rules of Court Rule 3.769, the parties also may, at the preliminary approval stage, request that the court provisionally approve certification of the class – conditional upon final approval of the settlement. "[P]re-certification settlements are routinely approved if found to be fair and reasonable."[89]

> The strength of the findings made by a judge at a preliminary hearing or

[85] The Manual for Complex Litigation (Third).
[86] 4 Alba Conte & Herbert B. Newberg, Newberg on Class Actions, § 11.26 (4th ed. 2002).
[87] 4 Newberg on Class Actions at § 11.24.
[88] *See* Ex. A; Grover Decl. at ¶ 13.
[89] *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244, *overruled on other grounds* by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal. 5th 260, 269; *accord Dunk*, *supra*, 48 Cal. App. 4th at 1803 (although the settlement was reached before any "adversary certification," the court was satisfied that it was "fair, adequate and reasonable."); *see also*, *In re Baldwin-United Corp.* (S.D.N.Y. 1984) 105 F.R.D. 475, 478 ("many courts have employed this practice in the name of judicial efficiency in order to facilitate apparently beneficial settlement proposals.").

> conference concerning a tentative settlement proposal . . . may be set out in conditional orders granting tentative approval to the various items submitted to the court. Three basic rulings are often conditionally entered at this preliminary hearing. These conditional rulings may approve a temporary settlement class, the proposed settlement, and the class counsel's application for fees and expenses.[90]

Each such condition is appropriate here (although, as mentioned, the Parties do not hereby seek final approval of the award to proposed Class Counsel, which will be addressed at the final approval stage).

1. The proposed Class should be certified solely for settlement purposes.

It is well established that trial courts should use a lower standard for determining the propriety of certifying a settlement class, as opposed to a litigation class.[91] The reason for this is that no trial is anticipated in a settlement class, so the case management issues inherent in determining if the class should be certified need not be confronted.[92] The proposed settlement class meets all requirements for certification of a settlement class, as discussed below.

a) The proposed settlement Class is ascertainable and too numerous to make joinder practicable.

The proposed settlement Class is ascertainable. The Class definition, the total size of the Class and the means for identifying the members of the Class determine whether it is ascertainable. In this case, the members of the proposed settlement Class are identifiable from Defendant's records.[93]

Further, the size of the proposed Class is sufficiently numerous to warrant certification. According to Defendant's records, there are approximately 195 proposed Class Members.[94]

b) Questions of law and fact common to members of the settlement Class predominate.

The proposed Class Members' claims all stem from a common set of circumstances. All Class Members have worked or work as non-exempt employees for Defendant in California during

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[90] 4 Newberg on Class Actions, at § 11.26.
[91] *Dunk*, *supra*, 48 Cal. App. 4th at 1807, n. 19.
[92] *Amchem Products, Inc. v. Windsor* (1987) 521 U.S. 591, 620.
[93] *Reyes v. Board of Supervisors* (1987) 196 Cal.App.3d 1263, 1274.
[94] *See* Grover Decl. at ¶ 12.

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the relevant time period. Plaintiff contends that all Class Members were subject to Defendant's uniform practices and policies regarding the computation of bonuses into employees' regular rate of pay and related calculations of rates for meal and rest period premiums, overtime wages, and sick pay wages. Plaintiff also contends that all Class Members were subject to Defendant's uniform practices and policies regarding the provision of meal periods and rest breaks, wage statements, termination pay and expense reimbursement. Those uniform policies and practices are at the core of Plaintiff's allegations that Defendant violated the Labor Code and create questions of law and fact common to all Class Members. All Class Members seek the same legal remedies under the same state laws.[95]

Furthermore, the common questions regarding Defendant's pay, meal and rest break, wage statement and expense reimbursement policies and practices are among the key issues that will determine Defendant's alleged liability to the proposed settlement Class. Plaintiff contends that common questions will predominate over any individual questions that may arise. Under these circumstances, the requirements that common questions of law and/or fact exist among the proposed Class Members and will predominate over individual questions are satisfied for purposes of certifying the Class for settlement.[96]

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c) The Proposed Class Representative's Claims are typical of the Class Members' Claims.

A class representative's claims are typical when they arise from the same event or course of conduct that gives rise to the claims of the class, and are based on the same legal theory.[97] In this case, the named Plaintiff contends that she, like all Class Members, worked for Defendant as a non-exempt employee in California during the Class Period. And like all Class Members, Plaintiff was subject to Defendant's uniform policies and practices referenced above. Thus, Plaintiff's claims and the Class Members' claims arise from the same course of conduct.[98]

[95] Grover Decl. at ¶ 45.
[96] *Id*.
[97] *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46-47.
[98] Grover Decl. at ¶ 46.

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d) The Proposed Class Representative will adequately represent the Class.

The named Plaintiff also has demonstrated that she will aggressively and competently assert the Class Members' interests. Plaintiff has retained competent counsel, experienced in litigating class action claims in the wage and hour context.[99] Thus, the Court should conditionally certify the proposed Class solely for settlement purposes.

C. The settlement is fair and reasonable and not the result of fraud or collusion.

"The trial court operates under a presumption of fairness when the settlement is the result of arm's-length negotiation, investigation and discovery that are sufficient to permit counsel and the court to act intelligently, counsel are experienced in similar litigation, and the percentage of objectors is small."[100]

While the recommendations of counsel proposing the settlement are not conclusive, the Court can properly take them into account, particularly where, as here, such counsel have been involved in substantial informal discovery and negotiations, appear to be competent, have experience with this type of litigation, and have exchanged substantial, relevant information with the opposing party.[101] Here, both Plaintiff's counsel and Defendant's counsel have a great deal of experience in wage and hour matters and class action litigation.[102] Moreover, both Class Counsel and defense counsel conducted an extensive investigation of the factual allegations involved in this case. The Parties have engaged in the exchange of relevant documents, records and other information necessary to evaluate the strengths and weaknesses of the case. Each side has apprised the other of their respective factual contentions, legal theories and defenses, resulting in extensive arm's-length negotiations – including formal mediation with an experienced mediator – taking

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[99] *See* Grover Decl. at ¶¶ 2-4.

[100] *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723, citing *Dunk*, *supra*, 48 Cal.App.4th at 1800-01, which cited *Officers for Justice v. Civil Service Com'n*, (9th Cir. 1982) 688 F.2d 615, 625; *see also, e.g., Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245 (similar), *overruled on other ground by Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 270.

[101] *See* Newberg on Class Actions, § 11.47; *Wershba*, *supra*, 91 Cal.App.4th at 245; *In re Paine Webber Ltd. P'ships Litig.* (S.D.N.Y. 1997) 171 F.R.D. 104, 125 ("[s]o long as the integrity of the arm's length negotiation process is preserved, however, a strong initial presumption of fairness attaches to the proposed settlement . . . [citations] and 'great weight' is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation").

[102] *See* Grover Decl. at ¶¶ 2-4.

place between the Parties.[103]

Plaintiff believes the settlement for each Class Member to be fair, reasonable and adequate, given the inherent risk of litigation and the costs of pursuing such litigation.[104] The settlement shall finally resolve all claims arising out of the claims that were expressly pleaded in the operative Complaint, *i.e.*, Labor Code §§ 201, 202, 203, 226, 226.7, 246, 510, 512, 1194, and 2802 and related provisions of Wage Order No. 7 claims and related Business and Profession Code §§ 17200, *et seq.*, claims based on alleged violations of these Labor Code provisions, together with interest, fees, and costs related to those claims.[105] The Release Period for the Released Claims shall be the same as the Class Period, *i.e.*, from and including March 13, 2021, through November 13, 2025.[106] The settlement also finally resolves any and all PAGA claims alleged in the Complaint for civil penalties, attorneys' fees, and litigation costs during the PAGA Period.[107]

The settlement also compensates the named Plaintiff with a reasonable Incentive Award/General Release Payment, taking into consideration the risks, time, effort, and expenses she incurred in coming forward to provide invaluable information, negotiate, and litigate this matter on behalf of all Class Members against her former employer.[108] The named Plaintiff also will provide a General Release of her individual claims against Defendant.[109]

Fairness of the settlement is further demonstrated by the uncertainty and risks to Plaintiff involved both in not prevailing on one or more of the causes of action or theories alleged in the Complaint and in non-certification.[110] Defendant disputes Plaintiff's ability to certify a class and to prove that Defendant is liable to the Class for its pay, meal period and rest break, wage statement, and expense reimbursement policies and practices. Were a class not certified, it is unlikely that any Class Member would maintain an individual action against Defendant.[111]

Moreover, it is established that settlements that are only a small percentage of a *theoretical*

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[103] Grover Decl. at ¶ 11-13, 39; *see* Ex. A at § III.B.
[104] Grover Decl. at ¶¶ 17-41.
[105] *See* Ex. A at §§ III.A, III.B, III.M, see also,§§ I.X, I.NN, I.OO; *see* Ex. B (FAC) at ¶¶ 23-62.
[106] *See* Ex. A at §§ III.B, I.I, I.NN.
[107] Ex. A at §§ III.D, III.M.5, *see also*, §§ I.BB, I.CC, I.DD;
[108] Ex. A at §§ I.J, I.K, III.M.3; Grover Decl. at ¶ 48.
[109] Ex. A at § III.C; Grover Decl. at ¶ 48.
[110] Grover Decl. at ¶¶ 19, 41.
[111] *See* Grover Decl. at ¶ 19, *see also*, ¶¶ 42-47.

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recovery do not preclude a court from finding that a settlement is fair. Courts regularly find that settlements for substantially less than the plaintiff's theoretical maximum damages are fair and reasonable, especially when considering factors such as defendant's defenses and the uncertainties, risks and delay involved in litigation.[112]

Despite the asserted fairness of the settlement terms, should any proposed Class Member, upon reviewing the Notice of proposed settlement, object to the terms of the settlement as set forth in the Stipulation, each has the right to submit a request for exclusion (*i.e.*, opt out) from the settlement, pursuant to which the Class Member would retain any claim he or she may have against Defendant.[113] Moreover, Class Members who do not opt out may object to one or more of the settlement terms set forth in the Stipulation.[114]

D. The PAGA Payment is reasonable and warrants approval.

Labor Code § 2699(l)(2) requires court approval of any PAGA settlement. Class action requirements do not apply to PAGA actions.[115] "PAGA has no notice requirements for unnamed Aggrieved Employees, nor may such employees opt out of a PAGA action."[116] The circumstances of the settlement, rather than the amount allocated to PAGA claims, determine whether a PAGA settlement is appropriate.[117]

As part of the final approval process, Plaintiff will seek the Court's approval of the PAGA portion of the Settlement, including the $15,000 PAGA Payment, the distribution plan for the PAGA Payment and the PAGA Release.[118]

V. CONCLUSION

Based on the foregoing, Plaintiff requests that this Court, as part of its preliminary approval of the settlement, do the following:

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[112] *See e.g.*, *Wershba*, *supra*, 91 Cal.App.4th at 246-47, 250-51; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1150; *Glass v. UBS Fin. Servs.*, No. C-06-4068 MMC (N.D. Cal. Jan. 26, 2007) 2007 U.S. Dist. LEXIS 8476, at *13, *aff'd*, (9th Cir. 2009) 331 F. App'x 452.
[113] Ex. A at § III.L.7, *see also*, § I.PP.
[114] Ex. A at § III.L.8, *see also*, § I.PP.
[115] *Arias v. Superior Court* (2009) 46 Cal.4th 969, 974.
[116] *Baumann*, *supra*, 747 F.3d at 1122.
[117] *Nordstrom Com'n Cases* (2010) 186 Cal.App.4th 576, 589.
[118] Ex. A at § III.M.5; Grover Decl. at ¶ 34, fn. 6.

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1. Review the proposed Stipulation setting forth the settlement terms;

2. Consider whether the proposed settlement preliminarily appears to be fair, reasonable and adequate;

3. Confirm that the proposed settlement Class preliminarily appears to meet the applicable certification criteria;

4. Preliminarily approve the Stipulation;

5. Appoint Veronica Cusimano as settlement Class Representative and appoint Eric A. Grover and Robert W. Spencer of Keller Grover LLP as Class Counsel solely for settlement purposes;

6. Approve Phoenix Settlement Administrators as Settlement Administrator with regard to handling the notice and settlement procedure as set forth more particularly in the Stipulation; and

7. Enter an Order provisionally approving the proposed settlement class on a non-mandatory basis, approve the proposed Notice to be distributed to Class Members, and direct the Notice to be given to Class Members in accordance with the procedure set forth in the Stipulation.

Respectfully submitted,

Dated: June 4, 2026

KELLER GROVER LLP

By: ______________________________
ERIC A. GROVER
ROBERT W. SPENCER
Attorneys for Plaintiff and proposed Class Counsel

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PROOF OF SERVICE

I, JOEY GONZALEZ, am employed in the County of San Francisco, State of California. I am over the age of eighteen and not a party to the within action. My business address is 1965 Market Street, San Francisco, California 94103. On **June 4, 2026,** in the case of *Cusimano v. Brilliant Earth, LLC*, Los Angeles County Superior Court case number 22SMCV02621, I served the foregoing document(s):

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

on the interested party(ies) below, using the following means:

James Smith, Esq. Kevin L. Quan, Esq. Kayla Frederickson, Esq. **KILPATRICK TOWNSEND & STOCKTON LLP** Two Embarcadero Center, Suite 1900 San Francisco, CA 94111 James.Smith@kilpatricktownsend.com kquan@ktslaw.com kfrederickson@kilpatricktownsend.com Cc: ecerletti@kilpatricktownsend.com	*Attorneys for Defendant* **BRILLIANT EARTH, LLC**
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☒	(BY ELECTRONIC SERVICE) by electronically mailing a true and correct copy in PDF format through our electronic mail system to the email address(es) set forth above, or as stated on the attached service list per CCP § 1010.6 or an agreement between the parties.
☒	(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

JOEY GONZALEZ

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VERONICA CUSIMANO vs BRILLIANT EARTH, LLC, A DELAWARE LIMITED LIABILITY COMPANY,

Case Number: 22SMCV02621 Case Type: Civil Unlimited Category: Other Employment Complaint Case
Date Filed: 2022-12-08 Location: Beverly Hills Courthouse - Department 205

Reservation

Case Name: VERONICA CUSIMANO vs BRILLIANT EARTH, LLC, A DELAWARE LIMITED LIABILITY COMPANY,	Case Number: 22SMCV02621
Type: Motion re: (Motion for Preliminary Approval of Class Action and PAGA Settlement)	Status: RESERVED
Filing Party: Veronica Cusimano (Plaintiff)	Location: Beverly Hills Courthouse - Department 205
Date/Time: 07/28/2026 8:30 AM	Number of Motions: 1
Reservation ID: 635264219399	Confirmation Code: CR-E9ERUSZCEWKB3B448

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	0.00	1	0.00
TOTAL			**$0.00**

Payment

Amount: $0.00	Type: NOFEE
Account Number: n/a	Authorization: n/a
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