

MELMED LAW GROUP P.C.

Kyle D. Smith (SBN 280489)

ks@melmedlaw.com

Talia Shapiro (SBN 365923)

ts@melmedlaw.com

1801 Century Park East, Suite 850

Los Angeles, California 90067

Phone: (310) 824-3828

Fax: (310) 862-6851

Attorneys for Plaintiff, the Putative Class, and the Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

LUCIA MAGANA, an individual, on behalf of
herself, the State of California, as a private
attorney general, and on behalf of all others
similarly situated,

Plaintiff,

v.

BAY CONTRACT MAINTENANCE, INC., a
California Corporation; and DOES 1 TO 50,

Defendants.

Case Number: 25CV117669

**Plaintiff's Notice of Motion and Motion for
Preliminary Approval of Class Action and
PAGA Settlement**

Complaint Filed: April 4, 2025

Trial Date: None Set

Hearing Date: October 20, 2026

Hearing Time: 2:30 p.m.

Dept.: 21

Judge: Hon. Somnath Raj Chatterjee

RESERVATION ID: 199669350834

1 **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL**

2 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

3 **PLEASE TAKE NOTICE** that on October 20, 2026, at 2:30 p.m., or as soon thereafter as the
4 matter may be heard, in Department 21 of the Alameda County Superior Court for the State of
5 California, located at the Rene C. Davidson Courthouse, 1225 Fallon Street, Oakland, California
6 94612, before the Honorable Somnath Raj Chatterjee, Plaintiff Lucia Magana (“Plaintiff”), on behalf
7 of herself, the State of California, as a private attorney general, and on behalf of all others similarly
8 situated, will and hereby does move this Court for entry of an order:

9 1. Preliminarily certifying the settlement class for purposes of settlement pursuant to
10 California Code of Civil Procedure section 382 and California Rules of Court, rule 3.769;

11 2. Preliminarily appointing Plaintiff as class representative for purposes of settlement;

12 3. Preliminarily appointing Kyle D. Smith and Talia Shapiro of Melmed Law Group P.C.
13 as class counsel for purposes of settlement;

14 4. Preliminarily approving the settlement as fair, adequate, and reasonable, based upon the
15 terms set forth in the parties’ *Class Action and PAGA Settlement Agreement* (the “Settlement
16 Agreement”), which is based on the Los Angeles Superior Court’s *[Model] Class Action and PAGA
17 Settlement Agreement* (LASC CIV 296), including payment by Defendant Bay Contract Maintenance,
18 Inc. (“Defendant”) of the non-reversionary gross settlement amount of \$418,000.00 (“Gross Settlement
19 Amount”);

20 5. Preliminarily approving payment of reasonable attorneys’ fees from the Gross
21 Settlement Amount in an amount not to exceed one-third of the Gross Settlement Amount (i.e., up to
22 \$139,333.33), plus necessary litigation costs not to exceed \$30,000.00;

23 6. Preliminarily approving a class representative service payment in an amount of up to
24 \$7,500.00 for Lucia Magana from the Gross Settlement Amount to compensate her for the
25 responsibilities, time, effort, and risks involved in coming forward on behalf of the proposed class;

26 7. Preliminarily approving the settlement of Plaintiff’s claims under the California Labor
27 Code Private Attorneys General Act of 2004 (“PAGA”), including the allocation of \$41,800.00 for
28 PAGA penalties, of which 65% (i.e., \$27,170.00) shall be paid to the California Labor and Workforce

1 Development Agency (“LWDA”) from the Gross Settlement Amount, with the remaining 35% (i.e.,
2 \$14,630.00) payable to the Aggrieved Employees;

3 8. Appointing ILYM Group, Inc. (the “Settlement Administrator”) as the settlement
4 administrator to handle the notice and administration process and preliminarily approving settlement
5 administration costs estimated to be \$7,950.00;

6 9. Approving the proposed class notice and ordering it be disseminated to the class
7 members as provided in the Settlement Agreement;

8 10. Directing the Settlement Administrator to mail the class notice to the proposed class;

9 11. Approving the proposed deadlines for the notice and administration process as reflected
10 in this motion and in the Settlement Agreement;

11 12. Setting a date for a final fairness hearing to determine, following dissemination of the
12 proposed class notice packet, whether to grant final approval of the settlement; and

13 13. Granting Plaintiff leave to file the overlength brief included with this motion.

14 This motion is based on this Notice of Motion and Motion for Preliminary Approval of Class
15 Action and PAGA Settlement; the Memorandum of Points and Authorities in support thereof; the
16 declaration of Plaintiff’s counsel Kyle D. Smith; the declaration of Plaintiff; the Settlement Agreement;
17 the proposed class notice; the proposed order granting preliminary approval of the Settlement
18 Agreement and setting a settlement fairness hearing; the other records, pleadings, and papers filed in
19 this action; and upon such other evidence or argument as may be presented to the court at the hearing
20 of this motion.

21 Dated: September 23, 2026

MELMED LAW GROUP P.C.



KYLE D. SMITH

Attorneys for Plaintiff, the Putative Class, and the
Aggrieved Employees

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	BACKGROUND	3
A.	The Parties	3
B.	Procedural Summary	3
III.	SUMMARY OF THE CLAIMS, DEFENSES, AND EXPOSURE	6
A.	Off-the-Clock Practices & Minimum and Overtime Wage Allegations	6
B.	Rest Period Allegations.....	8
C.	Meal Period Allegations.....	9
D.	Derivative Recordkeeping Allegations	11
E.	Derivative Waiting Time Penalty Allegations	12
F.	Wage Statement Allegations.....	13
G.	PAGA Allegations	13
H.	Vacation, Sick Leave, Expense Reimbursement, Timely Payment, and Regular Rate Allegations.....	14
IV.	SUMMARY OF THE PROPOSED SETTLEMENT	15
A.	Reasonableness of the Gross Settlement Amount	15
B.	Settlement Consideration and Allocation	16
C.	The Release	17
D.	Settlement Allocation Formula	18
E.	Selection of the Settlement Administrator	18
F.	Notice Procedures.....	19
G.	Timing of Settlement Disbursements	20
H.	<i>Cy Pres</i> Distribution	20
I.	Tax Treatment.....	21
V.	THE CLASS SHOULD BE PRELIMINARILY CERTIFIED.....	22
A.	The Lesser Standard of Scrutiny for Settlement-Only Certification Is Appropriate	22

1	B.	The Proposed Class Is Numerous and Ascertainable	22
2	C.	Members of the Proposed Class Share a Well-Defined Community of Interest..	23
3	1.	<i>Commonality</i>	23
4	2.	<i>Typicality</i>	23
5	3.	<i>Adequacy of Representation</i>	23
6	4.	<i>Superiority</i>	24
7	5.	<i>Predominance</i>	24
8	VI.	PRELIMINARY APPROVAL SHOULD BE GRANTED	24
9	A.	The Settlement is the Result of Serious, Informed, and Non-Collusive	
10		Negotiations	24
11	B.	The Discovery and Investigations Were Extensive	25
12	C.	The Risks Inherent in Continued Litigation Are Great	26
13	D.	The Settlement Is a Reasonable Compromise of Claims	26
14	E.	Plaintiff’s Counsel Are Experienced in Similar Wage-And-Hour Litigation.....	26
15	F.	The Class Notice Plan Conforms to All Applicable Statutes and Rules.....	27
16	VII.	THE ATTORNEYS’ FEE ALLOCATION UNDER THE SETTLEMENT	
17		AGREEMENT IS FAIR.....	28
18	VIII.	THE CLASS REPRESENTATIVE SERVICE AWARD IS FAIR AND APPROPRIATE	
19			29
20	IX.	SUBMISSION TO THE LWDA.....	30
21	X.	CONCLUSION.....	30

TABLE OF AUTHORITIES

CASES

<i>Alvarado v. Dart Container Corp. of California</i> (2018) 4 Cal.5th 542, 554	7, 8, 10
<i>Amchem Products, Inc. v. Windsor</i> (1997) 521 U.S. 591, 620 [117 S.Ct. 2231, 2248	22
<i>Archibald v. Cinerama Hotels</i> (1976) 15 Cal.3d 853, 860	27
<i>Arenas v. El Torito Restaurants, Inc.</i> (2010) 183 Cal.App.4th 723, 732.....	23
<i>Armenta v. Osmose, Inc.</i> (2005) 135 Cal.App.4th 314, 324	6
<i>Augustus v. ABM Security Services, Inc.</i> (2016) 2 Cal.5th 257, 260	8
<i>Barboza v. West Coast Digital GSM, Inc.</i> (2009) 179 Cal.App.4th 540, 546	23
<i>Bond v. Ferguson Enterprises, Inc.</i> (E.D. Cal., June 30, 2011, No. 1:09-cv-1662 OWW MJS) 2011 WL 2648879.....	30
<i>Carrington v. Starbucks Corp.</i> (2018) 30 Cal.App.5th 504, 529.....	14
<i>Carrington v. Starbucks Corp., supra</i> , 30 Cal.App.5th at p. 529	14
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794, 1801	26
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794, 1802	16
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794, 1807, fn. 19	22
<i>Ellis v. Naval Air Rework Facility</i> (N.D. Cal. 1980) 87 F.R.D. 15, 18, aff'd (9th Cir. 1981) 661 F.2d 939.....	27
<i>Ferra v. Loews Hollywood Hotel, LLC</i> (2021) 11 Cal.5th 858, 869.....	8, 10
<i>Garner v. State Farm Mut. Auto. Ins. Co.</i> (N.D. Cal., Apr. 22, 2010, No. CV 08 1365 CW (EMC)) 2010 WL 1687832.....	30
<i>Laffitte v. Robert Half Internat. Inc.</i> (2016) 1 Cal.5th 480, 506	28
<i>Local Joint Executive Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.</i> (9th Cir. 2001) 244 F.3d 1152, 1162.....	24
<i>Mamika v. Barca</i> (1998) 68 Cal.App.4th 487, 492	12
<i>Martin v. FedEx Ground Package System, Inc.</i> (N.D. Cal., Dec. 31, 2008, No. C 06-6883 VRW) 2008 WL 5478576.....	29
<i>Martinez v. Joe's Crab Shack Holdings</i> (2014) 231 Cal.App.4th 362, 375	23

1	<i>Medrazo v. Honda of North Hollywood</i> (2008) 166 Cal.App.4th 89, 101	22
2	<i>Officers for Justice v. Civil Service Com. of City and County of San Francisco</i> (9th Cir. 1982) 688	
3	F.2d 615, 633.....	22
4	<i>Raines v. Coastal Pacific Food Distributors, Inc.</i> (2018) 23 Cal.App.5th 667	11
5	<i>Romero v. Producers Dairy Foods, Inc.</i> (E.D. Cal., Nov. 14, 2007, No. 1:05CV0484 DLB) 2007 WL	
6	3492841.....	29
7	<i>Seastrom v. Neways, Inc.</i> (2007) 149 Cal.App.4th 1496, 1502	23
8	<i>Singer v. Becton Dickinson and Co.</i> (S.D. Cal., June 1, 2010, No. 08-CV-821-IEG (BLM)) 2010 WL	
9	2196104.....	29
10	<i>Stuart v. RadioShack Corp.</i> (N.D. Cal., Aug. 9, 2010, No. C-07-4499 EMC) 2010 WL 3155645	29
11	<i>Vasquez v. Coast Valley Roofing, Inc.</i> (E.D. Cal. 2010) 266 F.R.D. 482, 493	30
12	<i>Washington Mutual Bank, FA v. Superior Court</i> (2001) 24 Cal.4th 906, 913.....	23
13	STATUTES	
14	Bus. & Prof. Code, § 17200	4
15	Bus. & Prof. Code, § 17210	4
16	Code Civ. Proc., § 382	22
17	Lab. Code, § 226.3	11
18	Lab. Code, § 226.7	8
19	Lab. Code, § 246	14
20	Lab. Code, § 2699	13
21	Lab. Code, § 2699	14
22	Lab. Code, § 2699.5	11
23	Lab. Code, § 510	15
24	Lab. Code, § 512	9
25	Lab. Code, § 1185	6
26	Lab. Code, § 201	14
27	Lab. Code, § 202, 227.3	14
28	Lab. Code, § 227.3	14

1	Lab. Code, §§ 204, 210	15
2	Lab. Code, §§ 2698–2699.6	4
3	Lab. Code, §§ 2802, 2804	14
4	REGULATIONS	
5	Cal. Code of Regs., tit. 8, § 11050	3
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This motion seeks preliminary approval of a wage-and-hour class action settlement between
4 Plaintiff Lucia Magana (“Plaintiff”) and Defendant Bay Contract Maintenance, Inc. (“Defendant”)
5 (collectively, the “Parties”) for the Gross Settlement Amount of \$418,000.00. A true and correct copy
6 of the *Class Action and PAGA Settlement Agreement and Class Notice* (the “Settlement Agreement”),
7 which is based on the Los Angeles Superior Court’s [Model] *Class Action and PAGA Settlement*
8 *Agreement* (LASC CIV 296), is attached as **Exhibit 1** to the concurrently filed *Declaration of Kyle D.*
9 *Smith in Support of Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA Settlement*
10 (“Declaration of Kyle D. Smith” or “Smith Decl.”). The Settlement Agreement, in its entirety, is
11 incorporated herein by reference.

12 Under the Settlement Agreement, the Gross Settlement Amount is to be distributed to
13 approximately 298 individuals defined as: *All individuals who are or were employed by Defendant as*
14 *non-exempt employees in California during the Class Period*. These employees are referred to herein
15 collectively as the “Class.” These employees are referred to herein individually as a “Class Member,”
16 which is defined as: a member of the Class, as either a Participating Class Member or Non-Participating
17 Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved
18 Employee). The “Class Period” for these purposes is defined as the period from April 4, 2021, through
19 June 4, 2026. (Settlement Agreement, at pp. 1, 2.)

20 Plaintiff also represents a group of approximately 129 aggrieved employees on behalf of the
21 State of California as a private attorney general pursuant to the California Labor Code Private Attorneys
22 General Act of 2004, Labor Code sections 2698 through 2699.6 (“PAGA”). The “Aggrieved
23 Employees,” for these purposes, are defined as: *All individuals who are or were employed by Defendant*
24 *as non-exempt employees in California during the PAGA Period*. The “PAGA Period” for these
25 purposes is defined as the period from April 4, 2024, through June 4, 2026. (Settlement Agreement, at
26 p. 4.)

27 The Settlement Agreement is a non-reversionary settlement, meaning that none of the Gross
28 Settlement Amount will revert to Defendant. (Settlement Agreement, at p. 6.) Class Members are not

required to submit a claim form to receive their settlement share. (Settlement Agreement, at p. 6.) The applicable employer-side payroll taxes are to be paid by Defendant outside the Gross Settlement Amount. (Settlement Agreement, at p. 6.)

Gross Settlement Amount	\$418,000.00
Attorneys' Fees	(up to \$139,333.33)
Litigation Costs	(up to \$30,000.00)
Settlement Administration Costs	(up to \$7,950.00)
Service Award to Plaintiff	(up to \$7,500.00)
PAGA Payment to LWDA	(\$27,170.00)
PAGA Payment to Aggrieved Employees	(\$14,630.00)
Net Settlement Amount	\$191,416.67

Because the settlement is fair and reasonable, was negotiated at arm's length between counsel following extensive investigation and discovery, and was reached after participation in a full-day mediation, it should be preliminarily approved. (Smith Decl., ¶ 7.)

This settlement is an excellent result considering the number of Class Members affected. Because the Settlement is well within the zone of reasonableness, Plaintiff requests entry of an order: **(1)** preliminarily certifying the Settlement Class under California Code of Civil Procedure section 382 and California Rules of Court, rule 3.769(c), for settlement purposes and preliminarily approving the settlement; **(2)** preliminarily appointing Plaintiff as class representative for purposes of settlement; **(3)** preliminarily appointing Plaintiff's counsel as class counsel for the purposes of settlement; **(4)** preliminarily approving the settlement as fair, adequate, and reasonable; **(5)** preliminarily approving the proposed deductions from the Gross Settlement Amount, including the proposed allocation of PAGA penalties, the attorneys' fees, litigation costs, service award to the named Plaintiff, and administration costs; **(6)** approving the proposed class notice as **Exhibit 2** to the concurrently filed Declaration of Kyle D. Smith ("Class Notice"), to be distributed to Class Members pursuant to the Settlement Agreement; **(7)** appointing ILYM Group, Inc. to administer the settlement ("Settlement

Administrator”) and directing the Settlement Administrator to distribute the Class Notice; and
(8) scheduling a hearing for final approval after the completion of the settlement notice process.

II. BACKGROUND

A. THE PARTIES

Defendant Bay Contract Maintenance, Inc. is a Building Service Contractor for cleaning and janitorial services, which employed non-exempt workers during the Class Period and PAGA Period. (Smith Decl., ¶ 19.)

Plaintiff Lucia Magana worked as an hourly, non-exempt Day Porter from on or about May 22, 2019, and through November 20, 2024. Her duties included cleaning, restock of supplies, response to requested client support, light logistics, and lab assistance. Plaintiff alleged that Defendant’s employees—including Plaintiff, the Class Members, and the Aggrieved Employees (collectively, the “Employees”)—experienced various violations of California’s wage-and-hour laws. (Smith Decl., ¶¶ 20-21.)

B. PROCEDURAL SUMMARY

On April 4, 2025, Plaintiff submitted a letter to the California Labor and Workforce Development Agency (“LWDA”) to notify the LWDA, pursuant to PAGA, of Plaintiff’s intent to seek civil penalties against Defendant for violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 246, 256, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and others that may be applicable; and California Industrial Welfare Commission (“IWC”) Wage Order 5-2001 (the “Applicable Wage Order”). (Cal. Code of Regs., tit. 8, § 11050; Smith Decl., ¶ 23.) The letter attached Plaintiff’s original complaint, and incorporated the original complaint by reference, and thus sought penalties for claims identical to those alleged in the case. For the Court’s reference, a copy of Plaintiff’s letter to the LWDA is attached as **Exhibit 3** to the concurrently filed Declaration of Kyle D. Smith.

On April 4, 2025, Plaintiff commenced this action by filing a class action complaint alleging causes of action against Defendant for (1) failure to pay minimum wage for all hours worked in violation of Labor Code sections 1194 and 1194.2, and the Applicable Wage Order; (2) failure to pay proper overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the Applicable

1 Wage Order; **(3)** failure to pay all accrued vacation time in violation of Labor Code sections 201, 202,
2 and 227.3; **(4)** failure to provide compliant rest periods and pay missed rest break premiums in violation
3 of Labor Code section 226.7 and the Applicable Wage Order; **(5)** failure to provide compliant meal
4 periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512, and
5 the Applicable Wage Order; **(6)** failure to maintain accurate employment records in violation of Labor
6 Code section 1174; **(7)** failure to pay timely wages during employment in violation of Labor Code
7 sections 204, 210; **(8)** failure to pay all wages due and owing at separation in violation of Labor Code
8 sections 201, 202, and 203; **(9)** failure to reimburse business expenses in violation of Labor Code
9 sections 2802 and 2804; **(10)** failure to provide complete and accurate wage statements in violation of
10 Labor Code sections 226 and 226.3; **(11)** failure to pay sick leave in violation of Labor Code section
11 246; and **(12)** deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing
12 in violation of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210). (Smith
13 Decl., ¶ 24.)

14 On June 12, 2025, Plaintiff filed a first amended complaint alleging causes of action against
15 Defendant for those described in the original Complaint and adding one cause of action for penalties
16 based on the foregoing pursuant to PAGA. (Lab. Code, §§ 2698–2699.6.) The first amended complaint
17 is the operative complaint in the action (the “Operative Complaint”). (Smith Decl., ¶ 25.)

18 On February 13, 2026, the Court entered an order on the Parties’ stipulation withdrawing
19 Plaintiff’s request for entry of default and setting March 6, 2026, as the deadline for Defendant’s
20 responsive pleading to the Operative Complaint. (Smith Decl., ¶ 26.) On March 5, 2026, Plaintiff filed
21 a request for dismissal without prejudice of defendant JSN Bay Contract, Inc. (Smith Decl., ¶ 27.) On
22 March 6, 2026, Defendant filed a demurrer to the thirteenth cause of action of the Operative Complaint,
23 contending that Plaintiff’s notice to the LWDA did not satisfy Labor Code section 2699.3, and the
24 demurrer was set for hearing on August 25, 2026. (Smith Decl., ¶ 28.)

25 Thereafter, the Parties agreed to attend a private mediation with Rachel Pusey. (Smith Decl., ¶
26 29.) Prior to the mediation, Plaintiff’s counsel conducted significant informal discovery. (Smith Decl.,
27 ¶ 29.) Discovery, investigation, and prosecution have included, among other things, numerous
28 telephonic conferences with Plaintiff; inspection and analysis of hundreds of pages of documents,

1 including Defendant's relevant policies and employee handbook, and other information produced by
2 Plaintiff and Defendant; analysis of work-related data from a sample of Class Members and Aggrieved
3 Employees; an analysis of the legal positions taken by Defendant; investigation into the viability of
4 class treatment of the claims asserted in the action; analysis of potential class-wide damages, including
5 information sufficient to understand Defendant's potential defenses to Plaintiff's claims; research of
6 the applicable law with respect to the claims asserted in the Operative Complaint and the potential
7 defenses thereto; and assembling and analyzing of data for calculating damages. (Smith Decl., ¶ 29.)

8 Among other key pieces of information, Plaintiff's counsel requested in its informal discovery
9 letter the wage statements and time records for a statistically significant sample size of Class Members
10 during the Class Period. (Smith Decl., ¶ 30.) The Parties agreed on, and Defendant produced, a 15%
11 sampling of randomly-selected employees, which Plaintiff's counsel determined would provide a
12 statistically significant sample size with a high-degree of confidence for Plaintiff's expert's statistical
13 analysis. (Smith Decl., ¶ 30.) This sampling included payroll records and timesheets for the Class
14 Members' shifts during the Class Period. (Smith Decl., ¶ 30.) From these records, Plaintiff's expert
15 was able to carefully craft a damages model for each of the categories of alleged claims for which the
16 data would reflect violations. (Smith Decl., ¶ 30.)

17 On June 4, 2026, the Parties participated in a full-day mediation with Rachel Pusey who is a
18 full-time mediator with extensive experience in California wage and hour class action lawsuits. (Smith
19 Decl., ¶ 31.) The mediation negotiations were contentious, but the Parties were eventually able to reach
20 the broad terms of an agreement. After further negotiation, the Parties executed the long-form
21 Settlement Agreement now before the Court for approval. (Smith Decl., ¶ 32.) The Settlement
22 Agreement generally follows the Los Angeles Superior Court's *[Model] Class Action and PAGA*
23 *Settlement Agreement* (LASC CIV 296), with changes reflecting the specific terms of the Parties'
24 agreement. On August 6, 2026, the Parties filed a joint notice of settlement, and on August 10, 2026,
25 the Court vacated the hearing on Defendant's demurrer and the case management conference and set a
26 compliance hearing regarding preliminary approval. (Smith Decl., ¶ 33.)

27 Plaintiff now seeks the Court's preliminary approval of the Settlement Agreement.
28

1 **III. SUMMARY OF THE CLAIMS, DEFENSES, AND EXPOSURE**

2 Plaintiff alleges several categories of wage and hour violations on behalf of the Employees.
3 Most importantly, Plaintiff alleged that Defendant failed to pay employees for each minute worked and
4 failed to properly provide the Employees with meal periods and rest periods. From these violations,
5 Plaintiff sought damages for derivative claims for waiting time penalties, inaccurate itemized wage
6 statements, and PAGA penalties based on the foregoing. (Smith Decl., ¶ 34.)

7 Defendant has persistently denied all liability of any kind associated with the claims and
8 allegations, and further denied that the Employees are entitled to any relief. Defendant also denies that
9 these allegations are appropriate for class or representative treatment for any purpose other than the
10 settlement. Defendant maintains, among other things, that it has complied with California laws in all
11 respects. (Smith Decl., ¶ 35.) A summary of the legal and factual basis for each claim, the applicable
12 defenses, and the potential damages are summarized in more detail below.

13 **A. OFF-THE-CLOCK PRACTICES & MINIMUM AND OVERTIME WAGE**
14 **ALLEGATIONS**

15 Labor Code section 1197 requires employees to be paid at least the minimum wage fixed by
16 the IWC, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code section
17 1194 entitles “any employee receiving less than the legal minimum wage . . . to recover in a civil action
18 the unpaid balance of the full amount of this minimum wage.” (See also Lab. Code, §§ 1185 [giving
19 the Applicable Wage Order the force of law], 1198 [same].) These minimum wage standards apply to
20 each hour that employees work. Therefore, an employer’s failure to pay for any particular time worked
21 by an employee is unlawful, even if averaging an employee’s total pay over all hours worked, paid or
22 not, results in an average hourly wage above minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135
23 Cal.App.4th 314, 324.)

24 Labor Code section 510 requires an employer to compensate an employee who works more
25 than eight hours in one workday, 40 hours in a workweek, and for the first eight hours worked on the
26 seventh consecutive day no less than one and one-half times the regular rate of pay for the employee.
27 It further obligates employers to compensate employees at no less than twice the regular rate of pay
28 when an employee works more than 12 hours in a day or more than eight hours on the seventh

1 consecutive day of work. The “regular rate of pay” for these purposes is not the same as the employee’s
2 base hourly rate, but rather it must include “adjustments to the straight time rate, reflecting, among
3 other things, shift differentials and the per-hour value of any nonhourly compensation the employee
4 has earned.” (*Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 554.)

5 Here, Plaintiff alleged that the Employees were consistently required to work off the clock after
6 clocking out. (Smith Decl., ¶ 37.) Specifically, Plaintiff alleged that, although Defendant required
7 Plaintiff to clock in and out, Defendant instructed Plaintiff that she was not permitted to record or be
8 paid for any overtime hours. (Smith Decl., ¶ 37.) As a result, Plaintiff was instructed and required to
9 clock out at her scheduled end time, even when her assigned workload required her to continue working
10 beyond that time. (Smith Decl., ¶ 37.) For example, Defendant received a Costco delivery of supplies
11 approximately once per week, which often arrived around the time Plaintiff was scheduled to clock
12 out. (Smith Decl., ¶ 38.) Defendant required Plaintiff to put away the delivered supplies even after she
13 had clocked out at her scheduled end time. (Smith Decl., ¶ 38.) Plaintiff’s workload was further
14 increased on those occasions when a co-worker called out sick, as Plaintiff was required to cover work
15 at the absent employee’s building before returning to her own buildings to complete her own assigned
16 workload. (Smith Decl., ¶ 38.)

17 Plaintiff further alleged that Defendant’s timekeeping records were synthetic in nature, which
18 evidences the off-the-clock time worked. (Smith Decl., ¶ 39.) Specifically, Plaintiff’s expert estimated
19 that 38.5% of shifts were perfectly rounded to the nearest quarter hour and 24.8% of all shifts contained
20 entirely perfectly rounded time entries (e.g., 7:00 or 9:30) for every time punch. (Smith Decl., ¶ 39.)
21 Plaintiff alleged that the degree of uniformity in punch times is virtually unattainable without manual
22 manipulation. (Smith Decl., ¶ 39.)

23 Defendant categorically denied that it underpaid regular or minimum wages to the Class
24 Members. (Smith Decl., ¶ 40.) Defendant asserted that the Employees recorded all hours worked,
25 without completing any additional off-the-clock work, and that their pay was based precisely on this
26 recorded time. (Smith Decl., ¶ 40.) Specifically, Defendant asserted that all employees were covered
27 by another employee on duty when their shifts ended. (Smith Decl., ¶ 40.) Defendant therefore argued
28

1 that any off-the-clock work was de minimis such that it would be difficult or impossible to prove, both
2 at trial and for the purposes of class certification. (Smith Decl., ¶ 40.)

3 Plaintiff's expert estimated that the Class Members performed an average of 2.75 hours of off-
4 the-clock work per workweek at an average regular hourly rate of \$18.93 across 34,580 workweeks,
5 resulting in total estimated damages of \$1,800,148.35. (Smith Decl., ¶ 41.) Plaintiff discounted this
6 amount by 90% due to the very real risk that this Court would agree with Defendant's good-faith
7 defenses that (1) its employees were properly instructed to clock in and out for all time worked and (2)
8 that employees were there to cover another employee on duty when their shifts ended. (Smith Decl., ¶
9 41.) Plaintiff estimated Defendant's realistic exposure for this claim to be approximately **\$180,014.84**.
10 (Smith Decl., ¶ 41.) Defendant refutes the damages exposure.

11 **B. REST PERIOD ALLEGATIONS**

12 Under Labor Code section 226.7 and the Applicable Wage Order, employers are required to
13 provide their non-exempt employees with compensated, duty-free rest periods of not less than ten
14 minutes for every major fraction of four hours worked. Likewise, Labor Code section 226.7 provides
15 that "[a]n employer shall not require an employee to work during a meal or rest or recovery period
16 mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial
17 Welfare Commission" (Lab. Code, § 226.7, subd. (b).)

18 Labor Code section 226.7 also provides that employers must pay their employees one additional
19 hour of pay at the employee's regular rate for each workday that a "meal or rest or recovery period is
20 not provided." (Lab. Code, § 226.7, subd. (c).) The "regular rate" for these purposes is synonymous
21 with the "regular rate" in the overtime context, which means that it must include "adjustments to the
22 straight time rate, reflecting, among other things, shift differentials and the per-hour value of any
23 nonhourly compensation the employee has earned." (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11
24 Cal.5th 858, 869; *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 554.) The
25 California Supreme Court has held that, during required rest periods, "employers must relieve their
26 employees of all duties and relinquish any control over how employees spend their break time."
27 (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260.)
28

1 Here, Plaintiff alleged that Plaintiff was generally provided with only one ten-minute rest period
2 per shift, taken at approximately 9:00 a.m.—despite working hours entitling her to receive two rest
3 periods per shift. (Smith Decl., ¶ 42.) Plaintiff’s expert determined that 44.9% of the shifts Plaintiff’s
4 expert analyzed were over six hours, and therefore, required a second rest period. (Smith Decl., ¶ 42.)
5 Plaintiff further alleged that the demands of the job routinely interrupted even her first rest periods,
6 which were periodically cut short or skipped entirely—for example, when a Costco delivery arrived
7 during a scheduled break. (Smith Decl., ¶ 42.)

8 Defendant argued that the employees were provided with compliant rest periods. (Smith Decl.,
9 ¶ 43.) Defendant also contended that while the employees are given a schedule, the job is highly
10 individualized. (Smith Decl., ¶ 43.) Specifically, Defendant argued that employees can work at their
11 own pace and choose to take breaks when they please, leading to serious challenges to certification and
12 manageability as to this claim. (Smith Decl., ¶ 43.) Defendant further argued that it did not impede,
13 discourage, or prohibit employees from taking rest breaks. (Smith Decl., ¶ 43.)

14 In terms of Defendant’s exposure for this claim, Plaintiff’s expert identified 107,450 total shifts
15 that exceeded 3.5 hours in length, thus triggering a right to at least one rest period. Assuming a 50%
16 violation rate and an average regular rate of pay of \$18.93, Defendant’s maximum exposure for the rest
17 period claim was approximately \$1,017,014.25 (107,450 shifts × 50% × \$18.93), excluding
18 consideration of interest, attorneys’ fees, or penalties. (Smith Decl., ¶ 44.) However, Plaintiff ascribed
19 a 90% discount due to the risks that this Court would agree with Defendant’s good-faith defenses,
20 Defendant’s argument that the Employees may have voluntarily waived their rest periods, and the
21 individualized reasons for the failure to take rest breaks. (Smith Decl., ¶ 44.) Plaintiff estimated
22 Defendant’s realistic exposure for this claim to be approximately **\$101,701.43**. (Smith Decl., ¶ 44.)
23 Defendant disputes the alleged damages exposure.

24 C. MEAL PERIOD ALLEGATIONS

25 Employers are required to provide their nonexempt employees with a thirty-minute
26 uninterrupted and duty-free meal period within the first five hours of work. (Lab. Code, § 512, subd.
27 (a).) Additionally, an employee who works more than ten hours per day is entitled to receive a second
28 thirty-minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd. (a).) Labor Code

1 section 226.7 provides that employers must pay their employees one additional hour of pay at the
2 employee's regular rate for each workday that a "meal or rest or recovery period is not provided." (Lab.
3 Code, § 226.7, subd. (c).) The "regular rate" for these purposes is synonymous with the "regular rate"
4 in the overtime context, which means that it must include "adjustments to the straight time rate,
5 reflecting, among other things, shift differentials and the per-hour value of any nonhourly
6 compensation the employee has earned." (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th
7 858, 869; *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 554.)

8 Here, Plaintiff alleged that Defendant maintained a practice of consistently recording artificial
9 meal break entries reflecting punches of exactly 30-minute meals. (Smith Decl., ¶ 45.) Specifically,
10 Plaintiff's expert reported that 31.3% of meal periods were taken at exactly the four-hour mark and that
11 71.8% of all recorded meal periods were exactly 30 minutes. (Smith Decl., ¶ 45.) Plaintiff's expert also
12 reported that a high percentage of recorded meal periods were taken at the precise hours of 9:00 a.m.
13 or 10:00 a.m. (Smith Decl., ¶ 45.) Plaintiff further alleged that she regularly performed work during
14 portions of her purported off-duty meal period without being clocked in or compensated for that time,
15 further evidencing that the recorded 30-minute meal breaks are synthetic rather than reflective of actual
16 meal breaks. (Smith Decl., ¶ 45.)

17 Defendant argued that the employees were provided with compliant meal periods. (Smith Decl.,
18 ¶ 46.) Defendant also again contended that while the employees are given a schedule, the job is highly
19 individualized. (Smith Decl., ¶ 46.) Defendant specifically argued that employees can work at their
20 own pace and choose to take breaks when they please, leading to serious challenges to certification and
21 manageability as to this claim. (Smith Decl., ¶ 46.) Defendant further argued that it did not impede,
22 discourage, or prohibit employees from taking meal breaks. (Smith Decl., ¶ 46.)

23 Although Plaintiff's expert found that 71.8% of recorded meal periods were exactly 30 minutes
24 in length, Plaintiff conservatively assumed one meal period violation per workweek in valuing this
25 claim, because a recorded 30-minute meal period is facially compliant, Plaintiff's theory that those
26 entries are synthetic rests on inferences drawn from the pattern of the records rather than on direct
27 evidence for each shift, and Defendant's payroll records reflect some meal period premium payments.
28 (Smith Decl., ¶ 47.) After applying that violation rate to 34,580 workweeks, at an average base hourly

1 rate of \$18.76, Defendant's maximum exposure for the meal period claim was approximately
2 \$648,720.80, excluding consideration of interest, attorneys' fees, or penalties. (Smith Decl., ¶ 47.)
3 Plaintiff valued this claim at the average base hourly rate of \$18.76 rather than the slightly higher
4 average regular rate of \$18.93 applied to the rest period claim, a difference of less than one percent that
5 does not materially affect the analysis. (Smith Decl., ¶ 47.) However, Plaintiff ascribed an 80% discount
6 due to the risks that this Court would agree with Defendant's good-faith defenses and the individualized
7 reasons for the failure to take meal breaks. (Smith Decl., ¶ 48.) Plaintiff estimated Defendant's realistic
8 exposure for this claim to be approximately **\$129,744.16**. (Smith Decl., ¶ 48.) Defendant disputes the
9 alleged damages exposure.

10 **D. DERIVATIVE RECORDKEEPING ALLEGATIONS**

11 Labor Code section 226, subdivision (a), requires employers to keep an accurate record of,
12 among other things, all hours worked by employees, their gross wages earned, and all applicable hourly
13 rates in effect during the pay period. Labor Code section 226.3 provides that "in addition to any other
14 penalty provided by law" employers who fail to keep the records required by Labor Code section 226,
15 subdivision (a), are subject to a civil penalty of \$250 per employee per violation in an "initial citation"
16 and \$1,000 per employee for each violation "in a subsequent citation." (Lab. Code, § 226.3.)

17 Likewise, Labor Code section 1174, subdivision (d), requires every employer to keep these
18 records for at least three years. Labor Code section 1174.5 provides for a civil penalty of \$500 for any
19 employer who willfully fails to maintain the records required by Labor Code section 1174. These
20 penalties are recoverable through PAGA. (Lab. Code, § 2699.5 [listing violations of Labor Code
21 section 1174, subdivision (d), as an applicable PAGA claim]; *Raines v. Coastal Pacific Food*
22 *Distributors, Inc.* (2018) 23 Cal.App.5th 667, 680 [claims under Labor Code section 226.3 recoverable
23 through PAGA].)

24 Here, Plaintiff alleged that Defendant routinely required Plaintiff to work off the clock, report
25 false meal periods, and altogether failed to track the start and stop times of Plaintiff's meal periods.
26 (Smith Decl., ¶ 49.) Plaintiff further alleged that Defendant merely deducted meal period hours from
27 Plaintiff's shifts, without actually tracking when meal periods were taken. (Smith Decl., ¶ 49.)
28 Additionally, Plaintiff's expert estimated that about 71.8% of meal periods recorded were exactly thirty

1 minutes and 38.5% of shifts examined were recorded at exactly a quarter hour (0.0, 0.25, 0.5, or 0.75).
2 (Smith Decl., ¶ 49.) The recordkeeping violations likewise follow directly from Defendant's alleged
3 failure to authentically record meal periods and from the wage-statement inaccuracies detailed below.
4 (Smith Decl., ¶ 49.) Moreover, because Plaintiff alleges that Defendant also failed to log all hours
5 worked (such as for off-the-clock time), Defendant's time records do not reflect the true hours worked
6 by Plaintiff. (Smith Decl., ¶ 49.)

7 Defendant denied these allegations and argued that its timekeeping systems and payroll records
8 satisfied all applicable recordkeeping requirements. (Smith Decl., ¶ 50.) Defendant's dispute the
9 alleged liability. Plaintiff's calculation of Defendant's exposure here is subsumed within the PAGA
10 analysis below.

11 **E. DERIVATIVE WAITING TIME PENALTY ALLEGATIONS**

12 Labor Code section 203 provides that if an employer willfully fails to pay compensation
13 promptly upon discharge or resignation, as required by Labor Code sections 201 and 202, then the
14 employer is liable for penalties in the form of continued compensation up to thirty workdays. (See
15 *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.)

16 Plaintiff argued that Defendant's alleged failure to pay full wages, such as for off-the-clock
17 work, as described above, resulted in a portion of the wages earned by the Employees not being paid
18 at the time of termination or within 72 hours of their resignation. (Smith Decl., ¶ 51.) Defendant further
19 failed to pay those sums for 30 days thereafter as required by the Labor Code. (Smith Decl., ¶ 51.)

20 The maximum value of the waiting time penalty claim was therefore derived from the following
21 formula: 150 former employees × 30 days × 6.3 hours average per day × average rate of pay of \$18.76
22 per hour (or \$531,846.00). (Smith Decl., ¶ 52.) However, after ascribing a discount of 95% due to the
23 very real risks that this Court would agree with Defendant's good-faith defenses and because the claim
24 is derivative of the underlying claims, which may also fail to be certified or win on the merits, Plaintiff
25 estimated Defendant's realistic exposure for this claim to be approximately **\$26,592.30**. (Smith Decl.,
26 ¶ 52.) Defendant disputes the alleged damages exposure.

1 **F. WAGE STATEMENT ALLEGATIONS**

2 Labor Code section 226, subdivision (a), obligates employers, semi-monthly or at the time of
3 each payment to furnish an itemized wage statement. Employers that knowingly and intentionally fail
4 to provide their employees with accurate, itemized wage statements may be subject to penalties under
5 Labor Code section 226, subdivision (e). Plaintiff alleged that, by virtue of the allegations that
6 Defendant failed to properly pay the Employees their wages as described above, Defendant had
7 likewise failed to provide the Employees with compliant wage statements reflecting their gross wages
8 earned and their net wages earned. (Smith Decl., ¶ 53.)

9 As with Plaintiff's other claims, Defendant argued that the Employees were fully compensated
10 and that such violations were rare and nominal in value, if they occurred at all. (Smith Decl., ¶ 53.)
11 Defendant thus concluded that Plaintiff could not claim wage statement penalties because there were
12 no wage statement violations. (Smith Decl., ¶ 53.)

13 In terms of Defendant's exposure for this claim, Plaintiff calculated that approximately 129
14 employees worked a total of approximately 5,314 pay periods with alleged violations during the
15 applicable statutory period for this claim. (Smith Decl., ¶ 54.) Because Labor Code section 226,
16 subdivision (e)(1), caps the penalty at \$4,000.00 per employee, Plaintiff determined that Defendant's
17 maximum exposure for this claim was \$516,000.00 (129 employees × \$4,000.00). (Smith Decl., ¶ 54.)
18 Plaintiff then ascribed a 90% discount based on the very real risks that: **(1)** this Court might find that
19 Defendant's alleged wage statement errors were not made knowingly and intentionally such that the
20 penalties would not be triggered, **(2)** this Court might find that Defendant's alleged wage statement
21 errors caused little or no injury to the Class Members, or **(3)** that this Court might find that there were
22 no errors made on the wage statements. Plaintiff calculated that Defendant's realistic exposure for this
23 claim was **\$51,600**. (Smith Decl., ¶ 54.) Defendant disputes the alleged damages exposure.

24 **G. PAGA ALLEGATIONS**

25 Under Labor Code section 2699, subdivision (f)(2), employers that violate applicable
26 provisions of the Labor Code are subject to a default civil penalty of \$100.00 for each aggrieved
27 employee per pay period. (Lab. Code, § 2699, subd. (f)(2)(A).) These penalties must be allocated sixty-
28

1 five percent (65%) to the LWDA and thirty-five percent (35%) to the aggrieved employees. (Lab. Code,
2 § 2699, subd. (m).)

3 Here, Plaintiff alleged that, because of the violations described above, Defendant was liable for
4 these penalties for each applicable pay period during the applicable PAGA Period. (Smith Decl., ¶ 55.)
5 In ascertaining Defendant's exposure for this claim, Plaintiff considered several important cases.
6 (Smith Decl., ¶ 55.) First, courts to consider the issue have refused to "stack" PAGA penalties, severely
7 limiting the recoverable PAGA penalties. (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th
8 504, 529 [approving PAGA penalty reduction to \$5 per violation].) Plaintiff also considered that, given
9 the nature of the allegations and Defendant's efforts at good-faith compliance with the Labor Code,
10 there is a substantial likelihood that this Court would exercise the same discretion the Court of Appeal
11 upheld in *Carrington* and significantly reduce any PAGA penalty award. (Smith Decl., ¶ 55; *Carrington*
12 *v. Starbucks Corp.*, *supra*, 30 Cal.App.5th at p. 529.) Courts frequently use their discretion under Labor
13 Code section 2699, subdivision (e)(2), to significantly reduce PAGA penalties where such penalties
14 would be unjust, arbitrary and oppressive, or confiscatory.

15 Here, there were approximately 5,314 pay periods within the applicable PAGA Period.
16 Applying PAGA's maximum penalties would yield a maximum exposure for Defendant of \$531,400—
17 assuming an initial \$100 per pay period rate. (Smith Decl., ¶ 56.) However, considering Defendant's
18 defenses to the PAGA claim and the very real risk of a court reducing the amount of awarded PAGA
19 penalties (especially considering that the PAGA penalties themselves rival the amount of wages
20 actually owed), Plaintiff conservatively calculated a settlement value of \$10.00 per pay period—a 90%
21 reduction from the \$100.00 statutory default, and twice the \$5.00 per-violation penalty upheld in
22 *Carrington*—for a total realistic exposure of no more than **\$53,140**. (Smith Decl., ¶ 56.)

23 **H. VACATION, SICK LEAVE, EXPENSE REIMBURSEMENT, TIMELY**
24 **PAYMENT, AND REGULAR RATE ALLEGATIONS**

25 The Operative Complaint also alleges that Defendant failed to pay accrued vacation wages at
26 separation (Lab. Code, §§ 201, 202, 227.3), failed to pay sick leave at the correct rate of pay (Lab.
27 Code, § 246), failed to reimburse necessary business expenses (Lab. Code, §§ 2802, 2804), failed to
28

1 pay wages timely during employment (Lab. Code, §§ 204, 210), and failed to calculate overtime at the
2 correct regular rate of pay (Lab. Code, § 510). (Smith Decl., ¶ 57.)

3 Plaintiff's investigation and Plaintiff's expert's analysis of the sampled records provided
4 limited support for these theories. The sampled payroll data reflected only a handful of
5 nondiscretionary bonus payments, so the regular rate theory yielded an estimated maximum exposure
6 of approximately \$188.00 in unpaid overtime and approximately \$4,809.00 in underpaid sick leave,
7 inclusive of interest. (Smith Decl., ¶ 58.) The expense reimbursement claim, which was premised on
8 personal cell phone use by employees not covered by Defendant's reimbursement program, yielded an
9 estimated maximum exposure of approximately \$24,853.00, inclusive of interest. (Smith Decl., ¶ 58.)
10 The sampled records did not permit a class-wide valuation of the vacation claim, and the timely
11 payment claim under Labor Code sections 204 and 210 is derivative of the wage claims addressed
12 above. (Smith Decl., ¶ 58.) Defendant denied each of these allegations and maintained that it paid all
13 wages when due and reimbursed the business expenses its employees incurred. (Smith Decl., ¶ 58.)

14 Compared with the off-the-clock, meal period, rest period, and derivative penalty claims
15 discussed above, these remaining claims are nominal in value and considerably weaker on the merits.
16 They therefore did not meaningfully contribute to Plaintiff's damages model or to Plaintiff's
17 calculation of Defendant's realistic exposure, and Plaintiff assigned them no separate value in the
18 analysis that follows. (Smith Decl., ¶ 59.)

19 **IV. SUMMARY OF THE PROPOSED SETTLEMENT**

20 Under the terms of the Settlement Agreement, Defendant will be released of all claims asserted
21 in the Operative Complaint in exchange for Defendant's agreement to pay a non-reversionary Gross
22 Settlement Amount of \$418,000.00. (See generally, Settlement Agreement.)

23 **A. REASONABLENESS OF THE GROSS SETTLEMENT AMOUNT**

24 Plaintiff has applied appropriate discounts on the maximum settlement value as calculated
25 above to come to Defendant's realistic exposure of no more than \$542,792.73. (Smith Decl., ¶ 60.) As
26 explained above, the issues in this case were hotly contested—both legally and factually. (Smith Decl.,
27 ¶ 60.) While Plaintiff continues to believe in the merits of the case, Defendant argued that it fully
28 complied with California's wage and hour laws, and thus faced minimal exposure, if any. (*Ibid.*)

1 Therefore, the Gross Settlement Amount of \$418,000.00 is an excellent result and within the zone of
2 reasonableness for all parties. (*Ibid.*) If preliminary approval is granted, Plaintiff will have recovered
3 **77.0%** of the estimated settlement value for the Class Members in this case—a fair compromise of the
4 claims, by any measure. (*Ibid.*)

5 The Gross Settlement Amount in the Settlement Agreement was reached only after the case
6 was thoroughly investigated by Plaintiff's counsel. (Smith Decl., ¶ 61.) As explained above, Plaintiff's
7 counsel reviewed, among other key pieces of information, the records of a 15% sampling of randomly-
8 selected employees, which Plaintiff's counsel determined would provide a statistically significant
9 sample size with a high-degree of confidence for Plaintiff's expert's statistical analysis. (Smith Decl.,
10 ¶ 61.) This sampling included payroll records and timesheets for the Class Members' shifts during the
11 Class Period. (Smith Decl., ¶ 61.) Plaintiff's counsel also conducted a detailed examination of
12 Defendant's relevant policies to inform Plaintiff's counsel's analysis of Defendant's potential
13 exposure. (Smith Decl., ¶ 62.) From these records, Plaintiff's expert was able to carefully craft a
14 damages model for each of the categories of alleged claims for which the data would reflect violations.
15 (Smith Decl., ¶ 62.) In total, Plaintiff's counsel and Plaintiff's expert reviewed hundreds of pages of
16 documents prior to agreeing to settle the case. (Smith Decl., ¶ 62.)

17 These documents, along with the other investigation and discovery described above, were
18 sufficient to allow counsel to act intelligently in reaching the Settlement Agreement and determining
19 that the Gross Settlement Amount was adequate. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,
20 1802.) Indeed, after a thorough review of all available evidence in the case, Plaintiff's counsel have
21 concluded that the Gross Settlement Amount represents an excellent result for the Class. (Smith Decl.,
22 ¶ 63.)

23 **B. SETTLEMENT CONSIDERATION AND ALLOCATION**

24 The Gross Settlement Amount includes: **(1)** the fees and expenses of the Settlement
25 Administrator, currently estimated to not exceed \$7,950.00; **(2)** Plaintiff's counsel's attorney fees not
26 to exceed one-third of the Gross Settlement Amount, i.e., \$139,333.33; **(3)** litigation expenses and costs
27 not to exceed \$30,000.00; **(4)** a service award to the named Plaintiff of up to \$7,500.00; **(5)** payment
28 to the LWDA of \$27,170.00 for its 65% share of the PAGA penalties; and **(6)** Individual PAGA

1 Payments to the Aggrieved Employees totaling \$14,630.00 for their 35% share of the PAGA penalties.
2 (Settlement Agreement, at pp. 6-8.)

3 After all Court-approved deductions from the Gross Settlement Amount, the Net Settlement
4 Amount, which consists of at least \$191,416.67, will be distributed to all Class Members who do not
5 request exclusion from the settlement. (Settlement Agreement, at p. 3.) The Aggrieved Employees will
6 separately receive Individual PAGA Payments from the \$14,630 employee share of the PAGA
7 penalties, whether or not they participate in the class settlement. (Settlement Agreement, at p. 8.)
8 Applicable employer-side payroll taxes will be paid by Defendant outside and separate from the Gross
9 Settlement Amount. (Settlement Agreement, at p. 6.) Defendant will fund the Gross Settlement Amount
10 in two rounds—\$200,000.00 by the later of December 15, 2026, or thirty calendar days after the order
11 granting final approval, and the balance no later than one year after the first payment is due—and the
12 Settlement Administrator will make a separate distribution within fourteen days after receiving each
13 payment. (Settlement Agreement, ¶¶ 4.3.1–4.3.3, at p. 9.)

14 C. THE RELEASE

15 Under the Settlement Agreement, the “Released Claims” are divided into two categories: **(1)** the
16 released claims for the purposes of the class action portion of the Settlement Agreement, and **(2)** the
17 released claims for the purposes of the PAGA portion of the Settlement Agreement. (Settlement
18 Agreement, at pp. 11-12.) The Released Claims for the purposes of the class action portion of the
19 Settlement Agreement, for the duration of the Class Period, include all claims that were alleged, or that
20 reasonably could have been alleged, based on the facts alleged in the Operative Complaint. (Settlement
21 Agreement, at pp. 11-12.) The Released Claims for the purposes of the PAGA portion of the Settlement
22 Agreement include, for the duration of the PAGA Period, all claims for PAGA civil penalties that were
23 alleged, or that reasonably could have been alleged, based on the facts stated in the Operative
24 Complaint and in Plaintiff’s PAGA notice to the LWDA. (Settlement Agreement, at p. 12.) A true and
25 correct copy of Plaintiff’s PAGA letter to the LWDA in this case is attached as **Exhibit 3** to the
26 concurrently filed Declaration of Kyle D. Smith. (Smith Decl., Exh. 3.) These releases will become
27 effective on the date when Defendant fully funds the entire Gross Settlement Amount and pays all
28 associated employer payroll taxes. (Settlement Agreement, at p. 11.)

1 **D. SETTLEMENT ALLOCATION FORMULA**

2 Individual payments to the Class Members from the class-portion of the settlement will be
3 calculated and apportioned based on the number of workweeks worked by the participating Class
4 Member during the Class Period (the “Individual Settlement Payments”). (Settlement Agreement, at
5 pp. 7-8.) Specific calculations of Individual Settlement Payments will be determined by: **(a)** dividing
6 the Net Settlement Amount by the total number of workweeks worked by all participating Class
7 Members during the Class Period, and **(b)** multiplying the result by each participating Class Member’s
8 workweeks. (Settlement Agreement, at p. 7.) If there are any timely submitted requests for exclusion,
9 the settlement administrator will proportionately increase the Individual Settlement Payments for each
10 participating Class Member so that the amount actually distributed to participating Class Members
11 equals 100% of the Net Settlement Amount. (Settlement Agreement, at p. 8.)

12 If the amounts allocated to attorney’s fees, litigation costs, service awards, or the Settlement
13 Administrator are approved at a lesser amount than provided in the Settlement Agreement, the
14 remaining funds will be returned to the Net Settlement Amount and distributed proportionately to the
15 participating Class Members based on their total workweeks worked. (Settlement Agreement, at pp. 6-
16 7.)

17 Individual payments to the Aggrieved Employees from the PAGA-portion of the settlement
18 (i.e., the portion not being sent to the LWDA), will be calculated and apportioned based on the number
19 of pay periods worked by each Aggrieved Employee during the PAGA Period compared to the total
20 number of pay periods worked by all Aggrieved Employees during the PAGA Period. (Settlement
21 Agreement, at p. 8.)

22 **E. SELECTION OF THE SETTLEMENT ADMINISTRATOR**

23 Plaintiff, through counsel, has obtained bids from several settlement administration companies
24 for the settlement administration of this case. Of those, ILYM Group, Inc. presented the lowest
25 qualified bid. Accordingly, Plaintiff proposes to use ILYM Group, Inc. as the settlement administrator.
26 (Smith Decl., ¶ 66; Settlement Agreement, at p. 14.) The settlement administrator will be responsible
27 for processing the settlement payments and providing notice to the Class Members as outlined in the
28 Settlement Agreement. (Settlement Agreement, at p. 14.)

1 **F. NOTICE PROCEDURES**

2 Within 15 days of the Court granting preliminary approval of the Settlement Agreement,
3 Defendant shall provide the Settlement Administrator with an updated list of Class Members and
4 Aggrieved Employees containing names, number of Class Period workweeks, number of PAGA Period
5 pay periods, addresses, and social security numbers (the “Class Data”). (Settlement Agreement, at pp.
6 8-9.)

7 Within 14 days of receiving the Class Data, the Settlement Administrator shall send the Class
8 Notice by bulk first class mail, forwarding requested, to the Class Members at the addresses identified
9 through the process described above, in English with a Spanish translation. (Settlement Agreement, at
10 p. 14.) The Class Notice will be substantially in the form of the one attached as **Exhibit 2** to the
11 Declaration of Kyle D. Smith (“Class Notice”).

12 The Class Notice also informs Class Members that the location, date, and time of the final
13 approval hearing may be changed. (Smith Decl., Exh. 2.) Additionally, the Class Notice will inform
14 each Class Member of his or her estimated share of the settlement, as well as an easily understood
15 statement alerting the Class Members that, unless they elect to opt out of the Settlement Agreement,
16 the Class Member is releasing and waiving all “Released Claims” (as that term is defined in the
17 Settlement Agreement and explained in the Class Notice). (Settlement Agreement, at pp. 14-16; Smith
18 Decl., Exh. 2.) The Class Notice will also inform the Class Members of their right to object to the
19 Settlement Agreement. (Settlement Agreement, at pp. 16-17.) Any Class Member who wishes to object
20 to the Class Settlement may submit a written objection to the Settlement Administrator no later than
21 45 days following the date on which the Settlement Administrator first mails the Class Notice to the
22 Class Members (“Response Deadline”). (Settlement Agreement, at p. 17.) Alternatively, Class
23 Members may also object to the Settlement Agreement by appearing at the final approval hearing,
24 either on their own or through an attorney. (Settlement Agreement, at p. 17.)

25 Class Members who do not timely request exclusion from the Settlement Agreement will be
26 deemed to be a participating Class Member without having to submit a claim form or take any other
27 action. (Settlement Agreement, at p. 6.) To request exclusion from the Settlement Agreement, the Class
28 Member must send to the Settlement Administrator a signed written request for exclusion from the

1 Settlement Agreement (“Request for Exclusion”), faxed, emailed, or postmarked no later than the
2 Response Deadline. (Settlement Agreement, at p. 15.)

3 Before mailing Class Notices, the Settlement Administrator will update Class Member
4 addresses using the National Change of Address database. (Settlement Agreement, at pp. 14-15.) If any
5 Class Notice mailed to a Class Member is returned as having been undelivered by the U.S. Postal
6 Service, the Settlement Administrator shall re-mail the Class Notice to the forwarding address affixed
7 thereto, if one is provided. (Settlement Agreement, at pp. 14-15.) If no forwarding address is provided,
8 the Settlement Administrator will conduct an address search and remail the Class Notice to the most
9 current address of that Class Member. (Settlement Agreement, at pp. 14-15.) Class Members to whom
10 the Class Notice is re-mailed are given an extension of up to 14 calendar days for disputes, objections,
11 or to request exclusion. (Settlement Agreement, at p. 15.)

12 **G. TIMING OF SETTLEMENT DISBURSEMENTS**

13 Defendant will deposit the Gross Settlement Amount in two rounds of funding, plus also fund
14 the amounts necessary to fully pay the employer-side payroll taxes, with the Settlement Administrator.
15 (Settlement Agreement, at p. 9.) For the first round of funding, Defendant shall pay \$200,000.00 of the
16 Gross Settlement Amount to the Settlement Administrator no later than the later of (i) December 15,
17 2026, or (ii) thirty (30) calendar days after the date the Court enters its order granting final approval of
18 the settlement. (Settlement Agreement, at p. 9.) For the second round of funding, Defendant shall pay
19 the remainder of the Gross Settlement Amount to the Settlement Administrator no later than one (1)
20 year after the due date of the First Round of Funding. (Settlement Agreement, at p. 9.) At that time, the
21 settlement will be fully funded. The Settlement Administrator shall conduct two separate distributions,
22 completing each distribution no later than fourteen (14) calendar days after its receipt of the
23 corresponding payment from Defendant. (Settlement Agreement, at p. 9.) The Settlement Agreement
24 further provides that disbursement of Plaintiff’s service award shall be paid in full as part of the first
25 distribution. (Settlement Agreement, at p. 9.)

26 **H. *CY PRES* DISTRIBUTION**

27 Class Members will have 180 days to cash their settlement checks. (Settlement Agreement, at
28 p. 10.) If a Class Member fails to cash his/her check by the deadline, then the Settlement Administrator

1 shall transmit the funds represented by such checks to My New Red Shoes, a nonprofit organization
2 that works to improve the quality of life and well-being for children and youth experiencing economic
3 hardship. (Settlement Agreement, at p. 10.)

4 This disposition of uncashed funds complies with Code of Civil Procedure section 384,
5 subdivision (b), which directs that any unpaid residue or unclaimed class member funds be paid to a
6 nonprofit organization or foundation that supports projects benefiting the class or similarly situated
7 persons, to a child advocacy program, or to a nonprofit organization providing civil legal services to
8 the indigent. My New Red Shoes is a Bay Area nonprofit that serves children and youth experiencing
9 economic hardship, a population that includes the families of the low-wage janitorial workforce that
10 makes up the Class, and neither Plaintiff nor Plaintiff's counsel has any relationship with the
11 organization. (Smith Decl., ¶ 67.) To the extent an amended judgment is required under Code of Civil
12 Procedure section 384, the Parties will jointly submit a proposed amended judgment. (Settlement
13 Agreement, ¶ 11, at p. 20.)

14 **I. TAX TREATMENT**

15 The Settlement Agreement provides that 15% of each individual settlement payment from the
16 class-portion of the Settlement Agreement shall constitute wages (for which each participating Class
17 Member will be issued an IRS Form W-2 for such payment), and the remaining 85% shall constitute
18 penalties and interest (for which each participating Class Member will be issued an IRS Form 1099).
19 (Settlement Agreement, at p. 8.)

20 With respect to the individual payments made under the PAGA-portion of the Settlement
21 Agreement, all such payments shall be treated as payments owing for penalties and interest (for which
22 each Aggrieved Employee will be issued an IRS Form 1099 for the interest and penalty allocation).
23 (Settlement Agreement, at p. 8.)

24 Defendant will separately and additionally pay its share of employer payroll taxes on the sum
25 allocated to wages. (Settlement Agreement, at pp. 6, 8.)
26
27
28

1 **V. THE CLASS SHOULD BE PRELIMINARILY CERTIFIED**

2 **A. THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY**
3 **CERTIFICATION IS APPROPRIATE**

4 California Rules of Court, rule 3.769, subdivision (d), provides that the Court may make an
5 order approving certification of a provisional settlement class at the preliminary approval stage. It is
6 well-established that trial courts should use a “lesser standard of scrutiny” for determining the propriety
7 of certifying a settlement class, as opposed to a litigation class. (*Dunk v. Ford Motor Co.* (1996) 48
8 Cal.App.4th 1794, 1807, fn. 19.) Since no trial is anticipated in a class-based settlement, the case
9 management issues inherent in determining if the class should be certified need not be confronted, and
10 the Court’s fairness review of the settlement focuses on protecting the interests of the non-
11 representative class members. (*Ibid.*; see also *Officers for Justice v. Civil Service Com. of City and*
12 *County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 633; *Amchem Products, Inc. v. Windsor* (1997)
13 521 U.S. 591, 620 [117 S.Ct. 2231, 2248] [“Confronted with a request for settlement-only class
14 certification, a district court need not inquire whether the case, if tried, would present intractable
15 management problems . . . for the proposal is that there be no trial.”].)

16 As discussed below, for settlement purposes only, the Parties ask this Court to conditionally
17 certify the Class, as defined above, under section 382 of the Code of Civil Procedure.

18 **B. THE PROPOSED CLASS IS NUMEROUS AND ASCERTAINABLE**

19 Numerosity is met if a proposed class is so large that joinder of all members would be
20 impracticable. (See Code Civ. Proc., § 382.) A proposed settlement class is ascertainable if the class
21 members can be objectively identified and given notice of the litigation without unreasonable time or
22 expense. (See *Medraza v. Honda of North Hollywood* (2008) 166 Cal.App.4th 89, 101.) Defendant has
23 represented that the proposed Class consists of approximately 298 Class Members ascertained through
24 Defendant’s records. As such, the numerosity requirement is met.

1 **C. MEMBERS OF THE PROPOSED CLASS SHARE A WELL-DEFINED**
2 **COMMUNITY OF INTEREST**

3 **1. Commonality**

4 To justify certification, the class proponent must show that questions of law or fact common to
5 the class predominate over the questions affecting the individual members. (See *Arenas v. El Torito*
6 *Restaurants, Inc.* (2010) 183 Cal.App.4th 723, 732 [citing *Washington Mutual Bank, FA v. Superior*
7 *Court* (2001) 24 Cal.4th 906, 913].) The commonality element is satisfied here because common legal
8 and factual questions exist, such as **(a)** whether individuals working for Defendant were subject to
9 unlawful wage-and-hour policies and/or practices under the California Labor Code; **(b)** whether these
10 violations triggered derivative claims for penalties; and **(c)** whether Defendant’s violations were
11 knowing or willful.

12 **2. Typicality**

13 Typicality focuses on: **(1)** whether other members of the proposed class have the same or
14 similar injury to the named plaintiff(s), **(2)** whether the action is based on conduct which is not unique
15 to the named plaintiff(s), and **(3)** whether other class members have been injured by the same course
16 of conduct. (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502; *Martinez v. Joe’s Crab*
17 *Shack Holdings* (2014) 231 Cal.App.4th 362, 375.) Here, Plaintiff’s claims are typical of the Class
18 Members because she was subject to Defendant’s policies and practices described above in Plaintiff’s
19 analysis of the claims and defenses, which were consistently applied class-wide to all Employees.
20 (Declaration of Lucia Magana in Support of Plaintiff’s Motion for Preliminary Approval of Class
21 Action Settlement (“Lucia Magana Decl.”), ¶ 4.)

22 **3. Adequacy of Representation**

23 A proposed class representative must establish that they will adequately represent the proposed
24 class. (See *Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540, 546.) Plaintiff is
25 adequate as a class representative because she is a member of the Class, experienced the same wage
26 and hour practices as the rest of the Class, is committed to representing the interests of the Class, has
27 no interests that are adverse to members of the Class, and understands and accepts her duty to represent
28

1 the best interests of the Class. Plaintiff is committed to the Class and is adequate to represent the
2 interests of the Class in this litigation. (Lucia Magana Decl., ¶ 5.)

3 Plaintiff also provided counsel with information that was crucial to initiating the action and
4 preparing the mediation brief, discussed settlement strategy with counsel, and provided valuable
5 information about the Class Members and their experiences working for Defendant. (Smith Decl., ¶
6 80; Lucia Magana Decl., ¶¶ 6-8.)

7 Adequacy may be established by the fact that counsel are experienced practitioners. (See *Local*
8 *Joint Executive Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001) 244
9 F.3d 1152, 1162.) Plaintiff is represented by counsel experienced in the litigation of wage and hour
10 class actions, who have no interests adverse to Plaintiff or the Class, who vigorously prosecuted this
11 action, and who have the financial resources to handle this case. (Smith Decl., ¶ 8.)

12 **4. Superiority**

13 Certification of the Class for settlement purposes is superior here because there will be a global
14 resolution of all claims at once, which fosters judicial economy. Class certification is also superior to
15 litigation of numerous individual claims because most of the claims are too small to litigate
16 individually.

17 **5. Predominance**

18 The common issues here, concerning the uniform deficiencies to Defendant's wage-and-hour
19 policies and practices raise predominating factual and legal issues supporting certification of a
20 settlement class.

21 **VI. PRELIMINARY APPROVAL SHOULD BE GRANTED**

22 **A. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, AND** 23 **NON-COLLUSIVE NEGOTIATIONS**

24 The Settlement Agreement was negotiated at arm's length between counsel using a professional
25 and well-respected third-party neutral. (Smith Decl., ¶ 68.) Counsel for both parties were thoroughly
26 familiar with the complex legal and factual questions at issue in this litigation. (Smith Decl., ¶ 68.) The
27 Settlement Agreement is a product of intensive negotiations, supported by investigation and direct
28

1 exchanges of information through informal discovery, during the course of settlement negotiations,
2 including a full-day mediation. (Smith Decl., ¶ 68.)

3 Although Plaintiff and her counsel believed the class claims had merit and there was a
4 possibility of certifying the class and claims, they recognized the potential risk, expense, and
5 complexity posed by litigation, such as unfavorable decisions on class certification, summary
6 judgment, at trial and/or on the damages awarded, and/or on an appeal that can take several more years
7 to litigate. (Smith Decl., ¶ 69.) The resulting Settlement Agreement was based on calculations, risk
8 assessment, and non-collusive negotiation. (Smith Decl., ¶ 69.) It takes the risks identified above and
9 others into account in arriving at the non-reversionary Gross Settlement Amount. (Smith Decl., ¶ 69.)

10 **B. THE DISCOVERY AND INVESTIGATIONS WERE EXTENSIVE**

11 Counsel for the Parties spent months prior to the mediation developing the factual record for
12 this case, engaging in informal discovery and exchanges of documents and information, and drafting
13 detailed mediation briefs, all of which ensured both sides were fully informed about the strengths and
14 weaknesses of their respective positions at the mediation and during subsequent settlement
15 negotiations. (Smith Decl., ¶ 70.) The Parties and their counsel attended a full-day mediation session
16 before an experienced and well-respected mediator which resulted in the resolution of the case on a
17 class and representative basis. (Smith Decl., ¶ 70.) Rachel Pusey is an experienced mediator of wage-
18 and-hour class actions and employment matters. (Smith Decl., ¶ 70.)

19 In addition, the Parties are represented by skilled and experienced counsel with extensive
20 backgrounds in complex litigation and experience litigating similar wage and hour class actions. (Smith
21 Decl., ¶ 71.) The Settlement Agreement was reached after extensive investigation and research,
22 calculations and risk evaluation, substantial exchanges of documents, and Plaintiff's counsel's
23 thorough factual investigation, which were sufficient to evaluate Defendant's defenses. (Smith Decl.,
24 ¶ 71.) The Settlement Agreement came only after the case was thoroughly investigated by Plaintiff's
25 counsel. (*Ibid.*) Plaintiff's counsel all agree that this settlement is fair, adequate, and reasonable, and in
26 the best interests of Class Members. (Smith Decl., ¶ 71.)

1 **C. THE RISKS INHERENT IN CONTINUED LITIGATION ARE GREAT**

2 To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court
3 should also consider “[t]he strength of plaintiff’s case, the risk, expense, complexity and likely duration
4 of further litigation, [and] the risk of maintaining class action status.” (*Dunk v. Ford Motor Co.* (1996)
5 48 Cal.App.4th 1794, 1801.) As described above, Defendant had strong defenses to Plaintiff’s claims,
6 which create a real possibility that the claims might not be certified or might fail on the merits. (Smith
7 Decl., ¶ 72.) Proceeding with litigation would impose a significant risk of no recovery as well as
8 ongoing, substantial additional expenditures of time and resources. If settlement were not achieved,
9 continued litigation of the claims would take a substantial amount of time and possibly confer no
10 benefit on Class Members. By contrast, the settlement will yield a prompt, certain, and substantial
11 recovery for the Class Members, which also benefits the Parties and the Court. In considering these
12 risks, the choice was overwhelmingly in favor of settlement. (Smith Decl., ¶ 73.)

13 **D. THE SETTLEMENT IS A REASONABLE COMPROMISE OF CLAIMS**

14 The Settlement Agreement represents a fair compromise given the risks and uncertainties
15 presented by continued litigation. Defendant asserted and would have continued to assert legal and
16 factual grounds to defend against this action, including factual and legal defenses on the merits.
17 Moreover, continued litigation would be costly, time-consuming, and uncertain. In contrast, the
18 Settlement Agreement ensures timely relief and substantial recovery of the Defendant’s realistic
19 exposure. (Smith Decl., ¶ 74.)

20 **E. PLAINTIFF’S COUNSEL ARE EXPERIENCED IN SIMILAR WAGE-AND-
21 HOUR LITIGATION**

22 Plaintiff’s counsel are experienced in wage-and-hour class actions. (Smith Decl., ¶ 75.)
23 Numerous state and federal courts have certified Mr. Smith as adequate and competent class counsel
24 in wage and hour class actions. (Smith Decl., ¶ 75.) Mr. Smith devotes the vast majority of his law
25 practice to plaintiff-side class and representative employment-law cases. (Smith Decl., ¶ 75.)

26 The Parties’ counsel agree that this settlement is fair, adequate, and reasonable in light of the
27 nature of the claims, realistic risk adjusted value of damages, complexities of the case, the state of
28 the law, and uncertainties of class certification and litigation. (Smith Decl., ¶ 76.) Given the risks

1 inherent in litigation and the defenses asserted, this settlement is fair, adequate, and reasonable and
2 in the best interests of Class Members and should be preliminarily approved. (Smith Decl., ¶ 76.) The
3 Settlement Agreement is also consistent with other settlements that received approval of the Courts.
4 (Smith Decl., ¶ 76.)

5 Experienced counsel, operating at arm's length, have weighed the strengths and risks of the
6 case, and endorse the proposed settlement. (Smith Decl., ¶ 77.) The view of the attorneys actively
7 conducting the litigation is entitled to significant weight in deciding whether to approve the settlement.
8 (*Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, aff'd (9th Cir. 1981) 661 F.2d
9 939 ["[T]he fact that experienced counsel involved in the case approved the settlement after hard-
10 fought negotiations is entitled to considerable weight."]; *Kullar v. Foot Locker Retail, Inc.* (2008) 168
11 Cal.App.4th 116, 128 [court must take into account the experience and view of counsel].)

12 **F. THE CLASS NOTICE PLAN CONFORMS TO ALL APPLICABLE**
13 **STATUTES AND RULES**

14 The proposed Class Notice—which the parties have already agreed to—should be approved, as
15 it fully informs the Class Members of the nature of the lawsuit and each Class Member's rights under
16 the terms of the Settlement Agreement and applicable law. (Smith Decl., Exh. 2.) The way the Class
17 Notice is to be disseminated, as outlined above, will ensure that all of the Class Members will be
18 properly notified of the proposed settlement. Of particular note, the Class Notice and the notice plan
19 outlined in the Settlement Agreement closely track the Los Angeles Superior Court's [Model] Class
20 Action and PAGA Settlement Agreement and Class Notice (LASC CIV 296). (Settlement Agreement,
21 at p. 1, fn. 1.) The Court can therefore proceed with confidence knowing that the Parties have followed
22 a notice plan that has already been vetted for use in class and PAGA settlements.

23 The Court has wide discretion in approving the means of providing notice, so long as the class
24 representative "provide(s) meaningful notice in a form that should have a reasonable chance of reaching
25 a substantial percentage of class members." (*Archibald v. Cinerama Hotels* (1976) 15 Cal.3d 853, 860,
26 quotation marks omitted.) Here, the Parties' notice plan is that notice of the Settlement Agreement will
27 be disseminated directly to the class members by first class mail by the settlement administrator within
28

1 14 days of the date on which the Settlement Administrator receives the Class Data from Defendant.
2 (Settlement Agreement, at p. 14.)

3 The notice plan and the Class Notice satisfy the requirements of rule 3.766 of the California
4 Rules of Court and afford the Class Members with all due process protections required by the United
5 States Constitution. Moreover, the contents of the Class Notice are in compliance with rule 3.766,
6 subdivision (d), of the California Rules of Court, because the Class Notice includes, among other
7 things: **(1)** a detailed explanation of the case, including the basic contentions or denials of the parties;
8 **(2)** a statement that the court will exclude the member from the class if the member so requests by a
9 specified date; **(3)** a procedure for the member to follow in requesting exclusion from the class; **(4)** a
10 statement that the judgment, whether favorable or not, will bind all members who do not request
11 exclusion; and **(5)** a statement that any member who does not request exclusion may, if the member so
12 desires, enter an appearance through counsel. (Smith Decl., Exh. 2.) The 45-day deadline for Class
13 Members to exclude themselves or challenge the number of workweeks worked during the Class Period
14 is reasonable, as it provides Class Members with sufficient time to do so and, if they so choose, to seek
15 independent legal advice in the interim. (Settlement Agreement, at pp. 16-17.) The Settlement
16 Administrator will also maintain a settlement website posting the operative settlement documents and
17 the date, time, and location of the final approval hearing, together with a toll-free telephone number
18 and an email address for Class Member inquiries. (Settlement Agreement, at p. 17.)

19 **VII. THE ATTORNEYS' FEE ALLOCATION UNDER THE SETTLEMENT**
20 **AGREEMENT IS FAIR**

21 In addition, at the time of final approval, Plaintiff's counsel will request attorneys' fees of up
22 to one-third of the Gross Settlement Amount, (i.e., \$139,333.33), plus reimbursement of litigation
23 expenses and costs of up to \$30,000.00. (Settlement Agreement, at p. 7.) As the California Supreme
24 Court has made clear, one-third of the common fund is a reasonable percentage for a trial court to
25 award as attorneys' fees in a class action where a common fund was generated as a result of the case.
26 (See *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 506 [finding no abuse of discretion
27 where trial court approved a fee request of one-third of the common fund].) The California Supreme
28 Court further clarified that trial courts "have discretion to conduct a lodestar cross check on a

percentage fee, as the court did here; they also retain the discretion to forgo a lodestar cross check and use other means to evaluate the reasonableness of a requested percentage fee.” (*Ibid.*)

The requested fee of one-third of the Gross Settlement Amount is also consistent with awards obtained in similar wage and hour class action cases approved by various courts in California. (See *Stuart v. RadioShack Corp.* (N.D. Cal., Aug. 9, 2010, No. C-07-4499 EMC) 2010 WL 3155645 [approving fee award of one-third of the total maximum settlement amount of \$4.5 million and noting that the fee award of one-third of the total settlement was “well within the range of percentages which courts have upheld as reasonable in other class action lawsuits”]; *Singer v. Becton Dickinson and Co.* (S.D. Cal., June 1, 2010, No. 08-CV-821-IEG (BLM)) 2010 WL 2196104, at * 8 [approving fee award of 33.33% of the common fund]; *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal., Nov. 14, 2007, No. 1:05CV0484 DLB) 2007 WL 3492841, at *4 [awarding fees of one-third of common fund in a wage and hour class action, noting: “[f]ee awards in class actions average around one-third of the recovery.”]; *Martin v. FedEx Ground Package System, Inc.* (N.D. Cal., Dec. 31, 2008, No. C 06-6883 VRW) 2008 WL 5478576, at *8 [approving attorneys’ fees of one-third of common fund].)

As part of the final approval motion, Plaintiff’s counsel will request approval of the attorneys’ fees and costs described in this motion and in the Settlement Agreement, which will be heard at the final approval hearing. Accordingly, the Court need not decide the fees and costs at this time, but only authorize the Class Notice to inform class members that counsel will seek fees and costs up to one third of the Gross Settlement Amount in fees, plus actual litigation costs.

VIII. THE CLASS REPRESENTATIVE SERVICE AWARD IS FAIR AND APPROPRIATE

Plaintiff will request payment of a service award from the Gross Settlement Amount of up to \$7,500.00 in addition to whatever payment she is otherwise entitled to receive as a Class Member. (Smith Decl., ¶ 79; Settlement Agreement, at p. 6.) The proposed service award is reasonable compensation given the time and effort that Plaintiff devoted to this case, the valuable assistance she provided to counsel, and the fact that she entered into an individual release that is broader than the release of the Class, including a waiver of the protections of Civil Code section 1542 and a release of claims under the Age Discrimination in Employment Act (29 U.S.C. § 621 et seq.). (Smith Decl., ¶ 79; Settlement Agreement, at p. 11; Lucia Magana Decl., ¶ 10.) Plaintiff provided invaluable assistance to

1 Plaintiff's counsel and the Class Members in this case, including providing factual background for
2 mediation and the operative complaint, reviewing the relevant documents, participating in phone calls
3 with Plaintiff's counsel, gathering highly relevant documents, and reviewing the settlement documents.
4 (Smith Decl., ¶ 80.) Plaintiff agreed to participate in this case with no guarantee of personal benefit.
5 (*Ibid.*) Further, Plaintiff agreed to undertake the financial risk of serving as a class representative and
6 exposed herself to the risk of negative publicity by anyone who opposed this case. (*Ibid.*)

7 Moreover, the requested service award for Plaintiff falls within the range of service payments
8 typically awarded to class representatives in similar class actions. (See, e.g., *Bond v. Ferguson*
9 *Enterprises, Inc.* (E.D. Cal., June 30, 2011, No. 1:09-cv-1662 OWW MJS) 2011 WL 2648879
10 [approving **\$11,250.00** service award to each of the two class representatives in a meal break class
11 action]; *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482, 493 [approving service
12 awards of **\$5,000.00** to each of two class representatives, **\$10,000.00** in total, from a \$300,000.00
13 settlement fund in a wage/hour class action]; *Garner v. State Farm Mut. Auto. Ins. Co.* (N.D. Cal., Apr.
14 22, 2010, No. CV 08 1365 CW (EMC)) 2010 WL 1687832, at *17, fn. 8 ["Numerous courts in the
15 Ninth Circuit and elsewhere have approved incentive awards of **\$20,000** or more where, as here, the
16 class representative has demonstrated a strong commitment to the class"], emphasis added.)

17 **IX. SUBMISSION TO THE LWDA**

18 The Settlement Agreement and this motion are concurrently being submitted to the LWDA in
19 accordance with Labor Code section 2699, subdivision (s)(2). (Smith Decl., ¶ 81.) The proof of
20 electronic submission is attached as **Exhibit 4** to the Declaration of Kyle D. Smith.

21 **X. CONCLUSION**

22 For these reasons, Plaintiff's motion for preliminary approval of the Parties' class action and
23 PAGA settlement should be granted.

1 Dated: September 23, 2026

MELMED LAW GROUP P.C.

2
3 

4 **KYLE D. SMITH**

5 Attorneys for Plaintiff, the Putative Class, and the
6 Aggrieved Employees
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28