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11 on behalf of herself, all others similarly situated,
12 and on behalf of the general public
13

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **IN AND FOR THE COUNTY OF LOS ANGELES**

16 VALERIE MAE LUNA on behalf of herself,
17 all others similarly situated, and on behalf of
18 the general public,

19 Plaintiffs,

20 v.

21 ACCU BIO-CHEM LABORATORIES; and
22 DOES 1-100,

23 Defendants.
24
25
26
27
28

Case No. 22STCV35014

*[Assigned for All Purposes to the
Honorable Elihu M. Berle, Dept.6]*

**PLAINTIFF VALERIE MAE LUNA’S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS AND PAGA
ACTION SETTLEMENT, CONDITIONAL
CERTIFICATION, APPROVAL OF CLASS
NOTICE, SETTING OF FINAL APPROVAL
HEARING DATE**

Date: October 2, 2023
Time: 9:00 a.m.

Date File: November 3, 2022
Trial Date: None Set

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1 **I. INTRODUCTION**

2 Plaintiff Valerie Mae Luna (hereinafter “Plaintiff” or “Ms. Luna”), on behalf of herself and
3 the approximately 73-member putative class, respectfully requests that this Court preliminarily
4 approve the Class Action and PAGA Settlement Agreement and Class Notice (hereinafter
5 “Agreement”¹) entered into between Plaintiff and Defendant Accu Bio-Chem Laboratories, LLC
6 (hereinafter “Defendant” or “ABCL”) (hereinafter Plaintiff and Defendant are collectively referred
7 to as the “Parties”). The Parties’ Agreement seeks to resolve claims raised against Defendant in
8 this matter in exchange for a non-reversionary \$235,000 Gross Settlement Amount. The proposed
9 Class is comprised of individuals who worked for Defendant as non-exempt hourly employees in
10 California at any time during the Class Period.² The Class Period is November 3, 2018, to August
11 19, 2023.³ It is requested that the Court grant preliminary approval as, when analyzing the
12 strengths and vulnerabilities of the claims and Defendant’s potential liability exposure, this
13 proposed settlement of \$235,000 is well within the range of reasonableness. This settlement is
14 estimated to pay Class Members an average payment of approximately \$1,187.32. The proposed
15 Agreement satisfies all the criteria for preliminary approval under Rule 3.769 of the California
16 Rules of Court.

17 As the following sections show, Class Counsel are convinced that the proposed settlement
18 is in the best interests of the Class based on the negotiations and a detailed knowledge of the issues
19 presented in this action. The length and risks of trial and perils of litigation that affect the value of
20 the claims were all carefully weighed. In addition, the defenses asserted by Defendant, the
21 uncertainty of class certification, the difficulties of complex litigation, the lengthy process of
22 establishing specific damages and various possible delays and appeals, were also carefully
23 considered by Class Counsel in arriving at the proposed settlement. The Agreement was the

24 _____
25 ¹ The Parties’ utilized the Los Angeles County Superior Court Model Class Action and PAGA
26 Settlement Agreement and Class Notice. The Parties’ Agreement is attached to the Declaration of
27 David Mara, Esq. as Exhibit 1. “Exhibit 1” herein refers to the Parties’ Agreement. Attached to
28 the Declaration of David Mara, Esq. as Exhibit 2 is a redlined version of the Agreement showing
what changes were made to the Model Class Action and PAGA Settlement Agreement and Class
Notice.

² Exhibit 1 at Paragraph 1.5.

³ Exhibit 1 at Paragraph 1.12.

product of an all-day mediation with the Honorable Amy Hogue (Ret.) and was the product of non-collusive, arm's-length negotiations by informed counsel and parties. The settlement is fair, reasonable, and adequate. Accordingly, Plaintiff seeks: (1) preliminary approval of the terms contained in the Agreement; (2) provisional certification of the Class; (3) appointment of Plaintiff as Class Representative; (4) appointment of Mara Law Firm, PC, as Class Counsel; (5) approval of the Parties' proposed notice of class action settlement⁴ (referred to herein as the "Class Notice" or "Notice") and method of notifying the Class about the settlement; and (6) a hearing date for final approval on February 16, 2024.

II. BACKGROUND

Defendant is a third-party analytical lab that analyzes and tests various products, such as cosmetics and over-the-counter products, on behalf of other companies. On November 3, 2022, Plaintiff commenced this action by filing a Complaint alleging causes of action against Defendant for (1) Failure to Pay All Straight Time Wages; (2) Failure to Pay All Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions; (6) Waiting Time Penalties; (7) Violation of Unfair Competition Law (Bus. & Prof. Code § 17200, et seq.); and (8) Failure to adopt a compliant sick pay/paid time off policy (Lab. Code §§233, 234, 246). (Mara Dec. ¶ 11).

On October 24, 2022, Plaintiff provided notice to the Labor and Workforce Development Agency ("LWDA") and Defendant in accordance with the Private Attorneys General Act of 2004 ("PAGA"). On January 1, 2023, Plaintiff filed a PAGA action which seeks civil penalties pursuant to Cal. Lab. Code 2699 *et seq.* for violations of all claims in the class action. The PAGA action was consolidated with the class action on March 15, 2023. (Mara Dec. ¶ 12).

III. INVESTIGATION/LITIGATION HISTORY

a. Discovery and Investigation

After filing, the Parties engaged in informal discovery. These discovery efforts led to Defendant producing policy documents, such as the employee handbook that covered employees'

⁴ The Class Notice is attached to the Agreement as Exhibit A.
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1 employment with Defendant, and time and wage records. Included within these documents were
2 Defendant's wage and hour policies, including its meal and rest period policies. Defendant also
3 produced time and wage records for a 20% random sampling of the Class Members which
4 Plaintiff's Counsel analyzed. To determine which Class Members would be included in the
5 sampling, Plaintiff randomly selected employee numbers and those employees were included in
6 the sampling. As such, the sampling should be reflective of the entire Class as the employees
7 included in it were selected at random. Defendant further produced Plaintiff's personnel file and
8 time and pay records. Plaintiff also requested, and Defendant produced, data surrounding the
9 number of current and former employees, as well as the number of shifts and pay periods worked
10 by Class Members during the relevant time period and Class Members' average rate of pay, to
11 establish a potential exposure model in preparation for mediation. From this discovery, Plaintiff
12 and her Counsel were able to analyze Defendant's liability in this action and prepare a realistic
13 damage model. (Mara Dec. ¶ 13).

14 **b. The Parties Agreed to Attend Mediation**

15 The Parties attended an all-day mediation presided over by Honorable Amy Hogue (Ret.)
16 on June 20, 2023. This mediation was successful. The Parties then met and conferred over all the
17 terms of the settlement and finalized their settlement in the Parties' Agreement. The Parties seek
18 preliminary approval of the Agreement in the instant motion. (*See* Mara Dec. ¶ 14; *see also* Exhibit
19 1 attached thereto).

20 **c. The Parties' Staunchly Conflicting Positions**

21 **i. Rest Periods**

22 Plaintiff alleges that employees are not provided with lawful rest periods. Employers have
23 an obligation to provide employees with ten (10) minute rest periods. An employer's obligation to
24 provide its employees with rest periods arises under the Industrial Welfare Commission Wage
25 Orders. Wage Order 4-2001, Section 12(A) states, "[e]very employer shall authorize and permit
26 all employees to take rest periods, which insofar as practicable shall be in the middle of each work
27 period. The authorized rest period time shall be based on the total hours worked daily at the rate
28 of ten (10) minutes net rest time per four (4) hours or major fraction thereof." Here, Plaintiff alleges

1 that Defendant does not provide duty-free rest periods. Plaintiff asserts that Defendant's handbook
2 tells employees that they are allowed to leave the work premises for meal periods but fails to
3 inform employees that they can leave the premises for rest periods. As such, Plaintiff contends that
4 rest periods are not duty-free as employees cannot leave the work premises. (Mara Dec. ¶ 15).

5 Defendant asserts that its rest period policy is lawful and that it provides employees with
6 rest periods in compliance with California law. Defendant alleges that if litigation continues it
7 would be able to show that it advised employees that they could leave the premises for rest periods
8 and that employees did, in fact, leave the premises for rest periods. Defendant further asserts that
9 employees were provided the opportunity to take legally compliant rest periods, and employees
10 were relieved of all work duties during such rest periods. Defendant also contends that if litigation
11 were to continue, it would provide declarations from employees stating that they knew they were
12 entitled to rest periods in accordance with California law and that they were able to leave the work
13 premises during rest periods. (Mara Dec. ¶ 16).

14 In summary, Plaintiff contends that Defendant does not provide rest periods wherein
15 employees can leave the premises during rest periods. Defendant asserts that employees can, and
16 do, leave the premises during rest periods. Defendant contends that to resolve this difference, the
17 Court or fact finder would have to ask each employee whether they could leave the premises during
18 rest periods which would defeat certification as individual issues would predominate. Plaintiff
19 asserts that certification is proper based upon Defendant's written rest period policy in its
20 employee handbook. As such, disputes exist as to whether certification is proper and as to whether
21 Defendant provided employees with lawful rest periods. (Mara Dec. ¶ 17).

22 **ii. Meal Periods**

23 Plaintiff contends that Defendant does not provide employees with meal periods that
24 conform with California law. Employers have an obligation under California law to provide
25 employees with thirty (30) minute meal periods. Under California Labor Code § 512(a), "[a]n
26 employer may not employ an employee for a work period of more than five hours per day without
27 providing the employee with a meal period of not less than 30 minutes" Cal. Lab. Code §
28 512(a). An employer "satisfies this obligation [to provide meal periods] if it relieves its employees

1 of all duty, relinquishes control over their activities and permits them a reasonable opportunity to
2 take an uninterrupted 30-minute break, and does not impede or discourage them from doing so.”
3 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040. Here, Plaintiff contends
4 that Defendant’s time records show non-compliant meal periods. (Mara Dec. ¶ 18).

5 In *Donohue v. AMN Services, LLC*, the California Supreme Court issued a decision,
6 wherein it ruled that time records showing late, short, or missed meal periods raises a rebuttable
7 presumption that the meal periods were not provided: “If time records show missed, short, or
8 delayed meal periods with no indication of proper compensation, then a rebuttable presumption
9 arises” that the meal periods were not provided in accordance with California law. *Donohue v.*
10 *AMN Services, LLC* (2021) 11 Cal.5th 58, 74. Plaintiff contends that, here, the time records show
11 non-compliant meal periods. In these shifts, under *Donohue*, Plaintiff contends that it is presumed
12 that meal period violations occurred. (Mara Dec. ¶ 19).

13 Defendant asserts that its meal period policy is lawful and that it provides employees with
14 meal periods in compliance with California law. Further, Defendant alleges that if litigation
15 continues it would be able to show that it advised employees of the right to take a meal period in
16 compliance with California law. Defendant contends that employees either took a lawful meal
17 period or knowingly and voluntarily decided to skip the meal period or take a late or short meal
18 period. Defendant contends that this evidence would rebut the presumption under *Donohue v. AMN*
19 *Services, LLC*. Defendant also asserts that the evidence in this case shows that it paid meal period
20 premiums in shifts in which employees were not provided with compliant meal periods. Thus,
21 Defendant contends that to the extent an employee was not provided the opportunity to take a
22 legally compliant meal period, they were provided a meal premium. (Mara Dec. ¶ 20).

23 In summary, Plaintiff contends that because Defendant’s time records show non-compliant
24 meal periods, it is presumed that meal period violations occurred in these shifts. Defendant
25 counters that it would be able to rebut this presumption because its meal period policy is lawful.
26 Defendant also asserts that in rebutting the presumption, the Court or fact finder would have to ask
27 each employee why their time records show a non-compliant meal period. This could be due to
28 employees knowingly and voluntarily deciding to skip the meal period or taking a late or short

1 meal period. To make this determination, Defendant contends the Court or fact finder would have
2 to ask each employee about each instance which would defeat certification as individual issues
3 would predominate. Plaintiff contends that this is not the case and that certification under *Donohue*
4 is proper. As such, disputes exist as to whether certification is proper and as to whether Defendant
5 can rebut the presumption under *Donohue*. (Mara Dec. ¶ 21).

6 **iii. Wage Statements and Waiting Time Penalties**

7 Plaintiff also pursued claims for failure to provide accurate itemized wage statements and
8 waiting time penalty claims. These claims are derivative of Plaintiff's meal and rest period claims.
9 Should Plaintiff's meal and rest period claims fail, these claims would also fail. (Mara Dec. ¶ 22).

10 In addition, Defendant contends that even if Plaintiff were successful in her unpaid wage
11 claims, she would have to prove Defendant "willfully" failed to pay employees the appropriate
12 meal and rest period premiums due upon separation of employment. "A willful failure to pay wages
13 within the meaning of Labor Code Section 203 occurs when an employer intentionally fails to pay
14 wages to an employee when those wages are due. However, a good faith dispute that any wages
15 are due will preclude imposition of waiting time penalties under Section 203." Cal. Code Regs.
16 Tit. 8 § 13520. "A 'good faith dispute' that any wages are due occurs when an employer presents
17 a defense, based in law or fact, which would preclude any recovery on the part of the employee.
18 The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith
19 dispute did exist." *Id.* Defendant contends that any failure to pay wages due at the separate of
20 employment was not willful. Defendant argues that it would not be liable for waiting time penalties
21 because a "good faith dispute" exists over the payment of those wages. *See* Cal. Code Regs. Tit. 8
22 § 13520; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201. Defendant also argues
23 that Plaintiff's meal and rest period claims cannot form the basis of her wage statement claim.
24 Defendant relies on the case *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, for
25 the position that employees do not suffer injury under California Labor Code § 226(a) so long as
26 the wage statements correctly reflected the hours worked and the pay received even if the pay is
27 later determined to be inaccurate. (Mara Dec. ¶ 23).

28 ///

1 **IV. TERMS OF THE PROPOSED SETTLEMENT**

2 Under the terms of the settlement, Defendant will create a settlement fund of \$235,000.

3 **a. Deductions from the Settlement**

4 The Parties have agreed (subject to and contingent upon the Court's approval) that this
5 action be settled and compromised for the non-reversionary total sum of \$235,000 ("Gross
6 Settlement Amount" or "GSA"), which includes, subject to Court approval: (a) attorneys' fees of
7 up to \$78,325.50 (33% of the GSA)⁵ to compensate Class Counsel for work already performed
8 and all work remaining to be performed in documenting the settlement, administering the
9 settlement, and securing Court approval; (b) litigation costs estimated at approximately, and not to
10 exceed, \$25,000;⁶ (c) a Service Payment Award to the named class representative, Valerie Mae
11 Luna, in a sum not to exceed \$10,000 in consideration for prosecuting this class action, serving as
12 Class Representative, work performed, and risks undertaken for the payment of attorneys' fees and
13 costs in the event she had been unsuccessful in the matter; (d) settlement administration fees and
14 expenses to APEX Class Action LLC (hereinafter "APEX"), estimated not to exceed
15 approximately \$10,000;⁷ and (e) \$25,000 allocated to Plaintiff's claims under the PAGA. Of this
16 payment, 75%, or \$18,750 will be provided to the LWDA, and 25%, or \$6,250, will be available
17 for distribution to Aggrieved Employees.⁸

18 **b. Calculation of the Settlement Payments to Class Members**

19 After all Court-approved deductions from the GSA, it is estimated that \$86,674.50⁹ ("Net

20 ⁵ Although Plaintiff's Counsel seeks attorneys' fees under the percentage method, Plaintiff's
21 Counsel will also provide the Court with their lodestar information at final approval.

22 ⁶ These will be tabulated and presented to the Court at final approval. Plaintiff will only seek the
23 amount of actual costs incurred during the litigation of this case. Should the actual costs exceed
24 \$25,000, Plaintiff will only seek reimbursement of costs up to \$25,000. Should the actual costs be
25 lower than \$25,000, the difference will be added to the Net Settlement Amount for disbursement
26 to Participating Class Members.

27 ⁷ APEX provided the Parties with the lowest bid for the settlement administration process in this
28 case, meaning that more of the Net Settlement Amount will be available for Participating Class
Members. Further, APEX will present to the Court a declaration in conjunction with the final
approval motion outlining the costs of the settlement administration process. If the settlement
administration costs are lower than the amount allocated in the Agreement, the difference will be
added to the Net Settlement Amount for distribution to Participating Class Members.

⁸ Aggrieved Employees are all individuals who worked for Defendant as non-exempt hourly
employees in California during the PAGA Period. (Exhibit 1 at Paragraph 1.4). The PAGA Period
is October 24, 2021, to August 19, 2023. (Exhibit 1 at Paragraph 1.31).

⁹ It should be noted that this number will increase at final approval because any unused portions

Settlement Amount” or “NSA”), less employee taxes on the “wage portion” of the settlement payment, will be distributed to Participating Class Members.¹⁰ Subject to the terms and conditions of the settlement, each Participating Class Member will receive a portion of the Net Class Settlement Amount called their “Individual Class Payment.” An Individual Class Payment will be 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. (Exhibit 1 at Paragraph 3.2.4). Therefore, the value of each Class Member’s Individual Settlement Share ties directly to the amount of weeks that he or she worked.

The Individual Class Payment will be divided into a “wage portion” to compensate Participating Class Members for alleged unpaid wages and a “non-wage portion” to compensate Participating Class Members for alleged interest and penalties. The wage portion will make up 50% of each Participating Class Members’ Individual Class Payment, and the non-wage portion will make up 50% of each Participating Class Members’ Individual Class Payment. (Exhibit 1 at Paragraph 3.2.4.1).

In addition, each Aggrieved Employee will receive a proportionate share of the PAGA Payment that is allocated for distribution to PAGA Aggrieved Employees (i.e., 25% of the PAGA Payment). The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Penalties (\$6,250) 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.

of the settlement administration costs and litigation costs will be added to the Net Settlement Fund and available for distribution to Participating Class Members. Currently, APEX’s quote for the administration costs is \$5,990. If this amount remains the same, the difference between this amount and the \$10,000 allocated to administration costs will be added to the Net Settlement Amount at final approval. In addition, Plaintiff’s Counsel’s litigation costs are currently \$11,469.02. While these costs will increase due to the filing fees associated with the filings of the preliminary and final approval motions, the difference between the actual costs and the \$25,000 allocated to litigation costs will be added to the Net Settlement Amount at final approval.

¹⁰ Participating Class Members are “[a]ll members of the Settlement Class except those who timely submit a valid Request for Exclusion . . . from this Settlement pursuant to the process described in this Agreement. For the purposes of the release of PAGA claims, ‘Participating Class Members’ also includes Class Members employed during the PAGA Period, even if they submit a valid Request for Exclusion.” (Exhibit 1 at Paragraph 9(e), Page 6).

Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. (Exhibit 1 at Paragraph 3.2.5.1). Therefore, the value of each PAGA Aggrieved Employees' PAGA Settlement Share ties directly to the amount of pay periods that the PAGA Aggrieved Employees worked during the PAGA Period.

Under no circumstances will any portion of the \$235,000 settlement revert to Defendant and 100% of the NSA will be paid out to Participating Class Members. In addition, the employer's share of taxes will be paid in addition to and outside of the GSA.

c. Notice to the Class

Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator. (Exhibit 1 at Paragraph 4.2). The Class Data shall be comprised of Class Member identifying information in Defendant's possession including the Class Member's name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods. (Exhibit 1 at Paragraph 1.8).

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 USPS mail, the Class Notice substantially in the form attached to this Agreement as Exhibit A. 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 amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database. (Exhibit 1 at Paragraph 7.4.2). The Notices will be mailed in English and Spanish.

After notices are mailed, Class Members will have forty-five (45) days to respond to the settlement. (Exhibit 1 at Paragraph 1.43). Class Members may respond to the settlement by requesting to be excluded from it or objecting to it. Class Members can also file a dispute as to the number of workweeks attributed to them. The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods and Requests for Exclusion will be extended an

1 additional 14 days beyond the 45 days otherwise provided in the Class Notice for all Class
2 Members whose notice is re-mailed. The Administrator will inform the Class Member of the
3 extended deadline with the re-mailed Class Notice. (Exhibit 1 at Paragraph 7.4.4).

4 **i. Requests for Exclusion**

5 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must
6 send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later
7 than 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class
8 Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class
9 Member or his/her/their representative that reasonably communicates the Class Member's election
10 to be excluded from the Settlement and includes the Class Member's name, address and email
11 address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed,
12 or postmarked by the Response Deadline. (Exhibit 1 at Paragraph 7.5.1).

13 **ii. Objections to the Settlement**

14 Participating Class Members may send written objections to the Administrator, by fax,
15 email or mail. In the alternative, Participating Class Members may appear in Court (or hire an
16 attorney to appear in Court) to present oral objections at the Final Approval Hearing. A
17 Participating Class Member who elects to send a written objection to the Administrator must do
18 so not later than 45 days after the Administrator's mailing of the Class Notice (plus an additional
19 14 days for Class Members whose Class Notice was re-mailed). (Exhibit 1 at Paragraph 7.7.2).

20 **iii. Disputes**

21 Each Class Member shall have 45 days after the Administrator mails the Class Notice (plus
22 an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number
23 of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class
24 Notice. The Class Member may challenge the allocation by communicating with the Administrator
25 via fax, email or mail. The Administrator must encourage the challenging Class Member to submit
26 supporting documentation. In the absence of any contrary documentation, the Administrator is
27 entitled to presume that the Workweeks contained in the Class Notice are correct so long as they
28 are consistent with the Class Data. The Administrator's determination of each Class Member's

1 allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise
2 susceptible to challenge. The Administrator shall promptly provide copies of all challenges to
3 calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the
4 Administrator's determination the challenges. (Exhibit 1 at Paragraph 7.6).

5 **iv. Returned Notices**

6 Not later than 3 business days after the Administrator's receipt of any Class Notice returned
7 by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding
8 address provided by the USPS. If the USPS does not provide a forwarding address, the
9 Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the
10 most current address obtained. The Administrator has no obligation to make further attempts to
11 locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a
12 second time. (Exhibit 1 at Paragraph 7.4.3).

13 **d. Website**

14 The Administrator will establish and maintain and use an internet website to post
15 information of interest to Class Members including the date, time and location for the Final
16 Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the
17 Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class
18 Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative
19 Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and
20 monitor an email address and a toll-free telephone number to receive Class Member calls, faxes
21 and emails. (Exhibit 1 at Paragraph 7.8.1).

22 **e. Distribution of Funds**

23 Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts
24 necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the
25 Administrator no later than 14 days after the Effective Date. (Exhibit 1 at Paragraph 4.3). The
26 Effective Date is the date by when both of the following have occurred: (a) the Court enters a
27 Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final.
28 The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class

1 Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more
2 Participating Class Members objects to the Settlement, the day after the deadline for filing a notice
3 of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the
4 appellate court affirms the Judgment and issues a remittitur. (Exhibit 1 at Paragraph 1.18).

5 Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will
6 mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA
7 Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class
8 Counsel Litigation Expenses Payment, and the Class Representative Service Payment.
9 Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment
10 and the Class Representative Service Payment shall not precede disbursement of Individual Class
11 Payments and Individual PAGA Payments. (Exhibit 1 at Paragraph 4.4).

12 The Administrator will issue checks for the Individual Class Payments and/or Individual
13 PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid.
14 The face of each check shall prominently state the date (not less than 180 days after the date of
15 mailing) when the check will be voided. The Administrator will cancel all checks not cashed by
16 the void date. The Administrator will send checks for Individual Settlement Payments to all
17 Participating Class Members (including those for whom Class Notice was returned undelivered).
18 The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees
19 including Non-Participating Class Members who qualify as Aggrieved Employees (including
20 those for whom Class Notice was returned undelivered). The Administrator may send Participating
21 Class Members a single check combining the Individual Class Payment and the Individual PAGA
22 Payment. Before mailing any checks, the Settlement Administrator must update the recipients'
23 mailing addresses using the National Change of Address Database. (Exhibit 1 at Paragraph 4.4.1).

24 The Administrator must conduct a Class Member Address Search for all other Class
25 Members whose checks are returned undelivered without United States Postal Service ("USPS")
26 forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail
27 checks to the USPS forwarding address provided or to an address ascertained through the Class
28 Member Address Search. The Administrator need not take further steps to deliver checks to Class

Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date. (Exhibit 1 at Paragraph 4.4.2).

: 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 United Way ("Cy Pres Recipient"). The Parties, Class Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient. (Exhibit 1 at Paragraph 4.4.3).

f. Release of Claims

In exchange for an Individual Class Payment, Participating Class Members will agree to the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, release the Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaints, including, e.g., 1) Failure to Pay All Straight Time Wages; 2) Failure to Pay All Overtime Wages; 3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, IWC Wage Order No. 4-2001(11); Cal. Code Regs., tit. 8 § 11090); 4) Failure to Authorize and Permit Rest Periods (Lab. Code § 226.7; IWC Wage Order No. 4-2001(12); Cal. Code Regs. tit. 8 § 11040); 5) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Lab. Code §§ 226, 1174, 1175); 6) Waiting Time Penalties; 7) Violation of Unfair Competition Law (Bus. & Prof. Code § 17200, et seq.); and 8) Failure to adopt a compliant sick pay/paid time off policy (Lab. Code §§233, 234, 246). This release will be for the Class Period. Except as set forth in Section 5.3 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.

(Exhibit 1 at Paragraph 5.2).

In addition, all Aggrieved Employees will agree to the following release in exchange for an Individual PAGA Payment: "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 stated in the Operative

1 Complaints, and the PAGA Notice. This release will be for the PAGA Period.” (Exhibit 1 at
2 Paragraph 5.3).

3 In addition, Plaintiff has agreed to a general release of her claims. (See Exhibit 1 at
4 Paragraph 5.1).

5 **g. Class Representative Service Payment Award**

6 Subject to the Court’s approval, Plaintiff shall receive a payment not to exceed \$10,000 in
7 consideration for a general release of all her claims against Defendant. The payment shall be made
8 from the GSA. As just noted, Plaintiff has agreed to a general release of her claims against
9 Defendant.

10 Moreover, as representative for the absent class members, Plaintiff risked a potential
11 judgment taken against her for attorneys’ fees and costs if this matter had not been successfully
12 concluded. Case law holds that a losing party is liable for the prevailing party’s costs. *See Early v.*
13 *Superior Court*, 79 Cal.App.4th 1420, 1433 (2000). And in some wage and hour actions, such as
14 this case, pursuant to California Labor Code § 218.5, the prevailing party can be liable for
15 attorneys’ fees as well. Though the fee agreement provides that Class Counsel would pay such
16 costs, Plaintiff would nevertheless have had a cost bill entered against her leaving him ultimately
17 liable for potentially hundreds of thousands of dollars in the unexpected possibility that Class
18 Counsel did not meet their obligation to cover those costs. Unfortunately, there have been
19 judgments like this entered against class representatives.¹¹ The risk of payment of Defendant’s
20 costs, alone, is a sufficient basis for an award of the requested service award. Few individuals are
21 willing to take this risk, and Plaintiff championed a cause on behalf of others with potentially huge
22 monetary risks.

23 Additionally, the modern-day work force is mobile, with employees holding several jobs
24 over the span of their career. It is also true that prospective employers in this computer, high-tech

25
26 ¹¹ See, e.g. *Koehl v. Verio, Inc.*, 142 Cal.App.4th 1313, 1328 (2006) (a wage and hour class action
27 where Defendant prevailed at trial, the named Plaintiffs were held liable, jointly and severally for
28 the Defendant’s attorneys’ fees); *Whiteway v. Fedex Kinkos Office & Print Services, Inc.*, No. 05-
2320, 2007 U.S. Dist. LEXIS 95398 (N.D. Cal. Dec. 17, 2007) (a wage and hour misclassification
case lost on summary judgment, after the case was certified, the named Plaintiff was assessed costs
in the sum of \$56,788.).

age “Google” and/or do extensive background checks and have access to court databases to see if applicants have ever filed a lawsuit or have ever been sued. Here, Plaintiff’s conduct will not be lost on a prospective employer who has to choose between an applicant who has never sued an employer and one who has done so. The requested award far from compensates Plaintiff for opportunities she may lose in the future because of the exercise of a Constitutional right to Petition the Courts for redress of a grievance.

h. Final Judgment

Pursuant to Cal. Rules of Court, Rule 3.771(b), notice of the final judgment will be posted on the Settlement Administrator’s website. (*See* Exhibit 1 at Paragraph 7.8.1).

V. ARGUMENT

a. Class Action Settlements Are Subject to Court Review and Approval Under the California Rules of Court

Rule 3.769 requires court approval for class action settlements.¹² “Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.” (California Rules of Court, Rule 3.769(g)). Rule 3.769 further requires a noticed motion for preliminary approval of class settlements:

(a) A settlement or compromise of an entire class action, or a cause of action in a class action, or as to a party, requires the approval of the court after hearing.

...

(c) Any party to a settlement agreement may serve and file a written notice of motion for preliminary approval of the settlement. The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion.

Courts act within their discretion in approving settlements that are fair, not collusive, and take into account “all the normal perils of litigation as well as the additional uncertainties inherent in complex class actions.” *In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F. 2d 167, 179, cert. den. sub nom. *Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981) 452 U.S. 905.

¹² The California Supreme Court also has authorized California’s trial courts to use Federal Rule 23 and cases applying it for guidance in considering class issues. *See Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146. Where appropriate, therefore, the Parties cite Federal Rule 23 and federal case law in addition to California law.

1 **b. The Settlement Is Fair, Reasonable, and Adequate**

2 In deciding whether to approve a proposed class action settlement under Code of Civil
3 Procedure § 382, the Court must find that a proposed settlement is “fair, adequate and reasonable.”
4 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. A proposed class action settlement is
5 **presumed** fair under the following circumstances: (1) the parties reached settlement after arms-
6 length negotiations; (2) investigation and discovery were sufficient to allow counsel and the court
7 to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
8 objectors is small. *Dunk v. Ford Motor Co.*, *supra*, at 1802. As the following shows, all of these
9 elements – with the exception of the percentage of objectors, which cannot be anticipated at this
10 stage of the litigation – bearing on the fairness of the proposed settlement are present here and the
11 Court’s grant of preliminary approval is therefore requested.

12 **i. The Settlement Was Reached as a Result of Arm’s-Length**
13 **Negotiations**

14 The settlement was reached as a result of arm’s-length negotiations. Though cordial and
15 professional, the settlement negotiations have been, at all times, adversarial and non-collusive in
16 nature. Prior to, at, and after the mediation, Counsel for the Parties conducted extensive arm’s
17 length settlement negotiations until the settlement was reached. The terms of the settlement are
18 memorialized in the Agreement which is attached to the Declaration of David Mara, Esq. as
19 Exhibit 1. While Plaintiff believes in the merits of her case, she also recognizes the inherent risks
20 of litigation and understands the benefit of the class receiving significant settlement funds
21 immediately as opposed to risking continued litigation in achieving class certification, preparing
22 for and conducting a trial, and/or an appeal that may take several more years to litigate.

23 **ii. The Settlement is the Result of Thorough Investigation and**
24 **Discovery**

25 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
26 before reaching the proposed settlement, and engaged in sufficient investigation, research and
27 discovery to support the settlement. The settlement was only possible following investigation,
28 discovery, and evaluation of Defendant’s policies and procedures, as well as the data produced for

1 the putative class, which permitted Class Counsel to engage in a comprehensive analysis of
2 liability and potential damages. This litigation has reached the stage where “the Parties certainly
3 have a clear view of the strengths and weaknesses of their cases” sufficient to support the
4 settlement. *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.

5 **iii. Counsel for Both Parties Are Experienced in Similar Litigation**

6 Both Plaintiff’s Counsel and Defendant’s Counsel are particularly experienced in wage and
7 hour employment law and class actions. Plaintiff’s Counsel has significant experience in litigating
8 unpaid wages, unprovided meal and rest periods, and overtime claims. (Mara Dec. ¶¶ 2-10).
9 Indeed, Plaintiff’s Counsel was class counsel in *Hohnbaum et al. v. Brinker Restaurant Corp et*
10 *al.*, which is the subject case in the landmark decision of *Brinker Restaurant Corp. v. Superior*
11 *Court* (2012) 53 Cal.4th 1004. (Mara Dec. ¶ 5). Plaintiff’s Counsel has prosecuted numerous wage
12 and hour class action cases on behalf of employees for California Labor Code violations and thus
13 are experienced and qualified to evaluate the class claims and to evaluate settlement versus trial
14 on a fully informed basis, and to evaluate the viability of the defenses. This experience instructed
15 Plaintiff’s Counsel on the risks and uncertainties of further litigation and guided their
16 determination to endorse the proposed settlement.¹³ Defendant’s Counsel practices labor and
17 employment law and have represented numerous employers in similar types of claims.
18 Accordingly, both Parties’ Counsel are experienced in wage and hour employment law and class
19 actions.

20 **iv. The Proposed Settlement is a Reasonable Compromise of Claims**

21 An understanding of the amount in controversy is an important factor in determining
22 whether the settlement “of the class members’ claims is reasonable in light of the strengths and
23 weaknesses of the claims and the risks of the particular litigation.” *Kullar v. Foot Locker Retail,*
24 *Inc.* (2008) 168 Cal.App.4th 116, 129; *see also Munoz v. BCI Coca-Cola Bottling Co. of Los*
25 *Angeles* (2010) 186 Cal.App.4th 399, 409. The most important factor in this regard is “the strength
26 of the case for plaintiffs on the merits, balanced against the amount offered in settlement.” *Id.*

27 ¹³ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the
28 Class Notice has been provided to the class and they have had an opportunity to respond. This
information will be provided to the Court in conjunction with the final approval motion.

1 In weighing the strength of the plaintiff's case, *Kullar* instructs that the court is not to
2 "decide the merits of the case or to substitute its evaluation of the most appropriate settlement for
3 that of the attorneys." *Kullar, supra*, 168 Cal.App.4th at 133. *Kullar* does not require an explicit
4 statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims,
5 provided there is a record which allows "an understanding of the amount that is in controversy and
6 the realistic range of outcomes of the litigation." *Munoz*, 186 Cal.App.4th at 409. Put differently,
7 "as the court does when it approves a settlement as in good faith under Code of Civil Procedure §
8 877.6, the court must at least satisfy itself that the class settlement is within the 'ballpark' of
9 reasonableness." *Kullar, supra*, 168 Cal.App.4th at 133, citing *Tech-Bilt v. Woodward-Clyde &*
10 *Associates* (1985) 38 Cal.3d 488, 499-500. As the following subsections show, the Parties'
11 investigation and discovery revealed many reasons to discount claims and agree to this settlement.

12 **1. The Proposed Settlement is a Reasonable Compromise of**
13 **Claims**

14 The proposed settlement was only possible following significant discovery and an
15 evaluation of Defendant's relevant policies and procedures, as well as the data that Defendant
16 produced for the putative class as referenced above. This permitted Class Counsel to engage in a
17 comprehensive analysis of liability and potential damages. The discovery conducted allowed
18 Plaintiff to evaluate the strengths and weaknesses of her central theories of liability, which are
19 predicated on Plaintiff's claims that Defendant failed to provide compliant meal and rest periods.
20 As explained herein, Defendant maintains that the discovery produced demonstrates that it would
21 succeed at both in denying class certification and on the merits.

22 Although, Plaintiff believes this case is suitable for certification on the claimed bases that
23 there are company-wide policies that Plaintiff contends violate California law and uniformly affect
24 the Class Members, Defendant's counterarguments raise uncertainties with respect to both class
25 certification and success on the merits. As the California Supreme Court ruled in *Sav-On v.*
26 *Superior Court* (2004) 34 Cal.4th 319, class certification is always a matter of the trial court's
27 sound discretion. Decisions following *Sav-On* have reached different conclusions, with respect to
28

certification of wage and hour claims.¹⁴ While remaining confident in the strengths of her claims, all of these factors led Plaintiff to discount the following maximum potential damage exposure.

2. Maximum Potential Exposure as Estimated by Plaintiff

The settlement encompasses 8,432 workweeks.¹⁵ This equates to approximately 33,728 shifts worked by class members during the Class Period. Employees average rate of pay is approximately \$17.00 per hour.

Plaintiff alleges that Defendant failed to provide employees with rest periods in accordance with California law because Plaintiff asserts that employees were not provided with duty-free rest periods wherein they could leave the work premises. If Plaintiff were to prevail on this claim for the entire class period, Plaintiff and the Class Members would be entitled to the following *maximum* potential damages: \$544,714 (32,042 shifts over 3.5 hours x \$17.00 average hourly rate = \$544,714). (Mara Dec. ¶ 24). Defendant contends that this amount should be zero because it has a lawful rest period policy and it does not require employees to remain on the premises during rest periods. Defendant contends that it would provide declarations confirming this is the case if litigation were to continue.

Plaintiff alleges that Defendant failed to provide employees with meal periods in accordance with California law because Defendant's time records show unlawful meal periods. If Plaintiff were to prevail on this claim for the entire class period, Plaintiff and the Class Members would be entitled to the following *maximum* potential damages: \$103,921 (6,113 shifts with meal period violations x \$17.00 per hour = \$103,921). (Mara Dec. ¶ 25). Defendant contends that this amount is too high as it has paid meal period premiums to employees. Defendant asserts that no damages would be attributable to shifts in which a premium has already been paid and the maximum potential damages would be reduced. Defendant also contends that that this amount

¹⁴ See, e.g., *Harris v. Superior Court* (2007) 154 Cal. App. 4th 164 (reversing decertification of class claiming misclassification and ordering summary adjudication in favor of employees), *review granted*, 171 P.3d 545 (2007) (not cited as precedent, but rather for illustrative purposes only); *Walsh v. IKON Solutions, Inc.* (2007) 148 Cal. App. 4th 1440 (affirming decertification of class claiming misclassification); *Aguilar v. Cintas Corp. No. 2* (2006) 144 Cal. App. 4th 121 (reversing denial of certification); *Dunbar v. Albertson's Inc.* (2006) 141 Cal. App. 4th 1422 (affirming denial of certification).

¹⁵ See Exhibit 1 at Paragraph 4.1.

1 should be zero because it would be able to rebut the presumption under *Donohue*, in part, by
2 showing it has a lawful meal period policy.

3 If Plaintiff were to prevail on her meal and/or rest period claims, Plaintiff may be entitled
4 to penalties for inaccurate wage statements. The statute of limitations for Plaintiff's wage
5 statement claim is one year. Under California Labor Code § 226(e)(1), the damages for breach of
6 this section are fifty dollars (\$50) for the initial pay period in which a violation occurs and one
7 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed
8 an aggregate penalty of four thousand dollars (\$4,000). If Plaintiff were to prevail on this claim
9 and assume that all employees who worked within the wage statement statute of limitations are
10 entitled to the maximum penalty of \$4,000, the **maximum** damages would be \$156,000 (\$4,000 x
11 39 employees = \$156,000). (Mara Dec. ¶ 26). As these damages are derivative of Plaintiff's meal
12 and rest period claims, if Plaintiff's meal and rest period claims fail, this claim also would fail.
13 Defendant also contends that Plaintiff would not be able to show that this violation was knowing
14 and intentional. On this basis, Defendant contends that Plaintiff would not be entitled to any
15 damages for unlawful wage statements.

16 If Plaintiff were to prevail on her meal and/or rest period claims, she and the Class
17 Members may also be entitled to waiting time penalties. Plaintiff calculates the potential **maximum**
18 exposure under her waiting time penalties cause of action as \$138,720 (34 former employees
19 within the three-year statute of limitations x 30 days x 8 hour shift x \$17.00 average hourly rate =
20 \$138,720). (Mara Dec. ¶ 27). As these damages are derivative of Plaintiff's meal and rest period
21 claims, if Plaintiff's meal and rest period claims fail, this claim also would fail. Defendant also
22 contends that Plaintiff would not be able to show that this violation was willful. On this basis,
23 Defendant contends that Plaintiff would not be entitled to any damages for waiting time penalties.

24 Plaintiff also seeks PAGA penalties. PAGA allows the private enforcement of certain
25 California Labor Code sections relating to wage and hour violations. PAGA Section 2699(f)(2)
26 reads, in part, as follows:
27
28

1 [T]he civil penalty is one hundred dollars (\$100) for each aggrieved employee per
2 pay period for the initial violation and two hundred dollars (\$200) for each
aggrieved employee per pay period for each subsequent violation.

3 The statute of limitations for PAGA violations go back one year. The maximum potential damages
4 under Plaintiff's PAGA claim is: \$100 x 3 PAGA violations x 1,404 pay periods = \$421,200.
5 (Mara Dec. ¶ 28). As Plaintiff's PAGA claims are based on the same alleged unlawful conduct as
6 her class claims, Plaintiff's PAGA claims are subject to the same risks on the merits as Plaintiff's
7 class claims. In addition, the Court may reduce any PAGA penalties awarded under Section 2699,
8 subdivision (e)(2). The likelihood of the Court reducing the PAGA penalties awarded to Plaintiff
9 and the Aggrieved Employees – assuming liability is proven as to each of Plaintiff's claims – is
10 higher in this case where these same individuals may also be receiving money for the same
11 unlawful conduct under the class claims. *See Avila v. Cold Spring Granite Co.* (E.D. Cal. Jan. 12,
12 2018) Case No. 1:16-cv-001533-AWI-SKO, 2018 U.S. Dist. LEXIS 6142 *17 (“Because the
13 PAGA penalties sought are at least partially duplicative of penalties granted by the underlying
14 Labor Code violations, *see, e.g.*, Cal. Lab. Code §§ 203, 226, 558(a), 1194.2, and because a Court
15 has discretion in whether and in what amount to award PAGA penalties, *see* Cal. Lab. Code §
16 2699(e)(2), Plaintiff recognizes that the potential PAGA penalties are highly uncertain.”). As such,
17 the Court may reduce any PAGA penalty amount awarded to Plaintiff and the Aggrieved
18 Employees.¹⁶

19 Thus, not taking into account any of its defenses or arguments, Plaintiff estimated that if
20 she were successful in her core claims, Defendant's total exposure would be approximately
21 \$648,635 [\$544,714 (rest period exposure) + \$103,921 (meal period exposure) = \$648,635]. If
22 Plaintiff is successful in her meal and rest period claims, she may also be entitled to damages for
23 wage statements and waiting time penalties in the amount of \$294,720 [\$156,000 (wage
24 statements) and \$138,720 (waiting time penalties) = \$294,720]. If Plaintiff's claims are successful,
25 she may also be entitled to PAGA penalties in the amount of \$421,200. (Mara Dec. ¶ 29).

26 ///

27 ¹⁶ The amount allocated to Plaintiff's PAGA claims takes into account the risk that the Court will
28 likely reduce Plaintiff's PAGA exposure for the reasons outlined above. It should be noted that all
Aggrieved Employees are also Class Members.

3. The Settlement Amount of \$235,000 is Reasonable

In light of the risks Plaintiff's claims faced, Plaintiff and her Counsel believe that the settlement amount of \$235,000 – with an average settlement share amount estimated at \$1,187.32 – is a reasonable and fair settlement amount. (Mara Dec. ¶ 30).

It should be noted that a settlement is not judged solely against what might have been recovered, had the plaintiff prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250; *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1139; “Compromise is inherent and necessary in the settlement process...even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.” *Wershba, supra*, at 250; *Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 628 (“It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not...render the settlement inadequate or unfair”); *see also In re Omnivision Technologies, Inc.* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 95616, *21, (noting that certainty of recovery in settlement of 6% of maximum potential recovery after reduction for attorneys’ fees was higher than median percentage for recoveries in shareholder class action settlements, averaging 2.2%-3% from 2002 through 2006).

c. Provisional Class Certification Should be Granted

Under California law, a class action is appropriate when the class is ascertainable and there is “a well defined community of interest in the questions of law and fact involved affecting the parties to be represented.” Cal. Civ. P. Code § 382. State law requirements under California Code of Civil Procedure section 382 for class certification follow federal law according to Rule 23 of the Federal Rule of Civil Procedure: numerosity, typicality of the class representatives’ claims, adequacy of representation, predominance of common issues, and superiority. Fed. R. Civ. P. 23(a); *see also Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1019. It should be noted that while a court must certify a class for settlement purposes if a class has not already been

certified, “it is well established that trial courts should use different standards to determine the propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases.” *Glob. Minerals & Metals Corp. v. Superior Court* (2013) 113 Cal.App.4th 836, 859 citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807, fn. 19.

Plaintiff contends, and Defendant does not dispute for settlement purposes only, each of these elements must be present. *See Wershba v. Apple Computer* (2001) 91 Cal. App. 4th 224, 237-38. Plaintiff seeks approval of the following Class for settlement purposes only: All individuals who worked for ABCL as non-exempt hourly employees in California at any time during the Class Period.

i. The Proposed Settlement Class is Ascertainable

Plaintiff contends that the proposed Class is ascertainable because of all of the Class Members have worked for Defendant as non-exempt employees and have been identified through Defendant’s own records, such as employee and payroll files. *See Rose v City of Hayward* (1981) 126 Cal.App.3d 926, 932 (finding that “Class Members are ‘ascertainable’ where they may be readily identified without unreasonable expense or time by reference to official records.”); *Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 919 (“[c]lass members are ‘ascertainable’ where they may be readily identified without unreasonable expense or time by reference to official [or business] records.”). Thus, the ascertainability requirement is met.

ii. The Proposed Settlement Class is Sufficiently Numerous

The numerosity requirement is met if the class is so large that joinder of all members would be impracticable. *Gay v. Waiters’ & Dairy Lunchmen’s Union* (N.D. Cal. 1980) 489 F. Supp. 282, *aff’d* (9th Cir. 1982) 694 F.2d 531. “There is no set number required to maintain a class action, and the statutory test is whether a class is so numerous that ‘it is impracticable to bring them all before the court.’” *Henderson v. Ready to Roll Transportation, Inc.* (2014) 228 Cal.App.4th 1213, 1223 (reversing superior court ruling that nine class members was too few); *Bowles v. Superior Court* (1995) 44 Cal.2d 574 (upholding a class of ten members). “The numerosity requirement is more readily met when a class contains employees suing their present employer . . . This is because

1 class members may be unwilling to sue their employer individually out of fear of retaliation.”
2 *Romero v. Producers Dairy Foods* (E.D. Cal. 2006) 235 F.R.D. 474, 485. As explained by the
3 California Supreme Court, “fear of retaliation for individual suits against an employer is a
4 justification for class certification in the arena of employment litigation, even when it is otherwise
5 questionable that the numerosity requirements were satisfied . . . It needs no argument to show that
6 fear of economic retaliation might often operate to induce aggrieved employees quietly to accept
7 substandard conditions.” *Gentry v. Superior Court* (2007) 42 Cal.4th 443, 460 (citation omitted),
8 overruled on other grounds in *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348.

9 Here, Defendant’s records show that they proposed Class has approximately 73 members.
10 Plaintiff contends that joinder of all Class Members is impracticable and, therefore, a class wide
11 proceeding is preferable. *See Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, 1030 (noting that
12 there is no set minimum to meet the numerosity prerequisite, but that a class of as few as 28 is
13 acceptable.). In fact, a class of ten (10) has been certified as a class action. *Id.*, citing *Bowles v.*
14 *Superior Court* (1995) 44 Cal.2d 574. Several federal cases on this issue have held that classes of
15 over forty (40) individuals are numerous enough to meet the numerosity requirement. *See Ikonen*
16 *v. Hartz Mountain Corp.* (S.D. Cal. 1988) 122 F.R.D. 258, 262. Accordingly, the Class is
17 comprised of approximately 73 members and is sufficient to satisfy the numerosity requirement.

18 **iii. The Commonality Requirement is Met**

19 The commonality requirement is met if there are questions of law and fact common to the
20 class. *Hanlon, supra*, 150 F.3d at 1019 (“The existence of shared legal issues with divergent factual
21 predicates is sufficient, as it a common core of salient facts coupled with disparate legal remedies
22 within the class.”). “Predominance is a comparative concept, and ‘the necessity for class members
23 to individually establish eligibility and damages does not mean individual fact questions
24 predominate.’” *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 334.
25 Commonality exists if there is a predominant common legal question regarding how an employer’s
26 policies impact its employees. *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal.App.4th 1524, 1536
27 (2008) (“[T]he common legal question remains the overall impact of Diva’s policies on its
28 drivers.”). Whether Plaintiff is likely to prevail on his theory of recovery is irrelevant at the

1 certification stage since the question is “essentially a procedural one that does not ask whether an
2 action is legally or factually meritorious.” *Linder v. Thrifty Oil Co.* (2003) 23 Cal.4th 429, 439-
3 440.

4 Here, Plaintiff contends that the proposed Class Members’ claims all stem from the same
5 allegedly unlawful policies and practices, which were addressed previously in this motion. Plaintiff
6 seeks the same legal remedies under state law on behalf of himself and all Class Members. As
7 liability as to all Class Members is predicated on the same policies and practices, which Plaintiff
8 alleges violates California law, the commonality requirement has been satisfied.

9 **iv. The Typicality Requirement is Met**

10 The typicality requirement is met if the claims of the named representative are typical of
11 those of the class, though “they need not be substantially identical.” *Hanlon, supra*, 150 F.3d at
12 1020; *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46-47. Plaintiff contends that his claims are
13 typical of the Class Members’ claims because they arise from the same factual basis and are based
14 on the same legal theory as those applicable to the Class Members. *See Wehner v. Syntex Corp.*
15 (N.D. Cal. 1987) 117 F.R.D. 641, 644. Each Class Member is challenging the same policies and
16 practices. Plaintiff alleges that Defendant’s policies applied to all Class Members. Factual
17 differences may exist between Plaintiff’s and the Class Members so long as the claims arise from
18 the same events or course of conduct and are based on the same legal theories. *Hanlon, supra*, 150
19 F. 3d at 1020; *see also Wehner, supra*, 117 F.R.D. at 644; *Newberg on Class Actions*, 4th ed. §
20 3:15, p.335 [When it is alleged that the same unlawful conduct was directed at or affected both the
21 named plaintiff and the class sought to be represented, the typicality requirement is usually met
22 irrespective of varying fact patterns which underlie individual claims.] As such, the typicality
23 requirement is satisfied.

24 **v. The Adequacy Requirement is Met**

25 The adequacy requirement is met if Plaintiff has no interests adverse to the interests of the
26 proposed Class Members and is committed to vigorously prosecuting the case on behalf of the
27 class. *Hanlon, supra*, 150 F.3d at 1020; *McGhee v. Bank of America* (1976) 70 Cal.App.3d 442,
28 450-51. Plaintiff contends those standards are met here. Plaintiff does not have any conflicts of

1 interest with the Class. She has been and continues to be committed to vigorously prosecuting this
2 case. If any Class Member wishes to opt-out of the Settlement, he or she may do so. Therefore,
3 there is no conflict of interest between Plaintiff and the Class Members.

4 **d. Notice to Class Members Complies with California Rule of Court 3.769(f)**

5 California Rule of Court 3.769(f), provides:

6 If the court has certified the action as a class action, notice of the final approval
7 hearing must be given to class members in the manner specified by the court. The
8 notice must contain an explanation of the proposed settlement and procedures for
9 class members to follow in filing written objections to it and in arranging to appear
10 at the settlement hearing and state any objections to the proposed settlement.

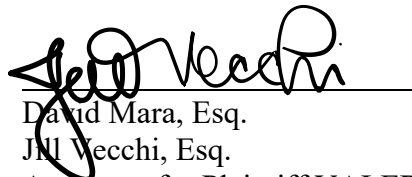
11 The proposed Class Notice meets all of these requirements. The proposed Class Notice advises the
12 class of their rights to participate in the settlement, how to and when to object to or request
13 exclusion from the settlement, and the date, time, and location of the final approval hearing. The
14 proposed Class Notice is attached as Exhibit A to the Agreement.

15 **VI. CONCLUSION¹⁷**

16 Plaintiff respectfully submits that the proposed settlement is in the best interests of the
17 Class and Class Members, as it is fair, adequate, and reasonable, and one that should ultimately be
18 granted final approval. Under the applicable class action criteria and guidelines, the proposed
19 settlement should be preliminarily approved by the Court, the class should be conditionally
20 certified for purposes of settlement only, and the Class Notice should be approved. Plaintiff also
21 respectfully requests the Court set a final approval hearing date of February 16, 2024.

22 Dated: August 31, 2023

23 **MARA LAW FIRM, PC**

24 
25 David Mara, Esq.
26 Jill Vecchi, Esq.

27 Attorneys for Plaintiff VALERIE MAE LUNA on
28 behalf of herself, all others similarly situated, and on
behalf of the general public

¹⁷ Pursuant to the Court's Checklist for Preliminary Approval of Class Action Settlement, attached hereto as Exhibits A, B, and C are proof of submission of the proposed settlement agreement to the LWDA (Exhibit A) and the Parties' proposed final approval order (Exhibit B) and proposed judgment (Exhibit C) that they intend to file with the Court in conjunction with final approval.

Exhibit *A*

Exhibit B

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

VALERIE MAE LUNA on behalf of herself,
all others similarly situated, and on behalf of
the general public,

Plaintiffs,

v.

ACCU BIO-CHEM LABORATORIES; and
DOES 1-100,

Defendants.

Case No. 22STCV35014

*[Assigned for All Purposes to the
Honorable Elihu M. Berle, Dept. 6]*

**[PROPOSED] ORDER GRANTING
PLAINTIFF VALERIE MAE LUNA’S
MOTION FOR FINAL APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT, ATTORNEYS’ FEES AND
COSTS, SERVICE AWARD PAYMENT,
ADMINISTRATION COSTS, LWDA
PAYMENT**

Date File: November 3, 2022
Trial Date: None Set

1 **I. RECITALS**

2 This action is currently pending before this Court as a putative class action and
3 representative action (the “Action”). Plaintiff Valerie Mae Luna has applied to this Court for an
4 order finally approving the settlement of the Action in accordance with the Class Action and
5 PAGA Settlement Agreement and Class Notice (the “Agreement” or “Settlement Agreement”),
6 which together with the exhibit annexed thereto, sets forth the terms and conditions for a proposed
7 settlement and entry of judgment upon the terms and conditions set forth therein. The Court has
8 read and considered the Memorandum of Points and Authorities in Support of Plaintiff’s Motion
9 for Final Approval of Class and PAGA Settlement, Attorneys’ Fees and Costs, Service Award
10 Payment, Administration Costs, LWDA Payment, and Entering of Final Judgment, and the
11 declarations submitted therewith. For purposes of this Order, the Court adopts all defined terms as
12 set forth in the Agreement.

13 **II. FINDINGS**

14 After review and consideration of the Agreement and Plaintiff’s motion for final approval
15 and the papers in support thereof, the Court hereby finds and orders as follows:

16 1. The Court has jurisdiction over the claims of the Class Members asserted in this
17 proceeding and over all parties to the proceeding.

18 2. The “Class” or “Class Members” are defined to include: “All individuals who
19 worked for Accu Bio-Chem Laboratories as non-exempt hourly employees in California at any
20 time during the Class Period.” The Class Period is November 3, 2018, to August 19, 2023.

21 3. The “PAGA Aggrieved Employees” are defined to include: “All individuals who
22 worked for Defendant as non-exempt hourly employees in California during the PAGA Period.”
23 The PAGA Period is October 24, 2021, to August 19, 2023.

24 4. The Court Approved Notice of Class Action Settlement and Hearing Date for Final
25 Court Approval (“Class Notice”) was mailed by first-class U.S. mail to all Class Members in
26 English and Spanish. The Class Notice informed the Class of the material terms of the settlement,
27 of their right to receive a *pro rata* portion of the Net Settlement Amount, of their right to request

1 exclusion from the settlement, of their right to comment upon or object to the settlement and to
2 appear in person or through counsel at the Final Approval Hearing and of the date set for the Final
3 Approval Hearing. Adequate periods of time were provided by each of these procedures.

4 5. In response to the Class Notice, no member of the Class submitted a written
5 objection to the settlement or stated an intention to appear at the Final Approval Hearing. No
6 members of the Class requested to be excluded from the settlement. No member of the Class
7 submitted a dispute regarding the number of workweeks credited to him or her.

8 **III. ORDER**

9 The Court having considered the papers submitted in support of the motion for preliminary
10 approval, HEREBY ORDERS THE FOLLOWING:

11 1. The Court finds that the applicable requirements of California Code of Civil
12 Procedure section 382 and California Rule of Court 3.769, *et seq.* have been satisfied with respect
13 to the Class and the settlement. The Court hereby makes final its earlier provisional certification
14 of the Class for settlement purposes, as set forth in the Preliminary Approval Order.

15 2. The Court finds and determines that this notice procedure afforded adequate
16 protections to Class Members and provides the basis for the Court to make an informed decision
17 regarding approval of the settlement based on the Class Members' response. The Court finds and
18 determines that the Class Notice was the best notice practicable under the circumstances, and
19 satisfied the requirements of law and due process.

20 3. The Court further finds and determines that the terms of the settlement are fair,
21 reasonable and adequate to the Class and to each Class Member.

22 4. Pursuant to California law, the Court hereby grants final approval of the settlement.
23 The Court finds that it appears that the settlement was reached as a result of informed and non-
24 collusive arm's-length negotiations facilitated by a neutral mediator. The Court further finds that
25 it appears that the Parties conducted extensive investigation, research, and discovery and that their
26 attorneys were able to reasonably evaluate their respective positions. The Court also finds that
27 settlement will enable the Parties to avoid additional and potentially substantial litigation costs,

1 as well as delay and risks if the Parties were to continue to litigate the case. The Court has
2 considered the absence of objections to and requests for exclusion from the settlement, reviewed
3 the monetary recovery provided as part of the settlement, and recognizes the significant value
4 accorded to the Class. Accordingly, the Court hereby approves the terms set forth in the
5 Settlement Agreement and finds that the settlement is, in all respects, fair, adequate, and
6 reasonable, and directs the Parties to effectuate the settlement according to its terms.

7 5. A full opportunity has been afforded to the Class Members to participate in the
8 Final Approval Hearing, and all Class Members and other persons wishing to be heard have been
9 heard. The Class Members also have had a full and fair opportunity to exclude themselves from
10 the settlement. Accordingly, the Court determines that all Class Members who did not submit a
11 valid and timely Request for Exclusion from the Settlement (“Participating Class Members”) are
12 bound by this Order.

13 6. In exchange for a portion of the Net Settlement Amount, all Participating Class
14 Members will be bound by the following release: “All Participating Class Members, on behalf of
15 themselves and their respective former and present representatives, agents, attorneys, heirs,
16 administrators, successors and assigns, release the Released Parties from (i) all claims that were
17 alleged, or reasonably could have been alleged, based on the facts stated in the Operative
18 Complaints, including, e.g., 1) Failure to Pay All Straight Time Wages; 2) Failure to Pay All
19 Overtime Wages; 3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, IWC Wage Order
20 No. 4-2001(11); Cal. Code Regs., tit. 8 § 11090); 4) Failure to Authorize and Permit Rest Periods
21 (Lab. Code § 226.7; IWC Wage Order No. 4-2001(12); Cal. Code Regs. tit. 8 § 11040); 5)
22 Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions
23 (Lab. Code §§ 226, 1174, 1175); 6) Waiting Time Penalties; 7) Violation of Unfair Competition
24 Law (Bus. & Prof. Code § 17200, et seq.); and 8) Failure to adopt a compliant sick pay/paid time
25 off policy (Lab. Code §§233, 234, 246). This release will be for the Class Period. Except as set
26 forth in Section 5.3 of this Agreement, Participating Class Members do not release any other
27 claims, including claims for vested benefits, wrongful termination, violation of the Fair

1 Employment and Housing Act, unemployment insurance, disability, social security, workers'
2 compensation or claims based on facts occurring outside the Class Period.”

3 7. In exchange for a portion of the PAGA Payment, all Aggrieved Employees will be
4 bound by the following release: “All Aggrieved Employees are deemed to release, on behalf of
5 themselves and their respective former and present representatives, agents, attorneys, heirs,
6 administrators, successors and assigns, the Released Parties from all claims for PAGA penalties
7 that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative
8 Complaints, and the PAGA Notice. This release will be for the PAGA Period.”

9 8. The Court hereby confirms David Mara and Jill Vecchi of Mara Law Firm, PC, as
10 Class Counsel in this action.

11 9. The Court hereby confirms Plaintiff Valerie Mae Luna as the Class Representative
12 in this action.

13 10. The Court finds and determines that the individual settlement payments provided
14 for by the terms of the Settlement Agreement to be paid to the Participating Class Members are
15 fair and reasonable. The Court hereby gives final approval to and orders the payment of those
16 amounts be made to the Participating Class Members in accordance with the terms of the
17 Settlement Agreement.

18 11. The Court finds and determines the Service Award Payment in the sum of \$10,000
19 to Plaintiff Valerie Mae Luna is fair and reasonable. The Court hereby orders the Settlement
20 Administrator to make the payment to the Plaintiff/Class Representative Valerie Mae Luna in the
21 amount of \$10,000 for the Service Award Payment in accordance with the terms of the Settlement
22 Agreement.

23 12. The Court finds and determines that the payment to the Settlement Administrator,
24 APEX Class Action Administration, in the sum of \$5,990 for its fee and expenses incurred and
25 to be incurred for the notice and settlement administration process is fair and reasonable. The
26 Court hereby orders the Settlement Administrator to make payment to itself in the amount of
27 \$5,990 for Administration Costs in accordance with the terms of the Settlement Agreement.

1 13. Pursuant to the terms of the settlement, and the authorities, evidence and argument
2 submitted by Class Counsel, the Court hereby approves of an attorneys' fee award in the sum of
3 \$78,325.50 and a Cost Award of \$INSERT to Class Counsel. The Court finds such amounts to be
4 fair and reasonable. The Court hereby orders the Settlement Administrator to make payment to
5 Class Counsel in the amount of \$78,325.50 for attorneys' fees and \$INSERT for litigation
6 expenses in accordance with the terms of the Settlement Agreement.

7 14. The Court finds and determines that the payment to the Labor and Workforce
8 Development Agency ("PAGA Payment"), in the sum of \$18,750 (which is 75% of \$25,000
9 allocated to claims under the Private Attorneys General Act of 2004, is fair and reasonable. The
10 Court hereby orders the Settlement Administrator to make the payment to the LWDA in the
11 amount of \$18,750 for the PAGA payment in accordance with the terms of the Settlement
12 Agreement. The Court further orders that the remaining amount of \$6,250 be distributed to
13 Aggrieved Employees in accordance with the terms of the Settlement Agreement.

14 15. Neither Defendant nor any related persons or entities shall have any further liability
15 for costs, expenses, interest, attorneys' fees, or for any other charge, expense, or liability, except
16 as provided for by the Settlement Agreement.

17 16. The Court finds and determines that the release contained in the Settlement
18 Agreement is appropriate and shall bind all Participating Class Members.

19 17. Nothing in this Final Approval Order and Judgment shall preclude any action to
20 enforce the Parties' obligations pursuant to the Settlement Agreement or pursuant to this Final
21 Approval Order and Judgment, including the requirement that Defendant make payments to
22 Participating Class Members in accordance with the Settlement Agreement.

23 18. The Court finds and determines that nothing in the Settlement Agreement or this
24 Final Approval Order and Judgment (1) is intended or will be construed as an admission of
25 liability or wrongdoing by Defendant or (2) may be offered in evidence against Defendant (other
26 than solely in connection with this settlement).

27 19. The Court hereby enters final judgment in this action in accordance with the terms

1 of the Settlement Agreement, Preliminary Approval Order, and this Final Approval Order and
2 Judgment.

3 20. The Court sets a Non-Appearence Case Review Re: Final Accounting for
4 _____ in Department 6 at Spring Street
5 Courthouse. This is to confirm that distribution efforts are fully completed, including the
6 distribution of uncashed Participating Class Member checks to State Controller's Office
7 Unclaimed Property Fund in the names of the applicable payees, that the Administrator's work is
8 complete, and that the Court's file thus may be closed. All supporting papers must be filed at least
9 10 days before the Non-Appearence Case Review.

10 21. The Parties shall bear their own costs and attorneys' fees except as otherwise
11 provided for by the Settlement Agreement and this Final Approval Order and Judgment.

12 22. Without affecting the finality of this Final Approval Order and Judgment in any
13 way, the Court retains jurisdiction of all matters relating to the interpretation, administration,
14 implementation, effectuation and enforcement of this order and the Settlement.

15
16 **IT IS SO ORDERED.**

17 Dated: _____, 2024

17 By _____
18 Honorable Elihu M. Berle
19 Los Angeles Superior Court Judge

Exhibit C

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

VALERIE MAE LUNA on behalf of herself,
all others similarly situated, and on behalf of
the general public,

Plaintiffs,

v.

ACCU BIO-CHEM LABORATORIES; and
DOES 1-100,

Defendants.

Case No. 22STCV35014

*[Assigned for All Purposes to the
Honorable Elihu M. Berle, Dept.6]*

[PROPOSED] JUDGMENT

Date File: November 3, 2022
Trial Date: None Set

1 **TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:**

2 The Court, having granted final approval of the Class Action and PAGA Settlement
3 Agreement and Class Notice (the “Agreement” or “Settlement Agreement”), as set forth in the
4 Court’s **INSERT**, Order Granting Plaintiff Valerie Mae Luna’s Motion for Final Approval of Class
5 and PAGA Settlement, Attorneys’ Fees and Costs, Service Award Payment, Administration Costs,
6 LWDA Payment, and Entering of Final Judgment (the “Final Approval Order”),

7 **HEREBY ORDERS, ADJUDGES AND DECREES** that this document shall constitute
8 a Judgment for purposes of Code of Civil Procedure sections 577, 904.1(a), and Rules 3.769(h),
9 and 8.104 California Rules of Court. Judgment in this matter is entered in accordance with the
10 findings made in the Final Approval Order and the Settlement Agreement, which are incorporated
11 herein by this reference as though set forth in full. Unless otherwise provided herein, all capitalized
12 terms used herein shall have the same meaning as defined in the Settlement Agreement. The Court
13 further directs as follows:

- 14 1. Unless otherwise defined differently in this Order, all capitalized terms used in
15 this Order have the same meaning as they are specifically defined in the Settlement
16 Agreement.
- 17 2. Plaintiff/Class Representative and all Class Members shall take nothing from
18 Defendant except as expressly set forth in the Settlement Agreement filed on
19 September 1, 2023, in conjunction with Plaintiff’s Motion for Preliminary
20 Approval of the Class Action Settlement.
- 21 3. Within fourteen (14) calendar days of the Effective Date¹, Defendant ACCU Bio-
22 Chem Laboratories (“Defendant”) is ordered to deliver to the Settlement
23 Administrator the Gross Settlement Amount of \$235,000 which shall be deposited

24
25 ¹ The Effective Date is the date by when both of the following have occurred: (a) the Court enters
26 a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final.
27 The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class
28 Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more
Participating Class Members objects to the Settlement, the day after the deadline for filing a notice
of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the
appellate court affirms the Judgment and issues a remittitur.

1 by the Settlement Administrator into the account established by the Settlement
2 Administrator for administration of the Settlement Agreement.

3 4. Within fourteen (14) days after Defendants' delivery of the Gross Settlement
4 Amount, the Settlement Administrator shall issue payment in accordance with the
5 Court's Final Approval Order and as set forth below.

6 5. Attorneys' fees in the amount of \$78,325.50 are to be paid to Mara Law Firm, PC
7 ("Class Counsel") from the Gross Settlement Amount for the work done and to be
8 done until the completion of this matter.

9 6. Attorneys' litigation costs in the amount of \$INSERT are to be paid to Class
10 Counsel from the Gross Settlement Amount for actual and necessary costs
11 incurred.

12 7. The Settlement Administrator, APEX Class Action Administration, shall issue
13 itself a payment of \$5,990, from the Gross Settlement Amount for its work done
14 and to be done until the completion of its administration of the Settlement
15 Agreement.

16 8. Plaintiff is hereby approved as the Class Representative and shall receive a Service
17 Payment Award in the sum of \$10,000.

18 9. The employer-side payroll taxes associated with the portion of the settlement
19 attributed to wages shall be paid by Defendant separate and apart from the Gross
20 Settlement Amount.

21 10. The remaining Net Settlement Amount shall be distributed by the Settlement
22 Administrator to the Participating Class Members in the manner specified in the
23 Settlement Agreement.

24 11. This Judgment is final and binding on Participating Class Members.

25 12. By operation of this Judgment, Participating Class Members on behalf of
26 themselves and their respective former and present representatives, agents,
27 attorneys, heirs, administrators, successors and assigns, release the Released
28 Parties from (i) all claims that were alleged, or reasonably could have been alleged,

1 based on the facts stated in the Operative Complaints, including, e.g., 1) Failure to
2 Pay All Straight Time Wages; 2) Failure to Pay All Overtime Wages; 3) Failure to
3 Provide Meal Periods (Lab. Code §§ 226.7, 512, IWC Wage Order No. 4-
4 2001(11); Cal. Code Regs., tit. 8 § 11090); 4) Failure to Authorize and Permit Rest
5 Periods (Lab. Code § 226.7; IWC Wage Order No. 4-2001(12); Cal. Code Regs.
6 tit. 8 § 11040); 5) Knowing and Intentional Failure to Comply with Itemized
7 Employee Wage Statement Provisions (Lab. Code §§ 226, 1174, 1175); 6) Waiting
8 Time Penalties; 7) Violation of Unfair Competition Law (Bus. & Prof. Code §
9 17200, et seq.); and 8) Failure to adopt a compliant sick pay/paid time off policy
10 (Lab. Code §§233, 234, 246). This release will be for the Class Period. Except as
11 set forth in Section 5.3 of this Agreement, Participating Class Members do not
12 release any other claims, including claims for vested benefits, wrongful
13 termination, violation of the Fair Employment and Housing Act, unemployment
14 insurance, disability, social security, workers' compensation or claims based on
15 facts occurring outside the Class Period.

16 13. This Judgment is final and binding on Aggrieved Employees.

17 14. By operation of this Judgment, Aggrieved Employees are deemed to release, on
18 behalf of themselves and their respective former and present representatives,
19 agents, attorneys, heirs, administrators, successors and assigns, the Released
20 Parties from all claims for PAGA penalties that were alleged, or reasonably could
21 have been alleged, based on the facts stated in the Operative Complaints, and the
22 PAGA Notice. This release will be for the PAGA Period.

23 15. The Court hereby approves and orders that the checks for individual settlement
24 payments mailed to Participating Class Members will remain negotiable for 180
25 days. If an envelope mailed to a Settlement Class Member is returned with no
26 forwarding address or the checks are not cashed within 180 days of mailing, then
27 the funds represented by checks returned as undeliverable and those checks
28 remaining un-cashed for more than 180 days after issuance will be sent to the The

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United Way.

16. The Parties will comply with CRC Rule 3.771(b), by posting a copy of this Order and Judgment on the settlement website.
17. The Court, pursuant to California Rule of Court 3.769(h), retains continuing jurisdiction as to all matters relating to the administration and consummation of the settlement as provided in the Settlement Agreement and all other matters covered in this Judgment.

IT IS SO ORDERED.

Dated: _____, 2024

By _____
Honorable Elihu M. Berle
Los Angeles Superior Court Judge