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Attorneys for Plaintiffs, and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

(*UNLIMITED JURISDICTION*)

MARGARITA PEREZ and MARIA DE LA LUNA HUERTA on behalf of themselves and all others similarly situated, and the general public, and as "Aggrieved Employees" on behalf of other "Aggrieved Employees" and the State of California under the Labor Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

WORKFORCE PERSONNEL, INC., California Corporation; DIAMOND WIPES INTERNATIONAL, INC., California Corporation; and DOES 1–50, inclusive,

Defendant(s).

Case No. CIVSB2220822

PLAINTIFF MARIA DE LA LUNA HUERTA'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Hearing Date: July 6, 2026
Hearing Time: 1:30 p.m.
Hearing Dept.: 17, The Honorable Joseph T. Ortiz

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TABLE OF AUTHORITIES

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Statutes

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I. INTRODUCTION

Plaintiff Maria De La Luna Huerta ("Plaintiff") submits this memorandum of points and authorities in support of her unopposed motion for preliminary approval of the Class Action and PAGA Settlement Agreement and Class Notice (the "Settlement")[4], which provides for a Gross Settlement Amount ("GSA") of $595,079.40 in compromise of all disputed claims on behalf of all individuals Defendant Diamond Wipes International, Inc. ("DWI") employed directly at its Chino location as hourly, non-exempt employees during the Class Period of July 25, 2019 through the date of preliminary approval of this Settlement. Through this Motion, Plaintiff respectfully requests for this Court to (1) provisionally certify the below-defined Class for settlement purposes only under Code of Civil Procedure § 382; (2) preliminarily approve the Settlement; (3) preliminarily appoint Plaintiff as Class Representative; (4) appoint David Spivak of The Spivak Law Firm and Louis M. Benowitz of Benowitz Law Corporation as Class Counsel; (5) approve the proposed notice procedures and related forms; and (6) schedule a final approval hearing.

This Court should grant Plaintiff's motion because: (1) for settlement purposes, the Settlement Class meets the requirements for class certification under Code of Civil Procedure § 382; (2) the Settlement warrants preliminary approval based on all indicia for fairness, reasonableness, and adequacy; (3) for settlement purposes, Plaintiff is adequate to serve as Class Representative; (4) Plaintiff's attorneys are adequate to serve as Class Counsel; (5) the proposed notice procedures, and related forms, fully comport with due process and adequately apprise Class Members of their rights; and (6) a final approval hearing must be scheduled to allow Settlement Class Members an opportunity to be heard regarding the Settlement and to give it finality. Accordingly, for the reasons detailed below, this Court should grant Plaintiff's Motion in its entirety and preliminarily approve the Settlement.

II. BACKGROUND

Defendant DWI produces wipes and other personal care products. Defendant employed Plaintiff in California as an operator and packer from about August 2022 until January 2023. DS, ¶ 4.

A. The Claims and Procedural History

[4] The Settlement is attached as Exhibit ("Ex.") 1 to the Declaration of David Spivak ("DS"), which is submitted herewith under a separate cover.

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On September 07, 2022, named plaintiff Margarita Perez notified Defendant, Workforce Personnel, Inc. ("Workforce") (Defendant and Workforce are hereafter referred to as "named Defendants"), and the California Labor and Workforce Development Agency ("LWDA"), pursuant to the California Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* ("PAGA"), of alleged Labor Code violations committed by Defendant. On September 19, 2022, named plaintiff Margarita Perez filed a Class Action Complaint in the San Bernardino County Superior Court, Case No. CIVSB2220822, against Defendant on behalf of herself and others similarly situated, alleging causes of action on a class-wide basis for: (1) Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198); (2) Failure to Provide Rest Breaks (Lab. Code §§226.7 and 1198); (3) Failure to Provide Meal Periods (Lab. Code §§226.7, 512 and 1198); (4) Failure to Indemnify (Lab. Code §§ 1198 and 2802); (5) Wage Statement Penalties (Lab. Code §§ 226 and 226.2); (6) Waiting Time Penalties (Lab. Code §§ 201-203); and (7) Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.). On November 22, 2022, named plaintiff Perez filed a second complaint against the same named Defendants under Private Attorneys General Act. On June 23, 2025, another former employee of Defendant, Plaintiff Maria De La Luna Huerta, through Counsel, sent a letter to the LWDA and named Defendants alleging specific provisions of the California Labor Code named Defendants violated. On November 14, 2025, and per the stipulation of the Parties, named plaintiff Margarita Perez filed a First Amended Complaint to add 1) Huerta as a plaintiff and 2) PAGA claims in this action (with all supporting facts). Defendant denies all of Plaintiff's allegations and strongly contends that its wage and hour policies, practices and procedures are fully compliant with all applicable laws. Defense Counsel and Defendant represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement. Settlement, ¶ 7.1. DS, ¶¶ 5-6, Exs. 2 to 6.

B. <u>Discovery and Sampling</u>

Before agreeing to mediation, the Parties engaged in formal written discovery, including the discovery of the names and contact information of the putative class members though the *Belaire-West* notice process. On July 01, 2024, Plaintiff also requested that Defendant informally disclose documents and data to enable Plaintiff to prepare for settlement discussions, including the number of putative class members and aggrieved employees, the number of paychecks and workweeks for the various limitations periods applicable to Plaintiff's claims. Plaintiff also

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requested a reasonable, randomly selected sample of Defendant's time and payroll, and related personnel records. Finally, Plaintiff requested Defendant's written policies applicable to the claims at hand and asked Defendant identify any and all comparable claims against it. The Parties thereafter engaged in an informal, voluntary exchange of information in the context of privileged settlement discussions to facilitate an early mediation. DS, ¶ 7.

Defendant contends that based on its records, there are 335 Class Members and 48,777 Total Work Weeks as of March 19, 2025 (i.e., as of the date the Parties participated in mediation). Defendant produced the records of approximately 44 class members. The sample was randomly selected. The sample consisted of time and payroll records, and related records. DS, ¶ 8.

Plaintiff retained Sridhar Srinivasan, a data analyst, to analyze the sample. Plaintiff also employed the Raosoft[5] Sample Size calculator (http://www.raosoft.com/samplesize.html) to determine if the sample size selected is statistically reliable. *Bell v. Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715 and *Duran v. U.S. Bank* (2014) 59 Cal.4th 1. The *Bell* court found a relative margin of error of 32.4 percent was unacceptable whereas the *Duran* court found a relative margin of error of 43.3 percent was unacceptable. Using a margin of error of 15%, a confidence level of 95%, and a population size of 335, the Raosoft Sample Size Calculator recommended a sample of 43. DS, ¶ 9, **Exhibit 7** (Raosoft Sample Size Calculator results print-out). Thus, the sample population that Plaintiff's data analyst evaluated is statistically reliable. *Id.*

<u>C. Mediation</u>

On March 19, 2025, following much of the foregoing informal discovery and exchange of information, the Parties participated in a mediation session presided over by Mediator Steven G. Mehta, Esq, an experienced class action mediator. During the mediation, the Parties had a full day of productive negotiations and reached agreement on a class-wide settlement after the mediation session. During the mediation sessions, each side, represented by her / its respective counsel, recognized the risk of an adverse result in the Action. The Parties ultimately agreed to

[5] Raosoft advertises, "Raosoft, Inc. produces EZSurvey for the Internet, InterForm, SurveyWin, EZReport and Rapid Report innovative survey software programs for information gathering and analysis. The family of survey software supports data collection and reporting for any form-based data. Support is for web-surveys and forms, email distribution, diskette,PDA, laptop or pen-based: all types of distribution." The Raosoft webpage advertises that is it "database web survey software for gathering information." http://www.raosoft.com/ . It also advertises, "The parameters of the sample size calculation are something that you choose." http://www.raosoft.com/suggestreading.html.

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settle the Action and all other matters covered by this Agreement pursuant to the terms and conditions of this Agreement. DS, ¶ 10.

III. OVERVIEW OF THE SETTLEMENT

A. Settlement Class and Aggrieved Employees Definition

The Settlement defines the Settlement Class as all individuals Defendant Diamond Wipes International, Inc. employed directly at its Chino location as hourly, non-exempt employees during the Class Period . The Class Period is July 25, 2019 through the date of preliminary approval of this Settlement. Settlement, ¶¶ 1.5 and 1.12. The "Aggrieved Employees" are all individuals Defendant Diamond Wipes International, Inc. employed directly at its Chino location as an hourly, non-exempt employee during the PAGA Period of September 7, 2021 through the date of preliminary approval of this Settlement. Settlement, ¶¶ 1.4 and 1.32.

Except as otherwise provided by Paragraph 9 of the Agreement, Defendant promises to pay $595,079.40 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of the Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant. Settlement, ¶ 3.1.

The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval (*see* generally Settlement, ¶ 3):

To Plaintiff: Class Representative Service Payment to the Class Representative of not more than $5,000.00 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full

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responsibility and liability for employee taxes owed on the Class Representative Service Payment.

To Class Counsel: A Class Counsel Fees Payment of not more than one third of the Gross Settlement Amount which is currently estimated to be $198,359.80 and a Class Counsel Litigation Expenses Payment of not more than $15,000.00. Defendant will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

To the Administrator: An Administrator Expenses Payment not to exceed $10,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than $10,000.00, the Administrator will retain the remainder in the Net Settlement Amount.

To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Work Weeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Work Weeks.

<u>To the LWDA and Aggrieved Employees:</u> PAGA Penalties in the amount of $5,000.00 to be paid from the Gross Settlement Amount, with 75% ($3,750.00) allocated to the LWDA PAGA Payment and 25% ($1,250.00) allocated to the Individual PAGA Payments.

<u>B. Timing of Payments</u>

Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than 14 days after the Effective Date. Within 14 days after Defendant funds

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the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments. Settlement, ¶¶ 4.3. and 4.4.

C. Calculation of Settlement Shares

An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Work Weeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Work Weeks. Settlement, ¶ 3.2.4.

The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties $1,250.00 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. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. Settlement, ¶ 3.2.5.1.

D. Apportionment of Settlement Shares

20.00% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 80.00% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Settlement, ¶ 3.2.4.1.

E. The Releases

Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

Plaintiff's Release. In addition to the Released Class Claims and Released PAGA Claims described below, Plaintiff, individually and on behalf of her respective former and present

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spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, occurrences, demands, rights, liabilities and causes of action of every nature and description whatsoever, whether known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule, law or regulation arising out of, relating to, or in connection with any act or omission of the Released Parties through the date of full execution of this Settlement Agreement ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to those rights that as a matter of law cannot be waived, including but not limited to, any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them. This release does not apply to Defendant Workforce Personnel, Inc., or any of its officers, directors, employees or agents. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

> A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.

Settlement, ¶ 6.1.

Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on facts set forth in the Operative Complaint that arose during the Class Period including, e.g., claims for: (a) failure to pay all wages earned for all hours worked and other compensable hours at the correct rates of pay, including for off-the-clock work, hours improperly deducted, minimum wages, regular wages, overtime wages, and doubletime wages; (b) failure to provide rest breaks or compensation in lieu thereof; (c) failure to

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provide compliant meal periods or compensation in lieu thereof; (d) failure to reimburse for necessary business-related expenses; (e) failure to provide accurate and complete itemized wage statements and maintain payroll records; (f) failure to timely pay all wages due during employment and upon separation of employment; and (g) claims for unfair competition. ("Released Class Claims"). Except for Plaintiff's Release by Plaintiff and as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period. This release does not apply to Defendant Workforce Personnel, Inc., or any of its officers, directors, employees or agents. Settlement, ¶ 6.2.

Release of PAGA Claim. All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts set forth in the Operative Complaint and the PAGA Notice that arose during the PAGA Period including, e.g., claims for: (a) failure to pay all wages earned for all hours worked and other compensable hours at the correct rates of pay, including for off-the-clock work, hours improperly deducted, minimum wages, regular wages, overtime wages, and doubletime wages; (b) failure to provide compliant rest breaks or compensation in lieu thereof; (c) failure to provide compliant meal periods or compensation in lieu thereof; (d) failure to reimburse for necessary business-related expenses; (e) failure to provide accurate and complete itemized wage statements and maintain payroll records; (f) failure to timely pay all wages due during employment and upon separation of employment; and (g) claims for unfair competition. ("Released PAGA Claims"). The foregoing release shall be binding on Plaintiff, the Aggrieved Employees, and the State of California, and shall bar by res judicata any claim under the PAGA brought by any person, including the Aggrieved Employees, on behalf of the State of California, as to any claims predicated on the Released PAGA Claims. Aggrieved Employees do not release claims for wages or damages unless such Aggrieved Employee is a Participating Class Member. This release does not apply to Defendant Workforce Personnel, Inc., or any of its officers, directors, employees or agents. Settlement, ¶ 6.3.

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F. Notice and Claims Process and Procedures

No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, Aggrieved Employees, Work Weeks, and Pay Periods in the Class Data. Settlement, ¶ 8.4.1.

Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Notice Packet with Spanish translation, substantially in the forms attached to the Agreement as Exhibits A, B, C, and D. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Work Weeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Notice Packets, the Administrator shall update Class Member addresses using the National Change of Address database. Settlement, ¶ 8.4.2.

Not later than three (3) business days after the Administrator's receipt of any Notice Packet returned by the USPS as undelivered, the Administrator shall re-mail the Notice Packet using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Notice Packet to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Notice Packet to Class Members whose Notice Packet is returned by the USPS a second time. Settlement, ¶ 8.4.3.

1. Disputes

Each Class Member shall have 60 days after the Administrator mails the Notice Packet (plus an additional 14 days for Class Members whose Notice Packet is re-mailed) to challenge the number of Class Work Weeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. This is also known as a dispute. A Work Week Dispute form, attached as Exhibit C, may be used for this purpose but is not required. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Work Weeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Work Weeks and/or PAGA Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The

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Administrator shall promptly provide copies of all challenges to calculation of Work Weeks and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges. Settlement, ¶ 8.6.

2. Opting Out

Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60 days after the Administrator mails the Notice Packet (plus an additional 14 days for Class Members whose Notice Packet is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline. An Election Not to Participate in Settlement form, attached as Exhibit B, may be used for this purpose but is not required. The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge. Settlement, ¶¶ 8.5.1-8.5.2.

3. Objecting

Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment. Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 60 days after the Administrator's mailing of the Notice Packet (plus an additional 14 days for Class Members whose Notice Packet was re-mailed). An The Objection form attached as Exhibit D may be used for this purpose but is

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not required. Non-Participating Class Members have no right to object to any of the class action components of the Settlement. Settlement, ¶ 8.7

G. Uncashed Checks

For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). Settlement, ¶ 4.4.3.

IV. CERTIFICATION OF THE CLASS IS APPROPRIATE

Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable and its members are too numerous for joinder to be practical; (2) the representative and absent class members share a community of interest and questions of law and fact common to the class predominate over questions unique to individual class members; (3) the representative's claims are typical of the class' claims; and (4) the representative will fairly and adequately represent the class' interests. *See*, *e.g.*, *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470. Moreover, in the settlement context, the Court can use a lesser standard to determine the appropriateness of a settlement class as opposed to a litigated class certification. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807. As explained below, all of these requirements are met in this case.

A. The Settlement Class Is Objectively Ascertainable

A class is ascertainable when it may be readily identified without unreasonable expense or time by reference to official records. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932 (citing *Hypolite v. Carlson* (1975) 52 Cal.App.3d 566, 579). Plaintiff maintains that the above-defined Class is ascertainable because its members may be identified by reference to Defendant's records and Defendant has agreed to share the relevant information from its records to facilitate the settlement process. DS, ¶ 12; Settlement, ¶ 4.2. Therefore, the Settlement Class is ascertainable.

B. The Membership of the Settlement Class Is Sufficiently Numerous

The Settlement Class has sufficiently numerous members to render joinder impractical. No set number is required as a matter of law to maintain a class action. *Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, 1030. Defendant estimates that there are approximately 335 Class Members. DS, ¶ 13. Plaintiff maintains that it would be impractical and economically inefficient to require each Class Members to separately maintain an individual action or be joined as a named

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plaintiff in this action. The California Supreme Court has upheld a class of as few as 10 individuals. *See Bowles v. Superior Court* (1955) 44 Cal.2d 574. In light of these considerations, the Settlement Class' membership is sufficiently numerous. DS, ¶13. *See Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695.

C. Class Members Share a Well-Defined Community of Interest

The community of interest requirement "embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal. 4th 319, 326. It "does not mandate that class members have uniform or identical claims." *Capitol People First v. Dept. of Developmental Servs.* (2007) 155 Cal. App. 4th 676, 692. Rather, courts focus on the defendant's internal policies and "pattern and practice . . . in order to assess whether that common behavior toward similarly situated plaintiffs renders class certification appropriate." *Id.* (citing *Sav-On*, 34 Cal. 4th at 333).

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.* (2010) 183 Cal. App. 4th 723, 732 (*citing Washington Mut. Bank, FA v. Superior Court* (2001) 248 Cal. 4th 906, 913). In light of the more lenient standard for certification of a settlement class, the Parties agree that for the purposes of the Settlement only, the claims of the Class Members all stem from the same sources. DS, ¶ 14.

In this case, Plaintiff asserts all Class Members were subject to the same or similar operations and employment policies, practices, and procedures. The claims arise from Defendant's alleged policy-driven failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to issue proper wage statements, failure to indemnify for business expenses, failure to timely pay wages, and related labor law violations, all of which Plaintiff claims constitute unfair business practices and give rise to PAGA penalties. Plaintiff asserts that common questions include, but are not limited to: (1) Whether Defendant failed to pay all wages earned to Class Members for all hours worked at the correct rates of pay; (2) Whether Defendant failed to provide the class with all meal and rest periods in compliance with California law; (3) Whether Defendant failed to pay the class one additional hour of pay on workdays it failed to provide the class with one or more meal or rest periods in compliance with California law; (4) Whether Defendant failed to

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indemnify the class for all necessary business expenditures incurred during the discharge of their duties; (5) Whether Defendant knowingly and intentionally failed to provide the class with accurate wage statements; (6) Whether Defendant willfully failed to provide the class with timely final wages; and (7) Whether Defendant engaged in unfair competition within the meaning of Business and Professions Code section 17200, *et seq*., with respect to the class. DS, ¶ 14. Therefore, common questions predominate.

D. Plaintiff Is Typical of the Settlement Class

The class representative must be similarly situated to the rest of the purported class. *See Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46 (stating "it has never been the law in California that the class representative must have identical interests with the class members. The only requirements are ... that the class representative be *similarly* situated") (emphasis in original); *See also* Newberg, § 3:29 (typicality "focuses on whether there exists a relationship between the Plaintiff's claims and the claims alleged on behalf of the class"). Plaintiff contends that her claims are typical for the purposes of certifying the Settlement Class. Plaintiff asserts that she, like absent Class Members was subject to the same relevant policies and procedures governing her compensation, hours of work and meal and rest periods. Because Plaintiff contends that she was subject to the same general course of conduct as absent Class Members, resolving the common questions as they apply to Plaintiff will determine Defendant's *prima facie* liability to all Class Members. Moreover, Plaintiff's claims could potentially be subject to the same primary affirmative defenses as those of absent Class Members. Accordingly, Plaintiff's claims are typical of the Class. DS, ¶ 15.

E. Plaintiff Will Adequately Represent the Settlement Class

The adequacy requirement is met where the plaintiff is represented by counsel qualified to conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to the class' interests. *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451. In other words, where the plaintiff has adequate counsel, the plaintiff may represent the entire class absent any disabling conflicts of interest that might hinder the plaintiff's ability to represent the class. DS, ¶ 16.

First, Class Counsel have supplied the Court with declarations to show that they are adequate to represent the Settlement Class and that they have significant experience in employment litigation generally, and wage and hour and employment-related class action litigation specifically. *See* DS, ¶¶ 16-25; Declaration of Louis M. Benowitz ("Benowitz Decl.") ¶¶ 2-13. Thus, Plaintiff's counsel are adequate to serve as Class Counsel.

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Second, Plaintiff contends that she is an adequate class representative. Plaintiff and the Class Members have strong and co-extensive interests in this litigation because they all worked for Defendant during the relevant time period, allegedly suffered the same alleged injuries from the same alleged course of conduct, and there is no evidence of any conflict of interest between Plaintiff and the Class Members. DS, ¶ 17. Moreover, Plaintiff has demonstrated her commitment to the Settlement Class by, among other things, retaining experienced counsel, providing counsel with documents and extensively speaking with them to assist in identifying the claims asserted in this case, assisting them in identifying witnesses, as well as exposing herself to the risk of attorneys' fees and costs awards against her if this lawsuit had been unsuccessful. DS, ¶ 17. Thus, Plaintiff is adequate to serve as settlement class representative. Accordingly, this Court should find that Plaintiff and her counsel are adequate to represent the Settlement Class as required under Code of Civil Procedure § 382.

F. Class Action Treatment Is the Superior Means For Resolving The Claims Of The Class Members.

Plaintiff further contends that a class action is also superior to other means of adjudicating the issues in this action. The predominance of common legal and factual questions shows that this Court could fairly adjudicate the claims of Class Members through a single class action. In view of the *theoretical* alternatives that proposed class members could potentially utilize—representative PAGA action (where there is less relief available), individual civil lawsuits or wage claims through the Division of Labor Standards Enforcement (where there would be relatively little money at stake, but the claims would be time-consuming to litigate)—a class action is plainly superior to all of them. Thus, this consideration supports conditional class action treatment for purposes of this Settlement only. DS, ¶ 26.

V. THE COURT SHOULD GRANT PRELIMINARY APPROVAL BECAUSE THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE.

A. Legal Standard

A class action settlement requires court approval. California Rules of Court ("CRC"), Rule 3.769 provides three steps for approval: (1) Preliminary approval after submission of a written motion for preliminary approval, the proposed class settlement, and the proposed class notice; (2) Issuance of notice of settlement to class members; and (3) A final settlement approval hearing where class members may be heard regarding the settlement, and at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement is presented. The decision to approve or reject a class settlement is committed to the Court's broad discretion.

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Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 128. The decision to approve class settlement may be reversed only upon a showing of "clear abuse of discretion." *Id.*

B. The Settlement Is Presumptively Fair

In assessing preliminary approval, a court evaluates if the settlement process has certain indicia of fairness. A "presumption of fairness exists where (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Kullar*, 168 Cal. App. 4th at 128, quoting *Dunk v. Ford Motor Co.*, (1996) 48 Cal.App.4th at 1794.

The class settlement here satisfies all of these factors. DS, ¶ 27. The Settlement resulted from thorough, arms' length, negotiations between experienced counsel with the assistance of a respected mediator after sufficient discovery was exchanged to assess the relative strengths and weaknesses of their respective cases and Defendant's estimated exposure. *Id*.

Plaintiff prepared "damages" estimates in advance of the mediation. DS, ¶ 28, Ex. 8. Plaintiff determined Defendant's maximum possible exposure for restitution and penalties to be approximately $43,930,779.41 (consisting of $10,044,902.12 in unpaid wages, $11,941,866.66 in missed meal period premium wages, $12,175,638.93 in missed rest break premium wages, $18,425.00 in unreimbursed expenses, $1,358,700.00 for wage statement penalties, $825,446.70 for waiting time penalties, and $7,565,800.00 for civil penalties under PAGA. Plaintiff calculated the damages based on the number of workweeks and pay periods provided by Defendant, Plaintiff's reports, and the sample data. *Id*.

However, based on the difficulties of proof, the Defendant's defenses, and the other attendant risks Plaintiff identifies below, Plaintiff estimates the likely awards at trial should Plaintiff prevail to be the following amounts:

a. Unpaid wages with interest in the amount of $1,004,490.21;

b. Meal period premium wages with interest in the amount of $1,194,186.67;

c. Rest period premium wages with interest in the amount of $1,217,563.89;

d. Unreimbursed expenses with interest in the amount of $1,842.50;

e. Statutory pay stub penalties in the amount of $135,870.00;

f. Waiting time penalties in the amount of $82,544.67; and

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g. Civil penalties in the amount of $137,560.00.

The total of these amounts is $3,774,057.94. The Gross Settlement Amount of $595,079.40 is 15.77% of this amount. DS, ¶ 29. Plaintiff's initial estimates do not realistically account for the risks outlined below or the risk that a class will not be certified. Therefore, Plaintiff believes a class settlement for $595,079.40 is fair and reasonable. *Id.*

C. The Settlement Satisfies the *Kullar* Factors for Approval

The *Kullar* case sets forth several factors a court should consider in determining whether to approve a class settlement. These factors include: (1) the strength of plaintiff's case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement. 168 Cal.App.4th at 128. As demonstrated herein, the Settlement satisfies each of these factors.

1. Evaluation of Plaintiff's Case

a. Risks Associated with the Unpaid Wages Claim

Plaintiff claims that Defendant required Plaintiff and the putative class members to work off the clock and complete these tasks before they could clock in at the beginning of their shifts: 1) submit to Covid-19 temperature checks, 2) don their protective gear, 3) place their personal belongings and cellphones in lockers, and 4) stand in long lines. There is a risk that Plaintiff's recovery for unpaid wages would be extremely limited at best, especially if Defendant can prove that its policies throughout the relevant time period prohibited off-the-clock work. *See Jong v. Kaiser Foundation Hospital* (2014) 226 Cal.App.4th 391 (employer must have notice of off-the-clock work for it to be compensable). Moreover, while Defendant disputes that off-the-clock work occurred, it contends that any time spent off the clock was *de minimis*. The California Supreme Court in *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 835 suggested that irregular and minute periods of time may still be subject to a *de minimis* defense even if compensable. (Stating that "We do not decide whether there are circumstances where compensable time is so minute or irregular that it is unreasonable to expect the time to be recorded."). Following *Troester*, Defendant contends that the *de minimis* doctrine may apply here because the time spent off the clock were minute and insignificant. Accordingly, a large award of penalties seems unlikely with respect to this claim. DS, ¶ 30.

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The difficulty inherent in proving that off-the-clock work occurred poses a significant hurdle to Plaintiff. Plaintiff will rely on declarations and witness statements to prove this claim. Generally, a court will not certify a class unless it can determine an appropriate classwide methodology. *See, e.g., Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1. Here, Plaintiff may rely heavily on anecdotal evidence to prove the off-the-clock work claim, especially given the lack of records indicating when such off-the-clock work may have taken place. Individualized inquiries would need to be conducted person-by-person, day-by-day, to determine if an individual in fact worked "minutes" off-the-clock on a "regular" basis. Accordingly, there is a significant risk that the Court would consider this evidentiary showing insufficient as a classwide methodology. DS, ¶ 31.

b. Risks Associated with the Meal Period Claims

There are risks to Plaintiff's meal period claim. DS, ¶ 32. Defendant contends that, to establish a violation for missed meal periods, a plaintiff must do more than show that a meal break was not taken. *Brinker*, 53 Cal. 4th at 1004. So long as an employer provides employees with a "reasonable opportunity" to take a duty-free meal period, it has no further duty to "police meal breaks and ensure no work thereafter is performed." *Id.* at 1040-41. *Id.* Instead, a plaintiff must show the employer impeded, discouraged, or prohibited the employee from taking a proper break, or otherwise failed to release the employee of all control. *Id.* "Thus, the crucial issue with regard to the meal break claim is the reason that a particular employee may have failed to take a meal break." *Washington v. Joe's Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. *Id.*

Defendant contends it did not impede or discourage Plaintiff, or any other employees, from taking their meal or rest periods. Defendant's policies mandate that employees take at least a 30-minute, uninterrupted meal periods and record the beginning and ending time of their meal breaks each day on their time records. The time records that comprise the random sample Defendant produced to Plaintiff for purposes of mediation show that meal periods were taken the vast majority of the time. Of the time records that show a late, short or no lunch, individualized evidence may be necessary to determine whether they occurred due to conduct of the Defendant or each of the employees concerned. Accordingly, there is a significant risk that the value of Plaintiff's meal period claim would be substantially reduced at trial. DS, ¶ 33.

c. Risks Associated with the Rest Break Claims

There are risks to Plaintiff's rest period claim. DS, ¶ 34. Employers are not required to record rest periods and such periods are paid. *Id.* Defendant contends it provided non-exempt

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employees the opportunity to take rest periods in accordance with California law. Further, Defendant's written policies on meal and rest periods are consistent with the Wage Order. *Id.* Thus, unlike meal periods, where there are often records showing whether an employee clocked out or not, there is no such evidence to prove a missed rest period or that the employer refused to authorize and permit one. *Id.* Managing such claims at trial has become exceedingly difficult. *Id.* Plaintiff will depend on sample witness testimony and surveys to prove the claims. *Id.* While a victory with such evidence is certainly possible, relevant caselaw makes such claims risky from a trial management and due process perspective. *Id.*, *See Duran v. U.S. Bank National Assn.*, (2014) 59 Cal. 4th 1, 31 (explaining "[I]f sufficient common questions exist to support class certification, it may be possible to manage individual issues through the use of surveys and statistical sampling."); *Tyson Foods, Inc. v. Bouphakeo* (2015) 136 S.Ct. 382; *Comcast Corporation v. Behrend* (2013) 133 S.Ct. 1426.

d. Risks Associated with the Failure to Indemnify Claim

There is a risk that the Court may consider Plaintiff's claims as to Defendant's alleged failure to indemnify for business expenses to be individual in nature and thus decline to certify the class. Plaintiff alleges that Defendant required Plaintiff and the Class Members to use their personal items including protective gear and tools, and failed to indemnify them for these business expenses. Defendant presented evidence that it has supplied its employees with tools, equipment, and other supplies. As such, there is a risk that the Court may consider Plaintiff's claims to be individual in nature and unfit for class wide resolution. DS, ¶ 35.

e. Risks Associated with the Statutory Wage Statement Penalty Claims

Plaintiff also asserts claims for wage statement violations, untimely wage violations, and PAGA penalties. Under Labor Code section 226, wage statements must include various information, including the applicable rates of pay, corresponding hours worked, and gross pay. Here, Plaintiff's wage statement claim has the same underlying risks as the above claims, as it is derivative of them. On their face, the wage statements issued by Defendant comply with the requirements of Labor Code § 226. DS, ¶ 36.

f. Risks Associated with the Waiting Time Penalty Claims.

Without proof willful behavior, Plaintiff will be unable to recover these penalties. DS, ¶ 37.

g. Risks Associated With the PAGA Claim

Regarding PAGA, a court has discretion to award a lesser amount than the maximum

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penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). As set forth above, Defendant has posed valid defenses to the Labor Code claims underlying Plaintiff's PAGA allegations. Thus, the PAGA claims likewise face significant uncertainty. There is a risk that the Court would consider the maximum civil penalty available to be confiscatory. DS, ¶ 38.

This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and required a significant discount for settlement purposes. DS, ¶ 39. For mediation purposes, Plaintiff's counsel estimated a maximum possible exposure of approximately $7,135,700.00 in civil penalties. This estimate did not take into account any of the risks discussed above and assumed a violation for every single pay period. *Id.* Plaintiff's counsel also assessed multiple penalties for the same pay period for the same alleged violations of different Labor Code provisions and derivative violations. *Id.* Although two federal district court decisions held that "stacking" PAGA penalties in this fashion may be appropriate to determine the amount in controversy for purposes of removal jurisdiction, Plaintiff's counsel is not aware of any California state courts awarding plaintiffs multiple PAGA penalties for the same violation for the same pay period under different Labor Code provisions. *Id.* This may be because the PAGA does not provide for what many employers characterize as claim splitting and not merely stacking. *Id.*

Plaintiff is aware of only two significant awards under the PAGA in a contested proceeding, both issued by federal district courts.[6] DS, ¶ 40. PAGA penalty awards are often

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[6] In *Bernstein v. Virgin Am., Inc*, (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil penalties under the PAGA of $12,277,500.00 where total adjusted damages were $18,695,692.58. In this regard, the district court stated,

> The plain language of PAGA provides that "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." Cal. Lab. Code s 2699(e)(2) (emphasis added). The relationship between the amount of total damages and the amount of maximum PAGA penalties is certainly a "circumstance" of the case under the term's ordinary meaning. The weight given to that circumstance is greater in this case because Plaintiffs' PAGA penalties are based on PAGA claims that are all derivative of Plaintiffs' individual claims except for one. As a general matter, it would be excessively punitive for the penalty imposed as a consequence of a discrete injury or set of injuries to exceed the damages caused by that injury or set of injuries.

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small even for egregious, intentional violations of the Labor Code.[7] *Id*. For instance, on October 24, 2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff, represented by very experienced counsel, civil penalties totaling only $50.00. *Shields v. Security Paving Company*, Inc., LA Superior Court case no. BC492828. Further, in *Carrington v. Starbucks Corp*. (2018) 30 Cal.App.5th 504, 529, the Court of Appeal affirmed judgment which provided for a PAGA penalty of only $5 per pay period for the defendant's meal period violations. A similar result could occur here. *Id*.

h. Risks Associated With A Pick-Up Stix Campaign

Plaintiff also considered the possibility that Defendant could launch a *Pick Up Stix* campaign and pursue individual release agreements from the Class Members. An employer enjoys the right to settle a putative class member's disputed wage claims individually, without the consent or involvement of class counsel. DS, ¶ 41 (see *Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal. App. 4th 796. *Id.* Defendant may launch a "pick off" settlement campaign to pursue individual release agreements from the Class Members, thereby potentially narrowing the size of the Settlement Class – 244 members - until it is no longer numerous enough for class certification. *Id.* Plaintiff, then, may not have sufficient number of employees to represent. This led to a significant reduction of claim value in settlement negotiations. *Id.*

Plaintiff's Counsel applied discounts to the maximum possible exposure to account for all other risks discussed below. While it is difficult to assign anything but crudely-determined percentages of risk to any of the claims, it is safe to say that the risk that a *Pick Up Stix* campaign would preclude recovery for such employees is substantial and alone justifies a significant discount because Defendant would likely by trial have gathered releases from the majority of the Class Members. A settlement for approximately 15.77% of the potential recovery is a proportion

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Id., ftnt. 9. The district court further stated, "Virgin "has not presented any evidence that the full penalty would be excessive in relation to its ability to pay," the weight of this factor is lessened." *Id.*

In *Robert Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F. Supp. 3d. 1058, the court awarded approximately $102 million in damages, primarily based on the Defendant's failures to comply with the requirements of California Labor Code section 226.

[7] In 2012, Plaintiff's Counsel tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court case number BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. The plaintiff sought in excess of $9 million in civil penalties under the PAGA. After a bench trial, the Honorable Judge Ronald M. Sohigian awarded approximately $325,000 in civil penalties under the PAGA.

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substantially in excess of recovery proportions sanctioned by existing case law.[8] DS, ¶ 42.

While the evidence gathered through Plaintiff's discovery supports the merits of the claims asserted in this lawsuit, Plaintiff and her counsel recognize that continued litigation presents significant risks that support a downward departure from Defendant's estimated liability exposure. DS, ¶ 43. In view of the risks, the Settlement reflects Plaintiff's estimate of the total amount of damages, monetary penalties or other relief that the Class could reasonably expect to be awarded at trial, taking into account the likelihood of prevailing and other attendant risks. *Id.* It also represents a fair, adequate, and reasonable compromise amount for these claims and warrants preliminary approval. *Id.*, *Torrisi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370, 1376 (the financial condition of defendant predominated in assessing the reasonableness of settlement); *Spann v. J.C. Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty concerning defendant's financial stability "strongly supports the reasonableness of the settlement"); *Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014 WL 2465049, * 3.

2. Allocation of the PAGA Payment

The settlement of PAGA penalties in the sum of $5,000.00, of which 75% ($3,750.00) will be paid to the LWDA and 25% ($1,250.00) will be distributed to the Aggrieved Employees, is reasonable and appropriate under the circumstances. The Parties negotiated a good faith amount for PAGA Penalties to be paid to the LWDA and to the Aggrieved Employees. The portion to be paid to the LWDA was not the result of self-interest at the expense of other Aggrieved Employees. DS, ¶ 44. Where settlements "negotiate[] a good faith amount" for PAGA penalties and "there is no indication that this amount was the result of self-interest at the expense of other Class Members," such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) No. CV-08-0844 EDL, 2009 WL 928133, at *9. Likewise, where the employer

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[8] *See, e.g., In re Newbridge Networks Sec. Litig.*, 1998 WL 765724 at *2 (D.D.C. Oct. 23, 1998) ("[A]n agreement that secures roughly six to twelve percent of a total trial recovery . . . seems to be within the targeted range of reasonableness."); *Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.* 2019 WL 3943859 at *8 (E.D. Cal. Aug. 21, 2019) (granting preliminary approval where the proposed allocation to settle class claims was at least 9.53 percent); *Bravo v. Gale Triangle, Inc.*, 2017 WL 708766 at * 10 (C.D. Cal. Feb 16, 2017) ("a settlement for fourteen percent recovery of Plaintiffs' maximum recovery is reasonable"); *In re Omnivision Techs., Inc.*, 559 F.Supp.2d 1036, 1042 (N.D. Cal. 2008) (approving settlement amount that "is just over 9% of the maximum potential recovery asserted by either party.").

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did not act willfully, and made good faith attempts to comply with wage and hour laws, a reduction or lesser penalty is warranted because imposing maximum PAGA penalty for each violation would have been unjust, arbitrary, and oppressive. *Id. Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 528-529 (affirming trial court's award of only 10% of maximum PAGA penalty for meal break violations). *Id.* The amount to be paid to the LWDA comports with PAGA settlement amounts approved by other courts. See, e.g., *Chu v. Wells Fargo Investments, LLC* (N.D. Cal., Feb. 16, 2011) 2011 WL 67245, 81 (approving PAGA payment of $7,500 to LWDA out of $6.9 million common fund); *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal., July 11, 2013) 2013 WL 3541217 (approving PAGA payment of $7,500 to LWDA out of $1.25 million common fund settlement); *Hopson v. Hanesbrands, Inc.* (N.D. Cal. Aug. 8, 2008) 2008 WL 3385452, at *1 (approving PAGA settlement of 0.3% or $1,500); see *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 589 (approving PAGA settlement and release that allocated $0 to PAGA claim). Courts have also approved settlements for $20,000 or less. See, e.g., *Hicks v. Toys 'R' Us–Delaware, Inc.*, (C.D. Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving $5,000 PAGA payment in a case involving $4 million settlement); *Franco v. Ruiz Food Prods., Inc.* (E.D. Cal. Nov. 27, 2012) 2012 WL 5941801 at *14 (approving PAGA penalties of $10,000 as part of $2.5 million settlement); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at *3 (approving PAGA payment of $10,000 as part of $3.7 million common-fund settlement). *Id.*

3. Presence of Governmental Participant

As required under Labor Code section 2699(l)(2), Plaintiff will provide notice of this settlement to the LWDA with the filing and service of this motion. DS, ¶ 71, Ex. 21.

VI. THE SETTLEMENT FAIRLY, ADEQUATELY, AND REASONABLY COMPENSATE CLASS MEMBERS BECAUSE IT WILL PAY EACH CLASS MEMBERS BASED ON THE POTENTIAL EXTENT OF HIS OR HER INJURY COMPARED TO OTHER CLASS MEMBERS

The Individual Settlement Payments will be paid to each Class Members based on his or her eligible Work Weeks compared to the total Work Weeks. Because this method compensates Class Members based on the extent of their potential injuries, in that Class Members who worked for Defendant longer would have been subject to more alleged violations, it is fair, adequate, and reasonable. DS, ¶ 66.

Defendant estimates that there are 48,777 Work Weeks for the Class Period. So, each Work Week has a value of approximately $7.37 ($359,719.60Net Settlement Amount / 48,777

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Work Weeks = $7.37). Plaintiff had approximately 22 Work Weeks during the Class Period. Based on this, it is anticipated that Plaintiff Maria De La Luna Huerta will receive an Individual Class Payment of approximately $160.75 as a Participating Class Member (22 Work Week x $7.37 = $162.14) while the average estimated Individual Class Payment to Participating Class Members will be approximately $1,073.79. Some Class Members – those who worked more Work Weeks during the Class Period - will receive more, and some less. The highest possible Individual Class Payment to a Participating Class Member (i.e., to those who qualify for all Work Weeks in the Class Period) will be approximately $2,703.33. The lowest possible Individual Class Payment to a Participating Class Member (i.e., to those who qualify for only one Work Week in the Class Period) will be approximately $7.37. Some Class Members – those who worked more Work Weeks during the Class Period - will receive more, and some less. DS, ¶ 65.

It is anticipated that the average Aggrieved Employees Individual PAGA Payments will be $5.12. Plaintiff's Individual PAGA Payments, her individual share of 25% of the PAGA Penalties, will be less than that of some absent Aggrieved Employees. Under the Settlement, each Aggrieved Employees will receive a *pro rata* distribution of 25% of the PAGA Penalties proportionate to the number of paychecks he or she had with Defendant during the PAGA Period, compared to the total of all paychecks of all Aggrieved Employees during the PAGA Period, as reflected by Defendant's records. Plaintiff estimates that there are 13,756 Aggrieved Employees paychecks for the PAGA Period. So, each Aggrieved Employees paycheck from the PAGA Period has a value of approximately $0.09 (25% of $5,000.00 in PAGA Penalties / 13,756 Aggrieved Employees paychecks = $0.09). It is anticipated that Plaintiff Maria De La Luna Huerta will receive an Individual PAGA Payment of approximately $0.91 as an Aggrieved Employees (10 paychecks during the PAGA Period x $0.09 paycheck value = $0.91) while the average estimated Individual PAGA Payments to an Aggrieved Employees will be approximately $5.12 ($1,250.00, 25% of PAGA Penalties / 244 Aggrieved Employees during the PAGA Period = $5.12 Individual PAGA Payments). Some Aggrieved Employees – those who had more paychecks during the PAGA Period - will receive more, and some less. The highest possible Individual PAGA Payments to an Aggrieved Employees (i.e., to those who qualify for all paychecks in the PAGA Period) will be approximately $10.74. The lowest possible Individual PAGA Payments to an Aggrieved Employees (i.e., to those who qualify for only one paycheck in the PAGA Period) will be approximately $0.09 DS, ¶ 67.

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VII. ALLOCATION FOR CLASS COUNSEL'S FEE AWARD AND ATTORNEYS' FEES AND COSTS AWARD FOR LITIGATION EXPENSES IS APPROPRIATE

The Settlement states Class Counsel may seek attorneys' fees of $198,359.80 (one-third of the GSA) and up to $15,000.00 for actual reasonable litigation costs and expenses incurred in prosecuting the Action. These amounts are reasonable, given the facts and circumstances of the case. DS, ¶¶ 45-52, Exhibit 11.

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal. App. 4th 19, 41. Indeed, it is long settled that the "experienced trial judge is the best judge of the value of professional services rendered in his court." *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1132. California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Laffitte v. Robert Half Intl, Inc.* (2016) 1 Cal. 5th 480, 503 (citing *Lealao, supra,* 82 Cal.App.4th at p. 48-49). The Supreme Court has recently approved fees equal to one-third (1/3) of the common fund. *Laffitte, supra*, 1 Cal. 5th 480. Many courts have similarly approved fee awards equal to or greater than the percentage requested here. *See, e.g., In re Pacific Enterprises* (9th Cir. 1995) 47 F.3d 373, 379 (award of 33% of the common fund); *In re Activision* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375 (32.8% of the common fund); *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494, 498 (45% of settlement fund).

The amount of fees and costs requested are commensurate with (1) the risk Class Counsel took in bringing the case, (2) the extensive time, effort and expense dedicated to the case, (3) the skill and determination Class Counsel has shown, (4) the results Class Counsel achieved, (5) the value of the Class Counsel achieved for the class, and (6) the other cases Class Counsel turned down to devote time to this matter. DS, ¶ 46. Class Counsel interviewed and obtained information from putative class members, met and conferred with Defendant's counsel on numerous occasions, reviewed and analyzed hundreds of pages of data and documents provided by Defendant and obtained through other sources, researched applicable law, and provided estimates of "damages" for purposes of settlement discussions, among other tasks. *Id.*

Class Counsel have borne all the risks and costs of litigation and will receive no compensation until recovery is obtained. DS, ¶ 47. Class Counsel are well-experienced in wage-and-hour class action litigation and used that experience to obtain a fair result for the Class. *Id.* Considering the amount of the attorney fees requested, the work performed, and the risks incurred,

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the requested fees and costs are reasonable and should be awarded. *Id.*

VIII. THE CLASS REPRESENTATIVE SERVICE PAYMENT TO PLAINTIFF SHOULD BE PRELIMINARILY APPROVED BECASUSE IT IS FAIR, ADEQUATE, AND REASONABLE

Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation, often in much higher amounts than that sought here. *See, e.g.*, *Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726 (upholding "service payments" to named plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294 (approving $50,000 enhancement award). The Settlement provides that Plaintiff may seek a Class Representative Service Payment of $5,000.00. This amount is entirely reasonable given Plaintiff's efforts in this action and the risks she undertook on behalf of Class Members. DS, ¶ 53; Declaration of Maria De La Luna Huerta ("Plaintiff decl."), generally. Plaintiff has devoted many hours advancing the interests of the Settlement Class. Plaintiff has done this by, among other things, retaining experienced counsel, providing them with information about her work history with Defendant and Defendant's policies and practices with respect to the wage and hour claims at issue, and being actively involved in the settlement process to ensure a fair result for the Settlement Class as a whole. In doing this, Plaintiff has been exposed to significant risks, including the risk of an order to pay Defendant's attorneys' fees and costs if this action had been unsuccessful (*See* Labor Code §§ 218.5-218.6). The efforts and risks that Plaintiff undertook on behalf of the Settlement Class shows that the proposed Class Representative Service Payment is fair, adequate, and reasonable, and thus warrants preliminary approval. DS, ¶¶ 53-63, Exs. 12-17; Plaintiff decl., generally.

IX. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS SHOULD BE PRELIMINARILY APPROVED BECAUSE THEY ARE FAIR, ADEQUATE, AND REASONABLE

With regard to the settlement administration costs provision, it is reasonable. Before agreeing to Apex Class Action and its bid of $8,490, the Parties sought and reviewed bids from other reputable third-party administrators which provided higher bids. DS, ¶ 69-70, Exs. 18, 19, and 20. Thus, the settlement administration costs provision should be given preliminary approval.

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X. THE PROPOSED NOTICE AND SETTLEMENT ADMINISTRATION PLAN SHOULD BE APPROVED BECAUSE IT IS REASONABLY CALCULATED TO GIVE ACTUAL NOTICE TO CLASS MEMBERS AND SUFFICIENT TIME TO EXERCISE THEIR RIGHTS

This Court should approve the proposed plans for giving notice to the Settlement Class and administering the Settlement. The standard for determining the adequacy of notice is whether the notice has "a reasonable chance of reaching a substantial percentage of the class members." *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974. The notice process includes multiple measures to ensure that as many Class Members as practicable receive actual notice of the Settlement and have enough time to exercise their rights. The Settlement requires distribution of the Notice by First Class U.S. mail only. Settlement, ¶ 4.4.1. Although there are current employee Class Members, it is uncertain whether Defendant's records of their contact information include email addresses and Class Members, who perform all of their work away from a desk, are not in a position to check their emails. As such, notice by mail alone is fair, adequate, and reasonable. DS, ¶ 68.

With respect to its content, "[The] notice given to the class must fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members." *Trotsky v. Los Angeles Fed. Sav. & Loan Assn*. (1975) 48 Cal.App.3d 134, 151-152. The purpose of the notice in class settlement context is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. *Id.* The Notice (Exhibit A to the Settlement) provides Class Members with all pertinent information, both in English and Spanish, that they need to fully evaluate their options and exercise their rights under the Settlement. Specifically, it clearly and concisely explains, among other things: (1) what the Settlement is about; (2) who is a Settlement Class Members; (3) how Class Counsel will be paid; (4) how to submit an exclusion request not to be bound by the Settlement; (5) how to object to the Settlement; (6) how the Settlement will be allocated; (7) how payments to Class Members will be calculated; (8) how the disputes will be resolved; and (9) the individual Settlement Class Members's estimated payment. Additionally, the Class Notice will include the number of Work Weeks a Class Members had during the Class Period. Accordingly, the Notice should be approved because it describes the Settlement with sufficient clarity and specificity to explain to Class Members what this action is about, their rights under the Settlement, and how to exercise those rights. DS, ¶ 68.

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XI. CONCLUSION

For the reasons stated above, this Court should grant Plaintiff's Motion in its entirety and adopt the proposed order submitted concurrently herewith.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: June 9, 2026

By: ______________________

DAVID G. SPIVAK, Attorneys for Plaintiff, MARIA DE LA LUNA HUERTA, and all others similarly situated

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