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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

NICOLE PARIS, an individual, on behalf of
herself and others similarly situated,

PLAINTIFF,

v.

ALLERGY & ASTHMA MEDICAL
GROUP OF THE BAY AREA, INC.; and
DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. C22-02359

[Case Assigned for All Purposes to Hon.
Charles Treat in Dept. 12]

**NOTICE OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

*[Filed concurrently with Declaration of Liane
Katzenstein and Proposed Order]*

Date: TBD

Time: TBD

Dept.: 12

Complaint Filed: November 1, 2022

FAC Filed: March 7, 2023

Trial Date: None Set

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on _____ at _____ in Department 12 of the
3 above-entitled court, Plaintiff NICOLE PARIS will move the Court for an Order of Preliminary
4 Approval of the Class Action and PAGA Settlement Agreement (“Agreement”), a copy of which
5 is filed concurrently herewith.

6 The Motion will be made on the grounds that the proposed Agreement is fair, adequate,
7 reasonable, and in the best interest of the Class and the Parties.

8 The Motion will be based on this Notice of Motion, the attached Memorandum of Points
9 and Authorities, the Declaration of Liane Katzenstein Ly, the Agreement and Release, all other
10 papers and records on file in this action, and on such oral and documentary evidence as may be
11 presented at the hearing on this Motion.

12 DATED: January 3, 2024

KINGSLEY & KINGSLEY, APC

13
14 By: 

Liane Katzenstein Ly
Attorneys for Plaintiff NICOLE PARIS and the
Proposed Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff NICOLE PARIS (“Plaintiff”) submits this Memorandum of Points and Authorities
4 in support of Plaintiff’s Motion for Preliminary Approval of the Class Action and PAGA
5 Settlement Agreement reached between Plaintiff and Defendant Allergy & Asthma Medical Group
6 of the Bay Area, Inc. (“Defendant”) (Plaintiff and Defendant together, the “Parties”).

7 By this Motion, Plaintiff requests that the Court:

8 (1) Grant preliminary approval of the fully-executed Class Action and PAGA
9 Settlement Agreement (“Settlement” or “Agreement”). A true and correct copy of the Agreement
10 is attached hereto as Exhibit “1”;

11 (2) Approve the proposed Notice to Class Members, a copy of which is attached to the
12 Agreement as Exhibit “A,” and direct that the Notice be sent to Class Members in the manner set
13 forth in the Agreement; and

14 (4) Schedule a hearing on final approval of the proposed Settlement and Plaintiff’s
15 counsel’s application for an award of attorney’s fees and litigation costs at which Class Members
16 may be heard (“Final Approval Hearing”).

17 **II. FACTUAL BACKGROUND**

18 A. Litigation Overview and Procedural History

19 On November 1, 2022, Plaintiff NICOLE PARIS filed a Class Action Complaint seeking
20 recovery for: (1) failure to provide meal breaks pursuant to Labor Code sections 226.7 and 512;
21 (2) failure to provide rest breaks pursuant to Labor Code section 226.7; (3) failure to reimburse
22 business related expenses pursuant to Labor Code section 2802; (4) failure to issue accurate
23 itemized wage statements pursuant to Labor Code section 226(a); (4) penalties under Labor Code
24 section 203; and (5) violation of Business & Professions Code section 17200. (Declaration of Liane
25 Katzenstein Ly (“Ly Decl.”) ¶4.) Also on November 1, 2022, Plaintiff sent a notice letter, pursuant
26 to Labor PAGA, to the Labor Workforce Development Agency (“LWDA”) regarding her intent to
27 seek civil penalties for the same Labor Code violations above, under Labor Code section 2699, *et*
28 *seq.* (Ly Decl. ¶5.)

1 On March 7, 2023, Plaintiff filed a First Amended Class and Representative Action
2 Complaint adding an additional cause of action for penalties pursuant to Labor Code § 2699, *et*
3 *seq.*, the Private Attorneys General Act (“PAGA”) based on the underlying Labor Code violations
4 already pled. (Hereafter, the “Action”.) (Ly Decl. ¶6.)

5 Plaintiff brings the Class Action on behalf of a Proposed Class defined as:

6 All persons who are employed or have been employed as a non-exempt employee
7 by Allergy & Asthma Medical Group of the Bay Area, Inc., in the State of
8 California since four (4) years prior to the filing of this action to the present plus
9 any additional time during which the statutes of limitation for the causes of action
herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court,
the ‘Emergency Rules Related to COVID-19’. (“Proposed Class”)
(Ly Decl. ¶7.)

10 B. The Discovery Process

11 The Parties have yet to engage in formal discovery, instead focusing their efforts on
12 resolving this case through early mediation. Defendant informally produced a sampling of time
13 and pay data for mediation purposes only. (Ly Decl. ¶8.)

14 Defendant denies any liability or wrongdoing of any kind associated with the claims
15 alleged in the Action, disputes the damages and penalties claimed by Plaintiff, and further contends
16 that, for any purpose other than settlement, Plaintiff’s claims are not appropriate for class or
17 representative action treatment. (Ly Decl. ¶9.) Defendant contends, among other things, that, at
18 all times, it has complied with the California Labor Code, and the Industrial Wage Commission
19 Orders. (*Id.*)

20 Based on their own independent investigation and evaluation, Class Counsel is of the
21 opinion that the Agreement with Defendant is fair, reasonable and adequate, and in the best interest
22 of the settlement classes in light of all known facts and circumstances, including the risk of
23 significant delay, defenses asserted by Defendant, uncertainties regarding a class and
24 representative action trial on the merits, and numerous potential appellate issues. (Ly Decl. ¶10.)
25 Although Defendant denies any liability, Defendant is agreeing to this Agreement solely to avoid
26 the cost of litigation. (*Id.*) Accordingly, the Parties and their counsel desire to fully, finally, and
27 forever settle, compromise, and discharge all disputes and claims arising from or relating to the
28 Action on the terms set forth here. (*Id.*)

III. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES

Originally creatures of equity, class actions have been statutorily embraced by the Legislature whenever “the question [in a case] is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court” (Code Civ. Proc. § 382; *see, e.g., Fireside Bank v. Sup. Court* (2007) 40 Cal.4th 1069, 1078.) They serve an important function by “establishing a technique whereby the claims of many individuals can be resolved at the same time” thereby “eliminat[ing] the possibility of repetitious litigation and provid[ing] small claimants with a method of obtaining redress.” (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 469.) Public policy supports the use of class actions to enforce wage and overtime laws for the benefit of workers. (*See Sav-on Drug Stores, Inc. v. Sup. Court* (2004) 34 Cal.4th 319, 340.)

The certification question is “essentially a procedural one that does not ask whether an action is legally or factually meritorious.” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 439–440.) A court ruling on a certification motion must determine “whether . . . the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.” (*Collins v. Rocha* (1972) 7 Cal.3d 232, 238.)

The California Supreme Court has identified three certification requirements: (1) “the existence of an ascertainable and sufficiently numerous class”; (2) “a well-defined community of interest”; and, (3) “substantial benefits from certification that render proceeding as a class superior to the alternatives.” (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.) The “community of interest” requirement includes three additional requirements: (1) common questions of law or fact predominant over individual questions; (2) the class representatives have claims or defenses typical of the class; and (3) the class representatives can adequately represent the class. (*Ibid, citing Fireside Bank, supra*, 40 Cal.4th at 1089.)

Class certification for settlement purposes is proper in this case as the proposed Settlement Class satisfies each of the requirements under Code of Civil Procedure § 382. Accordingly, this

1 Court should certify the putative settlement class.

2 A. The Proposed Class Is Ascertainable and Sufficiently Numerous

3 1. Ascertainability

4 Putative class members are deemed “ascertainable” when they may be “readily identified
5 without unreasonable expense or time by reference to official records.” (*Rose v. City of Hayward*
6 (1981) 126 Cal.App.3d 926, 932.) In determining whether a class is ascertainable, a court
7 scrutinizes the class definition, the size of the class, and the means of identifying class members.
8 (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.)

9 Here, Plaintiff maintains that the proposed settlement Class is ascertainable for several
10 reasons: First, Defendant has agreed in the Agreement to provide a class list to the Administrator
11 containing each Class Member’s name, last-known mailing address, Social Security Number, and
12 PAGA Pay Periods for all putative class members after issuance of the preliminary approval order.
13 (Ly Decl. ¶12; Ex. 1 at § 1, ¶1.8.) Second, Settlement Class Members consist of Defendant’s non-
14 exempt employees, and Defendant is required to keep records of its non-exempt employees’
15 names, home addresses, and Social Security numbers. (See Wage Order 5-2001, subsection 7(c);
16 Ly Decl. ¶13.) Third and finally, Defendant informally produced time and pay data for a random
17 sample (20%) for Settlement Class Members, which confirms that all Settlement Class Members
18 may be readily identified based on Defendant’s records. (Ly Decl. ¶14.)

19 2. Numerosity

20 There is no set number that is required as a matter of law to maintain a class action. (See,
21 e.g., *Rose v. City of Hayward*, *supra*, 126 Cal.App.3d at p. 934.) Here, the proposed settlement
22 Class contains, based upon information and belief, approximately 262 hourly non-exempt
23 employees in the State of California. (Ex. 1 at § 4, ¶4.1.) Therefore, Plaintiff is confident she will
24 be able to establish that the proposed settlement Class is ascertainable and sufficiently numerous.
25 (Ly Decl. ¶15.)

26 ///

27 ///

1 B. There Is a Well-Defined Community of Interest

2 1. There Are Predominant Questions of Law and Fact

3 In deciding whether questions of common or general interest predominate, a court must
4 determine whether “the issues which may be jointly tried, when compared with those requiring
5 separate adjudication, are so numerous or substantial that the maintenance of a class action would
6 be advantageous to the judicial process and to the litigants.” (*Collins v. Rocha* (1972) 7 Cal.3d
7 232, 238; *accord, Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.) As a
8 general matter, if the defendant’s liability can be determined by facts common to all members of
9 the class, a class will be certified even if the members must individually prove their damages.”
10 (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916, 107; *accord, Knapp v.*
11 *AT & T Wireless Services, Inc.* (2011) 195 Cal.App.4th 932, 941.)

12 Here, Plaintiff argues that there are questions of law and fact common to the proposed
13 settlement Class that predominate over any questions affecting only individual Class Members.
14 (Ly Decl. ¶16.) These common questions include:

- 15 1) Whether Defendant failed to provide lawfully required meal periods and/or failed
16 to compensate employees one (1) hour’s wages in lieu thereof;
- 17 2) Whether Defendant failed to provide lawfully required rest periods and/or failed to
18 compensate employees one (1) hour’s wages in lieu thereof;
- 19 3) Whether Defendant failed to reimburse business-related expenses;
- 20 4) Whether Defendant failed to provide accurate itemized wage statements;
- 21 5) Whether Defendant failed to pay compensation due and owing upon termination
22 of employment;
- 23 6) Whether Defendant engaged in unfair competition; and,
- 24 7) Whether Defendant violated § 2699, *et seq.* of the Labor Code by engaging in the
25 acts previously alleged.

26 (Ly Decl. ¶17.)

27 Defendant maintained a company handbook containing uniform meal and rest break
28 policies for all hourly employees. (Ly Decl. ¶18.) However, Plaintiff alleges that the offices were

1 understaffed and often Plaintiff and the Class Members could not leave their stations to take meal
2 periods and/or rest periods or could not leave their stations within the first five hours of their shift.

3 Plaintiff's challenge to Defendant's uniform practices involves common factual and legal
4 issues that are amenable to class treatment. (Ly Decl. ¶19.) As the California Supreme Court has
5 emphasized, "[c]laims alleging that a uniform policy consistently applied to a group of employees
6 is in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for
7 class treatment." (*Brinker, supra*, 53 Cal.4th at 1033; *see also Bradley v. Networkers International,*
8 *LLC* (2012) 211 Cal.App.4th 1129, 1141-1146.) Moreover, a class of similarly situated employees
9 may be certified based on common questions of fact or law, even if each employee has to establish
10 the amount of his or her damages. (*See Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715,
11 741; *Sav-On Drug Stores, Inc. v. Superior Court, supra*, 34 Cal.4th at 340.)

12 Here, Plaintiff maintains that the proposed Settlement Class Members suffered the same
13 injuries, in the same manner: (1) Settlement Class Members did not receive their meal and rest
14 periods as required; (2) Settlement Class Members were not reimbursed for business-related
15 expenses; (3) Settlement Class Members were not provided accurate itemized wage statements;
16 and (4) Settlement Class Members were not paid all wages owed upon termination/resignation.
17 (Ly Decl. ¶20.) Plaintiff alleges that Settlement Class Members worked in the same capacity for
18 the same employer and were subject to the same employment policies and practices; the questions
19 of fact and claims regarding the status of these employees are the same for each member of the
20 settlement Class. Accordingly, for purposes of settlement, the evidence reviewed by Class Counsel
21 demonstrates that common meal and rest practices applied to the proposed Settlement Class
22 Members and certification for settlement purposes is appropriate. (Ly Decl. ¶21.)

23 2. The Class Representative Has Claims Typical of the Proposed Class

24 A putative class representative's claim must be "typical," but not necessarily identical, to
25 the claims of other class members. The test of typicality "is whether other members have the same
26 or similar injury, whether the action is based on conduct which is not unique to the Class
27 Representatives, and whether other class members have been injured by the same course of
28 conduct." (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) Thus, it is sufficient

1 that the representative is similarly situated so that he or she will have the motive to litigate on
2 behalf of all class members. (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) Thus,
3 it is sufficient that the representative is similarly situated so that he or she will have the motive to
4 litigate on behalf of all class members. (*See, e.g., Classen v. Weller* (1983) 145 Cal.App.3d 27,
5 45.) It is not necessary that the class representative have personally incurred all of the damages
6 suffered by each of the other class members. (*Wershba v. Apple Computer, Inc.* (2001) 91
7 Cal.App.4th 224, 238.)

8 Plaintiff worked as an “hourly non-exempt employee” for Defendant in the Walnut Creek,
9 CA location. (Ly Decl. ¶22.) Plaintiff alleges that she: (1) worked without being provided
10 meal/rest periods as required by law; (2) worked without being reimbursed for costs associated
11 with personal cellphone usage; (3) worked without being provided accurate itemized wage
12 statements; and (4) worked without being paid all wages due upon separation. She also alleges
13 that she experienced derivative claims for unfair business competition (B&P Code §17200) and
14 Labor Code §2699, *et seq.* (Ly Decl. ¶23.) Plaintiff also contends that her claims are typical of
15 those of the settlement Class. (Ly Decl. ¶24.)

16 3. Plaintiff Contends That As the Class Representative She Has and Will
17 Fairly Represent the Interests of the Settlement Class Members

18 A putative class representative must show that she can adequately represent the class.
19 (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.App.4th 1096, 1104.) The representative,
20 through qualified counsel, must be capable of “vigorously and tenaciously” protecting the interests
21 of the class members. (*Simons v. Horowitz* (1984) 151 Cal.App.3d 834, 846.)

22 Plaintiff believes that she is capable of fairly representing and adequately protecting the
23 interests of the proposed Settlement Class Members. (Ly Decl. ¶25.) Plaintiff’s interests in this
24 litigation are coextensive with the interests of the proposed Settlement Class Members. The
25 members of the proposed settlement Class all worked for Defendant during the relevant time
26 period and incurred the same type of alleged damages with regard to Defendant’s alleged violations
27 of the law. (Ly Decl. ¶26.) Moreover, Plaintiff has agreed to serve as Class Representative and
28 has retained qualified Counsel who is experienced in prosecuting wage and hour class actions. (Ly

Decl. ¶27.) This demonstrates her commitment to bringing about the best possible results for the benefit of the proposed settlement Class. (Ly Decl. ¶28.) Plaintiff has provided her Counsel with all necessary and pertinent information. (Ly Decl. ¶29.) She has been a very active participant in the litigation including having frequent contact with Settlement Class Members, responding to informal discovery, and working closely with Class Counsel to develop the theories of liability. (Ly Decl. ¶30.) Plaintiff has provided her Counsel with all necessary and pertinent information. (Ly Decl. ¶31.) Therefore, Plaintiff believes that she has and will continue to adequately represent the proposed Settlement Class Members. (Ly Decl. ¶32.)

C. The Class Action Vehicle Is Superior to the Alternatives

“The ultimate question in every case of this type is whether . . . the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.” (*Lockheed Martin, supra*, 29 Cal.App.4th at 1104–1105.) The California Supreme Court has directed the courts to utilize the class action device to fashion “an effective and inclusive group remedy.” (*Richmond v. Dart Indus., Inc.* (1981) 29 Cal.3d 462, 469.) Normally, in making its class certification decision, the Court must determine that a class action would be superior to alternate means for a fair and efficient adjudication. If the causes of action may be adjudicated in a single proceeding, thereby saving time, reducing waste, and limiting duplication of effort, class certification is superior to individual litigation. (*See, e.g., Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 816.) Since the Parties agreed to a settlement in principal and now seek Court approval of that Settlement, Plaintiff submits that there is not as much need as there would be in an ordinary motion for class certification for the Court to determine that the case can be manageably tried.

Plaintiff maintains that class treatment would be the superior method of managing this case. A class action is superior to individual litigation “when numerous parties suffer injury of insufficient size to warrant individual action and when denial of class relief would result in unjust advantage to the wrongdoer.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.) In cases such as this, where individual damages may be small, the class action device is the most

feasible method of recovery. (*See, e.g. Lockheed Martin, supra*, 29 Cal.4th at 1131.) In this regard, the superiority of class treatment is evident here because individual pursuit of class members' claims may not be economically viable. (Ly Decl. ¶33.) The only alternative to certification would be to force approximately 262 employees to join this action, file individual, uniform actions, or abandon their legal rights altogether. (Ly Decl. ¶34.) Plaintiff maintains that this economic reality would result in a windfall for Defendant if this case were not certified. (Ly Decl. ¶35.)

IV. THE PROPOSED SETTLEMENT

A. The Settlement Class

For purposes of Agreement, the settlement class is defined as: "all current or former non-exempt employees who worked for Defendant in the State of California at any time from May 7, 2018 through September 28, 2023" ("Class"). The "Settlement Class Member" means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee). (Ly Decl. ¶36; Agreement, Ex. 1 at § 1, ¶1.9.)

The Class Period is May 7, 2018 through September 28, 2023. (Ly Decl. ¶37; Ex. 1 at §1, ¶1.12.) As of August 29, 2023 (the date of mediation), and based on documents and other information produced by Defendant, there are approximately 262 Settlement Class Members. (Ly Decl. ¶38; Ex. 1 at §4, ¶4.1.)

B. Aggrieved Employees

For purposes of the Agreement, the Aggrieved Employees are defined as: "all current or former non-exempt employees who worked for Defendant in the State of California at any time from March 7, 2022 (one year prior from the March 7, 2023 filing of Plaintiff's First Amended Complaint) through September 28, 2023." ("Aggrieved Employee" or "PAGA Member"). (Ly Decl. ¶39; Agreement, Ex. 1 at § 1, ¶1.4.)

The PAGA Period is from March 7, 2022 through September 28, 2023. (Ly Decl. ¶40; Ex. 1 at §1, ¶1.31.) As of August 29, 2023 (the date of mediation), and based on documents and other information produced by Defendant, there are approximately 4,853 PAGA pay periods. (Ly Decl. ¶41.)

1 C. Gross Settlement Amount

2 As detailed fully in the Agreement, the Settlement provides for Defendant to pay a Gross
3 Settlement Amount of \$480,000.00, which includes the sum of the Individual Class Payments, the
4 Class Representative service award, the Class Counsel Award, PAGA Payment, and the Settlement
5 Administration Costs. (Ly Decl. ¶42; Ex. 1 at § 1, ¶1.22.)

6 The Net Settlement Amount is the Gross Settlement Amount, less Class Counsel Award,
7 Class Representative Enhancement, PAGA Payment, and Settlement Administration Costs. (Ly
8 Decl. ¶43; Ex. 1 at § 1, ¶1.28.)

9 The Parties estimate the amount of the Net Settlement Amount as follows:

10	Gross Settlement Amount:	\$	480,000.00
11	Less Class Representative Enhancement:	\$	10,000.00
12	Less Class Counsel's Fees:	\$	160,000.00
13	Less Class Counsel's Costs:	\$	17,000.00
14	Less PAGA Payment:	\$	5,000.00
			<i>(\$3,750.00 to the LWDA and \$1,250.00 to remain in the Net Settlement Amount to be distributed to Aggrieved Employees only)</i>

15 Less Administrator Costs: \$ 7,500.00

16 Anticipated Net Settlement Amount \$ 281,750
17 (Ex. 1 at § 3.)

18 D. Individual Settlement Payments

19 The Individual Class Payment amount of each Participating Class Member is an
20 individualized amount that is based on Participating Class Member's pro rata share of the Net
21 Settlement Amount calculated according to the number of Workweeks worked during the Class
22 Period. (Ex. 1 at §1, ¶1.23; *see also* Ex. A to the Agreement [Class Notice].) Specifically,
23 Individual Class Payments will be paid from the Net Settlement Amount and shall be paid pursuant
24 to the settlement formula as follows: (a) dividing the Net Settlement Amount by the total number
25 of Workweeks worked by all Participating Class Members during the Class Period and (b)
26 multiplying the result by each Participating Class Member's Workweeks. (*Id.*)

27 Thirty-three percent (33.33%) of the Gross Settlement Amount to each Participating Class
28 Member shall be deemed payment for settlement of claims for wages and expenses and will be

1 subject to appropriate deductions and withholdings calculated and made by the Administrator. (Ex.
2 1 at § 3, ¶3.2.4.1.) Sixty-six (66%) of the Gross Settlement Amount to each Participating Class
3 Member shall be deemed payment for settlement of claims for penalties and interest and other non-
4 wage payments not subject to withholdings. (*Id.*)

5 The Agreement provides for a specific and detailed dispute process regarding Individual
6 Class Payments. (*See* Ex. 1 at § 8, ¶8.8.4.)

7 The Individual PAGA Payment of each PAGA Member will be paid from the Aggrieved
8 Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of
9 Workweeks worked during the PAGA Period. (*See* Ex. 1 at §1, ¶1.24.) Specifically, Individual
10 PAGA Payments will be calculated by: (a) dividing the amount of the Aggrieved Employees' 25%
11 share of PAGA Penalties (\$1,250.00) by the total number of PAGA Pay Periods worked by all
12 Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved
13 Employee's PAGA Pay Periods. Ex. 1 at §3, ¶3.2.5.1.)

14 E. Process for Administering Settlement After Preliminary Approval

15 The detailed Notice Procedure established by the Agreement will efficiently and accurately
16 ensure that Notice is provided to the Settlement Class Members. (Ex. 1 at § 8, ¶8.4.) The Parties
17 have agreed to use a reputable third-party claims administrator, Apex, to administer the
18 Agreement. (Ex. 1 at § 1, ¶1.2.)

19 F. Process for Settlement Class Members to Respond to Class Notice

20 Settlement Class Members will have an opportunity to request exclusion from the
21 Settlement Class (i.e., opt out) and to object to the Settlement at the Final Approval Hearing. (Ex.
22 1 at § 8, ¶8.5.)

23 Settlement Class Members who do not opt out of the Settlement Class may object to the
24 Agreement by mailing written objections to the Administrator no later than sixty (60) calendar
25 days after the mailing of the Notice Packet. (Ex. 1 at §8, ¶8.5; ¶8.7.) This deadline applies
26 notwithstanding any argument regarding alleged late receipt or non-receipt of the Notice Packet.
27 (*Ibid.*) Any Settlement Class Member who fails to timely mail written objections in this manner
28 shall be deemed to have waived any objections and shall be foreclosed from making any objection

1 to the Agreement and from filing any appeal from any order granting final approval issued by the
2 Court. (*Ibid.*)

3 Settlement Class Members who timely and validly return a Request for Exclusion from the
4 Agreement shall have no right to object and shall be foreclosed from making any objection to the
5 Agreement. (*Ibid.*) The Administrator shall promptly provide any such objections to Class Counsel
6 and Defendant's Counsel, who in turn shall file them with the Court in connection with the final
7 approval motion. (*Ibid.*)

8 Any Settlement Class Member wishing to appear at the final approval hearing to object to
9 the Agreement shall expressly indicate this in his or her written objections. (*Ibid.*) The making of
10 an objection to this Agreement does not affect the Settlement Class Members' ability to return a
11 valid Claim Form and become a Qualified Claimant if the Agreement is finally approved. (*Ibid.*)

12 G. The Release

13 The Released Claims include, but are not limited to Labor Code §§ 201, 202, 203, 226(a),
14 226.7, 510, 512, 2802, 2699, and the related IWC Wage Orders and Business & Professions Code
15 §§ 17200, *et seq.*, and include claims based on alleged violations of these Labor Code and Wage
16 Order provisions and all other claims, such as those under the California Labor Code, Wage
17 Orders, regulations, and/or other provisions of law, that could have been pleaded based on the facts
18 asserted in the Action, including: (1) failure to provide meal breaks pursuant to Labor Code §§
19 226.7 and 512; (2) failure to provide rest breaks pursuant to Labor Code § 226.7; (3) failure to
20 reimburse expenses pursuant to Labor Code § 2802; (4) violation of Labor Code § 226(a) regarding
21 inaccurate wage statements; (5) penalties pursuant to Labor Code § 203 regarding failure to timely
22 pay wages upon separation of employment; (6) violation of Business & Professions Code § 17200
23 regarding unfair competition; (7) penalties pursuant to Labor Code § 2699, *et seq.*; and (8) interest,
24 fees, and costs (collectively, the "Released Claims"). The enumeration of these specific statutes
25 shall neither enlarge or narrow the scope of res judicata based on the claims that were asserted in
26 the Action or could have been asserted in the Action based on the facts and circumstances alleged
27 in any Complaint on file in the Action. Except as set forth in Section 6.3 of this Agreement,
28 Participating Class Members do not release any other claims, including claims for vested benefits,

wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period. (Ex. 1 at §6, ¶6.2.)

The Release by Non-Participating Class Members Who Are Aggrieved Employees is defined as: "All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from any and all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the PAGA Notice during the PAGA Period." (Ex. 1 at §6, ¶6.3.)

V. ARGUMENT

A. Plaintiff Requests Approval of This Class Action Settlement

The case of *Kullar v. Foot Locker Retail, Inc* (2008) 168 Cal.App.4th 116, 128, set forth several factors that the Court should analyze in determining whether to approve a class action settlement. These factors include: (1) the strength of plaintiff's case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement.

In *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal. App. 4th 399, 409, the court clarified that a Kullar showing does not require the parties to submit the outer reaches of maximum possible recovery without taking into account the actual risks of certification, decertification, dispositive motions, and trial, so long as there is a record which allows "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." *Munoz*, 186 Cal. App. 4th at 409.

The proposed settlement satisfies each of these factors. (Ly Decl. ¶44.) Class Counsel conducted extensive informal discovery before entering into meaningful settlement negotiations in this matter that included time and pay data for a randomly selected sample of 20% of the Class. (*Id.* at Ly Decl. ¶¶8-11.) This discovery permitted Class Counsel to fairly evaluate the strength of

1 the case and the risks associated with ongoing litigation. (Ly Decl. ¶45.) Class Counsel is
2 experienced in handling wage and hour class actions and, after weighing all of the following
3 factors, supports this Agreement. (Ly Decl. ¶46.)

4 1. The Strength of Plaintiff's Case

5 a. Defendant Failed to Provide Lawful Meal Breaks

6 Under California Labor Code section 512 and IWC Wage Order No. 5, no employer shall
7 employ any person for a work period of more than five hours without providing a meal period of
8 not less than thirty minutes. The first meal period must be permitted to commence no later than
9 after five hours of work, or the start of the sixth hour of work (5.0 hours on the clock). (*Brinker*
10 *Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1049.) The second meal period must be
11 permitted to commence no later than after ten hours of work, or the start of the eleventh hour of
12 work (10.0 hours on the clock). (*Ibid.*) The California Supreme Court succinctly described Section
13 512's mandate: "Employers must afford employees uninterrupted half-hour periods in which they
14 are relieved of any duty or employer control and are free to come and go as they please." (*Brinker*
15 *Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1037.)

16 Here, Defendant instituted a common practice of understaffing its offices. Plaintiff alleges
17 that this understaffing resulted in missed and/or late meal periods. (Ly Decl. ¶47.) Plaintiff and
18 the Proposed Class consistently worked shifts over five (5) hours. (Ly Decl. ¶48.) Defendant
19 failed to provide Plaintiff and the Proposed Class with proper meal periods of not less than thirty
20 (30) minutes as required by the Labor Code during the relevant time period. (Ly Decl. ¶49.)
21 Defendant has had a consistent policy of requiring Plaintiff and the Proposed Class to remain at
22 their post, without relief, while taking meal breaks during each scheduled shift. (Ly Decl. ¶50.)
23 Plaintiff was only able to take meal breaks when another employee was there to relieve her.
24 Plaintiff also never received meal premiums for these violations. (Ly Decl. ¶51.) Defendant has
25 had a consistent policy of paying meal period premiums if any, at the base rate and not the blended
26 rate in violation of Labor Code §§ 226.7 and 512. (Ly Decl. ¶52.)

27 Defendant denies these allegations and argues that Plaintiff and the class received all
28 complaint rest periods. (Ly Decl. ¶53.) Additionally, Defendant argues that given the accurate

1 policy, class certification will be difficult.

2 b. Defendant Had No Practice of Providing Class Members with
3 Lawful Rest Breaks

4 Labor Code section 226.7, subdivision (c), requires an employer to pay an additional hour
5 of compensation for each workday the employer fails to provide a rest period according to law.
6 Employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked, or
7 major fraction thereof. (Cal. Code Regs., tit. 8, § 11070, subd. 12(A).)

8 Plaintiff and the Proposed Class Members’ rest period claims arise from a common course
9 of conduct wherein Defendant did not provide employees with the opportunity to take first, second,
10 and/or third 10-minute rest breaks in compliance with California law. (Ly Decl. ¶54.) The
11 California Supreme Court has held: “Employees are entitled to 10 minutes’ rest for shifts from
12 three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10
13 hours, 30 minutes for shifts of more than 10 hours up to 14 hours and so on.” (*Brinker Rest. Corp*
14 *v. Superior Court*, *supra*, 53 Cal.4th at 1029.) In an eight-hour work day, being denied the two
15 paid rest breaks in a day is “essentially perform[ing] 20 minutes of ‘free’ work.” (*Murphy v.*
16 *Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1104).

17 The Court has also clarified what steps an employer must take to make rest breaks available
18 to its employees:

19
20 An employer is required to authorize and permit the amount of rest break time
21 called for under the wage order for its industry. If it does not—if, for example, it
22 adopts a uniform policy authorizing and permitting only one rest break for
23 employees working a seven-hour shift when two are required—it has violated the
24 wage order and is liable. No issue of waiver ever arises for a rest break that was
25 required by law but never authorized; if a break is not authorized, an employee has
26 no opportunity to decline to take it.

27 (*Brinker Rest. Corp. v. Superior Court*, *supra*, 53 Cal.4th at 1033 (emphasis added).)

28 Employers must authorize and permit a net ten-minute paid rest period for every four
hours, or major fraction thereof, of work for its employees. If an employer does not, then the
employer must pay the employee one hour of pay at the employee’s regular rate of pay for each
workday that the rest period is not provided. (Cal. Code Regs., tit. 8, § 11050, subd. 12(B).)

1 Here, Defendant had a common practice of understaffing its offices, resulting in missed
2 rest periods. Plaintiff and the Proposed Class consistently worked shifts without being provided
3 compliant rest periods. (Ly Decl. ¶55.) Plaintiff maintains that Defendant failed to provide
4 Plaintiff and the Class with rest breaks of not less than ten (10) minutes as required by the Labor
5 Code during the relevant time period. (Ly Decl. ¶56.) Plaintiff and the Proposed Class were
6 required by Defendant to remain at their post, without relief, during rest periods in violation of
7 Labor Code. (Ly Decl. ¶57.) Defendant had a consistent policy of paying rest premiums, if any,
8 at the base rate and not the blended rate in violation of Labor Code §§ 226.7.

9 Defendant denies these allegations and argues that Plaintiff and the class received all
10 complaint rest periods. (Ly Decl. ¶58.) Additionally, Defendant argues that given the accurate
11 policy, class certification will be difficult.

12 c. Defendant Failed to Reimburse Necessary Business Expenses

13 Labor Code section 2802 provides that an employer must “indemnify his or her employee
14 or all necessary expenditures or losses incurred by the employee in direct consequence of the
15 discharge of his or her duties” (Lab. Code, § 2802, subd. (a).)

16 Here, Defendant has failed to reimburse Plaintiff and the Proposed Class for the cost of
17 using their personal cellphones for business related purposes. (Ly Decl. ¶59.) Plaintiff alleges
18 that Defendant required Plaintiff and the Proposed Class to be available by cellphone and
19 answer/use their cellphones to communicate with patients while working, and this was necessary
20 to perform their job duties. (Ly Decl. ¶60.) Plaintiff also alleges that she had to communicate with
21 pharmaceutical representatives to schedule meetings for Defendant. (Ly Decl. ¶61.) The
22 pharmaceutical representatives would message or call her on her personal cellphone to schedule
23 these meetings. (*Id.*) These cellphones were not provided by Defendant, and Defendant failed to
24 reimburse Plaintiff and the Proposed Class for the costs associated with using these personal
25 cellphones. (Ly Decl. ¶63.) Defendant denies Plaintiff’s allegations about requiring employees’
26 availability by personal cellphone, employees having to use their personal cellphones to
27 communicate with patients, and employees having to communicate with pharmaceutical
28 representatives via personal cellphones. (Ly Decl. ¶64.)

1 d. The Defendant Failed to Issue Lawful Wage Statements

2 California Labor Code §226(a) requires Defendant to provide its employees with accurate,
3 itemized written wage statements that show, in relevant part, total hours worked by the employee,
4 the name and address of the legal entity that is the employer, and all applicable hourly rates and
5 the corresponding number of hours worked.

6 Defendant has failed to include the appropriate rates of pay and the accurate hours worked
7 on itemized wage statements for Plaintiff and the Proposed Class. Plaintiff alleges that Defendant
8 issued to Plaintiff and the Proposed Class itemized wage statements that did not include all
9 applicable hourly rates in effect during the pay period and the corresponding number of hours
10 worked at each hourly rate by the employee. (Ly Decl. ¶64.) Plaintiff and the Proposed Class are
11 issued wage statements that do not accurately show meal and rest premiums as a result of the
12 claims alleged above and when they are provided, they are not provided at the proper rate. Thus,
13 Plaintiff brings a derivative wage statement claim. (Ly Decl. ¶65.)

14 Defendant denies Plaintiff's allegations about unlawful wage statements.

15 e. Defendant Failed to Provide All Wages Due at the Time of
16 Termination

17 Under Labor Code section 203, if an employer fails to provide wages at the time of an
18 employee's termination or within seventy-two (72) hours of resignation, then the employee's
19 wages shall continue as a penalty for up to thirty (30) days. (Labor Code § 203.) Section 203
20 reflects a public policy that favors the full and prompt payment of earned wages. (See, e.g.,
21 *Barnhill v. Robert Saunders & Co.* (1981) 125 Cal.App.3d 1, 7; *Mamika v. Barca* (1998) 68
22 Cal.App.4th 487, 492.)

23 Here, Plaintiff and numerous Proposed Class Members are no longer employed by
24 Defendant. (Ly Decl. ¶66.) Defendant failed to pay all wages owed and due upon their termination
25 and/or resignation. (Ly Decl. ¶67.) Defendant's actions were willful, as they have intentionally
26 failed or refused to perform an act which was required to be done. (See *Amaral v. Cintas Corp.*
27 *No. 2* (2008) 163 Cal.App.4th 1157, 1201.) "The failure to pay is willful if the employer 'knows
28 what [it] is doing [and] intends to do what [it] is doing', and does not also require proof that the

1 employer acted with “a deliberate evil purpose to defraud work[ers] of wages which the employer
2 knows to be due.” (*Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859, 868.)
3 Defendant was fully aware of its payment policies and practices and intended to carry out said
4 policies and practices. Therefore, Defendant is liable for damages.

5 Defendant denies Plaintiff’s allegations regarding wages due at termination. (Ly Decl.
6 ¶67.)

7 f. The Risks Associated with the PAGA Claim

8 California’s Private Attorneys General Act (“PAGA”), Labor Code § 2698, *et seq.*, permits
9 private litigants to recover civil penalties for violations of the Labor Code. PAGA provides that
10 plaintiffs may recover previously established civil penalties (section 2699(a)) or, if none were
11 established, plaintiffs may recover default penalties provided in section 2699(f) in the amount of
12 \$100 per employee per pay period for the initial violation and \$200 for subsequent violations.

13 The Parties discounted the PAGA claim for multiple reasons. (Ly Decl. ¶69.) First, the
14 aggrieved employees’ PAGA claims are derivative of all the foregoing class claims. (Ly Decl.
15 ¶70.) Second, a court has discretion to award less than the maximum penalty. (Ly Decl. ¶71.)
16 Labor Code § 2699(e)(2) (“a court may award a lesser amount than the maximum civil penalty
17 amount specified by this part if, based on the facts and circumstances of the particular case, to do
18 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory”). *See*
19 *e.g., Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647, 669
20 (affirming award of 10% of maximum PAGA penalty). Finally, the settlement Class is
21 compensated for these violations in the proposed Agreement, and thus any PAGA recovery for
22 these same violations would be duplicative. (Ly Decl. ¶72.) As such, the Agreement’s
23 contemplated PAGA payment of \$5,000.00 is appropriate. (Ly Decl. ¶73.) *See Nordstrom*
24 *Commissions Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming settlement allocating \$0 of \$6.4
25 million settlement to PAGA penalties).

26 2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation

27 There is significant expense associated with the class certification process, which the
28 Parties can avoid by entering into the contemplated Agreement now. (Ly Decl. ¶74.) If the Court

1 did eventually certify a class, trial of a case involving approximately 262 Settlement Class
2 Members would require the retention of expensive expert witnesses, the accrual of extensive
3 litigation costs, and a significant time overlay by the parties. (Ly Decl. ¶75.) Moreover, given the
4 complexity and unsettled nature of the issues in this case it is likely that any outcome at trial would
5 have resulted in a lengthy and costly appeal. (Ly Decl. ¶76.) An appeal would result in further
6 delay for the Settlement Class Members who are waiting for a resolution in this matter. (*Id.*)

7 3. The Risk of Maintaining Class Action Status Through Trial

8 This case has not been certified to be tried as a class action. (Ly Decl. ¶77.) While Plaintiff
9 believes there is strong evidence to support certification of several possible subclasses (especially
10 a rest period class), certification is always hard fought and subject to judicial discretion. Moreover,
11 in class actions, decertification is always a possibility. (*Id.*) In attempting to certify a class, the
12 parties would need to conduct multiple depositions, including of the Class Representative and of
13 several person(s) most knowledgeable regarding Defendant's meal and rest policies. (*Id.*) There
14 is a risk for both sides as to what these depositions will reveal and whether they will support class
15 certification to the extent expected. (*Id.*)

16 4. The Amount Offered in Settlement

17 It was very difficult for the Parties to reach this Settlement of \$480,000.00. (Ly Decl. ¶78.)
18 This Settlement is the result of adversarial, non-collusive, and arms-length negotiations. (Ly Decl.
19 ¶79.) The Parties arrived at the settlement after extensive investigation and discovery, careful
20 evaluation of the law, risks, and all information substantiating the amount of penalties reasonably
21 likely to be awarded to the class were the trier of fact to find Defendant liable, and the assistance
22 of an experienced mediator. (*Id.*)

23 a. Plaintiff's Assessment of Defendant's Maximum Exposure

24 The full value of the Meal Period claim, without any discount, was approximately
25 \$567,224.00, according to Plaintiff's calculations. (Ly Decl. ¶80.) This amount is comprised of
26 late meal violations, missed meal violations, and short meal violations with an offset for meal
27 premiums paid. (Ly Decl. ¶81.) For the reasons above, especially the risks associated with class
28 certification, Plaintiff determined that accepting a discount of the full amount was appropriate. (Ly

Decl. ¶82.)

The full value of the Rest Period claim, without any discount, was approximately \$3,187,918.00, according to Plaintiff's calculations. (Ly Decl. ¶83.) This amount assumes a 100% violation rate for all class members. (Ly Decl. ¶84.) Given, that the policy maintained by Defendant was accurate, and given that there are no records to look to for violations, Plaintiff determined that accepting a steep discount of the full amount was appropriate. (Ly Decl. ¶85.)

With regard to the Reimbursement Claim analysis, Plaintiff believed that it was reasonable to value the potential reimbursement at \$30.00 per month, per employee, for reimbursement of personal cellphone usage. This brought the damages for this claim to \$217,410.00. (Ly Decl. ¶86.)

Plaintiff valued the Wage Statement Claim, without discount, at \$476,900. (Ly Decl. ¶87.) Plaintiff used \$100 for each wage statement issued (pay period) during the one year period which results in this estimated exposure of for class members. (Ly Decl. ¶88.) This figure is overstated because Labor Code §226(e)(1) uses \$50 for the initial pay period (not \$100) and puts a \$4,000 cap on wage statement penalties per employee. (Ly Decl. ¶89.) Due to the risk discussed above that 226(a) liability would not attach under *Naranjo* and *Maldonado*, Plaintiff determined that a steep discount of this claim was fair for settlement purposes. (Ly Decl. ¶90.)

Plaintiff valued the Waiting Time Claim, tied to the Wage/Overtime claim, at \$799,807. (Ly Decl. ¶91.) Considering the derivate nature of Labor Code §203 and the dispute over whether class members were owed any wages, Plaintiff determined that accepting a discount on this claim was appropriate. (Ly Decl. ¶92.)

Finally, Plaintiff calculated the value of the PAGA claim at \$947,200.00 for Settlement Class Members (using \$100 per pay period). (Ly Decl. ¶93.) The main risk taken into account with PAGA is the discretionary nature of the penalty award. (Ly Decl. ¶94.) A judge can award the statutory maximum of \$100 for the initial violation and \$200 thereafter or – in theory – one cent per wage statement. (Ly Decl. ¶95.) While there is a dearth of available authority, in Plaintiff's view, were she to succeed on any of the underlying Labor Code violations, it is not likely that a Judge would also award a large amount of penalties of top of any damages recovered.

1 (Ly Decl. ¶96.)

2 Per Plaintiff's assessment, the maximum potential value of all of Plaintiff's and the
3 Settlement Class Members' claims was approximately \$6,196,459.00. (Ly Decl. ¶97.) However,
4 as a result of the forgoing risks on the merits and class certification, Class Counsel believes the
5 Gross Settlement Amount of \$480,000.00 is fair and reasonable. (Ly Decl. ¶98.)

6 5. The Experience and Views of Counsel

7 Finally, counsel's experience and success in similar class actions also weigh in favor of
8 preliminary approval. *See Wershba, supra*, 91 Cal.App.4th at 245. Kingsley & Kingsley, APC is
9 very experienced in prosecuting complex employment litigation, and the firm has focused its
10 practice since the year 2000 on complex wage, hour, and working condition violations. (Ly Decl.
11 ¶¶99-101.) The firm is well versed in class action litigation and has diligently and aggressively
12 pursued this action. (*Id.*) Kingsley & Kingsley, APC currently serves as Class Counsel for dozens
13 of pending class action lawsuits in Northern, Central, and Southern California. (*Id.*) A list of
14 representative cases that Kingsley & Kingsley, APC has handled is included in the accompanying
15 declaration of Liane Katzenstein Ly (*Id.*) After factoring in the risks explained above, Class
16 Counsel believes that the proposed settlement is fair and reasonable. (Ly Decl. ¶102.)

17 6. The Proposed Plan of Allocation Is Fair and Reasonable

18 Plans of allocation are subject to the same standard of review as class action settlements;
19 they must be "fair, adequate and reasonable." (*See, e.g., Officers for Justice v. Civil Service*
20 *Comm'n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
21 compensates Settlement Class Members based on pro rata share of the Net Settlement Amount
22 calculated according to the number of Workweeks worked during the Class Period. The lump sum
23 payment to each member of the Settlement Class not excluding him/ herself will be determined by
24 dividing the Net Settlement Amount by the total number of eligible Workweeks worked by all
25 Participating Class Members during the Class Period and multiplying the result by each
26 Participating Class Member's Workweeks. This allocation distributes Settlement funds
27 proportionally to each class member's damages and should therefore be approved as fair, adequate,
28 and reasonable. (Ly Decl. ¶103; Ex. 1 at § 3, ¶3.2.4.)

1 7. The Proposed Notice Fairly Apprises the Settlement Class Members of the
2 Terms of the Settlement and of the Class Members' Rights under the
3 Settlement

4 Plaintiff requests that the Court approve the proposed plan and form of Class Notice. The
5 standard for determining the adequacy of notice is whether the notice has “a reasonable chance of
6 reaching a substantial percentage of the class members.” (*Cartt v. Superior Court* (1975) 50
7 Cal.App.3d 960, 974.) Pursuant to the Agreement, the Notice will be sent to the last known address
8 of all Settlement Class Members, or to an updated address if one is located in the National Change
9 of Address Database. (Ex. 1 at § 4, ¶4.4.1). If any Notices are returned as undeliverable, the
10 Administrator will undertake another reasonable address verification measure to locate a valid
11 mailing address and will promptly send the Notice to the new address. (*Id.*) As such, the Notice
12 is likely to reach most, if not all, Settlement Class Members.

13 With respect to the contents of the Notice, the “notice given to the class must fairly apprise
14 the class members of the terms of the proposed compromise and of the options open to dissenting
15 class members.” (*Trotsky v. L.A. Fed. Sav. & Loan Ass’n* (1975) 48 Cal.App.3d 134, 151–52.)
16 The purpose of a class notice is to give class members sufficient information to decide whether
17 they should accept the benefits offered, opt out and pursue their own remedies, or object to the
18 settlement. (*Ibid.*)

19 Here, the Notice clearly explains the proposed Agreement and the options to opt out of the
20 Settlement or object to it at the Final Approval Hearing. (Ex. 1 at § 8, ¶8.5;8.7; *see also* Ex. A to
21 the Agreement at pp. 1-3, 5-6 [Class Notice].) In short, the Court should approve the proposed
22 Class Notice because it describes the proposed settlement with enough specificity to allow
23 Settlement Class Members to make an informed choice regarding whether to participate.

24 **VI. THE SERVICE AWARD TO THE NAMED PLAINTIFF**

25 The Class Representative is entitled to an enhancement for her valiant effort and time
26 expended in this matter. (Ly Decl. ¶104.) The time spent by Nicole Paris is significant and includes
27 researching and retaining competent counsel; providing information to Class Counsel regarding
28 the nature of the work at Defendant; compiling relevant documents; working closely with Class

1 Counsel to develop the theories of liability and martial relevant evidence; regularly discussing the
2 status of the case with Class Counsel; providing informal discovery responses; and responding
3 promptly to Class Counsel’s communications regarding settlement. (*Id.*) Thus, in addition to the
4 sums paid to Settlement Class Members, Plaintiff requests a proposed litigation enhancement in
5 the amount of \$10,000.00, to be paid from the Gross Settlement Amount. (Ex. 1 at § 3, ¶3.2.1.) As
6 set forth in the Agreement, Plaintiff will also be entering into a general release of liability pursuant
7 to Civil Code Section 1542. (Ly Decl. ¶105; Ex. 1 at § 6, ¶6.1-6.1.1.)

8 Class Counsel considers this to be a fair and reasonable enhancement. (Ly Decl. ¶106.)
9 The enhancement takes into consideration the time, effort, and expense incurred by Plaintiff in
10 coming forward to litigate this matter on behalf of all Settlement Class Members. (*Id.*) Plaintiff
11 will provide a detailed declaration with the Final Approval Motion detailing her participation and
12 further justification for the enhancement. (*Id.*)

13 **VII. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY**

14 As indicated on the Proof of Service, Plaintiff’s Motion for Approval of Class Action
15 Settlement (“Motion”) will be concurrently uploaded to the Labor and Workforce Development
16 Agency’s (“LWDA”) website on the date this Motion is filed as required by statute. Proof of
17 submission of Plaintiff’s Motion, all related documents, and copy of the email from the LWDA
18 confirming receipt is attached to the Declaration of Liane Katzenstein Ly as Exhibit “3.” (Ly Decl.
19 ¶106.)

20 **VIII. CONCLUSION**

21 Plaintiff respectfully submits that the proposed Agreement is fair, adequate, reasonable,
22 and in the best interest of the Settlement Class Members. Therefore, the Parties respectfully
23 request that the Court (1) grant preliminary approval of the Class Action and PAGA Settlement
24 Agreement, and all of its terms; (2) approve the proposed form of notice, and direct that the Notice
25 be sent to Settlement Class Members in the manner set forth in the Class Action and PAGA
26 Settlement Agreement; and (3) schedule a hearing on final approval of the Agreement and Class
27 Counsel’s application for an award of attorney’s fees and litigation costs.
28

1 DATED: January 3, 2024

KINGSLEY & KINGSLEY, APC

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3 By:



Liane Katzenstein Ly
Attorneys for Plaintiff NICOLE PARIS and the
proposed class

(PROOF OF SERVICE)

[CCP 1013(a)(3)]

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On January 3, 2024, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Matthew Wayne, Esq.

Amber A. Eklof, Esq.

Melanie Frakes, Esq.

GORDON REES SCULLY MANSUKHANI

275 Battery Street, Suite 2000

San Francisco, CA 94111

mwayne@grsm.com

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[] **(BY MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at Encino, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[XX] **BY ELECTRONIC SERVICE:** I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (<https://dir.tfaforms.net/315>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

[XX] **BY ELECTRONIC MAIL TRANSMISSION:** I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the below email address(es).

[XX] **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 3, 2024, at Woodland Hills, California.


Michelle Tanzer