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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES
11 UNLIMITED JURISDICTION
12

13 SANNIYAH BEY, on behalf of herself and
14 all others similarly situated, and the general
public,

15 *Plaintiff,*

16 vs.

17 FENDI NORTH AMERICA, INC., a New
York corporation; PYRAMID
18 CONSULTING GROUP, LLC, a New York
Limited Liability Company; and DOES 1
19 through 50, inclusive,

20 *Defendants.*

Case No. 22STCV25488

Assigned for All Purposes to Hon. Maren
Nelson, Dept. SSC-17

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT AND CERTIFICATION OF
SETTLEMENT CLASS; MEMORANDUM
OF POINTS AND AUTHORITIES**

*[Filed concurrently with Declaration of Shaun
Setareh in support thereof; and [Proposed]
Order]*

Date: December 28, 2023
Time: 9:00 a.m.
Place: Dept. SSC-17

Complaint Filed: August 8, 2022

1 TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on December 28, 2023, at 9:00 a.m. or as soon thereafter as the
3 matter may be heard in Department SSC-17 of the above-entitled Court located at 312 North Spring
4 Street, Los Angeles, CA 90012, Plaintiff SANNIYAH BEY ("Plaintiff") will and does hereby move this
5 Court for an Order:

- 6 • Preliminarily approving the proposed Class Action and PAGA Settlement Agreement
- 7 Between Plaintiff and Defendant;
- 8 • Certifying the Settlement Class;
- 9 • Appointing Plaintiff as the Class Representative;
- 10 • Appointing Shaun Setareh, Jose Maria D. Patino, Jr., and Tyson Gibb of Setareh Law
- 11 Group as Class Counsel;
- 12 • Appointing ILYM Group, Inc. ("ILYM") as the Settlement Administrator;
- 13 • Directing that notice be mailed to the Settlement Class; and
- 14 • Scheduling a hearing date for the Motion for Final Approval of Class Action Settlement.

15 This motion is made pursuant to California Rules of Court 3.769. This motion will be based
16 upon this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the
17 Declaration of Shaun Setareh as well as exhibits attached thereto, the arguments of counsel, the
18 documents filed in this action and any other matters as may be properly presented on or before the
19 hearing on this motion.

20
21 DATED: September 6, 2023

SETAREH LAW GROUP

22
23 /s/ Jose Maria D. Patino, Jr.

24 SHAUN SETAREH
JOSE MARIA D. PATINO, JR.
25 TYSON GIBB
Attorneys for Plaintiff
26 SANNIYAH BEY
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff SANNIYAH BEY (“Plaintiff”) seeks preliminary approval of a non-reversionary class
4 and representative action settlement of wage and hour and PAGA penalty claims against Defendants
5 FENDI NORTH AMERICA, INC. (“Fendi”) and PYRAMID CONSULTING GROUP, LLC
6 (“Pyramid”) (collectively “Defendants”).¹ for a Gross Settlement Amount (“GSA”) of **\$94,000.00**. The
7 Settlement consists of a Settlement Class consisting of a Fendi Settlement Class approximately 100
8 members and 29 Pyramid Class Members.

9 The Net Settlement Amount (“NSA”) expected to be paid to Class Members – after payment of
10 Class Counsel fees of one-third (1/3) of the GSA (\$31,333.33) and costs of up to \$10,500, settlement
11 administration costs of up to \$7,000, and a payment to the California Labor & Workforce Development
12 Agency (“LWDA”) pursuant to the Private Attorneys General Act of 2004 (“PAGA”) of \$15,000 (75%
13 of the total PAGA Settlement Amount of \$20,000) – is **\$25,166.67** (not including the 25% portion of the
14 PAGA Settlement Amount, or \$5,000, that will be paid to PAGA Employees employed during the
15 PAGA period). The average estimated share of the NSA per Class Member is approximately **\$195.09**.
16 Plaintiff has obtained a significant monetary recovery for Class Members.²

17 The Settlement occurred as a result of extensive, arm’s-length negotiations by experienced
18 counsel after sufficient formal and informal written discovery and investigation into the facts with
19 guidance of Hon. Amy D. Hogue (Ret.), an experienced and well-respected class action mediator and
20 former presiding judge of the complex civil departments of Los Angeles Superior Court. The Settlement
21 seeks to fully and finally settle and resolve all claims that were pled or reasonably could have been pled
22 based on the allegations in the operative Second Amended Complaint (“SAC”) filed with the Court,
23 individually and on behalf of the Class and on behalf of the Aggrieved Employees. The Settlement
24

25 ¹ The Parties are in the process of executing the Class Action and PAGA Settlement Agreement
26 (“Settlement”), attached as **Exhibit 1** to the Declaration of Shaun Setareh filed concurrently herewith.

27 ² The majority of the Class are Fendi Class Members whose class period was limited due to prior
28 settlements of the class claims and PAGA claims as well the existence of arbitration agreements
with class action waivers. These factors resulted in heavy discounts to the GSA.

1 Classes contain all persons employed by Fendi as non-exempt employees in California from June 2,
2 2020 through Preliminary Approval (“Fendi Class”) as well as all current and former hourly paid and/or
3 non-exempt employees who were employed by Pyramid and placed to work at Fendi in the State of
4 California at any time from August 8, 2018 until the date of Preliminary Approval.

5 Based upon their evaluation, Plaintiff and his counsel, Shaun Setareh and Jose Maria D. Patino,
6 Jr. of the Setareh Law Group, have determined that the Settlement is fair, reasonable, adequate and in the
7 best interest of the Class, and they request that this Court grant preliminary approval of the Settlement.

8 **II. THE MAJOR TERMS OF SETTLEMENT**

9 Key provisions of the proposed settlement include the following:

- 10 • Defendant stipulates to certification of a Settlement Class for purposes of settlement only.
- 11 • Defendant will pay a maximum of **\$94,000**, referred to as the Gross Settlement Amount
12 (“GSA”).
- 13 • Defendant will not oppose Class Counsel’s application for fees of 1/3 of the GSA (**\$31,333.33**)
14 and costs not to exceed **\$10,500**, to be paid out of the GSA.
- 15 • The notice portion of the Settlement will be administered by ILYM, whose costs are not to
16 exceed **\$7,000** to administer the Settlement per its terms.
- 17 • Out of the GSA, **\$20,000** is allocated to resolve the PAGA claims, with 75% (i.e., **\$15,000**) to be
18 paid by the Settlement Administrator to the LWDA, and 25% (i.e., **\$5,000**) to be paid to
19 Aggrieved Employees – i.e., Fendi Class Members employed at any time during the Fendi
20 PAGA Period or Pyramid Class Members employed at any time during the Pyramid PAGA
21 Period.
- 22 • After deducting Class Counsel’s attorneys’ fees and costs, enhancement payment to Plaintiff,
23 settlement administration costs, and the payment to the LWDA, the remainder – i.e., the NSA –
24 is calculated to be at least **\$25,166.67** (not including the 25% portion of the PAGA Settlement
25 Amount, or \$5,000, that will be paid to Aggrieved Employees). The NSA shall be distributed *pro*
26 *rata* to the Settlement Class Members based upon the number of weeks worked during the Class
27 Period. Each Aggrieved Employee’s Individual PAGA Payment will be similarly calculated
28 based on the number of PAGA Pay Periods worked during the Fendi PAGA Period or the

Pyramid PAGA Period.

- Settlement Class Members will be mailed a check so long as they do not opt out.
- Aggrieved Employees cannot opt out of the PAGA portion of the Settlement and will receive at least their share of the 25% of the PAGA Penalties allocated to Aggrieved Employees, even if they opt out of the Class portion of the Settlement.
- The Settlement will release specified PAGA claims for all PAGA Employees. Class Members who were employed with Defendants during the PAGA Period. Such Class Members cannot opt out of the PAGA portion of the Settlement and will be mailed their share of the PAGA Payment even if they opt out of the rest of the Settlement.
- Any checks issued by the Settlement Administrator to participating Class Members shall be negotiable for not less than 180 calendar days after mailing. Those checks remaining uncashed for more than 180 days after issuance will paid to the California State Controller's Unclaimed Property Fund in the name of the Class Member and/or Aggrieved Employee thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

(Declaration of Shaun Setareh ("Setareh Decl."), ¶ 12, Ex. 1 ("Settlement").)

III. STATEMENT OF FACTS

A. THE PARTIES

Defendant Fendi is an international fashion, design, and luxury goods brand that operates retail stores and "pop up" stores like the ones where Plaintiff worked. (*Id.*, ¶ 17.) Defendant Pyramid is a staffing agency that fills positions in various industries, including the fashion industry, who staffed Plaintiff and the Pyramid Class Members to work at Fendi locations in California. (*Id.*, ¶ 17.)

Plaintiff was employed by Defendants as a non-exempt, hourly employee from approximately October 15, 2021 through February 11, 2022. (*Id.*, ¶ 18.)

B. PROCEDURAL HISTORY

On August 8, 2022, Plaintiff commenced this Action by filing a class action Complaint in Los Angeles County Superior Court alleging causes of action for 1) Failure to provide meal periods; 2) Failure to provide rest periods; 3) Failure to pay hourly wages; 4) Failure to indemnify; 5) Failure to

1 provide accurate written wage statements; 6) Failure to timely pay all final wages; and 7) Unfair
2 Competition. (Settlement, § 2.1) On September 1, 2022, Plaintiff submitted a PAGA notice letter to the
3 LWDA and also filed her First Amended Complaint amended to name the correct Pyramid entity as a
4 Defendant in place of the entity identified in the original complaint. (Setareh Decl., ¶ 19.) On January
5 17, 2023, Plaintiff filed a Second Amended Complaint (“SAC”) adding a claim against Defendants for
6 civil penalties pursuant to PAGA. The SAC is the operative complaint in the Action.

7 **1. Wage and Hour Allegations**

8 **(a) Off-the-Clock Work**

9 Plaintiff alleges Defendants failed to pay her and putative class members for all hours worked.
10 (SAC, ¶¶ 19-27.) Specifically, Plaintiff alleges that Defendants required Plaintiff and the putative class to
11 manually submit time sheets of scheduled hours worked at the end of each week off-the-clock. (*Id.*, ¶
12 21.) Plaintiff further alleges that Plaintiff and the putative class were required to go through a bag
13 screening and security check after clocking out at the end of each shift. (*Id.*, ¶ 23.) The security check
14 required Plaintiff and the putative class to open and display the contents of their bag and allow a security
15 guard to search through the contents before being able to leave the store. (*Id.*) Plaintiff also alleges that
16 Plaintiff and the putative class members were required to participate in group chats with management on
17 their personal cell phones. (*Id.*) Plaintiff and the putative class members would spend approximately ten
18 (10) to twenty (20) minutes per week participating in group chats will off-the-clock. (*Id.*)

19 **(b) Missed and/or Shortened Meal Periods**

20 Plaintiff alleges Plaintiff and the putative class members were not provided legally mandated
21 uninterrupted meal periods of at least thirty minutes for every 5-hour period of work. (*Id.*, ¶¶ 28-30.)
22 Plaintiff and the putative class members were required to perform work-related duties before they were
23 to take their scheduled meal break if possible and they would routinely be interrupted during their
24 scheduled meal periods due to understaffing each work shift. (*Id.*, ¶ 30.)

25 **(c) Missed Rest Periods**

26 Plaintiff also alleges that due to the heavy workload, Plaintiff and the putative class members
27 were not provided the opportunity to take their legally mandated duty-free rest periods, of at least ten
28 (10) minutes, every four hours or major fraction thereof. (*Id.*, ¶¶ 32-35.)

1 **(d) Expense Reimbursement**

2 Plaintiff alleges that she and the putative class members were required to utilize their personal
3 cell phones to communicate with managers about work scheduling while off-the-clock and would spend
4 time every week doing so. (*Id.*, ¶ 38.) Plaintiff further alleges that she and the putative class members
5 were required to purchase a portable cell phone charge to accomplish their work-duties, and that
6 therefore Defendants failed to reimburse Plaintiff and the putative class for such necessary business
7 expenses incurred by them. (*Id.*, ¶ 36.)

8 **(e) Derivative Causes of Action**

9 Due to the above alleged violations, Plaintiff alleges that she and the putative class members
10 were not provided with accurate wage statements and not paid all final wages timely as required by
11 California law.

12 **C. INVESTIGATION AND DISCOVERY**

13 The Parties agreed to attend mediation to attempt to resolve the action entirely and further
14 agreed to engage in informal discovery in advance and in preparation thereof. (*Id.*, ¶ 6.) Defendants
15 produced hundreds of pages of documents. (*Id.*) This included, but was not limited to, the informal
16 exchange of meal period and timekeeping documents; Plaintiff's personnel file and wage statements;
17 sampling of Class Members' payroll records; and other documents relevant to the litigation. (*Id.*) The
18 Parties' exchange of information also revealed that class claims for Fendi employees were released from
19 March 29, 2018 through June 1, 2020 by a class settlement in *Lee v. Fendi North America, Inc.*, Los
20 Angeles Superior Court case number 19STCV10833, that PAGA claims were released for Fendi
21 employees from June 2, 2020 through February 9, 2023 by a PAGA settlement in *Lenart v. Fendi North*
22 *America*, Los Angeles Superior Court case number 20STCV21894, and that the Fendi employees all had
23 arbitration agreements with Fendi with class action waivers, limiting the scope of the claims in dispute in
24 the Action. (*Id.*) Plaintiff hired an expert to hire analyze the produced data with respect to potential
25 damages and penalties in preparation for mediation. (*Id.*)

26 **D. SETTLEMENT NEGOTIATIONS AND SETTLEMENT**

27 On April 19, 2023, the Parties participated in a private mediation session with Honorable Amy
28 D. Hogue (Ret.), a well-regarded and experienced class action mediator, upon the class and PAGA

1 claims in the instant Action, as well as the wrongful termination and FEHA race discrimination claims at
2 issue in a concurrent case filed by Plaintiff against Defendants in Los Angeles Superior Court, case
3 number 22STCV25967. (Settlement § 2.3; Setareh Dec, ¶ 7.) During the mediation, each of the Parties,
4 represented by its respective counsel, recognized the risk of an adverse result in the Action. (*Id.*) As a
5 result of the mediation, the Parties, pursuant to the Mediator’s Proposal, reached an agreement resolving
6 both matters. (Setareh Dec, ¶ 7.) On September 5, 2023, the Parties finalized the terms of the long-form
7 agreement in this Action and a separate agreement for the individual wrongful termination action and are
8 currently in the process of executing them. (*Id.*) An unexecuted version of the Settlement has been filed
9 concurrently with this Motion for ease of reference, and once all Parties and counsel have signed, a fully
10 executed copy will be filed with the Court and submitted to the LWDA. (*Id.*) Should the Court wish to
11 review the settlement in the individual action, the Parties can lodge a copy with the Court upon request.
12 (*Id.*) Counsel believe the proposed settlement is fair, reasonable, and adequate in light of the
13 complexities of the case, the uncertainties of further litigation, and that it represents a fair and reasonable
14 recovery for the Settlement Class. (*Id.*) The Parties have not engaged in any collusion or improper
15 negotiations. (*Id.*) Other than the separate settlement of Plaintiff’s individual wrongful termination
16 action against Defendants disclosed above, the Parties do not have any agreements regarding the
17 proposed Settlement that are not reflected in the Settlement. (*Id.*)

18 **E. REASONABLENESS OF THE SETTLEMENT**

19 Plaintiff’s counsel believe that the Settlement is in the best interest of the class members based on
20 their investigation and discovery, their detailed understanding of the issues raised, and the outcome of
21 extensive settlement negotiations. (Setareh Decl., ¶¶ 6-9.) Plaintiff’s counsel balanced the Settlement
22 against the probable outcome of class certification, liability, the range of recovery at trial, the risks of
23 losing class certification, losing at trial, or not recovering as much as provided by the proposed
24 Settlement, as well as the difficulties and complexity of the litigation, the lengthy process of litigating to
25 judgment, and the various possible delays and appeals. (*Id.*)

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1 **IV. DESCRIPTION OF THE SETTLEMENT**

2 **B. CONTINGENT NATURE OF THE SETTLEMENT**

3 Solely for purpose of settling this case, the Parties agree to settlement class certification and
4 representative treatment. (Settlement, § 12.1.) Defendants deny the allegations in the Operative
5 Complaint, and deny any failure to comply with the laws identified in Plaintiff’s Complaint. (*Id.*)
6 Plaintiff denies that Defendants’ defenses in the Action have merit. (*Id.*) However, the Parties agree that
7 class certification and representative treatment is appropriate for Settlement. (*Id.*)

8 **C. APPOINTMENT OF SETTLEMENT CLASS COUNSEL**

9 The Parties have agreed to the appointment of Shaun Setareh, Jose Maria D. Patino, Jr. and
10 Tyson Gibb of Setareh Law Group as Settlement Class Counsel (“Class Counsel”). (*Id.*, § 1.6.)

11 **D. APPOINTMENT OF SETTLEMENT ADMINISTRATOR**

12 The Parties have agreed to the appointment of ILYM to administer the Settlement and to provide
13 notice to the Class Members (the “Settlement Administrator” or “Claims Administrator”). (Settlement.,
14 § 8.1.) The settlement administration costs shall not exceed **\$7,000**. (*Id.*, § 3.2.2.) The Settlement
15 Administrator’s bid of a capped fee of \$7,000 for a class of approximately 100 Class Members is
16 reasonable for a settlement with a class of this size. (Setareh Decl., ¶ 15.)

17 **E. DESCRIPTION OF THE SETTLEMENT CLASSES**

18 The term “Class” in the Agreement collectively refers to the Fendi Class and Pyramid Class.
19 (Settlement, § 1.5) “Fendi Class” means all current and former hourly paid and/or non-exempt
20 employees who were employed by Fendi in the State of California at any time from June 2, 2020 until
21 the date of Preliminary Approval. (Settlement, § 1.18.) “Pyramid Class” means all current and former
22 hourly paid and/or non-exempt employees who were employed by Pyramid and placed to work at Fendi
23 in the State of California at any time from August 8, 2018 until the date of Preliminary Approval.. (*Id.*, §
24 1.42.) Based on a review of its records to date, Fendi estimates that, as of the date of the Parties’ April
25 19, 2023 mediation, (1) there were approximately 100 Fendi Class Members and approximately 6,230
26 Total Workweeks for them during the Fendi Class Period, and (2) there were approximately 80 Fendi
27 Aggrieved Employees and approximately 385 PAGA Pay Periods for them during the Fendi PAGA
28 Period. (*Id.*, § 12.20.) Similarly Pyramid estimates that, as of the date of this Settlement Agreement, (1)

1 there are 29 Pyramid Class Members and 296 Total Workweeks for them during the Pyramid Class
2 Period, and (2) there are 26 Pyramid Aggrieved Employees and 251 PAGA Pay Periods for them during
3 the Pyramid PAGA Period. (*Id.*) Individual Class Payments shall be calculated by (a) dividing the Net
4 Settlement Amount by the total number of Workweeks worked by all Participating Class Members
5 during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.
6 (*Id.*, § 3.2.3.) "Participating Class Members" means all Class Members who do not submit a valid and
7 timely Request for Exclusion. (*Id.*, § 1.37.)

8 **F. SCOPE OF THE RELEASE**

9 **1. Release of Class Claims**

10 "All Participating Class Members, on behalf of themselves and their respective former and
11 present representatives, agents, attorneys, heirs, administrators, successors, and assigns,
12 release the Released Parties from all claims, demands, damages, debts, liabilities, actions,
13 causes, and/or causes of action, whether known or unknown, arising or accruing at any
14 point during the Class Period that were asserted in the Operative Complaint and/or that
15 could have been asserted in the Operative Complaint based on the facts and/or legal
16 allegations alleged in the Operative Complaint, including claims for violation(s) of
17 California Labor Code sections 194, 201, 201.3, 201.5, 201.9, 202, 203, 204, 204.1, 204.2,
18 205, 205.5, 210, 226, 226.3, 226.7, 256, 510, 512, 558, 558.1, 1174, 1174.5, 1193.6, 1194,
19 1194.2, 1197, 1197.1, 1197.5, 1198, 2698 et seq., 2699 et seq., 2800, and 2802, IWC Wage
20 Order 7-2001, California Business & Professions Code sections 17000 et seq. and 17200
21 et seq., and any and all claims from attorneys' fees and costs and statutory interest
22 associated with the aforementioned claims. This includes but is not limited to claims for:
23 the purported payment or nonpayment of compensation, including, but not limited to,
wages, minimum wage, straight time, overtime, premium pay, and the calculation or
miscalculation of any of the foregoing; meal or rest period premiums or penalties, including
the calculation or miscalculation thereof; failure to pay for all hours worked, including but
not limited to alleged off-the-clock work; failure to timely pay wages during employment;
failure to pay wages at discharge or termination; failure to provide compliant meal and rest
periods; failure to accurately record time, including all time worked (such as off-the-clock
work); failure to provide timely and compliant wage statements and to maintain records;
failure to reimburse business expenses; unfair business practices; related premiums,
statutory penalties, waiting time penalties, civil penalties; liquidated damages; interest;
punitive damages; costs; attorneys' fees; injunctive relief; declaratory relief; or accounting,
whether such causes of action are in tort, contract, or pursuant to a statutory remedy. The
release shall include all the above claims through Preliminary Approval."

24 (*Id.*, § 5.3.) "Released Parties" means: Fendi and Pyramid, their parent or subsidiary corporations; each
25 of their present, former, or future owners, officers, directors, shareholders, partners, employees, insurers,
26 successors, predecessors, contractors, assigns, and managing agents; any and all agents, legal
27 representatives and/or attorneys of all of the foregoing entities and individuals and any entities that
28 Plaintiff, and/or any Class Member or Aggrieved Employee may assert are joint employers with Fendi

1 North America, Inc. and/or Pyramid Consulting Group, LLC. (*Id.*, § 1.48.)

2 **2. PAGA Release**

3 All Aggrieved Employees are deemed to release, on behalf of themselves and their
4 respective former and present representatives, agents, attorneys, heirs, administrators,
5 successors, and assigns, the Released Parties from all claims, demands, damages, debts,
6 liabilities, actions, causes, and/or causes of action for PAGA penalties, whether known or
7 unknown, that Plaintiff or any Aggrieved Employee had, now has, has asserted, or may
8 hereafter assert against Defendant or any Released Parties that are based on, or arise from,
9 the factual allegations in the Operative Complaint or the PAGA Notice or during the PAGA
10 Period, including PAGA claims for violation(s) of California Labor Code sections 194,
201, 201.3, 201.5, 201.9, 202, 203, 204, 204.1, 204.2, 205, 205.5, 210, 226, 226.3, 226.7,
256, 510, 512, 558, 558.1, 1174, 1174.5, 1193.6, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198,
2698 et seq., 2699 et seq., 2800, and 2802, IWC Wage Order 7-2001, and any and all
11 claims from attorneys' fees and costs and statutory interest associated with the
12 aforementioned claims. The release shall include all the above claims through Preliminary
13 Approval.

14 (*Id.*, § 5.4.)

15 **3. Release by Plaintiff (Individually)**

16 In addition to the claims above, Plaintiff executes a general release including an express waiver
17 of California Civil Code Section 1542. (*Id.*, §§ 5.1, 5.2.).

18 **G. SETTLEMENT AMOUNT AND ALLOCATION OF SETTLEMENT MONIES**

19 To implement the terms of this Settlement, Defendants agree to pay \$94,000, which includes all
20 Individual Settlement Awards to Class Members, Class Counsel Fees, Class Counsel Expenses, the
21 Administrator's Expenses, \$20,000.00 allocated to penalties under PAGA with \$15,000.00 (75% of
22 PAGA allocation) paid to the LWDA and \$5,00.00 (25% of PAGA allocation) paid to the Aggrieved
23 Employees. (Settlement § 1.22.) The GSA will be fully paid out without any residue returning to
24 Defendant. (*Id.*, § 3.1.) For any Class Member whose Individual Class Payment check or Individual
25 PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the
26 funds represented by such checks to the class members who did cash their checks. (*Id.*, §§ 1.25; 3.1-3.2.)

27 **H. CLASS MEMBER SETTLEMENT PAYMENT FORMULA**

28 An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total
number of Workweeks worked by all Participating Class Members during the Class Period and (b)
multiplying the result by each Participating Class Member's Workweeks. (*Id.*, § 3.2.3.) 20% of each
Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims

(the "Wage Portion"). (*Id.*, § 3.2.3.1.) The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). (*Id.*) The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. (*Id.*) Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment. (*Id.*) Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis. (*Id.*, § 3.2.3.2.) PAGA Penalties in the amount of \$20,000 will be paid from the Gross Settlement Amount, with 75% (\$15,000) allocated to the LWDA PAGA Payment and 25% (\$5,000) allocated to the Individual PAGA Payments. (*Id.*, § 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 \$5,000 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. (*Id.*) Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. (*Id.*)

I. NOTICE TO CLASS MEMBERS OF SETTLEMENT

Not later than 30 days after the Court grants Preliminary Approval of the Settlement, Defendants will each simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. (*Id.*, § 4.1.) No later than seven (7) 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, PAGA Members, Workweeks, and Pay Periods in the Class Data. (*Id.*, § 7.4.1.) 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 Class Notice substantially in the form attached to the Agreement as Exhibit A. (*Id.*, § 7.4.2.) 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 Workweeks and PAGA Pay Periods (if applicable) used to calculate these

1 amounts. (*Id.*) Before mailing Class Notices, the Administrator shall update Class Member addresses
2 using the National Change of Address database. (*Id.*)

3 Not later than 3 business days after the Administrator's receipt of any Class Notice returned by
4 the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address
5 provided by the USPS. (*Id.*, § 7.4.3.) If the USPS does not provide a forwarding address, the
6 Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most
7 current address obtained. (*Id.*) The Administrator has no obligation to make further attempts to locate or
8 send Class Notice to Class Members whose Class Notice is returned by the USPS a second time. (*Id.*)

9 The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay
10 Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 60 days
11 otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. (*Id.*, § 7.4.4.)
12 The Administrator will inform the Class Member of the extended deadline with the re-mailed Class
13 Notice. (*Id.*) If the Administrator, Defendants or Class Counsel is contacted by or otherwise discovers
14 any persons who believe they should have been included in the Class Data and should have received
15 Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith
16 in an effort to agree on whether to include them as Class Members. (*Id.*, § 7.4.5.) If the Parties agree,
17 such persons will be Class Members entitled to the same rights as other Class Members, and the
18 Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise
19 options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in
20 the Class Notice, which ever are later. (*Id.*)

21 The Administrator will establish and maintain and use an internet website to post information of
22 interest to Class Members including the date, time and location for the Final Approval Hearing and
23 copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the
24 Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel
25 Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the
26 Judgment. (*Id.*, § 7.8.1.) The Administrator will also maintain and monitor an email address and a toll-
27 free telephone number to receive Class Member calls, faxes and emails. (*Id.*)

28 ///

1 **J. NOTICE AND PAGA PAYMENT TO THE LWDA**

2 The Settlement provides for a total amount of **\$20,000** in settlement of all claims for civil
3 penalties under PAGA. (*Id.*, § 3.2.5.) Pursuant to Labor Code section 2699(i), 75% of the PAGA
4 settlement amount, or **\$15,000**, will be paid to the LWDA. (*Id.*) The remaining 25%, or **\$5,000**, will be
5 included in the NSA and distributed Class Members who worked for Defendant during the PAGA
6 Period. (*Id.*) In connection with Settlement approval, Class Counsel must notify the LWDA of the
7 Settlement's existence. (Setareh Decl., ¶ 16.) Once all Parties and counsel have signed the Settlement, a
8 fully executed copy will be filed with the Court and submitted to the LWDA. (*Id.*)

9 **K. CLASS MEMBERS' RIGHT TO OPT OUT**

10 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the
11 Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60 days after
12 the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class
13 Notice is re-mailed). (*Id.*, § 7.5.) A Request for Exclusion is a letter from a Class Member or his/her
14 representative that reasonably communicates the Class Member's election to be excluded from the
15 Settlement and includes the Class Member's name, address and email address or telephone number.
16 Participating Class Members may object to the class action components of the Settlement, including
17 contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment,
18 Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment. (*Id.*) Only
19 Participating Class Members may object to the class action components of the Settlement, including
20 contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment
21 and/or the Class Counsel Litigation Expenses Payment. (*Id.*, § 7.7.) Participating Class Members may
22 send written objections to the Administrator, by fax, email, or mail. (*Id.*, § 7.7.1.) In the alternative,
23 Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present
24 verbal objections at the Final Approval Hearing. (*Id.*, § 7.7.1.) A Participating Class Member who elects
25 to send a written objection to the Administrator must do so not later than 60 days after the
26 Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class
27 Notice was re-mailed). (*Id.*) Non-Participating Class Members have no right to object to any of the class
28 action components of the Settlement. (*Id.*, § 7.7.2.)

1 **V. ARGUMENT**

2 **A. THE COURT SHOULD CONDITIONALLY CERTIFY THE SETTLEMENT**
3 **CLASS BECAUSE IT MEETS ALL THE REQUIREMENTS FOR CLASS**
4 **CERTIFICATION FOR SETTLEMENT PURPOSES ONLY UNDER CODE OF**
5 **CIVIL PROCEDURE SECTION 382**

6 Under Code of Civil Procedure § 382, class certification is warranted so long as there is “a
7 numerous and ascertainable class with a well-defined community of interest among its members” and a
8 “class action proceeding is superior to other means for a fair and efficient adjudication of the litigation.”
9 *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326, 332. “The certification question
10 is ‘essentially a procedural one that does not ask whether an action is legally or factually meritorious.’”
11 *Id.* at 326 (quoting *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 439-440). Indeed, the certification
12 question simply asks whether the theory of recovery advanced by the plaintiff is likely to prove
13 amenable to class treatment. *E.g., Jaimez v. Daiohs USA, Inc.* (2010) 181 Cal.App.4th 1286, 1298. In
14 ruling on a certification motion, a trial court’s task is to determine “whether...the issues which may be
15 jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial
16 that the maintenance of a class action would be advantageous to the judicial process and to the litigants.”
17 *Id.*

18 “[I]t is also well established that trial courts should use different standards to determine the
19 propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard
20 of scrutiny is used for settlement cases.” *Global Minerals & Metals Corp. v. Superior Court* (2003) 113
21 Cal.App.4th 836, 859 (citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 n.19
22 (“*Dunk*”). As the court noted in *Dunk*, although certification requirements are intended “to protect the
23 interests of the non-representative class members,” that concern is “protected by the trial court’s fairness
24 review of the settlement.” *Id.*

25 Indeed, numerous courts have certified settlement classes. For example, *In re Drexel Burnham*
26 *Lambert Group, Inc.* (2d Cir. 1992) 960 F.2d 285, *cert. dismissed*, 506 U.S. 1088, 122 L. Ed. 497, 113 S.
27 Ct 1070 (1993), the parties entered into a tentative settlement before a class was certified. After a
28 hearing, the “district court issued an order certifying the class and approving the settlement agreement.”
Id. at 289; *see also, Alaniz v. California Processors, Inc.* (N.D. Cal. 1976) 73 F.R.D. 269, 278 (“the use

1 of the tentative settlement class procedure was appropriate in this case"), *aff'd*, 572 F.2d 657 (9th Cir.),
2 *cert. denied*, 439 U.S. 837 (1978). Certification of a settlement class is a regular feature of class action
3 litigation and an approved procedure which ought to be followed in this case. *See Newberg on Class*
4 *Actions* (3d ed. 1991) § 11.27, pp. 11-40 to 11-56; and *Manual for Complex Litigation*, 2d (1993) §
5 30.45.

6 As shown below, this Settlement and the Settlement Class easily meet all of the requirements for
7 certification for settlement purposes.

8 **1. Objectively Ascertainable and Sufficiently Numerous Class**

9 A class is ascertainable when it may be readily identified via an objectively stated definition
10 without unreasonable expense or time by reference to official records. *Rose v. City of Hayward* (1981)
11 126 Cal.App.3d 926, 932. No set number of class members is required to maintain a class action.
12 *Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, 1030. The California Supreme Court has upheld a
13 class of as few as ten members. *Bowles v. Super. Ct. (Nickel, Jr.)* (1955) 44 Cal.2d 574, 577-81. Here,
14 the Settlement Classes are made up of about 100 Fendi Class Members and 29 Pyramid Class Members,
15 all of whom may be readily ascertained by reference to Defendants' personnel records. (Settlement, §
16 12.20.) Accordingly, the Settlement Class is not only ascertainable but also sufficiently numerous.

17 **2. Predominance of Common Questions**

18 A question of law or fact is common to the members of a class if it may be resolved through
19 common proof. *See Jaimez, supra*, 181 Cal.App.4th at 1305. As for predominance, it "is a comparative
20 concept, and 'the necessity for class members to individually establish eligibility and damages does not
21 mean individual fact questions predominate.'" *Sav-on, supra*, 34 Cal.4th at 334 (quoting *Reyes v. San*
22 *Diego Cty. Bd. of Supervisors* (1979) 196 Cal.App.3d 1263, 1278). Thus, "[i]ndividual issues do not
23 render class certification inappropriate so long as such issues may effectively be managed." *Id.* This is
24 especially so where the key difference between class members solely concerns their respective amounts
25 of damages. *See id.* As a general rule, if a defendant's liability can be determined by facts common to
26 all members, a class will be certified even if the members must individually prove their damages. *See*
27 *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916.

1 In this case, the Settlement Class meets these requirements. Plaintiff submits that Defendants’
2 liability arises from the same set of facts and legal questions that apply to and are answered equally as to
3 all Class Members. *See generally* FAC. Plaintiff alleges Class Members were subjected to a common
4 practice in that Defendant: failed to pay them, *inter alia*, for missed meal periods, including premiums
5 (SAC, ¶¶ 45-59), for rest periods, including premiums (*Id.*, ¶¶ 60-70), for all wages and overtime wages
6 owed (*Id.*, ¶¶ 71-94), failed to indemnify (*Id.*, ¶¶ 95-104) (failed to provide compliant wage statements
7 (*Id.*, ¶¶ 105-110); and failed to pay all wages due upon separation of employment. (*Id.*, ¶¶ 114-121.)

8 The Court accordingly should certify the Settlement Class for purposes of settlement under Code
9 of Civil Procedure section 382 and Rule of Court 3.769(c).

10 **3. Typicality of Plaintiff’s Claims**

11 Typicality “requires a showing that the class representative has claims or defenses typical of the
12 class.” *See, e.g., Fireside Bank v. Super. Ct. (Gonzalez)* (2007) 40 Cal.4th 1069, 1090. This focuses on
13 “the nature of the claim or defense of the class representative, and not to the specific facts from which it
14 arose or the relief sought.” *Hanlon v. Dataproducts Corp.* (9th Cir. 1992) 976 F.2d 497, 508 (internal
15 citations omitted). “The test of typicality ‘is whether other members have the same or similar injury,
16 whether the action is based on conduct which is not unique to the named plaintiffs, and whether other
17 class members have been injured by the same course of conduct.’” *Id.* (quoting *Schwartz v. Harp* (C.D.
18 Cal. 1985) 108 F.R.D. 279, 282; *accord Classen v. Weller* (1983) 145 Cal.App.3d 27, 46 (“it has never
19 been the law in California that the class representative must have *identical* interest with the class
20 members”).

21 Under these standards, Plaintiff’s claims are typical of those of the Class Members. Like other
22 Class Members, Plaintiff was an hourly non-exempt employee of Defendant in California. (Setareh
23 Decl., ¶ 10.) Plaintiff alleges that she and the putative class members were not provided with compliant
24 rest breaks and meal breaks, were not paid all wages, did not have necessary business expenditures
25 reimbursed, did not receive all final wages timely, and did not receive accurate wage statements. (*Id.*)
26 *See Classen, supra*, 145 Cal.App.3d at 46 (representative plaintiffs need not have all claims or identical
27 interests with class members; they need only have claims that are “typical of the class”); *see also B.W.I.*
28 *Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 (representative plaintiffs need

not suffer all of the exact same damages as every class member). Accordingly, Plaintiff pursues claims typical of the class he seeks to represent.

4. Adequacy of Plaintiff and Class Counsel to Represent the Class

The adequacy requirement is met where the named plaintiffs are represented by counsel qualified to conduct the litigation and the plaintiffs' interest in the litigation is not antagonistic to the class's interests. *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51. In other words, where the named plaintiffs have adequate counsel, they may represent the entire class absent any disabling conflicts of interest that might hinder the named plaintiffs' ability to represent the class. *Id.*

In this case, Plaintiff has no conflict of interest with absent Settlement Class Members and has agreed to place the class's interests above her own. (Setareh Decl., ¶ 10.) See *Global Minerals, supra*, 113 Cal.App.4th at 851 (the inquiry into the adequacy of a class representative is intended to uncover any conflicts between the plaintiff and the class he or she seeks to represent). Plaintiff's counsel, Setareh Law Group, is experienced in wage and hour class action litigation and has no conflicts of interest with absent Class Members. (Setareh Decl., ¶¶ 4-5, 10.) Thus, this Court should appoint Plaintiff as Class Representative for the Settlement Class and appoint her counsel as Class Counsel.

B. STANDARD FOR GRANTING PRELIMINARY SETTLEMENT APPROVAL

Cases brought as class actions may only be settled upon court approval and then only after a determination that the settlement is fair, adequate, and reasonable is made. *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723. Courts have broad discretion to make this determination and consider factors, such as the strength of plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, and the reaction of the class members to the proposed settlement. *In re Microsoft*, 135 Cal.App.4th at 723; *Dunk*, 48 Cal.App.4th at 1800-01; *Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 336. "[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." *Dunk, supra*, at 1802; see also *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 52.

1 California Rule of Court 3.769 sets forth the procedures for settlement of class actions in
2 California. A two-step process is required. First, the court preliminarily approves the settlement and the
3 class members are notified as directed by the court. Cal. Rule of Court 3.769 (c) -(f). “The notice must
4 contain an explanation of the proposed settlement and the procedures for class members to follow in
5 filing written objections to it and in arranging to appear at the settlement hearing and state any objections
6 to the proposed settlement.” Cal. Rule of Court 3.769(f). Second, the court conducts a final approval
7 hearing to inquire into the fairness of the proposed settlement. Cal. Rule of Court 3.769(g). If the court
8 approves the settlement, a judgment is entered with provision for continued jurisdiction for the
9 enforcement of the judgment. Cal. Rule of Court 3.769(h).

10 In deciding whether to grant preliminary approval, courts are to give “due regard” to “what is
11 otherwise a private consensual agreement between the parties.” *Sutter Health Uninsured Pricing Cases*
12 (2009) 171 Cal. App. 4th 495, 505. When approving a settlement, “the court need not ‘reach any
13 ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute, for
14 it is the very uncertainty of the outcome in litigation and avoidance of wasteful and expensive litigation
15 that induce consensual settlements.’” *Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268,
16 1291 (quoting *Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625).³ The
17 court’s inquiry must be limited to the extent necessary to reach a reasoned judgment that the agreement
18 is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the
19 settlement, taken as a whole, is fair, reasonable and adequate to all concerned. *Id.*

20 **C. THIS COURT SHOULD GRANT THIS MOTION AND ISSUE AN ORDER**
21 **PRELIMINARILY APPROVING THE SETTLEMENT BECAUSE IT IS FAIR,**
ADEQUATE, AND REASONABLE

22 **1. Settlement Resulted From Serious, Informed, Non-Collusive Negotiations**

23 The Parties reached this settlement only after they conducted extensive and protracted arm’s-
24 length negotiations through an experienced and knowledgeable mediator, Honorable Amy D. Hogue
25 _____

26 ³ The California Supreme Court has suggested that trial courts, in the absence of controlling California
27 authority, utilize class action procedures of the Federal Rules of Civil Procedure. *See LaSala v.*
28 *American Sav. & Loan Ass’n* (1971) 5 Cal. 3d 864, 872. Thus, the Court may look to federal authorities
in ruling on this motion.

1 (Ret.). (Setareh Decl., ¶ 7.) The Parties have not engaged in any collusion or improper negotiations. (*Id.*)
2 Other than the separate settlement⁴ of Plaintiff's individual wrongful termination action that was
3 mediated concurrently with this Action and that was included in the same Mediator's Proposal as the
4 Settlement here, Plaintiff and Defendants do not have any agreements regarding the proposed Settlement
5 that are not reflected in the Settlement. (*Id.*)

6 2. **Sufficient Fact Investigation and Discovery Has Occurred to Assess the**
7 **Fairness of the Settlement**

8 As discussed above, Plaintiff's counsel engaged in extensive investigation and informal written
9 discovery that has allowed them to evaluate the merits of the Class Members' claims and Defendant's
10 defenses as well as the range of possible recoverable damages. (*Id.*, ¶¶ 6-9.) Based on Plaintiff's
11 counsel's investigation and discovery, Plaintiff and her counsel are of the opinion that this settlement is
12 fair, reasonable, adequate, and in the Class Members' best interest. (*Id.*) Plaintiff's counsel's
13 investigation and discovery is more than sufficient to warrant their and Plaintiff's decision to enter into
14 the Settlement. (*Id.*)

15 Plaintiff and Defendant engaged extensively in informal discovery prior to resolving the Action.
16 (*Id.*, ¶ 6.) Specifically, the Parties engaged in an informal, voluntary exchange of information in the
17 context of privileged settlement discussions to facilitate an early mediation. (*Id.*) The Parties agreed to
18 attend mediation to attempt to resolve the action entirely and further agreed to engage in informal
19 discovery in advance and in preparation thereof. (*Id.*) Defendants produced hundreds of pages of
20 documents. (*Id.*) This included, but was not limited to, the informal exchange of meal period and
21 timekeeping documents, Plaintiff's personnel file and wage statements, a sampling of Class Members'
22 payroll records, and other documents relevant to the litigation. (*Id.*) Plaintiff hired an expert to hire
23 analyze the produced data with respect to potential damages and penalties in preparation for mediation.
24 (*Id.*)

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27 ⁴ Should the Court wish to review the settlement in the individual action, the Parties can lodge a
28 copy with the Court upon request.

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settlement is substantially narrower than it would be if the suits were to be successfully litigated,’ this is not a bar to a class settlement because ‘the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.’” *Id.* (quoting *Air Lines Stewards v. American Airlines, Inc.* (7th Cir. 1972) 455 F.2d 101, 109).

The following chart provides the estimated potential recovery on a class basis that Plaintiff believes she could reasonably achieve *if he were to prevail on all her causes of action*⁵:

Plaintiff’s Estimated Potential Recovery		
Assumptions During Class Period (based on data provided by Defendants for Mediation and data provided in Settlement § 12.20)		
<u>Approximate Number of Shifts (Fendi): 29,641</u> <u>Number of Class Members (Fendi): 100</u> <u>Average Number of Shifts Per Workweek (Fendi): 4.69</u> <u>Total Workweeks (Fendi): 6,320</u> <u>Total PAGA Pay Periods (Fendi): 385</u> <u>Total Aggrieved Employees (Fendi): 80</u>		
<u>Approximate Number of Shifts (Pyramid): 1,193</u> <u>Number of Class Members (Pyramid): 29</u> <u>Average Number of Shifts Per Workweek (Pyramid): 4.03</u> <u>Total Workweeks (Pyramid): 296</u> <u>Total PAGA Pay Periods (Pyramid): 251</u> <u>Total Aggrieved Employees (Pyramid): 26</u>		
<u>Average Rate of Pay: \$20.38</u> <u>Number of Former Employees (Fendi): 43</u> <u>Meal Break Violation Rate: 20%</u> <u>Number of Former Employees (Pyramid): 26</u> <u>Rest Break Violation Rate: 30%</u> <u>Reimbursable Expenses Per Employee: \$20</u> <u>Off-The-Clock Minutes/Shift: 10</u>		
Cause of Action	Estimated Potential Recovery	Calculations for Estimated Potential Recovery
Meal Period Claim	\$125,679.38	(29,641 Fendi shifts + 1,193 Pyramid shifts) x 20% Meal viol. Rate x \$20.38 Hourly Rate
Rest Period Claim	\$188,519.08	(29,641 Fendi shifts + 1,193 Pyramid shifts) x 30% Rest viol. Rate x \$20.38 Hourly Rate

⁵ Civil penalties are estimated and interest is not included in this analysis. This is proper because, first, PAGA penalties are discretionary (see Lab. Code § 2699(e)(2) (the court in its discretion “may award a lesser amount than the maximum civil penalty amount specified by this part...”), and courts evaluate the strength of a proposed settlement without taking potential penalties or interest into consideration. (See *Rodriguez v. West Publishing Corp.* (9th Cir. 2000) 563 F.3d 948, 955; see also *Miller v. CEVA Logistics U.S.A., Inc.* (E.D. Cal. Feb. 19, 2015) 2015 WL 729638, at *7(court utilized calculation of a defendant’s exposure exclusive of interest and penalties to determine whether the settlement fell within the range of possible approval).)

Off-the-clock Claim	\$157,099.23	(29,641 Fendi shifts + 1,193 Pyramid shifts) x 10 mins off-the-clock per shift x \$20.38 Hourly Rate x 1.5 OT multiplier
Expense Reimbursement Claim	\$2,580.00	(100 Fendi Class Members + 29 Pyramid Class Members) x \$20 Reimbursable Expenses
Sub-Total Unpaid Wages/Reimbursement	\$172,053.68	
<i>Including 95% Discount Factor for Fendi Arb Agreements</i>	\$41,568.14	
Labor Code § 203 Penalties	\$337,492.80	69 Terminated Employees x \$20.38 Hourly Rate x 8 Hours per day x 30 day maximum
Labor Code § 226 Penalties	\$321,392.33	(Number of initial pay periods x \$50) + (Number of subsequent pay periods x \$100) [up to a maximum penalty amount of \$4,000 per employee]
TOTAL	\$1,132,762.82	
<i>Including 95% Discount Factor for Fendi Arb Agreements</i>	\$220,737.54	
PAGA Penalties	\$63,600.00	
Total if PAGA included	\$1,196,362.82	
<i>Including 95% Discount Factor for Fendi Arb Agreements</i>	\$284,337.54	

(Setareh Decl., ¶ 8.)

Despite a total potential recovery of \$172,053.68 on his unpaid wage, non-penalty class claims, and approximately \$1.1 million on all class claims, including statutory penalties, Plaintiff recognized the challenges she would have to face in certifying a class action and establishing liability on the wage and hour claims. (*Id.*, ¶ 8.) Plaintiff estimates that her likelihood of prevailing on all her causes of action are extremely low and thus her likelihood of recovering over \$1.1 million or anything close to that amount

1 on behalf of a class is very unlikely. (*Id.*) In fact, Fendi established that there are arbitration agreements
2 with class action waivers that applied to the Fendi Class Members. (*Id.*) If established, class
3 certification of those employees would be all but impossible, and to recover damages on such claims
4 would require submitting individual arbitrations for each, a highly unlikely strategy for counsel to
5 undertake as time- and cost-prohibitive. (*Id.*) Therefore, discounting the value on Fendi Class
6 Members' claims by 95% is appropriate to correctly assess the maximum value for the class claims.
7 (*Id.*) Doing so yields a maximum potential value on the unpaid wages and reimbursement claims of
8 **\$41,568.14**, and on all claims of **\$284,334.54**. (*Id.*)

9 With respect to the claims asserted on behalf of the Settlement Class in this case, there are
10 significant risks that support the reduced compromise amount. These risks include, but are not limited to,
11 the following:

12 (i) The risk that Plaintiff would be unable to establish liability for allegedly unpaid overtime
13 wages. *See Duran v. US Bank Nat'l Ass'n* (2014) 59 Cal.4th 1, 39 & fn. 33 ("Duran"), *citing Dilts v.*
14 *Penske Logistics* (S.D. Cal. 2014) LLC 2014 WL 205039 (dismissing certified off-the-clock claims
15 based on proof at trial). Defendants contend, e.g., that overtime was properly paid or not due or owing
16 across the putative Class as alleged by Plaintiff.

17 (ii) The risk that Plaintiff would not be able to prove liability for alleged failure to provide
18 compliant meal and rest breaks; or that to establish liability for the failure to provide compliant rest
19 breaks would require an individualized inquiry that would prevent these issues from being resolved on a
20 class and/or collective basis. Plaintiff alleged employees were regularly subject to meal break violations.
21 Defendant alleges that many employees took their meal and rest breaks and that in order to prove
22 whether each employee took their meal periods and/or rest breaks would require an individualized
23 inquiry that would prevent this issue from being resolved on a class and/or collective basis.

24 (iii) The risk that Plaintiff would not recover waiting time and wage statement penalties
25 pursuant to Labor Code sections 203 and 226. For example, Plaintiff might not prove that Defendant
26 acted with the intent necessary for the alleged claims for penalties under Labor Code sections 203 and
27 226. For example, there is currently a split of authority as to whether such penalties can be obtained
28 based on failure to provide rest breaks. *See, e.g., Singletary v. Teavana Corporation* (N.D. Cal. May 2,

1 2014) 2014 WL 1760884, *4 (noting that “the law in this area is murky at best” and holding that section
2 203 penalties are not applicable to meal and rest break claims). Specifically, section 203 requires that a
3 plaintiff show the employer committed a “willful” violation of the law in withholding wages. “A good
4 faith dispute that any wages are due will preclude imposition of waiting time penalties under Section
5 203.” 8 Cal. Code Regs. § 13520. Similarly, penalties pursuant to section 226 require a “knowing and
6 intentional” violation. Defendant contends that it would present several good faith defenses that would
7 preclude a finding of willfulness under section 203. *See Choate v. Celite Corp.* (2013) 215 Cal. App.4th
8 1460 (reversing award of section 203 penalties based on good faith defense where underlying wage
9 claim presented issue of first impression). Any such good faith dispute could preclude penalties.

10 (iv) The risk that Defendant’s challenged employment policies might not ultimately support
11 class certification or a class-wide liability finding, *see, Duran*, 59 Cal.4th at 14 & fn. 28 (citing Court of
12 Appeal decisions favorable on class certification issue without expressing opinion as to ultimate viability
13 of proposition). Defendant has contended, for example, that the managers were unaware of the off-the
14 clock work, and therefore had no reason to know or suspect that such off-the clock work was occurring.
15 *See, e.g., Morillion v. Royal Packing Co.* (2000) 22 Cal. 4th 575, 585 (employer not required to pay
16 employees for time spent performing work of which the employer had no knowledge). Even if such a
17 problem did exist, Defendant contends that it did not have such a policy, and therefore, it is not a
18 systematic problem across Defendant’s entire California workforce.

19 (v) For the same reasons, liability, damages recovery, and certification risks are heightened
20 given: (1) the risk that uncertainties pertaining to the ultimate legality of Defendant’s policies and
21 practices could preclude class-wide awards of statutory penalties under Labor Code section 226(e); (2)
22 the risk that individual differences between settlement Class Members could be construed as pertaining
23 to liability, and not solely to damages, *see, Duran*, 59 Cal.4th at 19; and (3) the risk that class or
24 collective treatment could be deemed improper as to one or more claims except for settlement purposes.

25 (vi) The risk that any civil penalties award under PAGA could be reduced by the Court in its
26 discretion could materially impact the recovery by the Aggrieved Employees, see Labor Code section
27 2699(e)(1).

28 (vii) The risk that lengthy appellate litigation could ensue as to both liability and certification

1 issues, with associated litigation risk and costs, further enhances the value of a confirmed settlement as
2 opposed to unpredictable litigation.

3 (viii) Although the PAGA penalties calculated by Plaintiff's expert amounts to \$63,600, that
4 amount is not likely to bear fruit in this case. Most significantly, the ultimate decision as to the amount
5 of penalties is always up to the discretion of the Court. Labor Code § 2699(e)(2) states: "In any action
6 by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a
7 court may award a lesser amount than the maximum civil penalty amount specified by this part if, based
8 on the facts and circumstances of the particular case, to do otherwise would result in an award that is
9 unjust, arbitrary and oppressive, or confiscatory." Subdivision (a) states, "Notwithstanding any other
10 provision of law, any provision of this code that provides for a civil penalty to be assessed and collected
11 by the Labor and Workforce Development Agency or any of its departments, divisions, commissions,
12 boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through
13 a civil action brought by an aggrieved employee on behalf of himself or herself and other current or
14 former employees pursuant to the procedures specified in Section 2699.3." Subdivision (f) specifies the
15 penalties in instances where the underlying statute does not specify any civil penalty. In other words,
16 where the facts and circumstances of the particular case demonstrate that an unreduced award would be
17 "unjust, arbitrary and oppressive, or confiscatory," the court (or arbitrator) may reduce the award so as to
18 ameliorate any such finding.

19 In these respects, Defendants strongly deny any liability and the propriety of class certification
20 for any reason other than settlement. (Settlement, § 12.1.) Continued litigation of this lawsuit presented
21 Plaintiff and Defendants with substantial legal risks that were (and continue to be) very difficult to
22 assess. (Setareh Decl., ¶ 9.)

23 In light of the uncertainties of protracted litigation, the Settlement amount reflects a fair and
24 reasonable recovery for the Class Members. (*Id.*) The Settlement amount is, of course, a compromise
25 figure. (*Id.*) By necessity, it took into account risks related to liability, damages, class action
26 certification, and all the defenses asserted by Defendants as to all such matters. (*Id.*) Moreover, each
27 settlement Class Member will be given the opportunity to opt out of the Settlement, allowing those who
28 feel they have claims that are greater than the benefits they can receive under this Settlement to pursue

1 their own claims. (*Id.*)

2 **D. THE COURT SHOULD GRANT THIS MOTION AND ISSUE AN ORDER**
3 **DIRECTING THAT NOTICE BE SENT**

4 “The notice given to the class must fairly apprise the class members of the terms of the proposed
5 compromise and of the options open to dissenting class members.” *Trotsky v. L.A. Fed. Sav. & Loan*
6 *Ass’n* (1975) 48 Cal.App.3d 134, 151-52. “The notice must be structured to enable class members to
7 decide whether to intervene or object, ‘opt out,’ or accept the settlement.” *Id.* at 152. Class notice must
8 strike a balance between thoroughness and the need to avoid unduly complicating the content of the
9 notice and confusing class members. *Wershba*, 91 Cal. App. 4th at 252. Furthermore, an appropriate
10 notice is one which has a reasonable chance of reaching the class members. *Cartt v. Superior Court*
11 (1975) 50 Cal.App.3d 960, 974.

12 The Notice of Class Action Settlement explains in plain and easily understood language what the
13 case is about; the class definition and claims; the settlement amount and approximate individual amount
14 each Class Member and/or PAGA Employee will receive; the requested amounts to be paid to class
15 counsel and as an enhancement award to the class representative; the rights of class members to opt out
16 or object to the Settlement’s terms and the process by which they can do so; the binding effect of the
17 Settlement on those who do not request exclusion, including a description of the claims being released;
18 and the particulars of the final fairness hearing. (Settlement, § 7.4.2, Ex. A.)

19 The Parties’ proposed plan for directing notice to the Class is also the best notice that is
20 practicable under the circumstances. Using best efforts to perform as soon as possible, and in no event
21 later than 14 days after receiving the Class Data, the Administrator will send to all Class Members
22 identified in the Class Data, via first-class United States Postal Service (“USPS”) mail. (*Id.*, § 7.4.2.)
23 Not later than 3 business days after the Administrator’s receipt of any Class Notice returned by the USPS
24 as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided
25 by the USPS. (*Id.*, § 7.4.3.) If the USPS does not provide a forwarding address, the Administrator shall
26 conduct a Class Member Address Search, and re-mail the Class Notice to the most current address
27 obtained. (*Id.*)

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1 **E. THE COURT SHOULD SET A HEARING FOR FINAL APPROVAL**

2 Finally, the Court should set a formal hearing to conduct an inquiry into the fairness of the
3 proposed settlement. Cal. Rule Ct. 3.769 (e), (g). At the hearing, proponents of the Settlement may
4 explain and describe the terms and conditions and offer argument of settlement approval. Members of
5 the Settlement Class, or their counsel, may also appear and offer evidence and testimony in opposition to
6 the Stipulation of Settlement. The Parties request that the hearing on final approval of the settlement be
7 set 150 days from the Preliminary Approval Hearing, or as soon thereafter as may be convenient for the
8 Court.

9 **VI. CONCLUSION**

10 For the foregoing reasons, the Parties respectfully submit that the Settlement's terms are fair,
11 adequate, and reasonable and that it is in the best interest of the Class Members. Under the applicable
12 class and representative action criteria and guidelines, this Class should be conditionally certified, the
13 Settlement should be preliminarily approved, the Class should be notified regarding the Settlement, and
14 the Court should schedule a final approval hearing.

15
16 DATED: September 6, 2023

SETAREH LAW GROUP

17
18 /s/ Jose Maria D. Patino, Jr.

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