

1 Timothy B. Del Castillo (SBN: 277296)
tdc@castleemploymentlaw.com
2 Kent L. Bradbury (SBN: 279402)
kb@castleemploymentlaw.com
3 **CASTLE LAW: CALIFORNIA EMPLOYMENT COUNSEL, PC**
4 2999 Douglas Blvd., Suite 180
Roseville, CA 95661
5 Telephone: (916) 245-0122

6 Attorneys for Plaintiff Alicia Wilson and the Class

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SACRAMENTO**
10

11 ALICIA WILSON, individually and on behalf of
12 all others similarly situated,

13 Plaintiff,

14 vs.

15 OHGANE, INC.; PETER KIM, an individual;
Does 1 Through 20, Inclusive,

16 Defendants.
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Case No. 34-2023-00333601

CLASS ACTION

**MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: August 30, 2024
Time: 9:00 am
Dept.: 23
Res. #: A-333601-001

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Trial Date: Not Set

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1 **I. INTRODUCTION AND PROCEDURAL HISTORY**

2 This Motion is brought seeking preliminary approval for the settlement of a wage and
3 hour class and PAGA in the total gross amount of \$450,000.00. *See generally* **Exhibit A**
4 (Joint Stipulation of Class Action Settlement and Release), (“Agreement”). Plaintiff Alicia
5 Wilson (“Plaintiff”) brought a class and PAGA action on behalf of herself and other similarly
6 situated individuals employed by Ohgane, Inc. and Peter Kim. (“Defendants”). *See generally*
7 Declaration of Kent L. Bradbury ISO Plaintiff’s Mot. for Preliminary Approval (“Bradbury
8 Decl.”), ¶ 9.

9 Plaintiff filed her PAGA Notice letter with the LWDA on November 17, 2022. On January
10 30, 2023, Plaintiff filed her Amended PAGA Notice. Plaintiff filed her Class Action and PAGA
11 Complaint in Placer County Superior Court on January 25, 2023, and her First Amended Complaint
12 on January 30, 2023. Defendants filed an answer to the complaint denying all material allegations
13 and asserting affirmative defenses.

14 In the class action and PAGA complaint, Plaintiff alleges, *inter alia*, on behalf of herself
15 and all others similarly situated, that Defendants violated California state wage and hour laws and
16 the California Business and Professions Code Section 17200 *et seq.* as a result of Defendant’s
17 California wage and hour policies and practices. Specifically, Plaintiff’s Complaint asserts causes
18 of action on behalf of herself and the putative class members as follows: (1) violation of
19 California Business and Professions Codes section 17200, *et seq.*, (2) failure to provide accurate
20 wage statements, (3) failure to pay overtime wages, (4) waiting time penalties, (5) failure to
21 provide meal and rest periods, (6) involuntary pay through direct deposit, (7) failure to pay
22 minimum wage for all hours worked, and; (8) penalties under PAGA from January 25, 2019
23 through the date the matter is certified as a class. Plaintiff’s Complaint seeks recovery of alleged
24 damages, penalties, interest, and attorneys’ fees and costs.

25 The following summary of the basic points outlined in this memorandum supports
26 approval of the Settlement:

- 27 ▪ The Settlement provides a total settlement sum of \$450,000.00, with class members
28 being paid a pro-rata share of the net settlement proceeds after attorneys’ fees,

costs, class representative incentive awards, payment to the settlement administrator, and payment to the LWDA;

- Plaintiff investigated the claims at issue, including through exchanges of information by Plaintiff and Defendants of class data for the entire class as necessary for Plaintiff and her counsel to fully evaluate the merits of and defenses to this case;
- To reach the Settlement, Counsel for the parties engaged in extensive informal discovery to investigate Plaintiffs' claims and engaged in extensive settlement negotiations, including a full-day mediation presided over by Mediator Ronald M. Sabraw on March 27, 2024, before reaching a final settlement;
- In addition to the class members, California's LWDA will also benefit from this Settlement, as it will receive \$37,500.00, should this Settlement be granted final approval;
- An experienced and well-regarded settlement administrator, ILYM Group, was retained to administer the claims process at a cost of \$15,950.00;
- Class Counsel are seeking fees in the amount of \$150,000, and reimbursement of litigation costs not to exceed \$30,000;
- Plaintiff is requesting an enhancement payment in the amount of \$15,000;
- The estimated Net Settlement Amount after deductions for attorneys fees and costs, payment to the LWDA, Plaintiffs' enhancement payments, and payment to the settlement administrator, is \$201,550.00.

Plaintiff contends she filed a meritorious class action lawsuit, and this case is appropriate for class certification as the requisites for class certification can be satisfied. *See Exhibit A.* Defendants have denied all of Plaintiff's allegations, including without limitation whether the case is appropriate for class treatment, and any liability or wrongdoing of any kind. *See Bradbury Decl.*, ¶ 11; Declaration of Timothy B. Del Castillo ("Del Castillo Decl.") ¶ 14. However, subject to final approval by the Court, Plaintiff and Defendants have been able to compromise and settle all claims for monetary compensation as a result of

1 extensive discovery relating to the factual bases for all of Plaintiff's claims, negotiations
2 between the parties, a full-day mediation session, and subsequent further negotiations.
3 Bradbury Decl., ¶ 13.

4 Plaintiff's counsel is convinced that the proposed settlement is in the best interest of
5 the proposed class based on the informal discovery, investigations, negotiations, and a
6 detailed knowledge of the issues in this case. *See* Bradbury Decl., ¶ 12; Del Castillo Decl., ¶
7 19. The prospect of a potential adverse summary judgment ruling, class certification issues
8 and the uncertainty of class certification, difficulties of complex litigation, and lengthy
9 process of establishing specific damages, court discretion to reduce civil penalties, and
10 various possible delays and appeals were carefully considered by Plaintiff and her counsel in
11 agreeing to the proposed settlement. *See* Bradbury Decl. at ¶ 12.

12 It is well within the discretion of this Court to grant preliminary and conditional
13 approval of the proposed settlement, which satisfies all of the criteria for preliminary
14 settlement approval under California law. Accordingly, Plaintiff requests that the Court: (1)
15 provisionally and conditionally certify the proposed settlement class; (2) grant preliminary
16 and conditional approval of the proposed settlement agreement; (3) set dates for and direct
17 distribution to the class of the notice of pendency of class action and proposed settlement,
18 which provides class members information regarding the settlement, including information
19 regarding the opportunity to opt out of, or object to, the settlement, and each class member's
20 expected pro rata share of the settlement; and (4) adopt the implementation schedule
21 contained in the proposed order and schedule a final approval hearing.

22 There is no date set for a motion for class certification in this matter and no trial date has
23 been set *See* Bradbury Decl., ¶ 10. Plaintiff and Class Counsel have engaged in good faith,
24 arms-length negotiations with Defendants concerning possible settlement of the claims
25 asserted in the Litigation. The Parties participated in mediation before mediator Ronald M.
26 Sabraw on March 27, 2024. Mr. Sabraw is a retired superior court judge and a well-respected
27 employment law mediator. Negotiations at the mediation and following the mediation
28 resulted in the settlement reached in these matters.

1 **II. INVESTIGATION AND DISCOVERY CONDUCTED**

2 Plaintiff thoroughly investigated the merits of the class claims and potential damages
3 for such claims. *See* Bradbury Decl., ¶¶ 11–13. Plaintiff worked during the time all of
4 Defendant’s relevant policies and practices were in effect, giving rise to the class claims. *See*
5 Declaration of Plaintiff Alicia Wilson ISO Plaintiff’s Mot. for Preliminary Approval
6 (“Wilson Decl.”), ¶ 1.

7 Plaintiff engaged in informal discovery with Defendants, including exchange of
8 various documents and company policies, including pay records, time records, and other
9 documents which covered all aspects of the class and PAGA claims to ensure that Plaintiff
10 could determine both liability and create an accurate damages model. *See* Del Castillo Decl.,
11 ¶ 20; Bradbury Decl. ¶ 13. Plaintiff’s counsel was able to obtain directly relevant
12 information for members of the class and had ample information to perform reliable
13 calculations for the putative classes. *See id.* In addition, a full day mediation was attended
14 by all parties. *See id.* During the mediation, the parties discussed the relative strengths and
15 weaknesses of their positions, and following additional negotiation and continued assistance
16 from the mediator, were able to reach a settlement.

17 **III. NEGOTIATION AND PROPOSED SETTLEMENT**

18 **A. Plaintiff and Defendants Engaged in Extensive Arm’s Length Negotiations**

19 The mediation session was held on March 27, 2024. *See* Bradbury Decl., ¶ 13. At all
20 times the discussions and negotiations were adversarial in nature, although still conducted in
21 a professional manner. *See id.*

22 **B. The Terms of the Settlement**

23 Under the settlement agreement, the Parties have agreed to the following:

24 The scope of the settlement class:

25 The “Settlement Class” or “Class Members” shall consist of all
26 hourly, non-exempt employees of Defendants who performed work
27 for Defendants in California at any time between January 25, 2019
 and the date the Court grants preliminary approval (“Class Period”).

28 The PAGA Group Members:

1 The “PAGA Settlement Class” will consist of all hourly, non-
2 exempt employees of Defendants who performed work for
3 Defendants in California at any time between November 17, 2021
4 through the date the Court grants preliminary approval.

5 See Exhibit A, ¶¶ 5-6.

6 1. Defendants have provided documentation demonstrating that the putative class
7 consisted of approximately 1535 individuals and 46,131 workweeks worked during the Class
8 Period. Defendants will pay the Maximum Settlement Amount (“MSA”) of \$450,000.00 to
9 resolve the class and representative claims. The Parties agree the Maximum Settlement
10 Amount will be fully paid out, with no residue returning to Defendants.

11 2. If the actual number of weeks worked by Class Members during the class period
12 exceeds 46,131, the MSA will increase proportionally based on the difference between any
13 variation that exceeds ten percent (10%). For example, if the number of workweeks during the
14 class period increases by 12%, then the GSA shall be increased by 2%—i.e., the difference
15 between the 10% allowable variation and the 12% actual variation.

16 3. The parties agree the cost of administering this class action settlement shall be
17 paid from the settlement proceeds. Subject to Court approval, the parties selected ILYM
18 Group to act as the class action administrator to administer the class settlement. ILYM
19 Group has provided a quote to administer the class settlement for a total estimated fee of
20 \$15,950. Del Castillo Decl., Exh. A.

21 4. The parties agree that \$50,000.00 of the settlement proceeds will be allocated
22 to PAGA claims, which shall be allocated \$37,500.00 to the State of California and
23 \$12,500.00 shall be added to the Net Settlement Amount. See Exhibit A, ¶ 14(c)(iii).

24 5. The parties agree that Plaintiff could seek up to 33% of the gross settlement in
25 attorney’s fees, or \$150,000.00. See Exhibit A, ¶ 16. Additionally, the parties agree that
26 Plaintiffs will also be entitled seek an award from the Court of the actual litigation costs as
27 demonstrated to, and approved by, the Court in an amount not to exceed \$30,000.00. See *id.*

28 6. The parties agree that Plaintiff may seek an award of \$15,000.00 of the total
gross settlement as a Representative Enhancement Award. See *id.* at ¶ 14(c)(vii).

1 7. The settlement administrator will send notice to Class Members based on the
2 last contact information in Defendant's possession. *See id.* at ¶ 14(a). The timelines for
3 notice to class members and the submission of any request to opt out, object, or dispute the
4 allocation of money shall be consistent with the implementation schedule contained in the
5 proposed order, filed herewith. Class members will receive notice of their total number
6 workweeks worked during the class period, the estimated amount of settlement monies
7 payable to them, information on how to opt-out of this class action, information on how to
8 object to settlement terms, and information on how to dispute their total number of
9 workweeks. Exhibit A to Settlement Agreement (Class Notice). Pertinent case documents
10 will also be available to class members to download on the internet for free. *See id.*

11 8. For any portion of the Net Settlement Amount allocated to class members that
12 is not claimed by class members by cashing their respective settlement checks within 180
13 days, the remaining amount shall be distributed to California State Controller Unclaimed
14 Property Fund in that Class Member's name, subject to Court approval. *See Exhibit A* ¶ 19.

15 **C. Allocation of Settlement Funds**

16 Individual Settlement Payments will be paid from the Net Settlement Amount and
17 shall be paid to Class Members pursuant to the settlement formula and based upon the
18 number of workweeks worked by each Class Member during the Class Period. The amount
19 to be paid per pay period to Participating Class Members will be calculated by the Settlement
20 Administrator by dividing the Net Settlement Amount by the number of workweeks worked
21 by Participating Class Members. In addition, each Participating Class Member will get a
22 payment from the Private Attorneys General Act Allocation. *See Exhibit A*, ¶ 14(c)(ii).

23 After deductions for requested attorney's fees and costs, representative enhancements,
24 settlement administrator fees, and the LWDA's portion of the PAGA penalty allocations, the
25 Class will have a net settlement amount of approximately \$201,550.00. *See Del Castillo*
26 *Decl.*, ¶ 24.

1 **IV. ARGUMENT**

2 **A. Class Action Settlements are Subject to Court Review and Approval Under**
3 **the California Rules of Court.**

4 A class action may not be dismissed, compromised, or settled without Court approval
5 and the decision to approve or reject a settlement is committed to the Court's sound
6 discretion. See Fed. R. Civ. Proc., Rule 23(e).¹ Courts should give "proper deference to the
7 private consensual decision of the parties," since "the court's intrusion upon what is
8 otherwise a private consensual agreement negotiated between the parties to a lawsuit must be
9 limited to the extent necessary to reach a reasoned judgment that the agreement is not the
10 product of fraud or overreaching by, or collusion between, the negotiating parties, and that
11 the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Hanlon*
12 *v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). Where a settlement is reached on
13 terms agreeable to all parties, a court should disapprove of the settlement "only with
14 considerable circumspection." *Jamison v. Butcher & Sherrerd*, 68 F.R.D. 479, 481 (E.D. Pa.
15 1975). The law favors settlement of lawsuits, particularly class actions and other complex
16 cases where substantial resources can be conserved by avoiding the time, expense, and rigors
17 of formal litigation. See *Neary v. Regents of Univ. of Cal.*, 3 Cal. 4th 273, 277–81 (1992).

18 **B. The Terms of The Settlement Are Fair and Within the Range of**
19 **Reasonableness.**

20 The purpose of the Court's preliminary evaluation of a proposed class action
21 settlement is to determine only whether the proposed settlement is within the range of
22 possible approval and whether notice to the class of its terms and conditions and the
23 scheduling of a formal fairness hearing is warranted. See *Wershba v. Apple Computer, Inc.*,
24 91 Cal. App. 4th 224, 234–35 (2001). If the Court finds a proposed settlement falls within
25 "the range of reasonableness," it should grant preliminary approval of the class action
26 settlement. See, e.g., *North County Contr.'s Assn., Inc. v. Touchstone Ins. Svcs.*, 27 Cal.

27 ¹ The California Supreme Court has authorized California's trial courts to rely on these
28 federal resources to decide class certification issues. See *Green v. Obledo*, 29 Cal.3d 126, 145-
46 (1981).

1 App. 4th 1085, 1089–90 (1994). To make the fairness determination, the Court must
2 consider several factors, including:

3 the strength of the Plaintiff’s case, the risk, expense, complexity
4 and likely duration of further litigation, the risk of maintaining
5 class action status through trial, the amount offered in settlement,
6 the extent of discovery completed and the stage of the
7 proceedings, the experience and views of counsel, the presence of
8 a governmental participant, and the reaction of the class members
9 to the proposed settlement.

10 *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996). However, this Court should
11 begin its analysis with a presumption that the proposed settlement is fair. “[A] presumption
12 of fairness exists where: (1) the settlement is reached through arm’s length bargaining; (2)
13 investigation and discovery are sufficient to allow counsel and the court to act intelligently;
14 (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.”
15 *Id.* at 1802.

16 **1. The Settlement is a Result of Extensive, Non-Collusive Arm’s Length**
17 **Negotiations Between the Parties.**

18 Settlement in this case was reached only after extensive discussions, litigation, and
19 negotiations by the parties. The parties engaged in substantial informal discovery. The
20 information exchanged covered the number of employees in the class, workweeks, pay
21 periods, employment policies, and other information to ensure that Plaintiff could determine
22 both liability and create an accurate damages model for the class. At all times, the
23 negotiations were adversarial, although still professional in nature. See Bradbury Decl., ¶ 13.

24 **2. The Extent of Investigation and Discovery Completed Provided Ample**
25 **Information to Enter into an Informed and Reasonable Settlement.**

26 The parties were in possession of all necessary information during the negotiations.
27 Plaintiff engaged in informal discovery and sought information regarding the class members
28 to ensure Plaintiff could determine both liability and create an accurate damages model for
the class. See Del Castillo Decl., ¶ 20. Plaintiff was in possession of this information and
pay period information for all class members prior to calculating the potential range of
liability in this case. See *id.* As a result, Plaintiff was able to make a reasonable estimation

1 of Defendants’ potential liability. *See id.* For these reasons, the settlement now before the
2 Court was reached at a stage where “the parties certainly have a clear view of the strengths
3 and weaknesses of their cases” sufficient to support the settlement. *Boyd v. Bechtel Corp.*,
4 485 F. Supp. 610, 617 (N.D. Cal. 1979).

5 **3. Plaintiffs’ Counsel are Experienced in Similar Litigation**

6 Plaintiff’s counsel has considerable experience in class actions and wage and hour
7 litigation. *See* Bradbury Decl., ¶¶ 3–8; Del Castillo Decl. ¶¶ 3–12. Plaintiff’s counsel has
8 brought and are currently bringing several class actions involving employment law generally
9 and wage and hour issues specifically. *See id.* Thus, Plaintiff’s counsel are qualified to
10 evaluate the class claims, value of settlement versus moving for certification and going to
11 trial, and viability of possible affirmative defenses. *See id.* Plaintiff’s counsel believe that
12 the settlement is fair and reasonable in light of the complexities of the case, the uncertainties
13 of class certification and litigation, and the secured benefit to the class. Bradbury Decl. ¶ 12.

14 **4. The Settlement is Fair and Reasonable Based on the Strength of** 15 **Plaintiffs’ Case and the Risks and Costs of Further Litigation**

16 A review of the proposed settlement agreement’s terms does not give rise to any
17 doubts about its fairness. *See Exhibit A.* In light of the foregoing, Plaintiff believes this
18 settlement to be a reasonable compromise of the class claims, and believes it is well within
19 the percentile ranges of the total available damages that have been approved in other class
20 settlements. *See Wershba*, 91 Cal. App. 4th at 246, 250; *Rebney v. Wells Fargo Bank*, 220
21 Cal.App.3d 1117, 1139 (1990); *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 628
22 (9th Cir. 1982); *see also In re Omnivision Technologies, Inc.*, 559 F.Supp.2d 1036, 1042
23 (2007) (noting that the median percentage for recoveries in shareholder class action
24 settlements averaged 2.2% to 3% from 2000 through 2002).

25 **5. The Proposed Settlement is a Reasonable Compromise of Claims.**

26 The case of *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116 (2008), requires
27 additional information be presented to the Court “to ensure that the recovery represents a
28

1 reasonable compromise, given the magnitude and apparent merit of the claims being released,
2 discounted by the risks and expenses of attempting to establish and collect on those claims by
3 pursuing the litigation” *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los*
4 *Angeles*, 186 Cal. App. 4th 399 (2010), clarified that *Kullar* does not require the parties to
5 submit an illusory prediction of the outer reaches of exposure without taking into account the
6 actual risks of certification, decertification, dispositive motions, and trial. *Kullar* also does
7 not require an explicit statement of the maximum amount the class could recover if it
8 prevailed on all its claims, provided there is a record that allows “an understanding of the
9 amount that is in controversy and the realistic range of outcomes of the litigation.” *Id.* at 409.
10 The *Munoz* court found the record before the trial court was sufficient, having included the
11 number of class members, payroll data, declarations describing hours and overtime worked, as
12 well as variances in duties and rest and meal period experience, and a companion action
13 alleging less than \$5,000,000 in damages. This information constituted “an adequate basis
14 from which to garner a reasonably adequate understanding of the amount that is in controversy
15 within the meaning of *Kullar*.” *Id.*

16 Plaintiff relied on payroll data, including paystubs, timecards, and a sample of
17 employees’ information to calculate damages. Ultimately, Plaintiff secured a percentage of
18 the total demand for the putative class that is well within the range of what has been found to
19 be sufficient in several other cases. *See, e.g., In re Omnivision Technologies, Inc.*, 559
20 F.Supp.2d at 1042; *Reed v. 1-800 Contacts, Inc.*, 2014 U.S. Dist. LEXIS 255 (S.D. Cal. 2014)
21 (approving a settlement of \$11.7 million where the maximum range of damages was \$5,000
22 for each of the alleged 300,000 instances of unlawful recording violations (\$1.5 billion),
23 equaling approximately .78% of the total demand and approximately \$800 per class member).
24 This settlement represents a reasonable compromise given the facts of the case, potential
25 defenses, and potential likely recoverable damages.

26 **6. The Payment to the Named Plaintiffs for Their Services to the Putative**
27 **Class Is Reasonable and Routinely Awarded by Courts.**

28 The service payment to the named Plaintiff is intended to recognize their time and

1 effort on behalf of the class. Indeed, courts routinely approve incentive awards to
2 compensate named plaintiffs for the services they provide and the risks they incurred during
3 the course of the class action litigation. *See Ingram v. The Coca Cola Co.*, 200 F.R.D. 685,
4 694 (N.D. Ga. 2001). In *Ingram*, the Court approved incentive awards of \$300,000.00 to
5 each named plaintiff in recognition of the services they provided to the class by responding to
6 discovery, participating in the mediation process, and taking the risk of stepping forward on
7 behalf of the class. *See id.* at 694; *see also Van Vranken v. Atlantic Richfield Co.*, 901 F.
8 Supp. 294 (N.D. Cal. 1995) (approving a \$50,000.00 participation award).

9 In this case, Plaintiff provided and explained documents and was available at all times
10 to discuss the case with Plaintiff’s counsel. *See Bradbury Decl.*, ¶ 13; *Wilson Decl* ¶¶ 2–6.
11 Plaintiffs spent a significant amount of her time pursuing this litigation and assisting her
12 attorneys in understanding the nature of her claims. *See Wilson Decl* ¶¶ 3–6. Plaintiff
13 brought this action knowing there would be a delay in any payment as the litigation
14 progressed, rather than proceeding on their individual claims in front of the California Labor
15 Commissioner. *See id.* Payment of \$15,000.00 to the Plaintiff is appropriate given the risks,
16 the assistance Plaintiff provided, the time Plaintiff expended in bringing this case, and the
17 favorable resolution of this case that Plaintiff achieved for members of the proposed class.

18 **7. The Requested Attorneys’ Fees are Reasonable and Customarily**
19 **Approved by Courts.**

20 California state and federal courts have recognized that when a litigant’s efforts create
21 or preserve a fund from which others derive benefits, the Court may spread litigation costs
22 proportionally among all the beneficiaries to compensate those who created the fund. *See*
23 *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (“[A] lawyer who recovers a common
24 fund for the benefit of persons other than . . . his client is entitled to a reasonable attorney’s
25 fee from the fund as a whole.”); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir.
26 1977); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375 (1970); *see also Serrano v. Priest*, 20
27 Cal.3d 25, 34-35 (1977). The purpose of this equitable doctrine is to avoid unjust enrichment
28 of counsel and to “spread litigation costs proportionally among all the beneficiaries so that

1 the active beneficiary does not bear the entire burden alone.” *Vincent*, 557 F.2d at 769;
2 *Williams v. MGM-Pathe Communications Co.*, 129 F.3d 1026, 1027 (9th Cir. 1977).
3 California state courts have approved use of a percentage of the fund to calculate reasonable
4 attorney fee awards where the amount of the settlement is certain or is an easily calculable
5 sum of money. *See Dunk*, 48 Cal. App. 4th at 1808.

6 The Ninth Circuit has also held that the common fund doctrine applies when: (1) the
7 class of beneficiaries is sufficiently identifiable; (2) the benefits can be accurately traced; and
8 (3) the fee can be shifted with some exactitude to those benefitting. *See Paul, Johnson,*
9 *Alston & Hunt v. Graulity*, 886 F.2d 268, 271 (9th Cir. 1989). These criteria are “easily met”
10 when “each member of a certified class has an undisputed and mathematically ascertainable
11 claim to part of a lump-sum [settlement] recovered on his behalf.” *Id.* at 271 (citations
12 omitted).

13 Under the three factors set forth in *Paul, Johnson, Alston & Hunt*, the common fund
14 doctrine applies in this case because there is a sufficiently identifiable class of beneficiaries
15 (*e.g.* the settlement class), the benefits can be accurately traced to the settlement Plaintiffs
16 and their counsel were able to negotiate on behalf of the class, and the fee can be shifted with
17 exactitude to those benefiting as the fee request is a specific, lump-sum percentage of the
18 common fund. As set forth in the fee award examples provided below for the Court’s
19 reference, it is an accepted practice in wage and hour class action settlements to award
20 attorneys’ fees based on a percentage of the common fund. *See, e.g., Staton v. Boeing Co.*,
21 327 F.3d 938, 967-972 (9th Cir. 2003); *Sanders v. City of Los Angeles*, 3 Cal.3d 252, 261,
22 263 (1970); *Wershba*, 91 Cal. App. 4th at 254; *Bell v. Farmers Ins. Exchange*, 115 Cal. App.
23 4th 715, 726, 765 (2004).

24 Historically, attorneys’ fee awards in common fund cases in general range from 20%
25 to 50% of the fund, depending on the circumstances of the case. *See Newberg on Class*
26 *Actions*, (3rd Ed.), 1992, §14.03 (finding 50% to be the upper limit). Awards ranging
27 between 30% and 40% of the fund are generally approved as reasonable in wage and hour
28 settlements below \$10 million:

1 More particularly, courts may award attorneys fees in the 30-40% range in wage
2 and hour class actions that result in recovery of a common fund under \$10
3 million. *See Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491-492
4 (E.D. Ca. 2010) (citing to five recent wage and hour class actions where federal
5 district courts approved attorney fee awards ranging from 30 to 33%); *Singer v.*
6 *Becton Dickenson and Co.*, 2010 U.S. Dist. LEXIS 53416, 2010 WL 2196104,
*8 (S.D. Ca. June 1, 2010) (approving attorney fee award of 33.33% of the
common fund and holding that award was similar to awards in three other wage
and hour class action cases where fees ranged from 33% to 40%); *Romero v.*
Producers Dairy Foods, Inc., 2007 U.S. Dist. LEXIS 86270, 2007 WL 3492841
(E.D. Cal. Nov. 14, 2007).

7 *See Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796 at *22-23 (S.D. Cal. 2011).
8 Plaintiffs' request of 33.333% of the settlement sum for attorneys' fees is within established
9 rates for fee awards in class settlements pursuant to the common fund doctrine. *See In re*
10 *Activision Sec. Litigation*, 723 F.Supp. 1373, 1379 (N.D. Cal. 1989); *Watson v. Raytheon*
11 *Company*, USDC Southern District, Case No. 3:10-cv-00634; *Dirienzo v. Dunbar Armored,*
12 *Inc.*, USDC Southern District, Case No. 3:09-cv-02745; *Green, et al. v. Penske Logistics,*
13 *L.L.C., et al.*, USDC Southern District, Case No. 3:09-cv-00069; *Benitez et al. v. Wilbur,*
14 USDC Eastern District, Case No. 1:08-cv-01122; *Chavez et al. v. Petrissans et al.*, USDC
15 Eastern District, Case No. 1:08-cv-00122; *Willis et al. v. Cal-Western Transport*, USDC
16 Eastern District, Case No. 1:00-cv-05695. To determine whether a percentage is reasonable,
17 a court should consider: (1) the percentage that would likely be negotiated between parties in
18 a similar case; (2) the percentage applied in other class actions; (3) the quality of class
19 counsel; (4) the size of the award; and (5) whether there are any objections by class members.
20 *See In re Ikon Office Solutions, Inc. Secur. Litig.*, 194 F.R.D. 166, 193 (E.D. Pa. 2000); *In re*
21 *Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555, 71 (C.D. Cal. 2005) ("[T]he absence of
22 objections or disapproval by class members to class counsel's fee request further supports
23 finding the fee request reasonable").

24 These factors support Plaintiff's request for reasonable attorneys' fees. The typical
25 percentage negotiated between parties ranges from thirty-five to forty percent (35% to 40%)
26 in individual litigation depending on the complexity of the case. In class action litigation, the
27 typical percentage negotiated between parties ranges from thirty to forty percent (30% to
28 40%) based on the same factors. Plaintiff's request of 33% falls within these typical fee

1 arrangements. *See Schiller v. David's Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776 at *48
2 (E.D. Cal. 2012) ("Class Members will receive an average of approximately \$198.70, with
3 the highest payment to a Class Member being \$695.78 . . . Overall, the Court finds that the
4 results achieved are good, which is highlighted by the fact that there was no objection to the
5 settlement amount or the attorneys' fees requested."); *Gardner v. GC Servs., LP*, 2012 U.S.
6 Dist. LEXIS 47043, 18 (S.D. Cal. 2012) ("[T]he results achieved in this case were very
7 favorable. Class members are provided with immediate monetary relief, with an average
8 award of around several hundred dollars and a minimum award of \$50.").

9 **C. Provisional Certification of the Class is Appropriate.**

10 Class certification is appropriate when (1) the class is ascertainable and (2) there is "a
11 well-defined community of interest in the questions of law and fact involved affecting the
12 parties to be represented." *Dunk*, 48 Cal. App. 4th at 1806. The "community of interest"
13 element "embodies three factors: (1) common questions of law or fact predominate; (2) class
14 representatives with claims or defenses typical of the class; and (3) class representatives who
15 can adequately represent the class." *Id.* Plaintiff and Defendants agree for the purposes of
16 settlement only, these prerequisites are met. *See Exhibit A.*

17 **1. The Proposed Settlement Class is Ascertainable and Sufficiently**
18 **Numerous.**

19 The proposed settlement class is ascertainable because all putative class members can
20 be readily identified through employee personnel and payroll files. *See Rose v. City of*
21 *Hayward*, 126 Cal.App.3d 926, 932 (1981). The numerosity requirement is met here because
22 the putative Class includes approximately 1535 members. Del Castillo Decl., ¶ 20. *See*
23 *Hebbard v. Calgrove*, 28 Cal.App.3d 1017, 1030 (1972) (noting no set minimum for the
24 numerosity prerequisite, and 28 members is acceptable).

25 **2. The Commonality, Predominance, and Typicality Requirements are**
26 **Met.**

27 The commonality requirement is met when there are questions of law or fact regarding
28 the class as a whole. *See Hanlon*, 150 F.3d at 1019. Commonality requires only that some
common legal or factual questions exist; Plaintiff need not show that all issues in the

litigation are identical. *See Richmond v. Dart Ind., Inc.*, 29 Cal.3d 462, 473 (1981). Common questions of law or fact must also predominate over individual questions and class-wide treatment of a dispute must be superior to individual litigation.² *See id.* at 469. Predominance requires a putative class be sufficiently cohesive to warrant adjudication by representation. *See Hanlon*, 150 F.3d at 1022. The typicality requirement is met when claims of the named representative are typical of those of the class, though “they need not be substantially identical.” *Id.* at 1020. The common questions of law or fact here stem from the central claims that Defendants failed to pay minimum wages for all hours worked, failed to pay overtime wages, failed to provide meal periods, failed to provide rest periods, failed to provide accurate wage statements, failed to timely pay wages at termination of employment, failed to reimburse business expenses, failed to maintain accurate records, and failed to issue wages in proper form. *See* Exhibit A. Plaintiff and the class members seek the same remedies under state law. These common issues predominate over any individual issues because Plaintiff and class members will rely on substantially identical evidence to establish Defendants’ liability; namely Defendants’ policies, time records, payroll records, and wage statements. Thus, the commonality and predominance requirements are satisfied. The named representative suffered from the same allegedly unlawful policies, treatment, and circumstances as the putative class members did. Plaintiff is making the same claims, will request the same remedies, and will rely on the same methods of proof to establish her claims. *See id.* Thus, the typicality requirement is satisfied for settlement purposes.

3. The Adequacy Requirement is Met

The adequacy of representation requirement is met if the named representatives and their counsel have no interests adverse to those of the putative class members and are committed to vigorously prosecuting the case on behalf of the class. *See Hanlon*, 150 F.3d at 1020. Those standards are met here. Under the proposed settlement, Plaintiff and putative

² When assessing predominance and superiority, a court may consider that the class will be certified for settlement purposes only and that manageability of trial is therefore irrelevant. *See Amchem Products v. Windsor*, 521 U.S. 591 (1997).

1 class members will receive a pro-rata portion of the settlement funds based on the number of
2 workweeks they worked for Defendants during the applicable class period. *See Exhibit A.*
3 Any settlement class member who wishes to opt out of the settlement may do so and he or
4 she may also dispute the number of workweeks contained on the class notice. *See id.* Thus,
5 no conflict of interest exists between Plaintiff and class members.

6 **V. CONCLUSION**

7 For all of the foregoing reasons, Plaintiff respectfully requests that this Court
8 preliminarily and conditionally certify the Class for settlement purposes; grant preliminary
9 and conditional approval to the proposed settlement, including counsel's application for
10 reasonable attorneys' fees and costs; approve the proposed form of the Class Notice; set a
11 date for mailing these forms to the class members; set the deadlines for opting out of,
12 commenting on, and objecting to the settlement; and schedule the final settlement approval
13 hearing. A copy of Plaintiff's proposed order is being filed concurrently herewith.

14
15 Respectfully submitted,

16 Dated: July 2, 2024

Castle Law: California Employment Counsel, PC

17
18 By: 
19 Kent L. Bradbury
20 Timothy B. Del Castillo
21 Attorneys for Plaintiff Alicia Wilson and the Class
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24
25
26
27
28

**EXHIBIT A TO MOTION
JOINT STIPULATION OF
SETTLEMENT**

Timothy B. Del Castillo (SBN: 277296)
tdc@castleemploymentlaw.com
Kent L. Bradbury (SBN: 279402)
kb@castleemploymentlaw.com
CASTLE LAW: CALIFORNIA EMPLOYMENT
COUNSEL, PC
2999 Douglas Blvd., Suite 180
Roseville, CA 95661
Telephone: (916) 245-0122

Attorneys for Plaintiff Alicia Wilson and the Class

COHEN LAW GROUP
JORDAN COHEN (SBN: 167678)
jason@cohenlawgroupla.com
SUSAN PETERSON (SBN: 171888)
susan.peterson@cohenlawgroupla.com
1901 Avenue of the Stars, Suite 200
Los Angeles, CA 90067
Telephone: 310.443.2149

Attorneys for Defendants

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

ALICIA WILSON, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

OHGANE, INC.; PETER KIM, an
individual; Does 1 Through 20, Inclusive,

Defendants.

Case No. 34-2023-00333601

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT AND RELEASE
BETWEEN PLAINTIFF, ON BEHALF OF
HERSELF AND ALL OTHERS
SIMILARLY SITUATED, AND
DEFENDANTS**

This Joint Stipulation of Settlement and Release (hereinafter “Stipulation of Settlement” or “Settlement”) is made and entered into by and between Plaintiff Alicia Wilson (“Plaintiff”), individually, and on behalf of other members of the general public similarly situated, on the one hand, and OHGANE, INC and PETER KIM, an individual (collectively referred to as “Defendants”) on the other hand. This Stipulation of Settlement shall be binding on Plaintiff and those persons Plaintiff seeks to represent, and on Defendants and the Released Parties, subject to the terms and conditions hereof and the Court’s approval. The Settlement contemplated by this Stipulation of Settlement is sometimes hereinafter referred to as the “Settlement.”

THE PARTIES STIPULATE AND AGREE as follows:

1. Plaintiff and Defendants are collectively referred to herein as “the Parties.” Plaintiff filed her PAGA Notice letter with the LWDA on November 17, 2022. On January 30, 2023, Plaintiff filed her Amended PAGA Notice. Plaintiff filed her Class Action and PAGA Complaint in Placer County Superior Court on January 25, 2023, and her First Amended Complaint on January 30, 2023. Defendants filed an answer to the complaint denying all material allegations and asserting affirmative defenses.

2. Plaintiff's Complaint asserts causes of action on behalf of herself and the putative class members as follows: (1) violation of California Business and Professions Codes section 17200, *et seq.*, (2) failure to provide accurate wage statements, (3) failure to pay overtime wages, (4) waiting time penalties, (5) failure to provide meal and rest periods, (6) involuntary pay through direct deposit, (7) failure to pay minimum wage for all hours worked, and; (8) penalties under PAGA from January 25, 2019 through the date the matter is certified as a class. Plaintiff's Complaint seeks recovery of alleged damages, penalties, interest, and attorneys' fees and costs. The term "Action" means this

1 putative class action pending in Sacramento County Superior Court. The class period is from January
2 25, 2019 through the date the Court grants preliminary approval (“Class Period”).

3 3. Plaintiff has not filed a motion for class certification in this action, nor has a date been
4 set by the Court for the filing of such a motion.

5 4. This Action has been actively litigated. There have been on-going investigations, and
6 there has been an exchange of extensive documentation and information.

7 5. For purposes of this Settlement, the “Settlement Class” or “Class Members” shall
8 consist of all hourly, non-exempt employees of Defendants who performed work for Defendants in
9 California at any time between January 25, 2019 and the date the Court grants preliminary approval
10 (“Class Period”). Defendants have represented that there are approximately 1,535 class members. (the
11 “Settlement Class” or the “Class Members”).

12 6. The “PAGA Settlement Class” will consist of all hourly, non-exempt employees of
13 Defendants who performed work for Defendants in California at any time between November 17,
14 2021 through the date the Court grants preliminary approval.

15 7. The Settlement Class shall not include any person who previously settled or released
16 any of the claims covered by this Settlement, or any person who previously was paid or received
17 awards through civil or administrative actions for the claims covered by this Settlement.

18 8. Solely for the purpose of settling this case, the Parties stipulate and agree that the
19 requisites for establishing class certification with respect to the Settlement Class have been met and
20 are met. More specifically, the Parties stipulate and agree that:

21 a. The Settlement Class is ascertainable and so numerous as to make it
22 impracticable to join all Class Members.

b. There are common questions of law and fact including, but not limited to, the following:

i. Whether Defendants complied with applicable laws affecting Plaintiff and the Settlement Class under the California Labor Code and the Wage Orders of the California Industrial Welfare Commission; and

ii. Whether Plaintiff and the Settlement Class are entitled to alleged penalties, interest, and attorneys' fees and costs.

c. Plaintiff believes Plaintiff's claims are typical of the claims of the members of the Settlement Class.

d. Plaintiff believes Plaintiff will fairly and adequately protect the interests of the Settlement Class, and that Plaintiff's counsel Timothy B. Del Castillo and Kent L. Bradbury of Castle Law: California Employment Counsel, PC should be "Class Counsel," and will fairly and adequately protect the interests of the Settlement Class.

e. Plaintiff believes the prosecution of separate actions by individual members of the Settlement Class would create the risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct.

f. With respect to the Settlement Class, Plaintiff believes that questions of law and fact common to the members of the Settlement Class predominate over any questions affecting any individual member in such Class, and a class action is superior to other available means for the fair and efficient adjudication of the controversy.

8. Defendants deny any liability or wrongdoing of any kind whatsoever associated with the claims alleged in the Action, and further deny that, for any purpose other than settling this Action, this Action is appropriate for class or representative treatment. With respect to Plaintiff's

1 claims, Defendants contend, among other things, that they have complied with all applicable state,
2 federal and local laws affecting Plaintiff and the Settlement Class.

3 9. It is the desire of the Parties to fully, finally and forever settle, compromise and
4 discharge all disputes and claims arising from or related to the Action. To achieve a full and
5 complete release of Defendants, each Class Member acknowledges that this Stipulation of
6 Settlement is intended to include in its effect any and all claims under state, federal and local law
7 that were or could have been asserted based on the facts and allegations made in the Action, and any
8 amendments thereto.

9 10. It is the intention of the Parties that this Stipulation of Settlement shall constitute a
10 full and complete settlement and release of all claims arising from the allegations of this class action
11 case, which release includes in its effect Defendants and their current and former affiliates,
12 contractors, parents, divisions, subsidiaries, joint ventures and assigns, successors, predecessors and
13 assigns, partners, related business entities and actual or alleged joint employers and their past or
14 present officers, directors, shareholders, employees, agents, principals, heirs, representatives,
15 accountants, auditors, consultants, insurers and reinsurers, and their respective successors and
16 predecessors in interest, subsidiaries, affiliates, parents and attorneys, and all persons or entities
17 acting by, through, under or in concert with any of them, and any individual or entity which could be
18 jointly liable with Defendants for any of the Released Claims, including Defendants' customers. The
19 groups described in this paragraph 10 are collectively referred to as the "Released Parties".

20 11. Counsel for the Settlement Class have conducted a thorough investigation into the
21 facts of this Action, and have diligently pursued an investigation of Class Members' claims against
22 Defendants. Based on their own independent investigation and evaluation, Class Counsel are of the
23 opinion that the Settlement with Defendants for the consideration and on the terms set forth in this
24

1 Stipulation of Settlement is fair, reasonable and adequate and is in the best interest of the Settlement
2 Class in light of all known facts and circumstances, including the risk of significant delay, the risk
3 the Settlement Class will not be certified by the Court, defenses asserted by Defendants and
4 numerous potential appellate issues. Defendants and Defendants' counsel also agree that the
5 Settlement is fair and in the best interest of the Parties.

6 12. The Parties agree to cooperate and to take all steps necessary and appropriate to
7 consummate this Settlement and for entry of judgment in accordance with this Stipulation of
8 Settlement.

9 13. This Settlement requires Defendants to pay Settlement Awards (defined below)
10 according to a specified formula to each Settlement Class Member who fails to submit a timely and
11 valid Request for Exclusion as specified in this Settlement ("Participating Class Member") as well
12 as to each Settlement Class Member who was employed during the PAGA Period (November 17
13 2021 through the date the Court grants preliminary approval), regardless of whether or not that
14 Class Member timely excluded him/herself from the Settlement. The maximum settlement amount
15 is \$450,000, including the Settlement Awards, Class Counsel's attorneys' fees, Class Counsel's
16 litigation expenses and costs, the enhancement award to the class representative, \$50,000 allocated
17 to penalties under the California Private Attorneys General Act ("PAGA") with \$37,500 (three-
18 quarters) paid to the California Labor and Workforce Development Agency ("LWDA") and
19 \$12,500 (one-fourth, referred to herein as the "PAGA Settlement Amount") paid to the PAGA
20 Settlement Class as described below, and settlement administration expenses ("maximum total
21 liability"). It is understood and agreed that Defendants' maximum total liability under the
22 Settlement shall not exceed \$450,000.00, with the exception of employer-paid payroll taxes and any
23 pro rata increase pursuant to Section 14(c)(i) below. It is further understood and agreed that
24

1 Defendants shall have no obligation to pay any person, entity, or organization more than the amount
2 of the maximum total liability under the Settlement. If no objections are filed, payment of the
3 maximum settlement amount shall be made within 60 days from the court order granting final
4 approval in full and complete settlement of all PAGA Released Claims and Class Member Released
5 Claims. If objections are filed, payment shall be made within 65 days after final approval if no
6 appeal, or within seven (7) days after the appeal is dismissed or withdrawn, or the appeal is decided
7 upholding the propriety of the settlement.

8 TERMS OF SETTLEMENT

9 14. NOW THEREFORE, in consideration of the mutual covenants, promises and
10 agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

11 a. It is agreed by and among Plaintiff and Defendants that this Action and any
12 claims, damages or causes of action arising out of the disputes which are the subject of this Action,
13 be settled and compromised as between the Settlement Class and Defendants, subject to the terms
14 and conditions set forth in this Stipulation of Settlement and the approval of the Court.

15 b. Effective Date: The Settlement embodied in this Stipulation of Settlement
16 shall become effective ("Effective Date") when all of the following events have occurred: (i) this
17 Stipulation of Settlement has been executed by all Parties and by counsel for the Class and
18 Defendants; (ii) the Court has given preliminary approval to the Settlement; (iii) the notice has been
19 given to the Settlement Class, providing them with an opportunity to participate, object, or to opt
20 out of the Settlement; (iv) the Court has held a formal fairness hearing and entered a final order and
21 judgment certifying the Settlement Class and finally approving this Stipulation of Settlement; and
22 (v) only in the event there are written objections submitted prior to the formal fairness hearing
23 which are not later withdrawn, the later of the following events: when the period for filing any
24

1 appeal, writ or other appellate proceeding opposing the Settlement has elapsed without any appeal,
2 writ or other appellate proceeding having been filed; or any appeal, writ or other appellate
3 proceeding opposing the Settlement has been dismissed finally and conclusively with no right to
4 pursue further remedies or relief; or any appeal, writ or other appellate proceeding has upheld the
5 Court's final order with no right to pursue further remedies or relief. In this regard, it is the
6 intention of the Parties that the Settlement shall not become effective until the Court's order
7 approving the Settlement is completely final, and there is no further recourse by an appellant or
8 objector who seeks to contest the Settlement. It is further agreed by the Parties that this Settlement
9 will not become effective if Defendants, contrary to Paragraph 13 above, are required to pay more
10 than the total amount of their maximum total liability under the Settlement as set forth in Paragraph
11 13 under any circumstances, with the exception of employer-paid payroll taxes and any pro rata
12 increase pursuant to Section 14(c)(i) below. It is further agreed by and between the Parties that this
13 Settlement shall not become effective, and Defendants shall not have any obligation (monetary or
14 otherwise) under the terms of this Settlement, unless and until any objections, writs and/or appeals,
15 and any rights of appeal with respect to any objections or the judgment, have been finally exhausted
16 and resolved upholding the terms of this Settlement.

17 c. Maximum Settlement Amount, Net Settlement Amount and PAGA

18 Settlement Amount: To implement the terms of this Settlement, Defendants agree to pay
19 \$450,000.00 ("Maximum Settlement Amount"). The Parties agree the Maximum Settlement
20 Amount will be fully paid out, with no residue returning to Defendants. At no time shall
21 Defendants have the obligation to segregate the funds comprising the Maximum Settlement
22 Amount, and Defendants shall retain exclusive authority over, and the responsibility for, those
23 funds subject to the disbursement of funds necessary to effectuate the Settlement. All Settlement
24

Awards paid to Class Members, the attorneys' fees and costs to Class Counsel, the enhancement award to the Class Representative, the fees and expenses of the Settlement Administrator, the payment to the LWDA pursuant to PAGA, and any other payments provided by this Settlement, shall be paid out of the Maximum Settlement Amount. The Net Settlement Amount shall be calculated by deducting all Class Counsel's attorneys' fees, Class Counsel's litigation expenses, the enhancement award, \$37,500 attributable to PAGA penalties (the "PAGA Settlement Amount"), and settlement administration expenses from the Maximum Settlement Amount ("Net Settlement Amount"). Class Members shall not be required to submit claim forms to participate in the Settlement; all Participating Class Members will be mailed settlement award checks, as will all non-Participating Class Members who were employed during the PAGA Period.

i. Class Size: Defendants represented to Plaintiff at mediation that the putative class consisted of approximately 1535 individuals and 46,131 workweeks worked during the Class Period. If the actual number of weeks worked by Class Members during the class period exceeds 46,131, the GSA will increase proportionally based on the difference between any variation that exceeds ten percent (10%). For example, if the number of workweeks during the class period increases by 12%, then the GSA shall be increased by 2%—i.e., the difference between the 10% allowable variation and the 12% actual variation.

ii. Settlement Awards to Participating Class Members: Settlement Awards to Participating Class Members will be determined based on the number of workweeks worked in California in a non-exempt position by the Class Members during the Class Period based on information to be provided by Defendants. Defendants' workweek data will be presumed to be correct, unless a particular Class Member proves otherwise to the Settlement Administrator by credible written evidence. All workweek count disputes will be resolved and decided by the

1 Settlement Administrator, and the Settlement Administrator's decision on all workweek count
2 disputes will be final and non-appealable. The amount to be paid per workweek to Participating
3 Class Members will be calculated by the Settlement Administrator by dividing the Net Settlement
4 Amount by the number of workweeks worked by Participating Class Members. In addition, each
5 Participating Class Member will get a payment from the Private Attorneys General Act Allocation
6 based on the number of workweeks worked during the PAGA period. Any person who opts out of
7 the Settlement is not a Participating Class Member, and is ineligible to object to the Settlement.

8 iii. Private Attorneys General Act Allocation: The Parties have agreed to
9 allocate \$50,000 of the Maximum Settlement Amount to penalties under the California Private
10 Attorneys General Act ("PAGA"). Seventy-five percent (75%) of this amount, or in other words
11 \$37,500, will be paid to the Labor and Workforce Development Agency ("LWDA") of the State of
12 California, and the remaining balance of \$12,500 will be distributed to Class Members who worked
13 for Defendants during the PAGA Period based on the pro-rata share of workweeks worked by each
14 Class Member during the PAGA Period. Notwithstanding the submission of a timely and proper
15 request for exclusion, Class Members who were employed by Defendants during the PAGA Period
16 will still be bound by the settlement and release of the PAGA Claims or remedies under the Final
17 Judgment pursuant to *Arias v. Superior Court*, 46 Cal.4th 868 (2009) as requests for exclusion do
18 not apply to the PAGA Claims (and hence will receive a payment from the PAGA Settlement
19 Amount).

20 iv. Allocation of Settlement Awards: The Parties have agreed, based on
21 the allegations in the Action, that individual Settlement Awards payable to Participating Class
22 Members from the Net Settlement Amount will be allocated as follows: (1) ten percent (10%) will
23 be allocated to alleged unpaid wages for which IRS Forms W-2 will issue; (2) eighty percent (80%)
24

1 will be allocated to alleged unpaid penalties; and (3) ten percent (10%), interest for which IRS
2 Forms 1099-MISC will issue. Payments made to Class Members from the PAGA Settlement
3 Amount shall be allocated entirely to unpaid penalties for which IRS Forms 1099-MISC will issue.

4 v. Settlement Awards Do Not Trigger Additional Benefits: All
5 Settlement Awards to Class Members shall be deemed to be income to such Class Members solely
6 in the year in which such awards actually are received by the Class Members. It is expressly
7 understood and agreed that the receipt of such Settlement Awards will not entitle any Class Member
8 to additional compensation or benefits under any company bonus, contest or other compensation or
9 benefit plan or agreement in place during the period covered by the Settlement, nor will it entitle
10 any Class Member to any increased retirement, 401(k) benefits or matching benefits, or deferred
11 compensation benefits. It is the intent of this Settlement that the Settlement Awards provided for in
12 this Agreement are the sole payments to be made by Defendants to the Class Members in
13 connection with this Settlement, and that the Class Members are not entitled to any new or
14 additional compensation or benefits as a result of having received the Settlement Awards
15 (notwithstanding any contrary language or agreement in any benefit or compensation plan
16 document that might have been in effect during the period covered by this Settlement).

17 vi. Attorneys' Fees and Litigation Costs: Subject to Court approval or
18 modification, Defendants further agree not to oppose Class Counsel's application for attorneys' fees
19 and litigation costs as set forth in Paragraph 16 below.

20 vii. Class Representative: The Parties agree to the designation of Plaintiff
21 as the "Class Representative." Subject to Court approval, Defendants agree not to oppose
22 Plaintiff's request for an Enhancement Award of up to \$15,000. The Enhancement Award is in
23 addition to any claimed individual Settlement Award to which Plaintiff is entitled. The
24

Enhancement Award is to be part of, and to be deducted from, the Maximum Settlement Amount. The Settlement Administrator will issue an IRS Form 1099-MISC for the Enhancement Award to the Plaintiff for her service as the Class Representative, and Plaintiff will be responsible for correctly characterizing this compensation for tax purposes and for paying any taxes on the amounts received. Should the Court approve an Enhancement Award to the Class Representative in an amount less than that set forth above, the difference between the lesser amount approved by the Court and the Enhancement Award set forth above shall be added to the Net Settlement Amount.

viii. Settlement Administrator: The Settlement Administrator will be ILYM Group, or such other settlement administrator as may be mutually agreeable to the Parties and approved by the Court. All administration expenses shall be paid out of the Maximum Settlement Amount.

ix. Mailing of Settlement Awards: The Settlement Administrator will cause the Settlement Awards to be mailed to the Class Members within 30 calendar days after the Effective Date of the Settlement (defined above in Paragraph 14).

x. Class Notice: For each Class Member, there will be pre-printed information on the Notice of Pendency of Class Action and Proposed Settlement ("Class Notice"), based on Defendants' records, stating the number of workweeks worked as Class Member during the Class Period, along with each Class Member's estimated Settlement Award amount, assuming all Class Members participate and the final number of workweeks worked is the same as existed at the time of mailing the Class Notice. The pre-printed information based on Defendants' records shall be presumed to be correct unless written proof to the contrary is provided to the Settlement Administrator. A Class Member may challenge the pre-printed information on the Class Notice as to the workweeks worked during the Class Period by submitting written evidence to the Settlement

1 Administrator. All disputes regarding workweeks worked will be resolved and decided by the
2 Settlement Administrator, and the Settlement Administrator's decision on all disputes will be final
3 and binding.

4 d. Enhancement Award to Plaintiff for Plaintiff's Service as Class

5 Representative: The Settlement Administrator will pay the Enhancement Award approved by the
6 Court to Plaintiff within 30 calendar days after the Effective Date of the Settlement (defined above
7 in Paragraph 14).

8 e. Right to Rescission In the event that ten percent (10%) or more of Class
9 Members opt out of the settlement, Defendants maintain the right, in their sole discretion, to revoke
10 the settlement and their stipulation to class certification within seven (7) days of learning that more
11 than ten percent (10%) of Class Members opted out of the settlement. Should Defendants exercise
12 this right, they shall be solely responsible for the costs of settlement administration incurred.

13 CLAIMS ADMINISTRATION

14 15. The Parties have agreed to the appointment of ILYM Group to perform the
15 customary duties of Settlement Administrator; provided, however, the Parties shall have the right to
16 select or substitute a different Settlement Administrator by mutual agreement and approval by the
17 Court. The Settlement Administrator will mail the Class Notice to all Class Members. The
18 Settlement Administrator will independently review Defendants' data as to the number of pay
19 periods worked during the Class Period, and will calculate the amounts due to Class Members in
20 accordance with this Stipulation of Settlement. The Settlement Administrator shall report, in
21 summary or narrative form, the substance of its findings. The Settlement Administrator shall be
22 granted reasonable access to Defendants' records to perform its duties. At the request of
23 Defendants, and upon receipt of funds from Defendants, the Settlement Administrator will issue and
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1 send out Settlement Award checks to Class Members. Tax treatment of the Settlement Awards will
2 be as set forth herein. All disputes relating to the Settlement Administrator's performance of its
3 duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over the
4 terms and conditions of this Stipulation of Settlement until all payments and obligations
5 contemplated by this Stipulation of Settlement have been fully carried out.

6 ATTORNEYS' FEES AND LITIGATION COSTS

7 16. In consideration for settling this Action, in exchange for the release of claims by the
8 Settlement Class, and subject to final approval or modification by the Court, Defendants agree not
9 to oppose Class Counsel's application for attorneys' fees not to exceed 33.33 percent of the
10 Maximum Settlement Amount, or in other words up to \$150,000 and attorneys' costs not to exceed
11 \$30,000.00, from the Maximum Settlement Amount. The amounts set forth above will cover all
12 work performed and all fees and costs incurred to date, and all work to be performed and all fees
13 and costs to be incurred in connection with the approval by the Court of this Stipulation of
14 Settlement, the administration of the Settlement, and obtaining the final judgment. Should Class
15 Counsel request lesser amounts, or should the Court approve lesser amounts for attorneys' fees and
16 litigation costs, the difference between the lesser amounts and the maximum amounts set forth
17 above shall be added to the Net Settlement Amount.

18 17. The attorneys' fees and litigation costs approved by the Court shall be paid to Class
19 Counsel within 60 calendar days after the Effective Date of the Settlement (defined above in
20 Paragraph 14).

21 NOTICE TO THE PLAINTIFF CLASS

22 18. Class Notice as approved by the Court, shall be sent by the Settlement
23 Administrator to the Class Members by first class mail. Any returned envelopes from this mailing
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1 with forwarding addresses will be used by the Settlement Administrator to forward the Notice to
2 the Class Members.

3 a. Within 30 calendar days of preliminary approval of this Settlement by the
4 Court, Defendants shall provide to the Settlement Administrator a spreadsheet of the Class
5 Members' names, last-known addresses, last-known telephone numbers, Social Security numbers
6 ("Class Member Information"), and workweek data. The Class Members' contact information and
7 Social Security numbers will be used only by the Settlement Administrator for the sole purpose of
8 effectuating the Settlement, and will not be provided to Class Counsel at any time or in any form.
9 To the extent Class Counsel possesses or comes to possess the Class Members' contact information
10 and/or Social Security numbers, Class Counsel shall return all such information (including copies
11 and data or information derived therefrom) within five (5) days of the date the Court preliminarily
12 approves the Settlement, shall not retain copies of such information, and shall not maintain or use
13 such information for any purpose. The spreadsheet provided for above, shall be based on
14 Defendants' payroll and other business records and in a format acceptable to the Settlement
15 Administrator. Within 30 calendar days of preliminary approval of this Settlement, the Settlement
16 Administrator will mail the Class Notice to Class Members.

17 b. Notices returned to the Settlement Administrator as non-delivered during the
18 45 calendar day period for objecting to the Settlement, or disputing the workweeks worked during
19 the Class Period, shall be resent to the forwarding address, if any, on the returned envelope. If there
20 is no forwarding address, the Settlement Administrator will do a check of the Class Members'
21 addresses against those on file with the U.S. Postal Service's National Change of Address List and
22 will skip-trace return mail and re-mail within three (3) calendar days of receipt using the Class
23 Member's social security number; this search will be performed only once per Class Member by the
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1 Settlement Administrator. Upon completion of these steps by the Settlement Administrator,
2 Defendants and the Settlement Administrator shall be deemed to have satisfied their obligations to
3 provide the Class Notice to the affected member of the Settlement Class. The affected member of
4 the Settlement Class shall remain a member of the Settlement Class and shall be bound by all the
5 terms of the Stipulation of Settlement and the Court's Order and Final Judgment.

6 c. The Class Notice shall also identify the procedures for opting out of or
7 objecting to the Settlement.

8 e. Class Counsel shall provide to the Court, at least sixteen (16) court days
9 before the final fairness hearing, an initial declaration by the Settlement Administrator of due
10 diligence and proof of mailing with regard to the mailing of the Class Notice.

11 SETTLEMENT AWARDS

12 19. Settlement Awards shall remain valid and negotiable for one hundred eighty
13 (180) calendar days from the date of their issuance; upon the deadline to cash the Settlement
14 Awards, the checks will automatically be canceled by the Settlement Administrator if not cashed
15 by the Class Member within that time, and the Class Member's claim will remain released by the
16 Settlement. The Settlement Awards provided to Class Members shall prominently state the
17 expiration date or a statement that the checks will expire in one hundred eighty (180) days, or
18 alternatively, such a statement may be made in a letter accompanying the check. Expired
19 Settlement Awards will not be reissued, except for good cause and as mutually agreed by the
20 Parties in writing. The Settlement Administrator will send one reminder notice to all Class
21 Members who have not cashed the settlement award check 30 days prior to the deadline. Any
22 residue from uncashed Settlement Awards after the expiration date will be Funds from uncashed or
23 returned checks will be distributed to the State Controller Unclaimed Property Fund pursuant to
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Code of Civil Procedure Section 384, subject to Court approval. Upon completion of its calculation of payments, the Settlement Administrator shall provide Defendants with a report listing the amount of all payments to be made to each Class Member. Defendants, on behalf of the Released Parties, will pay to the Settlement Administrator the Maximum Settlement Amount, after the Settlement becomes effective as defined in Paragraph 14, within 30 calendar days following the Effective Date. The Settlement Administrator shall disburse the payment in accordance with Paragraph 14. The Settlement Administrator will be responsible for making appropriate deductions, paying to Class Counsel any Court-approved attorneys' fees and litigation costs, paying to the Class Representative any Court-approved Enhancement Award, paying the LWDA seventy-five percent (75%) of the amount allocated for PAGA penalties above, meeting tax reporting obligations, and for issuing the individual Settlement Awards to Class Members. Proof of payment will be filed with the Court and provided to Class Counsel and Defendants' Counsel within one hundred twenty (120) calendar days from the Effective Date.

OPTING OUT OF / OBJECTING TO THE SETTLEMENT

20. Opting Out of the Settlement. For those Class Members who do not wish to participate in the Settlement, such Class Members may exclude themselves (i.e., opt out) by submitting a timely written request to the Settlement Administrator. The written request ("Request for Exclusion") should state that he/she has received the Class Notice, decided not to participate in the Settlement, and words to the effect that he/she desires to be excluded from the Settlement. The Request for Exclusion must also state the individual's full name, address, last four digits of Social Security Number, and telephone number. The Request for Exclusion must be signed, dated and mailed by First Class U.S. Mail, or the equivalent, to the Settlement Administrator. All Requests for Exclusion must be postmarked and mailed to the Settlement Administrator no later than 45

1 calendar days after the Settlement Administrator mails the Notice to the Class Members. Any
2 individual who submits a Request for Exclusion will not be allowed to object to the terms of the
3 Settlement. If a Settlement Class Member submits both an objection and a valid and timely request
4 for exclusion, the request for exclusion will override the objection, and the objection shall therefore
5 be ignored.

6 21. Objecting to the Settlement. Any Participating Class Member that wishes to object
7 to the fairness, reasonableness, or adequacy of this Agreement or the proposed Settlement may
8 provide to the Settlement Administrator (who shall forward it to Class Counsel and counsel for
9 Defendants), a timely statement of objection. To be timely, an objection must be mailed to the
10 Settlement Administrator, and postmarked no later than 45 calendar days after the Settlement
11 Administrator mailed the Notice to the Class Members. The date of the postmark on the return-
12 mailing envelope shall be the exclusive means used to determine whether an objection has been
13 timely submitted. An objection must contain at least the following: (i) the objector's full name,
14 address, telephone, last four digits of Social Security Number, and signature; (ii) a clear reference to
15 the Lawsuit; (iii) a statement of the specific legal and factual basis for each objection argument; and
16 (iv) a statement whether the objecting person intends to appear at the Final Approval Hearing, either
17 in person or through counsel and, if through counsel, a statement identifying that counsel by name,
18 bar number, address and telephone number. All objections shall be signed by the objecting
19 Participating Class Member, even if the Participating Class Member is represented by counsel. The
20 right to object to the proposed Settlement must be exercised individually by a Participating Class
21 Member. Attempted collective, group, class or subclass objections shall be ineffective and
22 disregarded. If the Court rejects the objection, the Participating Class Member will be bound by the
23 terms of the Settlement.

RELEASE BY THE CLASS

22. Upon final approval by the court, the participating Class Members (i.e., Class Members who do not opt out of the settlement) shall be deemed to have fully, finally, and forever released Releasees from all any and all claims or causes of action that are pled, or that could have been pled, based on the facts alleged in the Complaint, while employed in California as hourly, non-exempt employees by Defendants during the class period, including but not limited to any and all claims, rights, demands, liabilities, and causes of action of every nature and description arising from January 25, 2019 through the date the Court grants preliminary approval, including, statutory, constitutional, contractual, or common law claims for wages, damages, unpaid costs, statutory penalties, liquidated damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief, which constitute or relate to any one or more of the following categories of claims: (a) failure to pay and/or appropriately calculate minimum, straight time, overtime, double time, or any other types of wages; (b) failure to provide compliant meal periods and/or pay compliant meal period premiums; (c) failure to provide compliant rest breaks and/or pay compliant rest break premiums; (d) failure to provide accurate wage statements; (e) failure to provide proper form of payment; (f) failure to pay timely wages; (g) failure to timely pay all wages due at termination, including claims for waiting time penalties; (h) failure to reimburse business expenses; and (i) any other types of claims that were pled, or could arise out of the facts pled, as part of the Action ("Class Members' Released Claims"). The Class Members' Released Claims include all claims that arise under the California Labor Code, including under California Labor Code §§ 201, 202, 203, 204, 210, 212, 221, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1 and 1198, 2802; California Business and Professions Code §§ 17200 et seq., any applicable California Industrial Welfare Commission Wage Order; and any similar statutes, regulations, ordinances, and laws, to the

1 extent such claims were pled, or could arise out of the facts pled, as part of this action. Class
2 Members who do not submit a timely and valid request for exclusion from the settlement shall be
3 deemed to have fully released all Class Members' Released Claims.

4 23. Subject to Court approval, all Settlement Class Members who worked one or more
5 shifts within the PAGA Period shall be deemed to have released the PAGA Released Claims,
6 meaning mean any and all claims against Releasees for recovery of civil penalties under PAGA to
7 recover civil penalties, attorneys' fees, litigation costs, which Plaintiff and/or the PAGA Settlement
8 Class had, or may claim to have, that were alleged or could have been alleged based on the facts
9 alleged in Plaintiff's November 17, 2022 and January 30, 2023 letters to the LWDA and the
10 Complaint arising from November 17, 2021 through the date the Court grants preliminary approval.
11 These claims are released by Plaintiff in her representative capacity as authorized proxy and agent
12 for the State of California and the LWDA and as a private attorney general acting on behalf of
13 herself and the PAGA settlement employees, for civil penalties under the PAGA, including the
14 alleged (a) failure to keep accurate records (Labor Code §§ 1174, 1174.5); (b) failure to provide
15 compliant meal periods and/or pay compliant meal period premiums; (Labor Code §§ 226.7, 512,
16 and IWC Wage Order No. 5-2001, § 11(A)); (c) failure to provide rest breaks and/or to pay
17 compliant rest break premiums (Labor Code § 226.7 and IWC Wage Order No. 5-2001, § 12(A));
18 (d) failure to provide accurate wage statements (Labor Code §§ 226, 226.3); (e) failure to pay final
19 wages (Labor Code §§ 201-203, 256, 227.3); (f) failure to pay and/or appropriately calculate sick pay
20 (Labor Code § 245, *et seq.*); (g) failure to reimburse business expenses (Labor Code § 2802); (h)
21 failure to pay minimum wages (Labor Code §§ 1194, 1194.2, 1197, 1197.1, 1182.12, IWC Wage
22 Order No. 5-2001, § 4); (i) failure to pay and/or appropriately calculate overtime, double time, or any
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1 other types of wages (Labor Code §§ 510, 1194; IWC Wage Order No. 4-2001, § 3); and, (j) failure
2 to timely pay wages during employment (Labor Code §§ 204, 210).

3 24. Effective upon the date of final approval by the Court of this Stipulation of
4 Settlement, Plaintiff fully releases and discharges the Released Parties from any and all past,
5 present, and future claims, actions, demands, causes of action, suits, debts, obligations, damages,
6 rights or liabilities, of any nature and description whatsoever, known or unknown, existing or
7 potential, recognized now or hereafter, expected or unexpected, pursuant to any theory of recovery
8 (including but not limited to those based in contract or tort, common law or equity, federal, state, or
9 local law, statute, ordinance, or regulation), and for claims for compensatory, consequential,
10 punitive or exemplary damages, statutory damages, penalties, interest, attorneys' fees, costs or
11 disbursements, against the Released Parties, including unknown claims covered by California Civil
12 Code section 1542, as quoted below, by Plaintiff, arising during the period from the beginning of
13 the Plaintiff's first interaction with any Defendant to the date on which the Court enters the order of
14 Final Approval of this Settlement, for any type of relief that can be released as a matter of law,
15 including, without limitation, claims for wages, damages, unpaid costs, penalties (including civil
16 and waiting time penalties), liquidated damages, punitive damages, interest, attorneys' fees,
17 litigation costs, restitution, or injunctive, declaratory or equitable relief with the exception of any
18 claims which cannot be released as a matter of law. Plaintiff generally releases all known and
19 unknown claims against the Released Parties, and waives the application of section 1542 of the
20 California Civil Code, which provides as follows: "A general release does not extend to claims
21 which the creditor or releasing party does not know or suspect to exist in his or her favor at the time
22 of executing the release and that if known by him or her, would have materially affected his or her
23 settlement with the debtor or released party." The claims released pursuant to this paragraph
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1 include but are not limited to the Participating Class Members' Released Claims, as well as any
2 other claims under any provision of the Fair Labor Standards Act, the California Labor Code, the
3 California Code of Regulations, or any applicable California Industrial Welfare Commission Wage
4 Order(s), and claims under state or federal discrimination statutes, including, without limitation the
5 California Fair Employment and Housing Act, California Government Code section 12940 et seq.;
6 the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 et seq.; the
7 Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq.; and all of their
8 implementing regulations and interpretive guidelines.

9 25. In addition, the Class Representative and each Settlement Class Member is forever barred
10 and enjoined from instituting or accepting damages or obtaining relief against the Released Parties
11 for any period from January 25, 2019, through the date the Court grants preliminary approval,
12 relating to claims that individual has released pursuant to Paragraphs 22-24.

13 DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

14 26. Plaintiff shall promptly submit this Stipulation of Settlement to the Sacramento
15 County Superior Court in support of Plaintiff's Motion for Preliminary Approval and determination
16 by the Court as to its fairness, adequacy and reasonableness; Plaintiff agrees to provide Defendants
17 the opportunity to review, and to seriously consider Defendants' comments before filing, Plaintiff's
18 Motion for Preliminary Approval. Promptly upon execution of this Stipulation of Settlement,
19 Plaintiff shall apply to the Court for the entry of an order preliminarily approving the Settlement.

20 a. Scheduling a fairness hearing on the question of whether the proposed
21 Settlement, including payment of attorneys' fees and litigation costs, costs of administration and the
22 Class Representative's Enhancement Award should be finally approved as fair, reasonable and
23 adequate as to the members of the Settlement Class;

b. Certifying a Settlement Class, Plaintiff Alicia Wilson as the Class Representative, and Timothy B. Del Castillo and Kent L. Bradbury of Castle Law: California Employment Counsel, PC as Class Counsel;

c. Approving as to form and content the proposed Class Notice;

d. Approving the manner and method for Class Members to request exclusion from the Settlement as contained herein and within the Class Notice;

e. Directing the mailing of the Class Notice by first class mail to the Class Members; and

f. Preliminarily approving the Settlement subject only to the objections of Class Members and final review by the Court; and

g. Enjoining Plaintiff and all Class Members from filing or prosecuting any other cases, claims, suits or administrative proceedings (including filing claims with the Division of Labor Standards Enforcement of the California Department of Industrial Relations) regarding the Released Claims unless and until such Class Members have filed valid Requests for Exclusion with the Settlement Administrator.

DUTIES OF THE PARTIES FOR FINAL COURT APPROVAL

27. Upon the Effective Date of the Settlement provided for in this Stipulation of Settlement, Class Counsel will return to Defendants or delete all company and employee documents, lists, and electronic data in all forms and formats (originals and copies). Plaintiff agrees to provide Defendants the opportunity to review, and to seriously consider Defendants' comments before filing, Plaintiff's Motion for Final Approval of Class Action Settlement.

a. Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;

b. Approving Class Counsel's application for an award of attorneys' fees and litigation costs;

c. Approving the Enhancement Award to the Class Representative; and

d. Entering judgment in accordance with California Rules of Court, Rule 3.769(h), with prejudice, and permanently barring and enjoining all members of the Settlement Class from prosecuting against any Released Parties any individual or class or collective claims released herein, upon satisfaction of all payments and obligations hereunder.

PARTIES' AUTHORITY

28. The signatories hereto hereby represent that they are fully authorized to enter into this Stipulation of Settlement and bind the Parties hereto to the terms and conditions thereof.

MUTUAL FULL COOPERATION

29. To effectuate the terms of the Settlement, the Parties agree all formal and informal discovery shall be stayed pending Court approval of the Settlement.

30. The Parties agree to fully cooperate with each other to accomplish the terms of this Stipulation of Settlement, including, but not limited to, execution of such documents and taking such other action as reasonably may be necessary to implement the terms of this Stipulation of Settlement. The Parties shall use their best efforts, including all efforts contemplated by this Stipulation of Settlement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Stipulation of Settlement and the terms set forth herein. As soon as practicable after execution of this Stipulation of Settlement, Class Counsel shall, with the assistance and cooperation of Defendants and their counsel, take all necessary steps to secure the Court's final approval of this Stipulation of Settlement.

1 31. The Parties and their respective counsel agree that they will not attempt to encourage
2 Class Members to file Requests for Exclusion.

3 NO PRIOR ASSIGNMENTS

4 32. The Parties and their counsel represent, covenant and warrant that they have not
5 directly or indirectly, assigned, transferred, encumbered or purported to assign, transfer or
6 encumber to any person or entity any portion of any liability, claim, demand, action, cause of action
7 or right herein released and discharged except as set forth herein.

8 NO ADMISSION

9 33. Nothing contained herein, nor the consummation of this Stipulation of Settlement, is
10 to be construed or deemed an admission of liability, culpability, negligence or wrongdoing on the
11 part of Defendants. Each of the Parties hereto has entered into this Stipulation of Settlement solely
12 with the intention to avoid further disputes and litigation with the attendant inconvenience and
13 expenses.

14 ENFORCEMENT ACTIONS

15 34. The Parties agree that the Sacramento County Superior Court shall retain jurisdiction
16 to enforce the terms of this Settlement pursuant to California Code of Civil Procedure Section
17 664.6. In the event one or more of the Parties to this Stipulation of Settlement institutes any legal
18 action or other proceeding against any other Party or Parties to enforce the provisions of this
19 Stipulation of Settlement or to declare rights or obligations under this Stipulation of Settlement, the
20 successful party or Parties shall be entitled to recover from the unsuccessful Party or Parties'
21 reasonable attorneys' fees and litigation costs, including expert witness fees incurred in connection
22 with any enforcement actions.

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NOTICES

35. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed as follows:

To Plaintiff and the Settlement Class:

Timothy B. Del Castillo, Esq.
Kent L. Bradbury, Esq.
CASTLE LAW: CALIFORNIA EMPLOYMENT COUNSEL, PC
2999 Douglas Blvd., Suite 180
Roseville, CA 95661

To Defendants:

Jordan M. Cohen
COHEN LAW GROUP
1902 Avenue of the Stars, Suite 200
Los Angeles, CA 91302

NO PUBLIC COMMENT

36. The Class Representative and Class Counsel will not make any public disclosure of the Settlement, except through the public filings to preliminarily and finally approve the Settlement; the Parties will use their best efforts to reach agreement on all Court filings. Notwithstanding the foregoing, the Class Representative and Class Counsel may, in response to a communication initiated by the media, direct the inquiring media member to the public records of the Action on file with the Court. Class Counsel will take all steps necessary to ensure that the Class Representative is aware of the restriction against any public disclosure of the Settlement. This provision does not prevent Class Counsel from communicating with any Class Members who may contact Class Counsel, or their own attorneys or tax advisors.

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CONSTRUCTION

37. The Parties hereto agree that the terms and conditions of this Stipulation of Settlement are the result of lengthy, intensive arms-length negotiations between the Parties and this Stipulation of Settlement shall not be construed in favor of or against any party by reason of the extent to which any party or his, her or its counsel participated in the drafting of this Stipulation of Settlement.

CAPTIONS AND INTERPRETATIONS

38. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Stipulation of Settlement or any provision of it. Each term of this Stipulation of Settlement is contractual and not merely a recital.

MODIFICATION

39. This Stipulation of Settlement may not be changed, altered or modified, except in writing and signed by the Parties hereto and approved by the Court. This Stipulation of Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

INTEGRATION CLAUSE

40. This Stipulation of Settlement contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations and statements, whether oral or written and whether by a party or such party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

1 BINDING ON ASSIGNS

2 41. This Stipulation of Settlement shall be binding upon and inure to the benefit of the
3 Parties and the Released Parties hereto, and their respective heirs, trustees, executors,
4 administrators, successors and assigns.

5 CLASS MEMBER SIGNATORIES

6 42. It is agreed that because the members of the Class are so numerous, it is impossible
7 or impractical to have each member of the Class execute this Stipulation of Settlement. The Class
8 Notice will advise all Class Members of the binding nature of the release, and the release shall have
9 the same force and effect as if this Stipulation of Settlement were executed by each member of the
10 Class.

11 COUNTERPARTS

12 43. This Stipulation of Settlement may be executed in counterparts and by facsimile
13 signatures, and when each party has signed and delivered at least one such counterpart, each
14 counterpart, including e-mail and PDF versions, shall be deemed an original and, when taken
15 together with other signed counterparts, shall constitute one Stipulation of Settlement binding upon
16 and effective as to all Parties.

17 IN WITNESS WHEREOF, the Parties knowingly and voluntarily execute this Joint
18 Stipulation of Settlement as of the date(s) set forth below:

19 **Plaintiff and Class Representative**

20
21
22 Dated: 16/05/24 _____

Alicia Wilson
Alicia Wilson (May 16, 2024 16:06 PDT)
ALICIA WILSON

Defendants

OHGANE, INC.

Dated: 05/21/2024

Peter Kim

by Peter Kim

PETER KIM

Dated: 05/21/2024

Peter Kim

Peter Kim

APPROVED AS TO FORM:

DATED: May 16, 2024

CASTLE LAW: CALIFORNIA EMPLOYMENT
COUNSEL

By: 

Timothy Del Castillo

Kent Bradbury

Attorneys for Plaintiff and the Class

DATED: May 21, 2024

COHEN LAW GROUP

By: 

Jordan Cohen

Susan Peterson

Attorneys for Defendants

**EXHIBIT A TO SETTLEMENT
AGREEMENT
PROPOSED CLASS NOTICE**

<<First Name>> <<Last Name>>

<<Address 1>>

<<Address 2>>

NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL

Alicia Wilson, individually and on behalf of all others similarly situated, v. OHGANE, INC.; PETER KIM, an individual; Does 1 Through 20, Inclusive,

Sacramento County Superior Court No. 34-2023-00333601

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A SETTLEMENT OF CLASS ACTION AND PAGA LITIGATION.

I. BACKGROUND OF THE CASE

On January 25, 2023, Alicia Wilson (“Plaintiff”) filed a lawsuit alleging wage and hour violations and seeking penalties under the California Private Attorneys General Act (“PAGA”) against Ohgane, Inc. and Peter Kim (together “Defendants”). The lawsuit was filed in Superior Court of the State of California for Sacramento (“Court”), Case No. 34-2023-00333601 (the “Action”). On January 30, 2023, Plaintiff filed a Second Amended Complaint.

The Action alleges Defendants failed to pay minimum wages for all hours worked, failed to pay overtime wages, failed to provide meal periods, failed to provide rest periods, failed to provide accurate wage statements, involuntarily paid wages through direct deposit, failed to timely pay wages, failed to reimburse business expenses, failed to maintain accurate records, engaged in unfair competition, and owe penalties under PAGA. Plaintiff’s Complaint seeks recovery of alleged damages, penalties, interest, and attorneys’ fees and costs.

Defendants deny all claims, deny that Plaintiff and the Class Members are entitled to any recovery, and assert affirmative defenses in response to Plaintiff’s claims.

The Action has been actively litigated. There have been on-going investigations, and an exchange of extensive documentation and information. Furthermore, the Parties have engaged in an arms-length private mediation before a well-respected mediator. Based upon the negotiations and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide Settlement based upon the recommendation of the mediator. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Settlement, Defendant continues to deny all allegations and claims.

The Parties have entered into a Joint Stipulation of Class Action Settlement and Release (“Settlement” or “Agreement”), which has been preliminarily approved by the Court. The Settlement has been reached between the Parties on behalf of:

- (1) All hourly, non-exempt employees of Defendants who performed work for Defendants in California at any time between January 25, 2019 and [REDACTED] (the date the Court grants preliminary approval) (“Class Period”); and
- (2) The PAGA settlement class will consist of all hourly, non-exempt employees of Defendants who performed work for Defendants in California at any time between November 17, 2021 through [REDACTED] (the date the Court grants preliminary approval).

II. ESTIMATED INDIVIDUAL AWARD

You have received this notice because Defendant's records indicate you are a Class Member. This notice is to advise you of how you can participate in or be excluded from the Settlement of the class claims.

Based on Defendants' records, your Settlement Award is estimated to be \$_____ (less applicable withholdings). The actual amount you may receive may be more or less than the amount estimated depending on the number of Class Members who choose to exclude themselves from the Settlement, the actual number of workweeks worked by Participating Class Members, and the distributions approved and allocated by the Court.

The above estimates are based on the records available to Defendants, which show that you worked _____ workweeks during the Class Period.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether or not you act. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement. The Court will also decide whether to enter a judgment that approves the releases of claims by Class Members and PAGA Members in accordance with the terms of the Settlement.

III. SUMMARY OF SETTLEMENT

1. Under the terms of the Settlement, Defendants agree to pay the Gross Settlement Amount of \$450,000.00, which is inclusive of all amounts Defendants are required to pay under the Settlement, including all Settlement Awards to Participating Class Members, all PAGA Awards to PAGA Members, the Labor and Workforce Development Agency (LWDA) Payment for PAGA penalties, Plaintiff's Enhancement Award, Class Counsel's Attorneys' Fees and Costs, and Administration Expenses. The entire Gross Settlement Amount will be fully paid out and no portion of the Gross Settlement Amount will revert back to Defendants.

2. At the Final Approval Hearing, Plaintiffs and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement Amount, the amounts of which will be decided by the Court at the Final Approval Hearing:

a. Up to \$15,950.00 in Administration Expenses to the Administrator for costs of administration of the Settlement.

b. \$50,000.00 allocated as PAGA penalties, 75% of which will be paid to the LWDA and 25% of which will be distributed as Individual PAGA Awards to PAGA Members on a pro-rata basis as part of the Settlement Award.

c. Up to \$150,000.00 (33.3333% of the Gross Settlement Amount) to Class Counsel for attorneys' fees and up to \$30,000.00 for litigation costs and expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

d. Up to \$15,000.00 as named Plaintiff's Enhancement Award in recognition of her effort and work in prosecuting the Action and in exchange for an individual general release of all claims.

3. After making the above deductions in amounts approved by the Court, and excluding the \$25,000.00 PAGA payment, which shall be separately allocated among PAGA Members based on the number of pay periods worked during the PAGA Period, the Administrator will distribute the remaining amount

(the “Net Settlement Amount”) as Settlement Awards to Participating Class Members. The Settlement Awards to Participating Class Members are calculated on a pro-rata basis based on the number of workweeks worked by all Class Members during the Class Period based on the data provided by Defendants.

4. Each Settlement Award to a Participating Class Member will be attributed as follows: (1) 10% will be allocated to alleged unpaid wages; (2) 80% will be allocated to alleged unpaid penalties; and (3) 10% will be allocated to alleged unpaid interest. The Administrator will report the portions paid as penalties, expenses, and interest via IRS 1099 form, along with the Class Members’ PAGA Payments (if applicable), and will report portions attributed to wages via IRS form W-2. The Administrator will deduct employee payroll taxes from the wage portion of Individual Class Awards. Although the Parties have agreed to these allocations, neither side is giving you any advice on whether your payment(s) are taxable or how much you might owe in taxes. You are solely responsible for correctly characterizing any payments you receive pursuant to the Settlement for tax purposes and for paying any taxes on the amounts received. You should consult a tax advisor if you have any questions about the tax consequences of the Settlement.

5. Releases of Claims. Upon Final Approval by the Court, every Class Member who does not opt out of the Settlement (“Participating Class Members”), will release Defendants and the Releasees from the Released Claims as described below. Additionally, every PAGA Member will release Defendants and the Releasees from the Released PAGA Claims as described below. In other words, if you are a Class Member and you do not exclude yourself from the Settlement Class, you will be deemed to have entered into the release and to have released the below-described Released Claims. If the Settlement is not approved by the Court or does not become final for some other reason, the Action will continue as though the Settlement never occurred and without prejudice to any Party.

a. “Released Parties” means Defendants and their current and former affiliates, contractors, parents, divisions, subsidiaries, joint ventures and assigns, successors, predecessors and assigns, partners, related business entities and actual or alleged joint employers and their past or present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys, and all persons or entities acting by, through, under or in concert with any of them, and any individual or entity which could be jointly liable with Defendants for any of the Released Claims, including Defendants’ customers.

b. Release By Participating Class Members. Upon final approval by the court, the participating Class Members (i.e., Class Members who do not opt out of the settlement) shall be deemed to have fully, finally, and forever released the Released Parties from all any and all claims or causes of action that are pled, or that could have been pled, based on the facts alleged in the Complaint, while employed in California as hourly, non-exempt employees by Defendants during the class period, including but not limited to any and all claims, rights, demands, liabilities, and causes of action of every nature and description arising from January 25, 2019 through the date the Court grants preliminary approval, including, statutory, constitutional, contractual, or common law claims for wages, damages, unpaid costs, statutory penalties, liquidated damages, interest, attorneys’ fees, litigation costs, restitution, or equitable relief, which constitute or relate to any one or more of the following categories of claims: (a) failure to pay and/or appropriately calculate minimum, straight time, overtime, double time, or any other types of wages; (b) failure to provide compliant meal periods and/or pay complaint meal period premiums; (c) failure to provide compliant rest breaks and/or pay compliant rest break premiums; (d) failure to provide accurate wage statements; (e) failure to provide proper form of payment; (f) failure to pay timely wages; (g) failure to timely pay all wages due at termination, including claims for waiting time penalties; (h) failure to reimburse business expenses; and (i) any other types of claims that were pled, or could arise out of the facts pled, as part of the Action (“Class Members’ Released Claims”). The Class Members’ Released Claims include all claims that arise under the California Labor Code, including under California Labor Code §§ 201, 202, 203,

204, 210, 212, 221, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1 and 1198, 2802; California Business and Professions Code §§ 17200 et seq., any applicable California Industrial Welfare Commission Wage Order; and any similar statutes, regulations, ordinances, and laws, to the extent such claims were pled, or could arise out of the facts pled, as part of this action. Class Members who do not submit a timely and valid request for exclusion from the settlement shall be deemed to have fully released all Class Members' Released Claims.

c. Release By PAGA Members and State of California. Subject to Court approval, all Settlement Class Members who worked one or more shifts within the PAGA Period shall be deemed to have released the PAGA Released Claims, meaning mean any and all claims against Releasees for recovery of civil penalties under PAGA to recover civil penalties, attorneys' fees, litigation costs, which Plaintiff and/or the PAGA Settlement Class had, or may claim to have, that were alleged or could have been alleged based on the facts alleged in Plaintiff's November 17, 2022 and January 30, 2023 letters to the LWDA and the Complaint arising from November 17, 2021 through the date the Court grants preliminary approval. These claims are released by Plaintiff in her representative capacity as authorized proxy and agent for the State of California and the LWDA and as a private attorney general acting on behalf of herself and the PAGA settlement employees, for civil penalties under the PAGA, including the alleged (a) failure to keep accurate records (Labor Code §§ 1174, 1174.5); (b) failure to provide compliant meal periods and/or pay compliant meal period premiums; (Labor Code §§ 226.7, 512, and IWC Wage Order No. 5-2001, § 11(A)); (c) failure to provide rest breaks and/or to pay compliant rest break premiums (Labor Code § 226.7 and IWC Wage Order No. 5-2001, § 12(A)); (d) failure to provide accurate wage statements (Labor Code §§ 226, 226.3); (e) failure to pay final wages (Labor Code §§ 201-203, 256, 227.3); (f) failure to pay and/or appropriately calculate sick pay (Labor Code § 245, *et seq.*); (g) failure to reimburse business expenses (Labor Code § 2802); (h) failure to pay minimum wages (Labor Code §§ 1194, 1194.2, 1197, 1197.1, 1182.12, IWC Wage Order No. 5-2001, § 4); (i) failure to pay and/or appropriately calculate overtime, double time, or any other types of wages (Labor Code §§ 510, 1194; IWC Wage Order No. 4-2001, § 3); and, (j) failure to timely pay wages during employment (Labor Code §§ 204, 210).

IV. YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

If you worked for Defendants during the Class Period and/or the PAGA Period, your options under the Settlement are as follows:

Do Nothing	You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, you will also give up your right to assert any other wage claims covered by this Settlement ("Released Claims").
Opt-Out of the Class Settlement. Response Deadline is [DATE]	You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. If you are an Aggrieved Employee, you will remain eligible for an Individual PAGA Payment, as you cannot opt-out of the PAGA portion of the proposed Settlement.
Participating Class Members can object to the Class	Any Class Member who does not exclude himself/herself from the Settlement (i.e., a Participating Class Member) may object to the terms of the Settlement by filing a written objection with the Court

Settlement but not the PAGA Settlement Response Deadline is [DATE]	and mailing a copy to the Administrator, no later than 45 calendar days after the Settlement Administrator mailed the Notice to the Class Members. A written objection must contain: (i) the objector's full name, address, telephone, last four digits of Social Security Number, and signature; (ii) a clear reference to the Lawsuit; (iii) a statement of the specific legal and factual basis for each objection argument; and (iv) a statement whether the objecting person intends to appear at the Final Approval Hearing, either in person or through counsel and, if through counsel, a statement identifying that counsel by name, bar number, address and telephone number. All objections shall be signed by the objecting Participating Class Member, even if the Participating Class Member is represented by counsel.
Participating Class Members can participate in the Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on [DATE] at [TIME] in Department [] of the Superior Court of California for the County of Sacramento located at 720 9th Street., Sacramento CA 95814 You don't have to attend, but you have the right to appear (or hire an attorney to appear on your behalf at your own cost) at the Final Approval Hearing. If you do not exclude yourself from the settlement, you may object orally at the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts and legal support for your objection. If the Court rejects the objection, you will nevertheless be bound by the terms of the Settlement. It is possible the Court will reschedule the Final Approval Hearing. Check the Court's website for the most current information or contact Class Counsel to verify the date and time of the Final Approval Hearing.
<u>You can dispute the calculation of your Workweeks / Pay Periods</u> Dispute Deadline is [DATE]	The number of workweeks you worked based on Defendants' records are stated above. If you disagree with this figure, you can dispute it by submitting a timely written Workweek Dispute to the Administrator. The Workweek Dispute must be signed, dated, and mailed by First Class U.S. Mail, or the equivalent, to the Administrator. All Workweek Disputes must be postmarked no later than the Dispute Deadline. Unless you submit documentary evidence in support of your dispute, Defendants' records will be determinative. All Workweek Disputes will be resolved and decided by the Administrator, and the Administrator's decision on all disputes will be final and binding.

V. HOW TO CONTACT THE ADMINISTRATOR

[ADMINISTRATOR]

[ADDRESS 1]

[ADDRESS 2]

Telephone: [NUMBER]

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you should consult the detailed “Joint Stipulation of Class Action Settlement and Release” which is on file with the Clerk of the Court and can be accessed at <<[website address](#)>>. The pleadings and other records in this Action, including the Settlement, may be examined at any time during regular business hours at the Office of the Clerk of the Sacramento County Superior Court at 720 9th St., Sacramento, California 95814.

If you want additional information about this Action and its proceedings, you can contact the Administrator or Class Counsel in this Action:

Timothy B. Del Castillo
Kent L. Bradbury
Castle Law: California Employment Counsel, PC
2999 Douglas Blvd., Suite 180
Roseville, Ca 95661
Telephone: (916) 245-0122
Email: tdc@castleemploymentlaw.com; kb@castleemploymentlaw.com

**PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK
FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS.**

BY ORDER OF THE SUPERIOR COURT.