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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

FRANCESCA O'CONNOR and **TATYANA CHALIK**, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

HRL LABORATORIES, LLC, a Delaware Limited Liability Company,

Defendant.

CASE NO. 37-2022-00048942-CU-OE-CTL

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

Date: January 16, 2026
Time: 9:00 a.m.
Dept: C-67, Judge Michael T. Smyth

Complaint Filed: December 7, 2022
Trial Date: None Set

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I. INTRODUCTION

In this expense reimbursement case under Labor Code § 2802 seeking reimbursement of home internet costs during the pandemic, Plaintiffs Francesca O'Connor and Tatyana Chalik seek preliminary approval of a non-reversionary $750,000 settlement on behalf of a certified class of approximately 700 employees of Defendant HRL Laboratories, LLC ("HRL") in California who worked remotely at any point during the Class Period ("Class Members"). The Class Period is the period from March 13, 2020, to February 28, 2022. The Settlement Agreement ("SA") is attached as **Exhibit 1** to Declaration of Julian Hammond in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Hammond Decl."), filed herewith.

This settlement was reached after nearly three years of hard-fought litigation, which included extensive and protracted formal discovery with numerous sets of written discovery exchanged and seven depositions taken (including of Plaintiffs' expert), a successful motion for class certification, and a full-day mediation with a well-respected mediator. Plaintiffs estimate that the Gross Settlement represents 80% of Defendant's potential exposure (excluding interest and PAGA), which is an excellent result. If approved, the Settlement will result in an average gross settlement share of $1,071.43 and an average net settlement payment of $535.71 per Class Member (in addition to his or her share of PAGA penalties). *See* Hammond Decl., ¶ 38.

The Settlement avoids the risks inherent in taking this case to trial and ensures that Class Members obtain a substantial recovery now, without the uncertainties and lengthy delays that further litigation would entail. As shown below, the terms of the Settlement are fair and reasonable and satisfy the criteria for judicial approval. Accordingly, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement, approve the proposed Class Notice, and set final approval hearing.

II. OVERVIEW OF THE SETTLEMENT

The Settlement resolves all claims asserted by Plaintiffs in the operative First Amended Complaint on behalf of the certified Class. The key Settlement terms are:

1. <u>Gross Settlement Amount ("GSA")</u> – Defendant will pay a non-reversionary sum of $750,000. SA § 1.22.

2. <u>Class Definition and Class Period</u> – The Class means all persons meeting the definition of the certified Class, namely "all employees of HRL Laboratories, LLC in California (except its then-Chief Executive Officer) who worked remotely at any point between March 13, 2020 and February 28, 2022, and who did not opt out of this instant class action." SA § 1.5. Thus, the Class Period is the period from March 13, 2020 and February 28, 2022. *Id.*

3. Attorneys' Fees, Costs, and Named Plaintiffs' Service Awards – Class Counsel will seek attorneys' fees of up to $300,000 (40% of the GSA) and up to $30,000 to reimburse their out-of-pocket litigation expenses. SA § 3.2.2. Class Counsel will seek an Individual Payment of $10,000 for each Plaintiff. SA § 3.2.1.

4. PAGA Penalties – The Settlement allocates $10,000 to the PAGA claim. The LWDA will be paid 75% of that amount ($7,500) and the remaining $2,500 will be paid on a *pro rata* basis to all Class Members who worked during the PAGA Period. SA § 3.2.5.

5. Settlement Administration Costs will not exceed $15,000. SA § 3.2.3. The Parties selected ILYM as Administrator. SA § 8.1.

6. Net Settlement Amount ("NSA") is the GSA less class counsel fees and litigation expenses approved by the Court, the named Plaintiffs' Service Awards, the Settlement Administration Costs, and the PAGA Penalties, totaling approximately $375,000.. From this amount, each CM who does not timely opt out of the Settlement will receive payment based on the number of months worked during the Class Period. SA § 1.23.

7. Class Settlement Notice – HRL will provide ILYM with the names, last known addresses, social security numbers, and the number of workweeks worked during the Class Period and number of pay periods during the PAGA Period ("Class Data"). SA § 1.8. Within 14 days of receiving the Class Data, after updating addresses using the NCOA database, ILYM will mail each CM a Notice substantially in the form attached to the SA as **Exhibit A**. SA § 8.4.2. For all returned Notices, ILYM will use skip tracing and/or other methods to update addresses and initiate a second mailing. *Id.*

8. Automatic Participation – The Settlement is non-reversionary, and each CM will automatically receive his or her share of the NSA, unless he or she opts out. SA § 3.1. CMs in the PAGA Period will receive a PAGA allocation even if they opt out of the Class settlement. SA § 6.3.

9. Opting Out / Objecting – CMs who wish to opt out of the Settlement must send a written Request for Exclusion to ILYM requesting to opt out within 45 days of the date the Notices are mailed. SA § 8.5. Any CM who properly requests to opt out will not receive a payment under the Settlement and will not be bound by the SA, except that he or she will still receive their share of PAGA Penalties and be bound by the release of PAGA claims. Alternatively, a CM may object to the terms of the Settlement by sending a written statement objecting to the Settlement within 45 days of the date the Notices are mailed. SA § 8.7.

10. Blow-Up Clause – If the number of valid Requests for Exclusion exceeds 7.5% of the total number of CMs, Defendant may elect to withdraw from the Settlement. SA § 9.

11. Tax Consequences of Settlement Payments – For tax purposes, Settlement payments will be treated as reimbursed expenses and reported on an IRS Form 1099. SA § 3.2.4.1.

12. Uncashed Checks – Checks not cashed within 180 days will be voided and funds will be tendered to Unclaimed Property Fund. SA § 4.4.3.

13. Scope of Release and Final Judgment - The release is limited to claims asserted in the Action, as amended, and/or arising from the facts alleged in the Action or the PAGA Notice, or that could have been raised in the Action or the PAGA Notice based on the facts alleged. SA § 6.2. The named Plaintiffs will each give a general release of all claims against Defendants. SA § 6.1.

III. OVERVIEW OF THE LITIGATION

A. Plaintiffs' Complaint

Plaintiffs filed this lawsuit in San Diego County Superior Court on December 7, 2022, alleging that HRL required its employees to work remotely during the COVID-19 pandemic but did not reimburse them for necessary remote work expenses (*e.g.*, home internet and utilities) in violation of Labor Code Section 2802. Hammond Decl. ¶10. Prior to filing the lawsuit, Plaintiff O'Connor filed a PAGA Notice with the LWDA on November 28, 2022. *Id.* On February 2, 2023, Plaintiffs filed a First Amended Complaint ("FAC") adding a PAGA claim. *Id.*

B. Discovery

Discovery in this case was unusually hard-fought and contentious, requiring Class Counsel to expend an extraordinary amount of effort to prepare the case. Because of this, Plaintiffs provide more detail in this factual section than is typically included. The manner in which the case was litigated led to Plaintiffs' counsel expending an extremely high amount of resources, which is relevant to Plaintiffs' request for preliminary approval of attorneys' fees of 40%, rather than the benchmark of one-third.

Plaintiffs' effort to obtain even the most basic discovery, required extensive meet and confer efforts, several informal discovery conferences, and motion-to-compel practice. On January 19, 2023, shortly after the case was filed, Plaintiffs served written discovery, but by September 2023, HRL still had not produced key documents, such as Company-wide communications ordering employees to work from home whenever possible. At an IDC, the Court ordered HRL to produce the documents, but did not include a deadline for HRL to do so. Hammond Decl. ¶¶ 11-12. By December 2023, HRL still had not produced the documents directed by the Court, so the Court held *another* IDC to provide Defendant with a deadline. As a result, Plaintiffs requested another IDC to ask the Court to set a deadline for HRL to produce the requested documents, which the Court did. Plaintiffs then sought a third IDC in January 2024 concerning the same set of discovery because HRL had still not fully complied with the Court's discovery order. During the January 2024 IDC, the Court instructed HRL to produce certain outstanding documents, or in the alternative, to state in a verified response that no such documents exist. HRL objected, and the Court ordered Plaintiffs to file a motion to compel. Plaintiffs filed the motion to compel, HRL provided compliant responses. *Id.* ¶¶ 13-14.

HRL also initially objected to sending a *Belaire West* notice to the proposed class members. In December 2023, the Parties submitted competing *Belaire* Notices to the Court, and after the Court approved a combination of the notices, on January 19, 2024, the *Belaire* notice was sent to the Class. *Id.* ¶ 15.

Plaintiffs later served additional sets of discovery largely seeking information related to HRL's electronic records showing when employees worked remotely. For example, because discovery showed that during COVID, the CEO stated in company-wide emails that he may review the "badging lists" to make sure employees were working remotely, Plaintiffs requested exemplars of such badging records. HRL objected to the request, and Plaintiffs sought another IDC on the issue. After the judge instructed HRL to answer, HRL responded that it had not preserved such records. *Id.* ¶ 16.

Plaintiffs also served additional discovery requesting data retention concerning the use of a VPN, which was necessary to access HRL's system remotely. HRL initially provided objection only responses, but after repeated meet and confer efforts, HRL responded that it did not preserve such records from the Class Period. *Id.* ¶ 17.

Plaintiffs also obtained declarations from HRL employees who attested to having worked remotely pursuant to the CEO's instruction, and to having incurred remote work expenses without receiving any reimbursement. *Id*. ¶ 18.

Plaintiffs also responded to three sets of discovery served by HRL, produced hundreds of pages of relevant documents, and successfully opposed a Motion to Compel further responses that HRL filed in July 2024. *Id*. ¶ 19.

C. <u>Depositions</u>

Oral discovery was extensive. In total, seven depositions were taken. Hammond Decl. ¶ 20.

Scheduling these depositions required substantial effort by Plaintiffs' Counsel. After protracted and extensive meet and confer efforts regarding deposition scheduling, Plaintiffs ultimately sought *ex parte* relief to ensure that Defendant would adhere to a deposition schedule. *Id*.

The Plaintiffs were eventually deposed in June 2024 and the PMK was deposed in July 2024. HRL also deposed three non-party witnesses, two of whom were represented at deposition by Class

Counsel and one of whom declined representation. HRL also deposed Plaintiffs' expert who had filed a declaration in support of Plaintiffs' Motion for Class Certification. *Id*.

D. <u>Class Certification</u>

As a result of the drawn-out discovery and deposition scheduling process, Plaintiffs had to push back the briefing schedule and hearing on their motion for class certification until November 2024. On October 9, 2024, Plaintiffs filed their Motion for Class Certification, consisting of a 20-page memorandum of points and authorities; two declarations from Class Counsel (one of which attached 245-pages of evidence gathered in discovery); two declarations from third-party witnesses; and a 38-page declaration from Plaintiffs' Expert providing data for determining liability, damages and penalties, at trial using statistical and representative evidence. The Motion for Class Certification also included a detailed proposed trial plan. Hammond Decl. ¶ 21.

HRL's opposition to Plaintiffs' Motion consisted of a 20-page memorandum, 28 supporting declarations, and a 14-page evidentiary objection to Plaintiffs' evidence in support of class certification. Plaintiffs' Reply brief consisted of a 15-page memorandum; additional declarations from three Class Counsel (one of which attached approximately 145 pages of evidence); and additional declarations from both named plaintiffs. Plaintiffs also filed a 15-page response to HRL's evidentiary objections. *Id.* ¶¶ 22-23.

Two days after Plaintiffs filed their Motion for Class Certification, on October 11, 2024, Defendant filed a cross-Motion to Deny Class Certification and/or Strike Class Allegations. This unusual cross-motion, which was filed before the Parties knew whether the class would be certified, resulted in two sets of briefing on the class certification issues instead of just one. Plaintiffs' opposition to the cross-Motion consisted of a 20-page memorandum, two declarations from Class Counsel, one of which attached 293-pages of evidence; and the same third-party witnesses and expert declarations filed in support of the Class Certification motion. *Id.* ¶ 24.

On November 5, 2024, HRL filed a second objection to Plaintiffs' evidence submitted in support of class certification, and asked the Court to strike all five declarations filed in support of Plaintiffs' Reply brief. Plaintiffs promptly filed a 24-page opposition to HRL's second objection. *Id.* ¶ 25.

On November 21, 2024, following a hearing, the Court granted class certification, finding that common questions predominate and other requirements for class certification were met, and certified the Class as defined above. See Hammond Decl., **Exhibit 2** (Order Granting Class Certification). The Court also approved Plaintiffs' trial plan, and subsequently scheduled trial to commence on November 7, 2025. *Id.* ¶ 26.

E. Class Notice and Mediation

Following the Court's Order granting class certification, Plaintiffs attempted to meet and confer with HRL to reach agreement on the notice to the certified Class. The Parties again failed to reach agreement, forcing Plaintiffs to file an *ex parte* application in December 2024 for an order directing that HRL provide the class list to the third-party administrator so notices could be mailed out. Hammond Decl. ¶ 27. Following a hearing, the Court set a deadline by which the Class Notice was to be mailed. *Id.* ¶ 28. On February 25, 2025, the Class Notice was mailed to 819 employees, of whom 119 opted out, leaving a total of 700 Class Members. The third-party administrator provided the contact information for those 700 Class Members to Plaintiffs in May 2025. *Id.* ¶ 28.

Shortly after the Class was certified the parties agreed to attend private mediation with Tripper Ortman, a well-regarded and experienced mediator. *Id.* ¶ 29.

F. Defendant's Motion for Summary Judgment

On the morning of May 14, 2025, only hours before the start of the mediation, HRL filed a Motion for Summary Judgment, or in the Alternative for Summary Adjudication, contending that (a) neither Plaintiff ever requested any reimbursement, and HRL could not be held liable for expenditures it did not know Plaintiffs had incurred; and (b) any expenses Plaintiffs did incur were not necessary or reasonable, because Plaintiffs were not required to work remotely, but did so voluntarily. HRL contended that Plaintiffs were provided access to worksites throughout the Class Period, so any remote work expenditures were not reimbursable under Labor Code § 2802. HRL contended that Plaintiffs' PAGA claim would fail for the same reason their underlying Labor Code claim. As a result of the outcome of the mediation, described below, HRL withdrew the motion without prejudice to refiling it. Hammond Decl. ¶ 30.

G. Settlement

On May 14, 2025, the Parties attended a full-day mediation with experienced mediator Tripper Ortman. Plaintiffs submitted a 13-page single-spaced mediation brief with 110 pages of exhibits. The brief described the facts and law, detailed the discovery exchanged to date, and presented a calculation of damages for the underlying claims if the case were to go to trial. At the end of the full-day mediation, Mr. Ortman made a mediator's proposal, which the Parties accepted. Hammond Decl. ¶ 31.

Although the general terms of settlement were agreed to in May 2025, and despite repeated urging, HRL did not circulate a draft of the long form Settlement Agreement until early August 2025. After an additional five months of negotiations, including regarding the Release language, blow-up clause, and other terms, the Parties finalized and executed the Settlement on December 18, 2025. *Id.*

IV. THE COURT HAS ALREADY CERTIFIED THE SETTLEMENT CLASS

The Court has already ruled that class certification is proper and has approved Plaintiffs and their counsel as adequate representatives of the Class. Hammond Decl. ¶ 26, Ex. 2. The Settlement Class is co-extensive with the certified class. The Class consists of 700 individuals. The identities and contact information of all of these individuals are known as they are each past or current employees of HRL to whom a Class Notice has been sent. *Id.* ¶ 28.

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT BECAUSE IT IS FAIR, REASONABLE, AND ADEQUATE.

A. The Two-Step Settlement Approval Process

Court approval of a class settlement is a two-step process: first, a preliminary review of the reasonableness of the settlement, and second, after notice has been distributed to the Class, a final approval analysis taking into account the Class's response. *See* Cal. Rule of Court, Rule 3.769; *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1800-01 (1996). Courts analyzing whether a settlement is fair and reasonable (either at the preliminary or final approval step) consider a number of factors: (1) the strength of Plaintiffs' case balanced against the settlement amount; (2) the risk, expense, complexity, and likely duration of further litigation and the risk of maintaining class action status through trial; (3) the extent of discovery completed and stage of the proceedings; (4) the experience and views of counsel; and (5) the reaction of the Class to the proposed settlement. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128, 130 (2008). At preliminary approval, courts generally approve the sending of notice if the settlement appears to be within the range of acceptable settlements. *See* Cal. Rule of Court, Rule 3.769(f); *N. Cty. Contractor's Ass'n v. Touchstone Ins. Servs.*, 27 Cal.App.4th 1085, 1089-90 (1994). A settlement is "presumed to be fair" when (1) it "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." *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 52 (2008).

1. The Gross Settlement Amount Is Reasonable Compared to the Potential Recovery

A comparison of the recovery achieved by the Settlement in relation to the strength of the Class's claims is the most important factor in analyzing the fairness of the Settlement. *Kullar*, 168 Cal. App. 4th at 130. This case involves a single claim for unreimbursed business expenses. Plaintiffs alleged that HRL instructed CMs to work remotely whenever possible during the COVID-19 pandemic. As a result, Plaintiffs alleged that CMs incurred necessary remote work expenses, yet HRL failed to reimburse CMs.

Id. ¶ 10. Plaintiffs initially sought reimbursement of a number of home office expenses, such as internet, mobile phone use, utilities, and equipment, but Plaintiffs later narrowed the scope of these expenses at the class certification stage to only home internet and utilities (*i.e.*, gas and electric). *Id.* ¶ 34.

Plaintiffs estimated that their best-case outcome at trial was an award of 100% of internet costs (estimated to be approximately $79/month based on Consumer Price Index data during the relevant period) and an award of 50% of utilities costs (estimated to be approximately $82/month based on Consumer Expenditure Surveys in California for the relevant period). There were approximately 11,606 calendar months during the Class Period. Plaintiffs thus calculated Defendant's maximum exposure for home internet costs to be approximately $916,874 (11,606 months x $79/month) and Defendant's maximum exposure for utilities to be $951,692 (11,606 months x $82/month), for a total of $1,868,566 (excluding interest and PAGA penalties). *Id.* ¶ 35.

Although Plaintiffs view the merits of their claim as strong, Plaintiffs faced significant risk that the factfinder would award a much lower amount per month for internet and utilities as a "reasonable percentage" to reimburse. (citing *Cochran v. Schwan's Home Serv., Inc.*, 228 Cal. App. 4th 1137, 1140 (2014) (requiring reimbursement only of a "reasonable percentage" of costs of personal cell phone service when phone is used for work). *Id.* ¶ 36. There was evidence that Plaintiffs used their home internet for personal reasons, particularly during evenings and weekends. In addition, discovery showed that some employees had to work on-site a significant portion of the time because of the nature of their work – although they still had to pay the cost of having home internet available for when they did work remotely, there was a risk that the jury would award them a lower percentage of reimbursement. *Id*.

HRL argued that employees worked remotely for personal reasons, not because of the company-wide instruction to work from home when possible. For example, HRL argued that Plaintiff O'Connor worked remotely as a reasonable accommodation for a medical condition and that Plaintiff O'Connor would have otherwise been required to work in person. There is some risk that Plaintiff O'Connor and CMs in a similar position would have been awarded a lower percentage of reimbursement or even found not to have been entitled to reimbursement. Plaintiffs therefore applied a 50% discount given these risks. *Id.* ¶ 37.

After the discount, Plaintiffs calculated Defendant's realistic exposure (excluding interest and PAGA Penalties) as $934,283. Thus, the $750,000 Gross Settlement represents 80% of HRL's realistic exposure, excluding interest and PAGA penalties. The gross share per Class Member is $1,071.43 and the net share is $535.71. A Class Member who worked for the entire Class Period will receive $775, in addition to his or her share of PAGA penalties. *Id.* ¶ 38.

This is an excellent result, especially in view of the risks Plaintiffs faced if they continued to litigate this case. Defendant's Motion for Summary Judgment/Adjudication presented risk and, if granted, would have rendered Plaintiffs' claims worthless. Even if Plaintiffs' claims survived Defendant's motion, trial presented additional inherent uncertainties and the possibility that Plaintiffs and the Class would recover nothing or substantially less than the amount offered in settlement. Accordingly, the Settlement provides an efficient resolution, and CMs will obtain a substantial recovery now without the risks and lengthy delays that further litigation would entail. *Id.* ¶ 39.

2. <u>The PAGA Allocation is Fair and Adequate</u>

Plaintiff calculates Defendants' maximum liability for PAGA Penalties, using $100 per pay period (because Defendants never received notice from the Labor Commissioner or the Court so there are arguably no "subsequent" violations) as $505,900. *Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021) (holding that "subsequent" violations for purposes of PAGA do not occur until employer has been notified that it is violating a Labor Code provision). The $10,000 allocated to PAGA penalties represents approximately 2% of Defendants' potential exposure to PAGA penalties. Hammond Decl. ¶ 40-41.

This allocation is fair and reasonable for several reasons. First, the overall settlement provides significant relief, which is what courts look at when assessing the amount attributed to PAGA penalties. *O'Connor v. Uber Techs., Inc.*, No. 201 F. Supp. 3d 1110, 1134 (N.D. Cal. Aug. 18, 2016) (where settlement for the class claims is robust, the purpose of PAGA may be fulfilled because by providing fair compensation to class members, the settlement has a deterrent effect on Defendants and other employers, thus fulfilling the purpose of PAGA). Second, Defendant would have argued that the Court should reduce any award of PAGA penalties as "unjust, arbitrary and oppressive, or confiscatory" under Labor Code § 2699(e)(2). This is a risk when, as here, PAGA penalties are over half of the estimated unreimbursed expenses allegedly incurred by the Class. Third, there is a risk that Plaintiffs' claims for PAGA penalties would fail for the same reasons as the underlying claims. Hammond Decl. ¶ 42-44. As such, the PAGA allocation is fair and reasonable.

3. <u>The Risk, Expense, Complexity, and Likely Duration of Further Litigation Support the Reasonableness of the Settlement</u>

Absent Settlement, Plaintiffs would need to defeat HRL's Motion for Summary Judgment to proceed to trial. If Plaintiffs succeeded, voluminous evidence would be needed at trial to prove the damages for the 700 CMs. Expert testimony and expert discovery would be required, and the trial would be complex given the number of employees involved. Regardless of which side prevailed at trial, an appeal would be likely, creating additional delay and uncertainty for the employees' receipt of any recovery. This Settlement provides an efficient resolution of this dispute, and CMs will obtain a substantial and guaranteed recovery now without the major risks and lengthy delays that further litigation would entail. Hammond Decl. ¶ 39.

4. <u>The Settlement Is the Product of Informed, Non-Collusive Negotiations</u>

The Settlement is the result of arm's-length negotiations, reached after years of litigation and a full-day mediation with an experienced mediator. *Id.* ¶ 31. At the time the case settled, Plaintiffs had certified the class and successfully opposed Defendant's attempt to decertify it, had conducted extensive written and oral discovery as described above, had submitted a proposed trial plan in their successful class certification motion, and were scheduled to go to trial less than 6 months from the mediation date. *Id.* ¶ 26. Thus, Plaintiffs were well-informed about the strengths and weaknesses of the Class claims, and well-positioned to conclude that this Settlement was an excellent outcome for the Class.

5. <u>Views of Experienced Counsel Support the Settlement</u>

The opinions of experienced and informed counsel supporting a settlement are entitled to considerable weight in granting preliminary approval. *Kullar,* 168 Cal. App. 4th at 133 (the trial court "may and undoubtedly should continue to place reliance on the competence and integrity of counsel, the involvement of a qualified mediator, and the paucity of objectors to the settlement."); *Dunk*, 48 Cal. App. 4th at 1801-02. As discussed above, Class Counsel have extensive experience in class action litigation, and, in particular wage-and-hour class actions, and have been determined by numerous courts, including this Court, to be adequate class counsel. Hammond Decl. ¶ 8; Declaration of Wiliam Jhaveri-Weeks in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Jhaveri-Weeks Decl."), filed herewith, ¶ 9. Class Counsel consider the settlement to be fair, reasonable and adequate when considering the lengthy delays that further litigation would entail. Hammond Decl. ¶ 39; Jhaveri-Weeks Decl. ¶ 19.

B. <u>The Proposed Class Notice Content and Procedure Are Adequate.</u>

Constitutional due process requires that CMs be provided with notice sufficient to give them an opportunity to be heard. *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). Proper notice must provide information to allow CMs to make an informed decision to accept or object to the settlement. *Id.*; *see also Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 251-52 (2001). Here, the proposed Notice provides: (1) the material terms of the Settlement, (2) the CM's anticipated Settlement share, (3) how to object or opt out, (4) how to obtain more information, (5) the proposed fees, costs, settlement administration costs, and service awards, and (6) the date and time of the final approval hearing.

See **Exhibit A** to the SA (Class Notice); *see also* Cal. Rules of Court, Rule 3.766. The procedure for distribution of Notice has "a reasonable chance of reaching a substantial percentage of the [CMs]." *Cartt v. Super. Ct.*, 50 Cal. App. 3d 960, 974 (1975). The Notice will be sent by first class mail to the most recent address of each CM. SA § 8.4.2. If a Notice is returned as undeliverable, ILYM will use skip tracing and resend it if a new address is identified. SA § 8.4.3. As such, the Notice is likely to reach most, if not all, CMs.

C. The Class Representative Service Awards are Preliminarily Reasonable

In conjunction with seeking final approval, Plaintiffs will move for approval of a Service Award of $10,000 to each Class Representative to recognize the time and effort they each expended for the Class and the general release they are signing. SA § 3.2.1. The requested awards are fair and reasonable to compensate Plaintiffs for their contributions to the prosecution of this class action, the significant time they each spent on this case, and for the risks they assumed in agreeing to represent the Class. Hammond Decl. ¶ 45. The requested awards fall well within the range of incentive payments typically awarded to Class Representatives in similar class actions. *See, e.g.*, *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1393 (2010) (affirming awards of $10,000).

If preliminary approval is granted, Plaintiffs will provide declarations in conjunction with final approval that will detail their efforts, including that each Plaintiff responded to multiple sets of extensive written discovery, was deposed, and participated in the mediation. Hammond Decl. ¶ 46.

D. The Requested Attorneys' Fees Are Preliminarily Reasonable Because the Fees Are Approximately One-Third of Class Counsel's Current Lodestar

Also in conjunction with final approval, Plaintiffs will move for an award of attorneys' fees of 40% of the GSA given the overwhelming amount of work that has been required to achieve this result. SA § 3.2.2. Because the case was so hard-fought, Class Counsel's estimated final lodestar will be approximately three times larger than their requested fees. If only one-third of the common fund were awarded, the fees would be approximately 27% of Class Counsel's current lodestar, and even less of their anticipated final lodestar. Such a result would make it economically infeasible for Class Counsel to take on important cases like this one enforcing the Labor Code.

The California Supreme Court has recognized "[t]wo primary methods of determining a reasonable attorney fee in class action litigation[.] The percentage method calculates the fee as a percentage share of a recovered common fund or the monetary value of plaintiffs' recovery. The lodestar method, or more accurately the lodestar-multiplier method, calculates the fee 'by multiplying the number of hours reasonably expended by counsel by a reasonable hourly rate.'" *Laffitte v. Robert Half Intern.*

Inc., 1 Cal. 5th 480, 489 (2016). Where, as here, attorneys create a settlement fund that benefits all class members, "the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created." *Id.* at 503; *see also Serrano v. Priest,* 20 Cal. 3d 25 (1977) (noting that federal and state courts have long recognized that when attorneys create a common fund that benefits a class, the attorneys have an equitable right to be compensated from that fund).

Class Counsel, through their efforts, resources, and skill, have created a common fund that benefits the Settlement Class. Although the typical benchmark is one-third (33.33%), when the circumstances warrant it, California courts regularly approve larger percentages. *See* Rubenstein, Conte and Newberg, *Newberg on Class Actions* at § 14:6 (fees of 30-50% are commonly awarded in cases in which the common fund obtained is under $10 million); *Burleigh v. National University*, Case No. MSC21-00939 (Contra Costa County Superior Court) (Aug. 26, 2022) (awarding 40% of $925,000 class settlement); *Mayton, et al. v. Konica Minolta Business Solutions USA, Inc.,* Case No. RG12657116 (Alameda County Superior Court) (June 22, 2015) (awarding 40% of a $1,225,000 wage and hour class action settlement); *Glover v. 20/20 Commc'ns, Inc.*, Case No. RG14748879 (Alameda County Superior Court) (Nov. 4, 2014) (awarding 46% of the PAGA settlement).

Here, the fees request is appropriate because even if 40% fees are awarded, Class Counsel will receive only about one-third of the lodestar they were required to invest to obtain this result for the Class. As described above, the heavy litigation Class Counsel undertook was necessary, and was not avoidable by Class Counsel. Class Counsel have, together, expended 1,295 hours on this case for a total combined lodestar of $915,749. Hammond Decl. ¶ 48; Jhaveri-Weeks Decl. ¶ 20. This does not even include all the work of seeing this case through the notice process, preparing the final approval papers, and supervising the disbursement of the funds if final approval is granted, and reporting back to the Court. Hammond Decl. ¶ 48.

Class Counsel undertook the case entirely on a contingent basis, assuming significant risks of no recovery for their time or significant out of pocket costs, and has not been paid anything for their work during the last three years. As described above, discovery was highly contentious and hard-fought. Defendant deposed every single proposed witness. The class certification was also hard fought and Class Counsel was required to brief two motions simultaneously – Plaintiffs' motion for class certification and Defendant's cross-motion. *Id.* at ¶ 24. At this point, the Court is not called upon to approve the fee request, but merely to approve that the proposed fees be included in the Class Settlement Notice. If the Court grants Preliminary Approval, Class Counsel will submit their lodestar breakdown with their fees motion that will be heard concurrently with the Motion for Final Approval. *Id.* at ¶ 50.

E. The Requested Costs Are Preliminarily Reasonable

Plaintiffs will also request reimbursement for out-of-pocket litigation expenses up to $30,000. Hammond Decl. ¶ 49. These costs are commonly taxable and reimbursed costs, including court-filing and process-serving fees, deposition and hearing transcript costs, expert consultation costs, and mediation costs. *Id.* Class Counsel will provide a detailed breakdown of these costs at the time of final approval. Id. ¶ 50.

VI. CONCLUSION

The Settlement is well within the range of acceptable settlements and provides substantial monetary relief to the Class. Plaintiffs request that the Court preliminarily approve the Settlement, and order that Notice be provided to the Class as set forth in the proposed Order.

DATED: December 23, 2025

Respectfully submitted,

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