Kevin A. Lipeles (Bar No. 244275)
kevin@kallaw.com
Thomas H. Schelly (Bar No. 217285)
thomas@kallaw.com
LIPELES LAW GROUP, APC
1060 Aviation Blvd., Suite 100
Hermosa Beach, CA 90254
Telephone: (310) 322-2211
Facsimile: (310) 322-2252

Attorneys for Plaintiff
AMIYAH SUMNER

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

AMIYAH SUMNER, an individual, on her own behalf and on behalf of all others similarly situated,

Plaintiffs,

vs.

THE INFORMATION AND REFERRAL FEDERATION OF LOS ANGELES COUNTY, a California non-profit corporation; and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 25-STCV12754

NOTICE OF MOTION AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL

Judge: Hon. Elaine Lu
Date: September 8, 2026
Time: 8:30 AM
Dept.: 9

Complaint Filed: April 30, 2025 Trial
Date: None Set

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Treatises

NOTICE IS HEREBY GIVEN that, on September 8, 2026, at 8:30 AM in Department 9 of the Los Angeles Superior Court before the Honorable Elaine Lu, pursuant to California Code of Civil Procedure §382, Plaintiff Amiyah Sumner ("Plaintiff"), on behalf of herself and all others similarly situated, will and does hereby move this Court for entry of an Order:

1. Preliminarily certifying the class for purposes of settlement only;

2. Preliminarily appointing Plaintiff as Class Representative for purposes of settlement only;

3. Preliminarily appointing Kevin Lipeles, Esq. and Thomas Schelly, Esq. of Lipeles Law Group, APC, as Class Counsel for purposes of settlement only;

4. Preliminarily approving the settlement as fair, adequate, and reasonable, based upon the terms set forth in the Parties' Class Action and PAGA Settlement Agreement and Class Notice ("Settlement Agreement"), including payment by the Information and Referral Federation of Los Angeles County ("Defendant") of the Gross Settlement Amount of $375,000.00;

5. Preliminarily approving the Class Representative Service Payment in the amount of $10,000 to Plaintiff in recognition of her service to the Settlement Class;

6. Preliminarily approving Plaintiff's Counsel's request for up to $131,250.00 (35%) of the Gross Settlement Amount as attorneys' fees;

7. Preliminarily approving Plaintiff's Counsel's request for actual costs from the Gross Settlement Amount in an amount up to $12,500.00;

8. Appointing Phoenix Class Action Administration Solutions ("Phoenix") as the third-party Administrator for mailing notices and for claims administration, approving that a maximum of $9,000.00 be deducted from the Gross Settlement Amount for the costs of administration, and approving that the fees and costs of the Administrator will be paid from the Gross Settlement Amount; and

9. Approving the proposed Class Notice and ordering it be disseminated to the Class as provided in the Settlement Agreement.

This motion is based upon this Notice of Motion and Motion; the Memorandum of Points and Authorities in Support thereof; the declarations of Jasmine Badawi, Esq., Jodey Lawrence and Amiyah Sumner in Support thereof; the Settlement Agreement; the proposed Order; the other records, pleadings, and papers filed in this action; and upon such other documentary and verbal evidence or argument as may be presented to the Court at the hearing of this motion.

Dated: June 4, 2026

Respectfully submitted,

LIPELES LAW GROUP, APC

By: ______________________

Kevin Lipeles, Esq.
Thomas Lipeles, Esq.
Attorneys for Plaintiff and the Settlement Class

I. INTRODUCTION

Plaintiff Amiyah Sumner ("Plaintiff"), on behalf of herself and the putative Settlement Class[1] requests that this Court preliminarily approve the Parties' proposed Settlement Agreement,[2] entered into by Plaintiff and the Information & Referral Federation of LA Co., ("Defendant") in May 2026. Defendant does not oppose Plaintiff's instant Motion.[3] The proposed Settlement Agreement satisfies all of the criteria for preliminary settlement approval under California Code of Civil Procedure §382, and falls well within the range of reasonableness. Accordingly, Plaintiff requests that the Court grant preliminary approval of the proposed Settlement, approve the proposed notice plan, and schedule a final approval hearing, all of which is described in detail below.

The Settlement Agreement seeks to fully release and discharge Defendant from the claims brought against it in the above-captioned matter (the "Action"[4]) and all related penalties on the date when Defendant fully funds the entire Gross Settlement Amount.[5] In exchange, Defendant will pay the Settlement Class up to $375,000.00 ("Gross Settlement Amount") with no reversion to Defendant.

The Settlement Agreement and Notice distribution plan were the products of non-collusive, arm's-length negotiations by informed counsel and parties. The settlement is fair, reasonable and adequate to all. Accordingly, Plaintiff seeks: (1) preliminary approval of the

---

[1] The proposed Settlement Class is defined as: all current and former hourly employees employed by Defendant in California who were classified as non-exempt employees at any time between April 30, 2021 through March 19, 2026.

[2] The Settlement Agreement is attached as Exhibit A to the Declaration of Jasmine Badawi ("Badawi Decl." filed herewith). The proposed Class Notice is attached as Exhibit 1 to the Settlement Agreement.

[3] Defendant vigorously denies liability or wrongdoing with respect to its wage and hour policies and practices. Defendant reserves its right to assert any and all defenses to the claims asserted by Plaintiff and the putative class. Further, Defendant joins in this motion to preliminarily approve of the settlement of a lawsuit that was filed as a class action, but specifically denies that a settlement was necessary as a result of any action or inaction by Defendant. Defendant agrees to resolve the claims asserted by Plaintiff on a class basis to avoid incurring additional substantial costs beyond those which have already been incurred as well as the delay and risks that would be presented by further prosecution of the litigation. The proposed settlement includes a non-admissions clause and Defendant has at all times maintained that its wage and hour policies and practices are fully lawful. Hence, Defendant does not join in the substance of the representations made by Plaintiff in this motion and specifically denies the negative characterizations of Defendant's conduct as well as Plaintiff's interpretation of certain legal authorities. Defendant, therefore, also reserves its right to clarify any aspect of the motion that it believes needs to be addressed.

[4] All capitalized terms have the same meaning as in the Settlement Agreement.

[5] Settlement Agreement, ¶5.

Settlement Agreement; (2) provisional certification of the Settlement Class; (3) appointment of Plaintiff as Class Representative; (4) appointment of Kevin Lipeles, Esq. and Thomas Schelly, Esq. as Class Counsel; (5) approval of the Parties' proposed form and method of notifying Class Members of the Settlement Agreement; (6) an order scheduling the hearing date for Final Approval of the Class Settlement; and (7) entry of a preliminary approval Order.

II. FACTUAL SUMMARY

A. Claims

Plaintiff alleges claims for failing to pay daily overtime in excess of eight hours per work day and sick leave wages. These extensive alleged Labor Code violations also resulted in Defendant issuing inaccurate itemized wage statements to Class Members and failing to pay wages due upon termination of employment to Class Members who are former employees. Additionally, Plaintiff alleges claims for failing to reimburse business expenses and failing to allow inspection of employment records.

Plaintiff contends that the foregoing also violated Cal. Bus. & Prof. Code §17200, *et seq*. Plaintiff also alleged that Defendant was liable for PAGA penalties pursuant to California Labor Code §2699.

Defendant vigorously denies each of Plaintiff's allegations, and contends that they maintained compliant wage and hour practices and policies.

B. Procedural History

On April 30, 2025, Plaintiff Amiyah Sumner commenced this Action (Case No. 25-STCV12754) by filing a complaint alleging causes of action against Defendant for (1) failure to pay overtime (Cal. Lab. Code §§ 510, 558, 1194, 1194.3, 1198; IWC Wage Order No. 4); (2) failure to maintain records and provide accurate itemized wage statements (Cal. Lab. Code § 226; Wage Order No. 4); (3) failure to pay wages due upon termination (Cal. Lab. Code §§ 201–203; Wage Order No. 4); (4) failure to reimburse business expenses (Cal. Lab. Code § 2802); (5) failure to pay all sick leave wages when due (Cal. Lab. Code §§ 201-204, 218, 218.5, 233, 245, 246 *et seq*.); (6) failure to allow inspection of employment records (Cal. Lab. Code § 1198.5); and (7) unfair competition (Cal. Bus. & Prof. Code §§ 17200 et seq.).

On July 7, 2025, Plaintiff Amiyah Sumner filed a First Amended Complaint ("FAC") adding a claim for civil penalties pursuant to the Private Attorneys General Act (PAGA) (Cal. Labor Code §§2699 *et seq.*). The FAC is the operative complaint in the Action.

C. Marshalling of Evidence

Through informal discovery, Plaintiff's counsel has diligently pursued an investigation of the putative Class Members' claims, including: (1) extensive review and analysis of relevant documents, including but not limited to documents relating to payroll and timecard data; (2) review of relevant data regarding the size of the putative class; (3) detailed examination of data related to Defendant's PAGA exposure; and (4) research with respect to the applicable law and the potential defenses thereto. Badawi Decl. ¶8.

1. Documents

The parties engaged in informal discovery in preparation for a private mediation. Badawi Decl. ¶¶7-8. Defendant provided information concerning the total number of Class Members (353), and a 20% sample of payroll and timecard data. The sample is statistically reliable because it is representative of the Class and is of sufficient size. *Id*. at ¶ 7.

2. Data and Damages Model

As part of informal discovery prior to mediation, Defendant culled its documents relating to its wage and hour policies and practices. To estimate the class-wide damages associated with Plaintiff's and the Class's claims, Plaintiff's counsel examined and analyzed the above-described voluminous documents.

From the data received from Defendant, Plaintiff constructed a damages model based on Defendant's exposure. Badawi Decl. ¶13.

a. <u>Failure to Pay Overtime Claim</u>

Plaintiff assumed that Defendant's non-exempt, hourly employees' off the clock work was 5 minutes per shift. The average wage rate for all employees during the Class Period was $22.28 per hour. The total number of unpaid overtime hours in the statutory period was 8,488 regular hours. Thus, the total amount of overtime owed equaled $189,113.00 as of the date of mediation, February 19, 2026. (8,488 * 22.28). Badawi Decl. ¶13A.

b. Failure to Provide Accurate Wage Statements Claim

Concerning the wage statement claim,[6] the putative class was comprised of approximately 216 current employees during the one-year statutory period. There were 24 pay periods per year. The value of Plaintiff's wage statement claim was $44,650.00, calculated as follows: Current employees (216, at the time of mediation) * $2,350 ($50.00 (initial violation) + $100 (subsequent violations) = $507,600.00. Badawi Decl. ¶13B.

c. Failure to Pay Wages on Termination Claim

Concerning waiting time penalties, the putative class is comprised of approximately 106 former employees during the statutory period. Plaintiff assumed 30 days per employee at 8 average shift hours per day, $22.28 average rate of pay and 106 former employees each year are in the Section 203 subclass. The potential value of the waiting time penalty claim[7] for the Class Members who are former employees of Defendant is $566,803, calculated as follows: 106 employees * 8 average shift hours per day * $22.28 * 30 days = $566,803.00. Badawi Decl. ¶13C.

d. Failure to Reimburse Business Expenses Claim

Plaintiff assumed there was $9.28[8] of unreimbursed cell phone business expenses per week. There were 25,465 Workweeks in the Class Period through February 19, 2026.

According to Plaintiff's damages model, Defendant's exposure for unreimbursed cell phone business expenses, excluding interest, amounted to approximately $236,315.00 (25,465 * $9.28). Badawi Decl. ¶13D.

Plaintiff assumed $1.35[9] of unreimbursed computer moniter usage per week. There were

---

[6] Labor Code §226(e) provides that an employee is entitled to recover $50 for the initial pay period in which a violation of Labor Code §226 occurs and $100 for each subsequent pay period, not to exceed $4,000, as well as an award of costs and reasonable attorneys' fees, for all pay periods in which the employer knowingly and intentionally fails to provide accurate itemized statements to the employee causing the employee to suffer injury. There are 24 pay periods per year. The wage statement violation claim is derivative of Plaintiff's other claims and depends on the actual number of violations found to exist.

[7] Under Labor Code 203(a), Plaintiff and the Class are entitled to one day's wages for each day he or she was not timely paid, not to exceed 30 days' wages.

[8] Cell phone reimbursement cost: http:www.//insights.samsung.com/2022/05/16/how-much-should-you-compensate-byod-employees-for-mobile-expenses-3/

[9] Monitor usage reimbursement cost: https://www.goworkwize.com/blog/it-equipment-average-cost

25,465 Workweeks in the Class Period through February 19, 2026.

According to Plaintiff's damages model, Defendant's exposure for unreimbursed computer monitor usage expenses, excluding interest, amounted to approximately $34,378.00 (25,465 * $1.35). Badawi Decl. ¶13D.

The total unreimbursed business expenses are $270,693.00.

e. <u>Failure to Pay Sick Leave Wages Claim</u>

Sick pay calculations were performed using the provided payroll data on a pay-period-by-pay-period basis. Plaintiff analyzed sick pay and calculated the adjusted regular rate (which includes bonus and commission payments) and sick pay was recalculated using the adjusted regular rate. Out of 546 total pay periods, 206 were identified as having some degree of sick pay underpayment. The average underpayment per affected pay period was $14.80, resulting in a total sick pay underpayment of $3,048 calculated as follows: (206 × $14.80 = $3,048).

Extrapolating that amount to the full class (using an extrapolation multiplier of 5) results in a total estimated sick pay underpayment of $15,240.00. Badawi Decl. ¶13E.

f. <u>Failure to Allow Inspection of Employment Records</u>

Concerning the failure to allow inspection of employment records claim, the putative class is comprised of approximately 216 employees. The potential value of Plaintiff's failure to allow inspection of employment records claim is $162,000.00, calculated as follows: $750.00 x 216 = $162,000.00. However, the ability to recover penalties for all class members is highly unlikely and depends on an individual inquiry as to whether each specific class member actually made a proper request for their records which was improperly denied by Defendant. Badawi Decl., ¶ 13F.

g. <u>Unfair Competition</u>

Concerning unfair competition, the restitution owed is $475,046.00. Badawi Decl., ¶ 13G. Plaintiff's claim under the UCL is derivative of their other wage claims. Thus, Plaintiff is not likely to obtain a double recovery for the same harm. *See, e.g. Plotnick v. Meihaus* (2012) 208 Cal. App. 4th 1590, 1612 ("Even where there are multiple legal theories upon which recovery might be predicated, one injury gives rise to only one claim for relief.... Regardless of the nature or number of legal theories advanced by the plaintiff, he is not entitled to more than a single recovery for each distinct item of compensable damage supported by the evidence. Double or duplicative recovery for the same items of damage amounts to overcompensation and is therefore prohibited."

h. Damages Model

The Damages Model manifested the following conclusions concerning Defendant's exposure, excluding interest:

ALLEGATION	**LIABILITY RISK**
Failure to Pay Overtime Claim	$189,113.00
Failure to Issue Accurate Itemized Wage Statement Claim	$507,600.00
Failure to Pay Wages on Termination Claim	$566,803.00
Failure to Reimburse Business Expenses Claim	$270,693.00
Failure to Pay Sick Leave Wages Claim	$15,240.00
Failure to Allow Inspection of Employment Records	$162,000.00
Unfair Competition	$475,046.00
Total, excluding interest	**$2,186,495.00**

Badawi Decl. ¶13H.

The following chart shows the amount of PAGA penalties on the overtime claim only since based on Labor Code 2699(h)(3)(i) PAGA penalties cannot be stacked:

Number of Pay Periods in PAGA Period	6,318	
Number of Pay Periods in PAGA Period – Overtime	6,318	
PAGA Penalty for Overtime	$631,800	$100/$100
Total PAGA penalties	**$631,800**	

Since PAGA penalties cannot be stacked, the maximum recoverable PAGA penalties is $631,800.00. Badawi Decl. ¶13H.

D. Settlement Negotiations

On February 19, 2026, the Parties virtually attended via Zoom an all-day mediation with mediator Angela J. Reddock-Wright, Esq. Badawi Decl. ¶15. Jasmine Badawi, Esq. formerly of Lipeles Law Group, APC, attended on behalf of Plaintiff. Plaintiff also attended the mediation remotely. Attorney Christine Starkie, Esq. of Kaufman Dolowich LLP, attended on behalf of Defendant. *Id.*

After a full day of negotiations, the Parties agreed to settle for $375,000.00 with no claims process and **no reversion** to Defendant of any settlement monies remaining after all Settlement Class Members are paid.[10] Badawi Decl. ¶¶17-18; Exhibit A thereto (the Parties' Settlement Agreement), ¶3.1.

E. Summary of Settlement Terms

Under the terms of the Settlement Agreement, Defendant is discharged of all claims asserted in the Action ("Released Class Claims")[11] in exchange for paying the Gross Settlement Amount ("GSA") of $375,000.00.[12] The following amounts will be subtracted, subject to court approval: Plaintiff's Class Representative Service Payment of up to $10,000, attorneys' fees up to $131,250.00, actual costs to Plaintiff's Counsel in an amount up to $12,500, PAGA Penalty in the amount of $10,000 (allocated 35% to the Aggrieved Employees in the amount of $3,500 and 65% to the LWDA in the amount of $6,500) and the Administration Expenses Payment up to $9,000.00. The employer's portion of the payroll taxes attributed to the wage portion of Individual Class Payments to Class Members will be paid by Defendant outside of and in addition to the Gross Settlement Amount.[13] The Net Settlement Amount ("NSA") is the remainder, *i.e.*, approximately $202,250, which shall be available for distribution to Class Members in its entirety.[14]

The estimated average share per class member is $572.95.[15] Settlement Class Members are not required to submit a claim form in order to receive an Individual Class Payment.[16]

To calculate Individual Class Payments, the Administrator, using the Class Data, will calculate the total workweeks for all Class Members. An Individual Class Payment shall be

---

[10] The Parties continued to negotiate until their finalized Settlement Agreement was fully executed by June 2026. Badawi Decl. ¶18.
[11] Settlement Agreement, ¶5.2.
[12] Settlement Agreement, ¶3.1.
[13] Settlement Agreement, ¶3.1.
[14] Settlement Agreement, ¶1.28.
[15] $202,250 (NSA)/353 (putative class members) = $572.95 (average award per class member).
[16] Settlement Agreement, ¶3.1.

calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.[17]

Because Aggrieved Employees cannot opt out of the PAGA claims, each Aggrieved Employee, whether or not a Participating Class Member, shall also receive his or her Individual PAGA Payment calculated by assigning a certain dollar value to each pay period the Aggrieved Employee worked during the PAGA Period (or from May 3, 2024 through March 19, 2026). The Administrator will calculate Individual PAGA Payments by (a) dividing the 35% share of the PAGA Penalties ($3,500.00) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods.[18]

For tax purposes, Individual Class Payments shall be allocated and treated as follows: twenty percent (20%) of each Individual Class Payment will be allocated to settlement of wage claims and subject to withholdings and taxes, eighty percent (80%) will be allocated to interest and penalties, and not subject to withholding. Each Individual PAGA Payment shall be treated as 100% penalties.[19]

Individual Class Payment checks issued to Participating Class Members and PAGA Employees shall remain valid and negotiable for one hundred and eighty (180) calendar days from the date of issuance. In the event an Individual Class Payment check has not been cashed within one hundred and eighty (180) days, all such checks shall be cancelled and funds associated with such cancelled checks, shall be remitted to the California State Controller's Office, Unclaimed Property Division in the name of the Participating Class Member for who the funds are designated.[20]

F. Administration of Notice, Objections, and Claims

The actual costs of administration, estimated at up to $9,000.00, will be deducted from the Gross Settlement Amount (Settlement Agreement ¶3.2.3). The Parties have agreed that Phoenix

---

[17] Settlement Agreement, ¶3.2.4.
[18] Settlement Agreement, ¶3.2.5.1.
[19] Settlement Agreement, ¶¶3.2.4.1, 3.2.5.1.
[20] Settlement Agreement, ¶4.4.3

Class Action Administration Solutions ("Phoenix") shall serve as the Administrator. Badawi Decl. ¶39. Not later than twenty-one (21) days after the entry of the Preliminary Approval Order, Defendant will provide the Administrator with the Class Data. Within fourteen (14) calendar days after receiving the Class Data from Defendant, Phoenix will mail all Class Members the Class Notice. The Class Notice (Exhibit 1 to the Settlement Agreement) shall contain, *inter alia*, an estimate of the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Class Period Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. The Class Notice will be in English and Spanish. The Administrator shall use the Class Data to determine the dates of employment, calculate the number of Workweeks and PAGA Pay Periods and calculate the estimated Individual Class Payment and Individual PAGA Payment for each Settlement Class Member.

Settlement Class Members will not be required to submit a claim form and shall automatically receive an Individual Class Payment unless they submit a valid Request for Exclusion.[21] Plaintiff negotiated this term to eliminate any potential fear of retaliation from Class Members, for participating in the settlement.[22] The proposed Class Notice is attached to the Settlement Agreement as Exhibit 1.

The Class Notice informs each Settlement Class Member of his or her right to object to the settlement. Settlement Class Members who wish to object to the Settlement must object in writing, file the objection with the Court and serve on Class Counsel and Defense Counsel, a written statement of the grounds of objection, signed by the objecting Class Member or his or her attorney, along with all supporting papers, no later than sixty (60) calendar days after the initial mailing of the Class Notice.[23]

G. Procedure for Requesting Exclusion or Opting Out of Settlement

Class Members who wish to exclude themselves from the Settlement Agreement must sign and mail a written Request for Exclusion opting out of the Settlement Class postmarked no later

---

[21] Settlement Agreement, ¶ 3.1.

[22] Neither Plaintiff nor her counsel believe that Defendant will retaliate against Class Members for participating in the lawsuit. However, Plaintiff's counsel has found the fear of retaliation to be a common, albeit often unfounded, fear among Class Members in virtually every case.

[23] Settlement Agreement, ¶7.7.2.

than sixty (60) calendar days after the Class Notice is first mailed out[24] (Settlement Agreement ¶ 7.5.1). All Class Members who do not submit a valid Request for Exclusion shall be bound by all the terms of the Settlement Agreement and any Final Judgment entered by the Court if the Court grants final approval of the settlement.

H. Mailing of Individual Class Payments

Settlement Class Members will automatically receive an Individual Class Payment unless they submit a valid Request for Exclusion. Defendant shall fund the Gross Settlement Amount (including any increase to the Gross Settlement Amount pursuant to the Escalator Clause), and also fund the amounts necessary to fully pay Defendant's share of payroll taxes, by transmitting the funds to the Administrator no later than 14 days after the Effective Date.

Distribution to Settlement Class Members shall be within thirty (30) calendar days of Defendant's full funding of the GSA.[25] Defendant will pay attorneys' fees and costs to Class Counsel within thirty (30) calendar days of Defendant's full funding of the GSA.[26] Additionally, within thirty (30) calendar days of Defendant's full funding of the GSA, the Administrator will pay the Class Representative Service Payment to the Named Plaintiff.[27]

III. CLASS ACTION SETTLEMENT APPROVAL PROCEDURE

Any settlement of class litigation must be reviewed and approved by the presiding court, Cal. R. Ct. 3.769(a). Approval occurs in two steps: (1) an early (preliminary) review by the trial court; and (2) a subsequent (final) review after the notice has been distributed to the Class Members for their comments and/or objections. The Preliminary Approval Hearing and Final Approval Hearing coincide with these two required steps. The present motion seeks preliminary approval and the setting of a Final Approval Hearing.

The first step, preliminary approval, proceeds as follows:

---

[24] However, those Settlement Class Members who receive a re-mailed Class Notice shall have their response period extended fourteen (14) calendar days from the original response period. Settlement Agreement, ¶7.5.1.

[25] Settlement Agreement, ¶ 4.4.

[26] Settlement Agreement, ¶ 4.4. Additionally, any portion of the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment not awarded to Plaintiff's Counsel will be available for distribution to Settlement Class Members as part of the NSA. Settlement Agreement, ¶ 3.2.2.

[27] Settlement Agreement, ¶ 4.4. Additionally, any portion of the Class Representative Service Payment not awarded to the Class Representative will be available for distribution to Settlement Class Members as part of the NSA. Settlement Agreement, ¶ 3.2.1.

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

Rubinstein, Conte & Newberg, *Newberg on Class Actions*, §§ 11.24-11.26 (4th Ed. 2002) ("*Newberg*").

California courts favor settlement. *Stambaugh v. Superior Court* (*Pacific Gas and Electric Company*), 62 Cal. App. 3d 231, 236 (1976). Courts have broad powers to determine whether a proposed settlement is fair under the circumstances of the case. *Mallick v. Superior Court* (*County of Marin*), 89 Cal. App. 3d 434, 438 (1979).

Here, the Parties have executed and hereby submit the Settlement Agreement, which sets forth all material terms. "Where the settlement terms are fair and reasonable, the settlement is presumptively valid, subject only to objections that may be raised at a final hearing." *Newberg*, § 11.26. California courts have certified classes in cases similar to the present Class in which Plaintiff's Counsel was appointed Class Counsel.[28]

The schedule setting forth a proposed sequence for the relevant dates and deadlines is outlined in the Proposed Order filed herewith. Having appropriately presented the materials and information necessary for preliminary approval, the Parties request that the Final Approval Hearing be conducted as soon as the Court's calendar may accommodate.

IV. PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE

The law favors settlement, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. *See Newberg* § 11:41 (and cases cited therein); *Class Plaintiff v. City of Seattle*, 955 F.2d 1268, 1276 (1992); *Van Bronkhorst v. Safeco Corp*., 529 F.2d 943, 950 (9th Cir. 1976); *see also Potter v. Pac. Coast Lumber Co*., 37 Cal. 2d 592, 602 (1951). In evaluating class action settlements, the court has broad powers to determine whether a proposed settlement is fair under the circumstances of the case. *Wershba v. Apple Computers, Inc*., 91 Cal. App. 4th 224, 234-35 (2001); *Mallick v. Superior Court* (*County of Marin*), 89 Cal. App. 3d 434, 438 (1979). The purpose of the preliminary evaluation of class action settlements is to determine only whether the proposed

[28] *See* Badawi Decl., ¶ 34.

settlement is within the range of possible approval, also described as the "range of reasonableness," and thus whether notice to the class of the settlement's terms and conditions and the scheduling of a formal fairness hearing are worthwhile. *See Wershba*, 91 Cal. App. 4th at 234-235; *North County Contractor's Ass'n, Inc. v. Touchstone Ins. Servs*., 27 Cal. App. 4th 1085, 1089-1090 (1994); I*n re Traffic Exec Ass'n*, 627 F.2d 631, 633-634 (2nd Cir. 1980); *Newberg*, § 11:25-26.

The *Manual for Complex Litigation*, Fourth (Fed. Judicial Center 2004 ("*Manual*"), § 21.632 characterizes the preliminary approval stage as an "initial evaluation" of the fairness of the proposed settlement made by the court on the basis of written submissions and informal presentation from the settling parties. To make a fairness determination, courts must consider several factors, including "the strength of the Plaintiff's case, the risk, expense and complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of the discovery completed and the stage of the proceedings, [and] the experience and views of counsel. ..." *Dunk v. Ford Motor Co*., 48 Cal. App. 4th 1794, 1801 (1996) "The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." *See Wershba*, 91 Cal. App. 4th at 245.

Furthermore, courts must give "proper deference to the private consensual agreement of the parties," since "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair reasonable and adequate to all concerned." *Hanlon v. Chrysler Corp*., 150 F.3d 1027 (9th Cir. 1998) (internal quotes and citation omitted). Once the judge is satisfied with the results of the initial inquiry into the fairness, reasonableness, and adequacy of the settlement, the court should direct that the Class Members be given notice of a formal fairness hearing, at which arguments and evidence may be presented in support of, and in opposition to, the settlement. *See Manual*, § 21.633.

A. The Proposed Settlement Is Fair to the Class

The terms of the settlement recognize the strength of the case. The proposed settlement is reasonable, in light of the strength of Plaintiff's case and the risks of litigation. *Clark v. American*

Residential Services, LLC, (2009), 175 Cal. App. 4th 785, 799. Under *Clark* "the trial court is obliged, at a minimum, to determine whether a legitimate controversy exists on a legal point, if that legal point significantly affects the valuation of the case for settlement purposes." *Id.* at 803. However, the trial court is not required to reach any ultimate legal or factual conclusions. *Id.* A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. *Wershba*, 91 Cal. App. 4th at 224 (holding that "[c]ompromise 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"). Settlement agreements are realistically assessed. *Stambaugh*, 62 Cal. App. 3d at 236; *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989) ("The fact that a plaintiff might have received more if the case had been fully litigated is no reason not to approve the settlement.").

The Settlement Agreement in this case confers a substantial benefit on the Settlement Class. Pursuant to the terms of the Settlement Agreement, Defendant will pay $375,000 in exchange for a full discharge of Plaintiff's and Settlement Class Members' Released Claims.[29] Once all the adequate deductions have been made from the GSA, the amount available for distribution to Plaintiff and the Settlement Class is approximately $202,250.00.

Plaintiff has evaluated the strengths of the class claims, and assessed the range of potential outcomes of the litigation. In addition to disputing the merits of Plaintiff's claims, Defendant would strongly challenge any request for class certification. Plaintiff believed that this case was suitable for class certification. However, Plaintiff also realized that there is always a significant risk associated with class certification proceedings. In light of the uncertainties of protracted litigation, the GSA reflects an excellent recovery for the Class Members. Badawi Decl. ¶25.

1. <u>Plaintiff Faced Significant Risk</u>

Pursuit of the Action through trial would impose significant risks on the outcome of Plaintiff's claims. Plaintiff estimates that her likelihood of proving all her underlying claims is low

[29] Settlement Agreement ¶5.

and thus her likelihood of recovering the potential undiscounted amount or anything close to that amount is very unlikely. With respect to the claims asserted on behalf of the Class in this case, there are significant risks that support the reduced compromise amount. These risks include, but are not limited to the following:

(i) The risk that Plaintiff would be unable to establish liability for allegedly unpaid overtime wages. *See Duran v. U.S. Bank Nat'l Ass'n*, 59 Cal.4th 1, 39 & fn. 33 (2014) ("*Duran*"), citing *Dilts v. Penske Logistics, LLC* 2014 WL 205039 (S.D. Cal. 2014) (dismissing certified off-the-clock claims based on proof at trial). Defendant contends that it is their policy and practice to pay all wages for all time worked and that employees were not allowed to engage in off the clock work. Thus, not getting certified was a risk which Plaintiff considered during the negotiations.

(ii) Plaintiff must establish willfulness with respect to her waiting time penalties claim under Labor Code Section 203 as well as a knowing and intentional violation under Labor Code Section 226 for wage statement penalties. It should be noted that there is currently a split of authority as to whether such penalties can be obtained. *See e.g., Singletary v. Teavana Corporation,* 2014 WL 1760884, *4 (N.D. Cal. 2014) (noting that "the law in this area is murky at best" and holding that section 203 penalties are not applicable to meal and rest break claims). Plaintiff might not prevail in showing that Defendant acted with the requisite intent necessary for the alleged claims for penalties under Labor Code sections 203 and 226. Specifically, section 203 requires that a plaintiff show the employer committed a "willful" violation of the law in withholding wages. "A good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203." 8 Cal. Code Regs. § 13520. Similarly, penalties pursuant to section 226 require a "knowing and intentional" violation. Defendant contends that they would present several good faith defenses that would preclude a finding of willfulness under section 203 and intent under section 226.

(iii) The risk that any civil penalties award under PAGA could be reduced by the Court in its discretion, which would materially impact the recovery by the Aggrieved Employees. *See* Labor Code section 2699(e)(1).

(iv) The risk that lengthy appellate litigation could ensue, with associated litigation risk and costs, further enhances the value of a confirmed settlement as opposed to unpredictable litigation.

(v) Although the PAGA penalties recoverable amounts to $631,800, that amount is not likely to bear fruit in this case. Most significantly, the ultimate decision as to the amount of penalties is always up to the discretion of the Court.[30] Since only 35% of any PAGA recovery reaches the Aggrieved Employees (with the balance going to the state), the strength of Plaintiff's potential PAGA claims and the potentially limited recovery was a factor considered during settlement negotiations. Here, the amount allocated to PAGA penalties is fair, reasonable and adequate in view of PAGA's purposes to remediate labor law violations and deter future ones in accordance with *Moniz v. Adecco USA, Inc.* (2021) 72 Cal. App. 5th 56. Badawi Decl. ¶24.

(vi) The risk that the Court would find that Defendant's reimbursement policies were compliant. Plaintiff claims that Class Members were not reimbursed for their cell phones, personal internet and computer monitor use for business. Defendant maintained that employees were not required to use their cell phones, personal internet and computer monitors. Thus, those expenses are not recoverable. However, Plaintiff contended that Defendant failed to reimburse Plaintiff and Class Members. Thus, there was a significant risk that the Court would deny the expense reimbursement claim.

(vii) The risk that the Court would find that Defendant properly paid sick pay. Plaintiff contended that Defendant paid sick days at exactly the base rate, and did not include shift differentials/shift premiums into the sick pay rate. Defendant maintained that it complied with sick leave laws.

(viii) Moreover, Plaintiff faced the risk of a potentially prolonged and expensive trial.

Each of these factors bore heavily on the negotiations leading to the Settlement. In view of these

---

[30] Labor Code § 2699(e)(2) states: "In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Subdivision (a) states, "Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3." Subdivision (f) specifies the penalties in instances where the underlying statute does not specify any civil penalty. In other words, where the facts and circumstances of the particular case demonstrate that an unreduced award would be "unjust, arbitrary and oppressive, or confiscatory," the court may reduce the award so as to ameliorate any such finding.

risks, the Settlement reflects a fair, adequate, and reasonable compromise amount for these claims and warrants approval. Indeed, while the risks listed herein are far from exhaustive, they show that the Settlement is fair, adequate, and reasonable in view of them. Pursuit of the Action through trial would impose significant risks on the outcome of Plaintiff's claims. Badawi Decl. ¶19.

Where, as here, the settlement affords the Class Members prompt, substantial relief, while avoiding legal and factual hurdles that otherwise may have prevented the Class from obtaining any recovery at all, or at least after a very significant delay, the reasonableness of the settlement is clear. Because the Settlement Agreement provides immediate and substantial relief, without the attendant risks and delay of continued litigation, it warrants the Court's preliminary approval.

B. The Proposed Settlement Is the Result of Arm's-Length Negotiation

Plaintiff's counsel conducted an extensive investigation, including reviewing voluminous documentary evidence. The Parties negotiated in good faith and at arm's-length on several occasions over several months before reaching an agreement. Thus, Class Counsel negotiated the proposed Settlement with ample knowledge of the strengths and weaknesses of this case, the amounts necessary to compensate Settlement Class Members for their damages, and the benefits of the proposed Settlement under the circumstances of this case. In addition, Class Counsel and Defense Counsel, are experienced class action litigation and employment attorneys, and have used their experience and expertise in fashioning a proposed Settlement that is acceptable to both parties. *See* Badawi Decl. ¶¶34-35.

The settlement terms also indicate that the Settlement is fair to the Class. Defendant has legal and factual grounds for defending this action. Among other things, Defendant denies the allegations asserted in the Action and continues to assert defenses to such claims. Defendant further contends that at all relevant times they had valid wage and hour policies and that they properly paid Plaintiff and Class Members. Notwithstanding these arguments, the Settlement commits Defendant to pay a total of $375,000.00, of which approximately $202,250.00 will go to compensate the Settlement Class Members for their damages, which Class Counsel believes is a fair and adequate amount given the litigation risks and delays inherent in further litigation and appeals. *See* Badawi Decl. ¶¶ 20, 23-24, 33.

Accordingly, preliminary approval of the Settlement is appropriate, and Plaintiff requests that the Court order that the Class Notice be disseminated to the Class, and that a final approval hearing be scheduled.

C. Provisional Certification of the Settlement Class Under the Lesser Standard of Scrutiny for Settlement-Only Certification Is Appropriate

"[P]re-certification settlements are routinely approved if found to be fair and reasonable." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App 4th 224, 240; *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.* 105 F.R.D. 475, 478 (S.D.N.Y. 1984) ("many courts have employed this practice in the name of judicial efficiency in order to facilitate apparently beneficial settlement proposals.").

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

4 *Newberg on Class Actions*, at §11.26.

The standard for class certification in the settlement context is a significantly lower threshold than in a contested proceeding or a trial context:

> The two basic purposes for the Rule 23 certification requirements, as they relate to questions of a nationwide class are: (1) to keep the lawsuit manageable for trial; and (2) to protect the interests of the nonrepresentative members. The first purpose is inapposite in the settlement context, and the second, as it relates to commonality of issues, *only makes a difference if the nonrepresentative class members would do much better by litigating on their own or in their own jurisdiction*. The second category concerns are protected by the trial court's fairness review of the settlement.

Dunk, 48 Cal. App. 4th at 1807, n. 19, (emphasis added). The reason for this is that no trial is anticipated in the settlement context, so any case management issues inherent in determining if the class should be certified need not be confronted. *Amchem Products, Inc. v. Windsor* 521 U.S. 591 (1987)

The very liberal standard expressed in *Dunk* is plainly satisfied here. The requirements for class certification in the settlement context – ascertainability, numerosity, predominance of common questions of law and fact, typicality, and adequacy – are all met. It certainly cannot be said that the Settlement Class Members would do "much better by litigating on their own". *Dunk,* 48 Cal. App. 4th at 1807, n. 19. The proposed Settlement Class should be conditionally certified as requested.

1. Numerosity and Ascertainability.

Numerosity is met if a proposed class is so large that joinder of all members would be impracticable. *See* Code Civ. Proc. § 382. No set number of class members is required to maintain a class action. *Hebbard v. Colgrove* (1972) 28 Cal. App. 3d 1017, 1030. The California Supreme Court has upheld a class of as few as ten members. *Bowles v. Super. Ct.* (*Nickel, Jr.*) (1955) 44 Cal.2d 574, 577-81. A proposed settlement class is ascertainable if the class members can be objectively identified and given notice of the litigation without unreasonable time or expense. *Medrazo v. Honda of N. Hollywood*, 166 Cal. App. 4th 89, 101 (2008). Here, the settlement class consists of 353 current and former employees of Defendant in California from April 30, 2021 through March 19, 2026, who have already been identified. Badawi Decl. ¶7.

2. Well-Defined Community of Interest.

a. Commonality.

To justify certification, the class proponent must show that questions of law or fact common to the class predominate over the questions affecting the individual members. *See Arenas v. El Torito Rests., Inc*., 183 Cal. App. 4th 723, 732 (2010). While the Parties dispute whether a class would be appropriate if the litigation were to continue, they agree, for the purposes of this settlement only, that the Class is subject to common compensation policies and challenges to those policies that are certifiable for settlement purposes. *See e.g., Bluford*, 216 Cal. App. 4th at 872-73 (certifiable issues were raised by claim that the employer's per mile piece-rate system did not compensate drivers for their statutory rest break time).

b. Typicality.

Typicality "requires a showing that the class representative has claims or defenses typical of the class." *See, e.g.*, *Fireside Bank v. Super. Ct. (Gonzalez)* (2007) 40 Cal.4th 1069, 1090. This focuses on "the nature of the claim or defense of the class representative, and not to the specific facts from which it arose or the relief sought." *Hanon v. Dataproducts Corp.* (9th Cir. 1992) 976 F.2d 497, 508 (internal citations omitted). "The test of typicality 'is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.'" *Id.* (*quoting Schwartz v. Harp* (C.D. Cal. 1985) 108 F.R.D. 279, 282; *accord Classen v. Weller* (1983) 145 Cal.App.3d 27, 46 (representative plaintiffs need not have all claims or identical interests with class members; they need only have claims that are "typical of the class"); *see also B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal. App. 3d 1341, 1347 (representative plaintiffs need not suffer all of the exact same damages as every class member).

Plaintiffs submit that under these standards, Plaintiff's claims are typical of those of the Class Members. Like Class Members, Plaintiff was an hourly non-exempt employee of Defendant in California. Declaration of Amiyah Sumner in Support of Plaintiff's Motion for Preliminary Approval ("Sumner Decl."), ¶3. Here, for purposes of settlement, the Parties agree that Plaintiff asserts claims regarding Defendant's wage and hour compensation practices that are at the core of the action. Badawi Decl. ¶5. Plaintiff testifies and alleges she and Class members were not paid overtime, did not receive accurate wage statements, did not receive all wages owed on termination of employment, were not reimbursed necessary business expenses and not properly paid sick pay. Sumner Decl. ¶ 4; FAC. ¶ ¶ 30-42. Accordingly, Plaintiff pursues claims typical of the class she seeks to represent.

c. Adequacy of representation.

The proposed class representative must establish that he or she will adequately represent the proposed class. *See Barboza v. West Coast Digital GSM, Inc.*, 179 Cal. App. 4th 540, 546 (2009). Adequacy may be established by the fact that counsel are experienced. *See Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001). Here, Plaintiff alleges, and Defendant does not dispute for purposes of settlement, that Plaintiff and the Class are represented by counsel with extensive experience in wage-and-hour litigation and that Plaintiff is an adequate class representative. Badawi Decl. ¶¶ 34-35, 39.

D. An Award of Class Counsel's Attorneys' Fees, Expenses and Costs, and Payments for the Class Representative's Participation, Service and Risk from the Settlement Fund Are Justified in this Case.

The proposed Settlement provides that Plaintiff will request, and Defendant will not oppose, an award to Class Counsel in an amount not to exceed $131,250.00 in attorneys' fees (35% of the Gross Settlement Amount), actual costs up to $12,500, a Class Representative Service Payment of $10,000 to the Named Plaintiff in recognition of her time, effort, and risk as a Class Representative, PAGA Penalty in the amount of $10,000 and up to $9,000 for the Administration Expenses Payment. The foregoing awards amount to $172,750 and Plaintiff therefore requests that the Court approve a total deduction of $172,750.00 from the $375,000.00 Gross Settlement Amount. Viewing the participation, service and risk payment as an additional cost of litigation, in combination with the allocation for attorneys' fees, expenses and costs, this total deduction of $172,250.00 is within the range of attorneys' fees, expenses and costs awarded in similar cases. *See* Badawi Decl. at ¶ 25. The participation payment to Plaintiff is also justified as a Class Representative Service Payment, which courts regularly award in class action litigation.

1. The Proposed Attorneys' Fees and Cost Reimbursement Requested Are Reasonable, Fair and Appropriate Under the Common Fund Doctrine and Should be Preliminarily Approved.

Plaintiff seeks preliminary approval of his request for reasonable attorneys' fees in an amount up to $ 131,250.00 and actual expenses and costs up to $12,500.00.[31] As discussed in more detail below, this fee award is reasonable under the common fund approach in determining reasonable attorneys' fees.

An attorneys' fees award is justified where the legal action has produced its benefits by way of a voluntary settlement. *See, e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987). California law provides that when a party is entitled to statutory fees, he must be compensated for all time

---

[31] Prior to the expiration of the period of time allotted for class members to make objections to the settlement, Plaintiff will file a motion and brief for fees and costs (to be heard at the same time as the Final Fairness Hearing) so that class members will be able, if they elect to do so, to review the fees motion prior to making objections or filing a claim. The fee brief will provide information regarding how attorneys' fees are calculated and a detailed lodestar analysis. The motion and brief for fees and costs will include, *inter alia*, an itemized listing of all costs incurred in litigating this case. *See* Badawi Decl. ¶ 37.

reasonably spent seeking to accomplish the desired litigation result. *See Serrano v. Unruh*, 32 Cal.3d 621, 624 (1982). Courts in and out of California have long recognized the equitable "common fund" doctrine under which attorneys that create a common fund or benefit for a group of persons may be awarded their fees and costs out of the fund. "[W]hen a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorneys' fees out of the fund." *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977), *see also Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("[A] lawyer who recovers a common fund… is entitled to reasonable attorneys' fees from the fund as a whole").

In addition to spreading the litigation costs among all beneficiaries, awards of common fund fees are essential to furthering the important societal goal of attracting competent counsel to handle these often complex contingency cases, "who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if assured that [they] will be promptly and directly compensated should [their] efforts be successful." *Melendres v. City of Los Angeles*, 45 Cal. App. 3d 267, 273 (1975) (quoting *Estate of Stauffer*, 53 Cal.2d 124, 132 (1959). In California, trial courts have inherent equitable power to award attorneys' fees on a common fund basis when counsel's efforts "have resulted in the preservation or recovery of a certain or easily calculable sum of money." *Serrano*, 20 Cal.3d 25 at 35; *see also Bank of America Nat'l Trust & Sav. Ass'n v. Cory*, 164 Cal. App. 3d 66, 89 (1985); *Melendres,* 45 Cal. App. 3d 267, 277 (trial courts' "broad discretion" in awarding common fund fees is well-established).

The traditional method for calculating a common fund fee is to award a percentage of the total fund. *See, e.g., Blum v. Stenson*, 465 U.S. 886, 900 and 916 (1984); *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990); *Lealao v. Beneficial California, Inc.,* 82 Cal. App. 4th 19, 26 (2000); *Melendres,* 45 Cal. App. 3d at 278. Indeed, California courts have regularly approved payments of attorneys' fees amounting to 35% or more of the common fund in similar class actions.

California state and federal courts have regularly approved payments of attorneys' fees amounting to as much as 35% or more of the common fund in similar wage and hour class actions alleging missed meal and/or rest periods. *See, e.g., Morales v. Southland Sod Farms Operations, Inc.,* No. 56-2017-00496912, 2018 WL 6928228, *2 (Cal. Super. Oct. 10, 2018) (granting final approval in a wage and hour action and awarding 35% in attorneys' fees); *Erickson v. Q.S.P., Inc.,* No. BC469830, 2013 WL 4369736, *5, (Cal. Super. July 9, 2013) (granting final approval in a wage and hour action and finding that 35% in attorneys' fees was reasonable); *Cabrera v. Advantage Sale & Marketing, LLC,* No. BC485259, 2013 WL 1182822, (Cal. Sup. Mar. 12, 2013) (granting final approval for failure to afford meal/rest breaks and awarding 35% in attorneys' fees). Where, as here, the common fund is relatively small, class action commentators have noted that courts typically award 30-50% of the common fund as attorneys' fees. *See Newberg* at §14.6.

Finally, several other factors support the requested attorneys' fees. Plaintiff and her counsel brought this class action to prevent Defendant from continuing to commit the alleged violations of California law regarding wage and hour violations alleged in the FAC. Plaintiff's Counsel handled this case on a contingency basis and the case involved significant risks of non-payment of attorneys' fees and non-recovery of litigation expenses if class certification was not granted and/or if Plaintiff's Counsel did not settle or prevail. For these reasons, a costs award and common fund fee of 35% of the settlement fund (*i.e.*, a total of up to $143,750.00) is fair, reasonable and appropriate. Furthermore, because Plaintiff's requested attorneys' fees of 35% of the common fund is reasonable and falls within the range of approved percentages in similar common fund class action cases, Plaintiff's request for fees of 35% of the common fund should be granted.

2. The Proposed Payment to the Class Representative for Her Service to the Class Is Reasonable, Routinely Awarded, and Should be Preliminarily Approved.

The proposed payment of $10,000 to the Named Plaintiff[32] is intended to recognize the critical role she played in this case and the time, effort and risk undertaken in helping secure the result obtained on behalf of the Class. *See Bell v. Farmers Ins. Exch*., 115 Cal. App. 4th 715, 726 (2004) (upholding "service payments" to named plaintiffs for their efforts in bringing class case); Manual §21.62 n. 973 (noting service awards are warranted).

"Courts routinely approve incentive payments to compensate named plaintiffs for the services they provide and the risks they incurred during the course of the class action litigation." *Ingram v. The Coca-Cola Co*., 200 F.R.D. 685, 694 (N.D. Ga. 2001) (quoting *In re S. Ohio*

[32] Any portion of the Class Representative Class Representative Service Payment not awarded to Plaintiff will be made available for distribution to Settlement Class Members as part of the NSA. Settlement Agreement, ¶3.2.1.

Correctional Facility, 175 F.R.D. 270, 272 (S.D. Ohio 1997) (approving $303,000 payment to each class representative plaintiff in employment case settling before class certification); *Martens v. Smith Barney*, No. 96 Civ. 3779, 1998 W.L. 1661385, *4 (S.D.N.Y. 1998) and 181 F.R.D. 243, 262 (S.D.N.Y. 1998) (approving payments of up to $163,000 for named plaintiffs, for a total of $1.9 million in incentive payments for employment cases settling prior to class certification); *Roberts v. Texaco*, 979 F. Supp. 185 (S.D.N.Y. 1997) (approving incentive payments up to $85,000 for named plaintiffs in employment case settling prior to class certification).

The factors courts use in determining the amount of incentive payments include (1) a comparison between the incentive payments and the range of monetary recovery available to the class; *see, e.g., Ingram*, 200 F.R.D. at 694; *Roberts v. Texaco*, *Inc.* 979 F. Supp. 185, 204 (S.D.N.Y. 1997); (2) time and effort put into the litigation; *see, e.g., Van Vranken v. Atlantic Richfield Co*., 901 F. Supp. 294, 299 (1995); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998); (3) whether the litigation will further the public policy underlying the statutory scheme; *see, e.g., Roberts,* 979 F. Supp. at 201; (4) risks of retaliation*; see Roberts*, 979 F. Supp. at 202; *Cook*, 142 F.3d 1004, at 1016; (5) compromise of unique individual claims; *see, e.g. Women's Comm. For Equal Employment Opportunity v. Nat'l Broad. Co*., 76 F.R.D. 173, 180 (S.D.N.Y. 1977); and (6) risks of an adverse attorneys' fees award; *see, e.g., Rodriguez v. West Publishing*, 563 F.3d 948, 958 (9th Cir. 2009) ("Incentive payments are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.").

These factors support the approval of the incentive payments requested here for the Class Representatives. First, the Named Plaintiff spent time providing invaluable assistance to Class Counsel and the Class in this case, including providing factual background for the Class Complaint; providing and explaining documents corroborating her allegations to Class Counsel; reviewing the complaints and other pleadings filed with the Court by Plaintiff and Defendant; participating in multiple conference calls and phone calls to discuss litigation and settlement strategy, and remotely attending the all-day mediation. *See* Sumner Decl., ¶6. The Named Plaintiff has been actively involved in this case, and has proven herself to be an invaluable resource of information throughout the settlement discussions. Badawi Decl. ¶29; Sumner Decl. ¶6. Second, by bringing this action, the Named Plaintiff furthered the public policy goal of encouraging compliance with the wage and hour provisions of the Labor Code. Finally, the requested Class Representative Service Payment of $10,000 to the Plaintiff falls well within the range of incentive payments typically awarded to class representatives in such class actions. Badawi Decl. ¶29; *see e.g., Ross v. US Bank Nat'l Ass'n*, No. C 07–02951 SI, 2010 WL 3833922, at *2 (N.D. Cal. Sept. 29, 2010) (approving $20,000 enhancement awards to each of four class representatives in the wage and hour class action); *Garner v. State Farm Mut. Auto. Ins. Co*., No. CV 08 1365 CW (EMC), 2010 WL 1687832, at *17 n.8 (N.D. Cal. Apr. 22, 2010) ("Numerous courts in the Ninth Circuit and elsewhere have approved incentive payments of $20,000 or more where, as here, the class representative has demonstrated a strong commitment to the class").

Accordingly, the requested Class Representative Service Payment of $10,000 to the Named Plaintiff is fully deserved and justified and thus should be preliminarily approved.

V. THE PROPOSED CLASS NOTICE IS APPROPRIATE

A. The Proposed Notice of Class Action Settlement Satisfies Due Process

California statutory and case law vests the Court with broad discretion in fashioning an appropriate notice program. *See Cal. Rules of Court* 1859(f); *Cartt v. Superior Court*, 50 Cal. App. 3d 960, 973-74 (1975). The notice plan here entails mailing, and if necessary, re-mailing, the notice to all identified participating Settlement Class Members based on Defendant's employment records. Defendant will provide the last known addresses for all identified Class Members. Plaintiff has proposed the services of an experienced class action settlement administration firm, Phoenix, to implement the proposed Class Notice procedures. The Class Notice is consistent with class certification notices approved by numerous state and federal courts, and is, under the circumstances of this case, the best notice practicable. Such notice satisfies all due process requirements. *See Cartt*, 50 Cal. App. 3d at 966-975.

B. The Proposed Notice of Class Action Settlement is Accurate and Informative

The proposed Class Notice, attached as Exhibit 1 to the proposed Settlement Agreement, provides among other things: (1) information regarding the nature of the Action; (2) a summary of the substance of the settlement; (3) the Class definition; (4) the formulae for calculating Individual

Class Payments and Individual PAGA Payments; (5) the dates the Settlement Class Member was employed by Defendant during the Class Period; (6) the number of workweeks/PAGA Pay Periods based on Defendant's business records; (7) instructions on how Settlement Class Members may submit a valid Request for Exclusion; (8) the procedure for objecting to the settlement; (9) the deadline by which Settlement Class Members must postmark an objection to the settlement; (10) notice that the Settlement Class Members will permanently forego their right to pursue any and all of their released claims against Defendant, unless they elect not to participate in the Action; and (11) notice that Settlement Class Members will automatically receive an Individual Class Payment unless they submit a valid request for exclusion.

The best practicable means of providing notice to all Class Members will be used. Notice will be mailed to all known and reasonably ascertainable Class Members, using Defendant's records. The information in those records will be updated prior to mailing, using the National Change of Address Database or its equivalent. If any Class Notices are returned as undeliverable, the Administrator will take appropriate steps, such as skip-tracing, to maximize the probability that the Class Notice will be received by all Class Members. (Settlement Agreement ¶1.10).

The Class Notice also fulfills the requirement of neutrality in Class Notices. *See Newberg* § 8:39 at pp. 284, 285. The Class Notice summarizes the proceedings to date, the significant legal developments since the date of the settlement, and the terms and conditions of the settlement, in a coherent and informative manner. The Class Notice clearly states that the Settlement does not constitute an admission of liability by Defendant and recognizes that the Court has not ruled on the merits of the Action. The Class Notice also states that the final settlement approval decision has yet to be made. Accordingly, the Class Notice complies with the standards of fairness, completeness and neutrality required of a settlement notice disseminated under authority of the Court. *Newberg* §8:21, §8:39; *Manual* § 21.312.

VI. A FINAL APPROVAL HEARING SHOULD BE SCHEDULED

The last step in the settlement approval process is the formal final approval hearing, at which the Court may hear all evidence and argument necessary to evaluate the proposed Settlement. *See Cal. Rules of Court* 1859(b). At that hearing, proponents of the Settlement may explain and describe its terms and conditions and offer argument in support of the Settlement approval. Furthermore, members of the Settlement Class, or their counsel, may be heard in support of or in opposition to the proposed Settlement. Class Counsel requests that the hearing be held as soon as the Court's calendar may accomodate.

VII. CONCLUSION

For the reasons discussed above, Plaintiff requests that the Court enter an order of preliminary approval of the class action settlement, approve the form of the proposed notice, and approve the proposed schedule, including setting a date for a final approval hearing.

Dated: June 4, 2026

Respectfully submitted,

LIPELES LAW GROUP, APC

By: ________________________________

Kevin Lipeles, Esq.
Thomas Lipeles, Esq.
Attorneys for Plaintiff and the Class