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Attorneys for Plaintiff and the Putative Class

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

JOSEPHINE ENRIQUEZ, on behalf of herself and all others similarly situated;

Plaintiffs,

v.

INSYNC CONSULTING SERVICES, LLC a Delaware Limited Liability Company doing business as InSync, and DOES 1 through 10, inclusive,

Defendants.

Case No.: 22CV022533

CLASS ACTION

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT

Reservation No.: 553096906648

Date: April 22, 2025
Time: 10:00 a.m.
Location: Dept. 23
Judge: Hon. Michael Markman

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on April 22, 2025 at 10:00 a.m. or as soon thereafter as the matter may be heard in Department 23 of the above-entitled Court, located at 1221 Oak Street, 4th Floor, Oakland, CA 94612, Plaintiff Josephine Enriquez ("Plaintiff") will and hereby does move this Court for:

1) Preliminary approval of the proposed Joint Stipulation for Class and PAGA Representative Action Settlement (the "Settlement") between Plaintiff and Defendant InSync Consulting Services, LLC ("Defendant");
2) Provisional certification, pursuant to section 382 of the California Code of Civil Procedure, for settlement purposes only, of the proposed Settlement Class defined as follows: all individuals whom Defendant employed throughout California who used the TSheets timekeeping application in any workweek from November 22, 2018 through July 21, 2024.
3) Preliminary appointment of Josephine Enriquez as Class Representative;
4) Preliminary appointment of Hunter Pyle and Katie Fiester of Hunter Pyle Law as Class Counsel;
5) The scheduling of a final approval hearing date to consider whether the Settlement should be finally approved and to award an amount for a service payment to Plaintiff, and attorneys' fees and costs to Plaintiff's counsel;
6) Appointment of Simpluris, Inc. as the third-party Settlement Administrator; and
7) Approval of the proposed Class Notice, and an order that it be disseminated to the proposed Settlement Class as provided in the Settlement.

This motion is based on this notice of motion; the attached memorandum of points and authorities; the declaration of Hunter Pyle in Support of Plaintiff's Motion for Preliminary Approval of Class and Representative Action; the declaration of Katie Fiester in Support of Plaintiff's Motion for Preliminary Approval of Class and Representative Action and exhibits attached thereto; the declaration of Josephine Enriquez in Support of Plaintiff's Motion for Preliminary Approval of Class and Representative Action; the declaration of Denise Islas on behalf of Simpluris, Inc. (Proposed Settlement Administrator); the pleadings and other papers filed in this action; and any further oral or documentary evidence or argument presented at the time of hearing.

Dated: March 26, 2025

Respectfully Submitted,

HUNTER PYLE LAW, PC

By: Katie Fiester
Hunter Pyle
Katie Fiester

Attorneys for Plaintiff and the Putative Class

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I. INTRODUCTION

Pursuant to Rule 3.769 of the California Rules of Court, Plaintiff Josephine Enriquez ("Plaintiff"), respectfully requests that this Court grant preliminary approval of the Joint Stipulation for Class and PAGA Representative Action Settlement (the "Settlement" or "Settlement Agreement") agreed to by Plaintiff and Defendant InSync Consulting Services, LLC ("Defendant"). Plaintiff and Defendant are collectively referred to herein as the "Parties."

Plaintiff brings this action based on Defendant's failure to reimburse for the use of personal cell phones for work-related purposes. Plaintiff and the other 1,496 Settlement Class Members she seeks to represent, are individuals whom Defendant employed throughout California who used the TSheets timekeeping application during their employment. (See Declaration of Katie Fiester in Support of Plaintiff's Motion for Preliminary Approval ("Fiester Decl."), ¶ 9.)

The Settlement, which is attached as Exhibit 1 to the Fiester Decl., is not a claims-made settlement. (Fiester Decl., ¶ 3 & Exhibit 1 ("Settlement").) It includes the following essential terms:

1) A Settlement Class[1] comprised of all individuals whom Defendant employed throughout California who used the TSheets timekeeping application in any workweek from November 22, 2018 through July 21, 2024. (Settlement, ¶ 26.)
2) A non-reversionary Gross Settlement Amount of $350,000, that includes the Net Settlement Payments to Participating Class Members, the PAGA Settlement, Administrative Costs, a service payment to the Plaintiff, and Plaintiff's counsel's attorneys' fees and litigation costs, pending this Court's approval. (Settlement, ¶ 10.) These amounts, pending Court approval, are as follows:
    a. A PAGA Settlement payment totaling $35,000, with 75% or $26,250 paid to the California Labor and Workforce Development Agency ("LWDA") and the remaining 25% or $8,750 paid to the PAGA Employees. (Settlement, ¶¶ 10, 21, 61(b).)

[1] Unless otherwise defined herein, all capitalized terms herein have the same meanings as those in the Settlement Agreement.

b. Administrative Costs of up to $12,500. (Settlement, ¶¶ 1, 10, 45.)

c. A service payment of up to $10,000 to Plaintiff. (Settlement, ¶¶ 10, 67.)

d. An award of up to one-third of the Gross Settlement Amount (currently $116,666.67) in attorneys' fees and up to $15,000 in reimbursement of litigation costs to Plaintiff's counsel. (Settlement, ¶¶ 10, 64.)

3) The Net Settlement Amount is the Gross Settlement Amount minus the PAGA Settlement, Administrative Costs, service payment to Plaintiff, and Plaintiff's counsel's attorneys' fees and costs, pending this Court's approval. (Settlement, ¶ 14.) Upon approval of the Court, the Net Settlement Amount of approximately $160,833.33 will be allocated to approximately 1,497 Settlement Class Members on a pro rata basis according to the number of workweeks they used TSheets during the Settlement Class Period. (Settlement, ¶¶ 61(a), 33; *see also* Fiester Decl., ¶¶ 29, 40.) The PAGA Settlement allocated to PAGA Employees is currently projected to be an additional $8,750. (Settlement, ¶¶ 21, 61(b); *see also* Fiester Decl., ¶¶ 25, 29.)

As discussed below, the Settlement satisfies all criteria for preliminary approval under California law and falls well within the range of reasonableness. The Settlement was reached through informed, arms-length bargaining at and after mediation between experienced attorneys. Accordingly, the Parties respectfully request that the Court enter an Order (1) preliminarily approving the proposed Settlement; (2) provisionally certifying the Settlement Class; (3) provisionally approving the appointment of Josephine Enriquez as Class Representative; (4) provisionally approving the appointment of Hunter Pyle Law as Class Counsel; (5) setting a final fairness and approval hearing; (6) appointing Simpluris, Inc. ("Simpluris") as the third-party Settlement Administrator; and (7) approving and directing distribution of a Notice of Settlement of Class Action ("Class Notice") to the Settlement Class (attached as Exhibit A to the Settlement Agreement).

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II. <u>SUMMARY OF THE LITIGATION</u>

A. FACTUAL AND PROCEDURAL BACKGROUND

Defendant is a staffing agency. (Fiester Decl., ¶ 9.) Plaintiff and the other 1,496 Settlement Class Members worked for Defendant at various worksites throughout California. (*Ibid*.) Plaintiff alleges that, at Defendant's direction, the Settlement Class Members used the TSheets timekeeping application on their personal cell phones for work-related purposes. (*Ibid*.) Specifically, Plaintiff alleges that Defendant required Settlement Class Members to use the TSheets timekeeping application to clock in and out of work each day. (*Ibid*.)

On November 1, 2022, Plaintiff notified the Labor and Workforce Development Agency ("LWDA") of Defendant's alleged violations of the Private Attorneys General Act ("PAGA"), Labor Code section 2698, *et seq*. (Fiester Decl., ¶ 10.)

On November 22, 2022, Plaintiff commenced the Litigation by filing a complaint in Alameda County Superior Court alleging the following claims: (1) failure to reimburse business expenses (Labor Code § 2802) and (2) unfair business practices (Business & Professions Code §§ 17200 *et seq*.). (Fiester Decl., ¶ 11.)

On January 11, 2023, after more than sixty-five days had passed without the LWDA taking any action, Plaintiff filed a First Amended Complaint that added a representative cause of action seeking civil penalties for Labor Code violations pursuant to PAGA. (Fiester Decl., ¶ 12.)

Defendant filed a Motion to Compel Arbitration ("Motion) on August 18, 2023. (Fiester Decl., ¶ 13.) Plaintiff filed an opposition to Defendant's Motion on October 11, 2023. (*Ibid*.) The Court denied Defendant's Motion in October 2024. (*Ibid*.)

B. INVESTIGATION AND SETTLEMENT

Plaintiff's counsel have conducted a thorough investigation into the facts relevant to the Litigation and have diligently pursued an investigation of Settlement Class Members' claims against Defendant. Among other things, Plaintiff's counsel have reviewed information and data regarding the claims asserted in the Litigation, and the defenses available to Defendant. (Fiester Decl., ¶ 14.)

For example, Plaintiff's counsel reviewed and analyzed relevant TSheets policies, and data indicating the number of Settlement Class Members and the number of workweeks those Settlement Class Members used TSheets throughout the Settlement Class Period. (Fiester Decl., ¶ 15.)

After the Court denied Defendant's Motion, the Parties agreed to attend mediation with the assistance of experienced mediator, Steve Paul. Prior to the mediation, the Parties met and conferred and agreed that Defendant would produce informal discovery that would allow them to productively move forward with settlement discussions. (Fiester Decl., ¶ 16.) Based on this informal discovery, Plaintiff's counsel determined under what circumstances a potential violation of law could be identified. (*Ibid*.)

Prior to engaging in settlement discussions, Plaintiff conducted a damages analysis based on the information and data that Defendant provided regarding the Settlement Class Members' use of the TSheets application. (Fiester Decl., ¶ 17.) Plaintiff provided the mediator with a detailed analysis of Defendant's liability and damages. (*Ibid*.)

On May 16, 2024, the Parties attended an all-day mediation with Mr. Paul. (Fiester Decl., ¶ 18.) The Parties did not resolve the matter at mediation but continued to engage in arms-length negotiations for many months with the assistance of Mr. Paul. (*Ibid*.) Ultimately, the Parties reached a settlement in principle based on a mediator's proposal. The terms of the Parties' agreement were outlined in a Memorandum of Understanding. (*Ibid*.) The Parties thereafter negotiated the terms of the Settlement Agreement.[2] (*Ibid*.)

C. REASONS FOR THE PARTIES' SETTLEMENT

Plaintiff recognizes the expense and length of protracted proceedings necessary to continue the Litigation against Defendant through trial and through any possible appeals. (Fiester Decl., ¶ 21.)

Plaintiff has also taken into account the uncertainty and risk of further litigation, including the risk of significant delay, the risk that if the matter is litigated a class may not be certified by the

[2] Plaintiff also entered into an individual settlement agreement with Defendant solely related to her individual claims against Defendant that were not alleged in the Litigation. (Fiester Decl., ¶ 19.) This individual settlement agreement was separate from and not contingent on the class and representative Settlement. (*Ibid*.) Should the Court want more information regarding Plaintiff's individual settlement, Plaintiff will provide a supplemental declaration and/or lodge the individual settlement agreement with the Court for in camera review. (*Ibid*.)

Court or that it may later be decertified, and potential appellate issues. (Fiester Decl., ¶ 22.) Plaintiff is also aware of the burdens of proof necessary to establish liability for the claims asserted in the Litigation, Defendant's defenses thereto, and the difficulties in establishing damages. (*Ibid*.)

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

The Settlement Agreement provides that Defendant shall pay the Gross Settlement Amount of $350,000 to resolve the claims alleged in the Litigation. (Settlement, ¶¶ 10, 42.) The essential terms of the Settlement are as follows:

1. Settlement Class Definition

The Settlement Class is defined as: All individuals whom Defendant employed throughout California who used the TSheets timekeeping application in any workweek from November 22, 2018 through July 21, 2024. (Settlement, ¶ 27.) Defendant represents that there are 1,497 Settlement Class Members. (*Id*. at ¶ 33.)

2. Settlement Amount

The Gross Settlement Amount of $350,000[3] that Defendant agrees to pay to settle this Litigation shall include all Net Settlement Payments to Participating Class Members, the PAGA Settlement, Administrative Costs, a service payment to the Plaintiff, and Plaintiff's counsel's attorneys' fees and litigation costs, pending this Court's approval. (Settlement, ¶ 10.)

Pursuant to the Settlement, Defendant shall fund the Gross Settlement Amount within 30 days after Final Approval. (Settlement, ¶ 60.)

The Settlement Agreement provides that any and all claims for PAGA penalties alleged in the LWDA Letter have been settled for the amount of $35,000, which shall be allocated as follows:

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[3] The Gross Settlement Amount is conditioned on representations made concerning the number of Settlement Class members and number of workweeks during which they used TSheets within the Settlement Period. (Settlement, ¶ 86.) Specifically, Defendant has represented that there are 1,497 Settlement Class Members who used TSheets over approximately 22,278 workweeks. (*Ibid*.) In even the number of workweeks increases by more than ten percent (10%), the Gross Settlement Amount will increase pro rata per additional Participating Class Member. (*Ibid*.) Otherwise the Settlement allows Defendant can keep the estimated workweeks and end the Settlement Class Period at an earlier date. (*Ibid*.)

75% ($26,250) shall be paid to the California Labor and Workforce Development Agency ("LWDA") and 25% ($8,750) shall be distributed to PAGA Employees. (Settlement, ¶¶ 43, 21.)

The Administrative Costs shall not exceed $12,500 and will be deducted from the Gross Settlement Amount, upon approval by the Court. (Settlement, ¶¶ 1, 10, 45.)

Plaintiff's counsel will apply to the Court for an award of $10,000 to be paid to Plaintiff as a service payment in recognition of her service to the Settlement Class. (Settlement, ¶ 67; Fiester Decl., ¶ 27; see also Declaration of Josephine Enriquez in Support of Plaintiff's Motion for Preliminary Approval of Class and Representative Action (Enriquez Decl.").)

The Settlement Agreement permits Plaintiff's counsel to apply to the Court for an award of attorneys' fees not to exceed one-third the Gross Settlement Amount, or $116,666.67, plus reasonable actual litigation costs not to exceed $15,000. (Settlement, ¶ 64; *see also* Fiester Decl., ¶ 28.)

The Net Settlement Amount is the Gross Settlement Amount minus the PAGA Settlement, Administrative Costs, a service payment to Plaintiff, and Plaintiff's counsel's attorneys' fees and expenses, pending this Court's approval. (Settlement, ¶ 14.) The Net Settlement Amount is currently estimated to be $160,833.33 and the PAGA Settlement allocated to PAGA Employees is currently projected to be an additional $8,750 as follows:

Gross Settlement Amount:	**$**	**350,000.00**
Less PAGA Settlement	-$	35,000.00
Less Administration Costs	-$	12,500.00
Less Service Payment	-$	10,000.00
Less Attorneys' Fees	-$	116,666.67
Less Litigation Costs	-$	15,000.00
NET SETTLEMENT AMOUNT	**$**	**160,833.33**
PAGA Settlement:	**$**	**35,000.00**
Less Payment to LWDA	-$	26,250.00
PAYMENT TO PAGA EMPLOYEES	**$**	**8,750.00**

(Fiester Decl., ¶ 29.)

3. The Settlement Is Neither Claims-Made Nor Reversionary

This is not a claims-made Settlement. (Settlement, ¶¶ 22, 57, 61(a)-(b).) Participating Class Members will receive a portion of the Net Settlement Amount as long as they do not opt-out of the

Settlement. (*Ibid*.) All PAGA Employees will receive their portion of the PAGA Settlement. (*Id*. at ¶¶ 58, 61(b).)

The Settlement is also non-reversionary. (Settlement, ¶ 63.) Under no circumstances will the Gross Settlement Amount or any portion thereof revert back to Defendant. (*Ibid*.; see also Fiester Decl., ¶ 31.)

4. Settlement Administrator

The Parties have agreed that Simpluris will serve as the Settlement Administrator. (Settlement, ¶¶ 25, 45; Fiester Decl., ¶ 34.) Simpluris has successfully administered a large number of wage and hour class action settlements in an efficient and effective manner. (Declaration of Denise Islas on behalf of Simpluris, Inc. (Proposed Settlement Administrator) ("Islas Decl."), ¶¶ 3-4, Exh. A; Fiester Decl., ¶ 34.) Simpluris has provided a bid of $11,574 for the proposed administrative work. (Islas Decl., ¶ 9, Exh. C.) Plaintiff's counsel considered two other bids before choosing Simpluris, which had the lowest bid. (Fiester Decl., ¶ 34.)

5. Class Notice, Opt-Out and Objections

The Settlement Administrator shall mail a Class Notice, including a computation of the amount of each Settlement Class Member's share of the Net Settlement Payment and Individual PAGA Settlement, to all Settlement Class Members, whose names and addresses Defendant will provide to the Settlement Administrator. (Settlement, ¶¶ 46-47, Exh. A.) The Class Notice is attached as Exhibit A to the Settlement Agreement. (*Id*. at Exh. A.)

The Class Notice informs each Settlement Class Member of their right to object to and opt-out of the Settlement. (Settlement, ¶¶ 47, Exh. A.) The Class Notice provides instructions for Settlement Class Members to object to the Settlement, to opt-out of the Settlement or to dispute the computation of the Settlement Class Members' share of the Net Settlement Amount and PAGA Settlement. (*Ibid*.)

Settlement Class Members will have 60 days in which to postmark objections, disputes, and requests for exclusion. (Settlement, ¶¶ 24, 50-51, 57.) Individuals who do not submit valid and timely requests for exclusion shall be deemed Participating Class Members. (*Id*. at ¶ 22.)

Settlement Class Members who submit valid and timely requests for exclusion will not be Participating Class Members and will not be bound by the terms of the Settlement. (Settlement, ¶ 57.) However, Settlement Class Members that worked during the PAGA Settlement Period cannot opt-out of the PAGA Settlement. (*Id.* at ¶¶ 57-58.; *see also Robinson v. Southern Counties Oil Company* (2020) 53 Cal.App.5th 476, *review denied* (Nov. 24, 2020).)

6. Calculation of Payments and Distribution to Settlement Class Members

Each Participating Class Member will receive a share of the Net Settlement Amount based on the actual number of workweeks they used TSheets during the Settlement Class Period. (Settlement, ¶ 61(a).)

Simpluris shall calculate each Settlement Class Member's Net Settlement Payment as follows: Each Participating Class Member shall receive a proportionate share that is equal to (i) the number of workweeks a Participating Class Member used TSheets during the Settlement Class Period divided by (ii) the total number of workweeks all Participating Class Members used TSheets during the Settlement Class Period. (Settlement, ¶ 61(a).)

Simpluris shall calculate each PAGA Member's Individual PAGA Payment as follows: From the $35,000 allocated to PAGA penalties, one-quarter (25%) ($8,750) shall be distributed to the PAGA Employees, which shall consist of all Settlement Class Members who were employed at any time during the time period from November 1, 2021 to July 21, 2024. (Settlement, ¶¶ 19, 21, 61(b).)

Each PAGA Employee will receive a proportionate share of money allocated to the PAGA Employees that is equal to (i) the number of workweeks they used TSheets during the PAGA Settlement Period divided by (ii) the total number of workweeks all PAGA Employees used TSheets during the PAGA Settlement Period ("Individual PAGA Payment"). The remaining three-quarters (75%) ($26,250) of the PAGA Settlement shall be distributed to the LWDA. (Settlement, ¶ 61(b).)

For tax reporting, the Net Settlement Payments to the Participating Class Members will be characterized as one hundred percent reimbursements. (Settlement, ¶¶ 68(i)-69).) Payments from the PAGA Settlement will be characterized as one hundred percent (100%) penalties. (*Id*. at ¶¶ 70(i)-71.)

7. Mailing of Checks

Within 15 calendar days after Defendant fully fund the Settlement, the Settlement Administrator will make all disbursements under the Settlement Agreement. (Settlement, ¶ 62.) The checks will remain negotiable for 180 days from the date of mailing. (*Id*. at ¶ 63.)

The Parties propose that the Court designate Legal Aid at Work as the *cy pres* beneficiary. If approved, any funds that remain from uncashed or unclaimed settlement checks shall be distributed to Legal Aid at Work, the *cy pres* charity agreed upon by the Parties. (Settlement, ¶ 63.) In support of Plaintiff's motion for final approval, she will submit a declaration establishing that Legal Aid at Work is a qualified cy pres designee under section 384 because it is a "nonprofit organization[] providing civil legal services to the indigent." (Fiester Decl., ¶ 44.) Plaintiff's counsel has no involvement in the governance of Legal Aid at Work. (*Ibid*.)

IV. THE COURT SHOULD APPROVE THE PROPOSED SETTLEMENT

A. THE PROPOSED SETTLEMENT MEETS THE STANDARDS FOR PRELIMINARY APPROVAL

California Rule of Court 3.769 conditions settlement of a class action on court approval, which is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of Civil Procedure. (*See Reed v. United Teachers Los Angeles* (2012) 208 Cal. App. 4th 322, 337 (Rule 3.769 requires the trial court to determine "that the settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026 (Rule 23(e) requires court to determine "whether a proposed settlement is fundamentally fair, adequate, and reasonable").)

Settlement is the preferred means of resolution, particularly in complex class action litigation. (*See In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101.) The Court's role in evaluating a proposed settlement is to ensure that the agreement taken as a whole is fair and is within the range of reasonableness. (*See, e.g.*, *Hanlon*, 150 F.3d at 1027.) There is an initial presumption of fairness when the settlement agreement was negotiated at arm's-length by plaintiff's counsel. (*See, e.g.*, *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 130.)

1. Standard for Preliminary Approval

To make a fairness determination, the Court should consider several factors, including "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and views of counsel." (*Wershba v. Apple Computer, Inc*. (2001) 91 Cal. App. 4th 224, 245.) "The list of factors is not exclusive and the Court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." (*Ibid.*)

For the reasons set forth below, the Court should find that the Settlement is fair, reasonable and adequate.

2. The Settlement is Within the Range of Reasonableness

The Settlement results in a substantial benefit to all Settlement Class Members for the use of their personal cell phones for work-related purposes. (Fiester Decl., ¶ 45.) Participating Class Members will receive an award based on the total number of workweeks they used TSheets during the Settlement Period. (Settlement, ¶ 61(a).) Based on the Gross Settlement Amount, the Settlement results in a payment of approximately $15.50 per workweek, or approximately $68.00 per month. (Fiester Decl., ¶ 45.) Based on the Net Settlement Amount, subject to Court approval, the average anticipated award will be $107.44 for each Participating Class Member. (*Ibid*.) Accordingly, the Settlement provides meaningful relief for the disputed Labor Code violations, will result in substantial benefit to all Settlement Class members, and is well within the range of reasonableness. (*Ibid*.)

3. The Settlement is Reasonable in Light of Significant Litigation Risks

The Court must make an "independent assessment of the reasonableness of the terms of the settlement" prior to granting preliminary and final approval. (*Clark v. American Residential Services LLC* (2009) 175 Cal. App. 4th 785, 799; *Kullar*, 168 Cal. App. 4th at 127-128, 130, 133.) To do so requires the Parties to submit "basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." (*Clark*, 175 Cal. App. 4th at 800.) However, the Court should not "attempt to decide the merits of the case or to substitute its evaluation of the most appropriate settlement for that of the attorneys." (*Kullar*, 168 Cal. App. 4th at 133.)

While Plaintiff and her counsel believe that this is a strong case, the significant risks and expenses associated with class certification and liability proceedings must be taken into account. (Fiester Decl., ¶ 46.) The value of the Settlement recognizes the risks of obtaining class certification, maintaining class certification throughout trial, proving liability, obtaining a judgment, and surviving appeals. (*Ibid*.)

Plaintiff's counsel calculated Defendant's maximum potential exposure totaled approximately $1,102,650 as set forth in detail below. (Fiester Decl., ¶ 47.)

Plaintiff's counsel assigned a reasonable settlement value to the claims on behalf of the Settlement Class Members. (Fiester Decl., ¶ 48.) Plaintiff's counsel estimates the total reasonable settlement value of those claims to be approximately $344,000. (*Ibid*.) The Gross Settlement Amount therefore exceeds the reasonable settlement value of the Settlement Class Members' claims. (*Ibid*.)

Plaintiff's counsel's analysis of the reasonable value of each of the claims made in the Litigation is as follows:

i. The Unreimbursed Business Expenses Claim

California law requires an employer to indemnify employees "for all necessary expenditures or losses incurred. . .in direct consequence of the discharge of his or her duties. . ." (Lab. Code § 2802.) Here, Plaintiff alleges that Defendant failed to reimburse her for using her personal cell phone device for work-related purposes. (Fiester Decl., ¶ 50.) Specifically, Plaintiff alleges in the Litigation that Defendant required her to use the TSheets timekeeping application on her personal cell phone but Defendant did not reimburse her for this use. (*Ibid*.)

According to Defendant, there are 22,278 workweeks during which Settlement Class Members used TSheets during the Settlement Class Period. (Fiester Decl., ¶ 51.) Plaintiff's counsel researched the average cost of a cell phone over the Settlement Class Period and determined that amount averaged approximately $25 per week. Assuming a $25 cell phone reimbursement for each of the 22,278 workweeks, Plaintiff's counsel calculated the owed cell phone reimbursements to be $556,950. (*Ibid*.) Plaintiff's counsel also calculated 10% interest on the owed reimbursement payments that amounted to approximately $140,000. (*Ibid*.) Thus, Plaintiff counsel calculated Defendant's maximum potential exposure for the cell phone reimbursements, including interest, to be approximately $696,950. (*Ibid*.)

a. The Reasonable Settlement Value of the Unreimbursed Business Expenses Claim

In response, Defendant contends that they did not require Settlement Class Members to use TSheets on their personal cell phones. Defendant further contends that it offered some Settlement Class Members the option to use devices at their worksites to clock in and out or Settlement Class Members could use a paper timecard instead. (Fiester Decl., ¶ 52.) Thus, Defendant contends that if Settlement Class Members used their own devices to track their time it was out of convenience rather than necessity. Defendant also contends that even if the Court were to find it liable to pay business expenses, Defendant is not responsible for paying the full cost of Settlement Class Members' phone bill. (*Ibid*.)

Under these circumstances, it is reasonable to discount Plaintiff's cell phone reimbursement claim by twenty-five percent (multiplying by .75) with regard to Plaintiff's cell phone reimbursement claim to account for the risks that Defendant will prevail on their defenses and by an additional forty percent (multiplying by .60) to account for the risks involved in certifying a class and maintaining certification through trial. (Fiester Decl., ¶ 53.) Accordingly, Plaintiff determined that the reasonable settlement value of the reimbursement claim was approximately **$314,000**. (*Ibid*.)

ii. The Unfair Competition Claim

Plaintiff's claim for violation of Business and Professions Code section 17200 (the "UCL") is based on the same Labor Code violations described above. If the Court were to rule against Plaintiff on the predicate claims, the UCL claims would also fall. In addition, the damages for Plaintiff's UCL claims are co-extensive with the damages for their other claims. (Fiester Decl., ¶ 54.) This claim therefore does not add to the settlement value. (*Ibid*.)

iii. The PAGA Penalties

The Parties agreed to allocate $35,000 to the PAGA penalties in this case in light of Defendant's possible defenses and the Court's authority to reduce any award that is "unjust, arbitrary and oppressing, or confusing." (Fiester Decl., ¶ 55; Labor Code § 2699 (e)(2); *see, e.g. Fleming v. Covidien, Inc.* (C.D. Cal. Aug. 12, 2011) No. 5:10-cv-01487-RGK-OP [reducing PAGA penalty by more than 80 percent to avoid injustice].)

Trial courts evaluating PAGA settlements, including those made in conjunction with a class settlement, must determine whether they are "fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77.) In so doing, courts should "evaluate the adequacy of compensation to the class as well as the adequacy of the settlement in view of the purposes and policies of PAGA." (*O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1134, emphasis in original.) In conducting this evaluation, courts may apply a sliding scale. For example, if the settlement for the class is robust, the purposes of PAGA may be concurrently fulfilled. (*Ibid*.) "By providing fair compensation to the class members as employees and substantial monetary relief, a settlement not only vindicates the rights of the class members as employees, but may have a deterrent effect upon the defendant employer and other employers, an objective of PAGA." (*Ibid*.)

Defendant has represented that there are 17,650 PAGA workweeks during the PAGA Settlement Period. (Fiester Decl., ¶ 56.) Assuming a violation of $100 per month, Plaintiff's counsel calculated Defendant's maximum potential exposure was approximately $405,700. (*Ibid*.)

a. The Reasonable Settlement Value of the PAGA Penalties Claim.

Courts have broad discretion to reduce penalty amounts under PAGA. (See Cal. Lab. Code § 2699 (e)(2).) Courts typically reduce PAGA penalties where there is unsettled law during the pendency of the litigation, where the case presents a matter of first impression that the court had to rule upon, or where an employer demonstrates a serious attempt to comply with the law. (See

Thurman v. Bayshore Transit Management, Inc. (2012) 203 Cal.App.4th 1112; *Cotter v. Lyft, Inc.* (N.D. Cal 2016) 176 F.Supp.3d 930, 941.)

Here, it is reasonable to discount Plaintiff's PAGA claim by twenty-five percent (multiplying by .75) to account for the risks that Defendant will prevail on their defenses, and by an additional ninety percent (multiplying by .10) to account for the discretionary nature of PAGA penalties. (Fiester Decl., ¶ 57.) The reasonable settlement value of Plaintiff's PAGA claim was therefore approximately **$30,000.** (*Ibid*.) Thus, the PAGA Settlement of $35,000 exceeds the settlement value of the PAGA claim and is therefore reasonable. (*Ibid*.)

b. The LWDA has been Notified of the PAGA Settlement

The LWDA has been notified of the PAGA aspects of the Settlement. Plaintiff will notify the Court if they receive any response from the LWDA regarding the Settlement. (Fiester Decl., ¶ 58.)

4. The Settlement is the Product of Non-Collusive, Arm's-Length and Informed Negotiations

California courts recognize that "a presumption of fairness exists where…[a] settlement is reached through arm's-length bargaining." (*Wershba*, 91 Cal. App. 4th at 245.) In this case, the Settlement was reached after the parties attended mediation and continued in arm's-length negotiations between the Parties. (Fiester Decl., ¶ 18.)

In reaching the Settlement, counsel on both sides relied on their substantial litigation experience in similar employment class actions. (Fiester Decl., ¶ 20.) Information gleaned from investigation and informal discovery informed Plaintiff's counsel's assessment of the strengths and weaknesses of the case and the benefits of the Settlement. (*Ibid*.) Thus, the Settlement is the product of informed and non-collusive arm's-length bargaining, and is entitled to a presumption of fairness. (*Ibid*.)

5. The Experience and Views of Plaintiff's Counsel Favor Settlement Approval

"The recommendations of plaintiffs' counsel should be given a presumption of reasonableness." (*In Re Omnivision Technologies, Inc*. (N.D. Cal. 2008) 559 F. Supp. 2d 1036, 1043 [quotation marks and citation omitted].) "The court undoubtedly should give considerable weight to the competency and integrity of counsel…in assuring itself that a settlement agreement represents an arm's-length transaction entered without self-dealing or other potential misconduct." (*Kullar*, 168 Cal. App. 4th at 129.)

Plaintiff and Plaintiff's counsel have vigorously prosecuted this case and will continue to do so. (Fiester Decl., ¶ 59.) Information gleaned from Plaintiff's counsel's investigation and discovery informed their assessment of the merits and risks of the case and the benefits of the Settlement. (*Ibid*.) Plaintiff's counsel conducted a thorough investigation into the facts of the Litigation. (*Ibid*.) Based on an independent investigation and evaluation, Plaintiff's counsel are of the opinion that the Settlement is fair, reasonable, and adequate, and is in the best interest of the Settlement Class Members in light of all known facts and circumstances, including the risk of significant delay, the risk that Defendant will prevail on their defenses, and potential appellate issues. (*Ibid*.; see also Declaration of Hunter Pyle in Support of Plaintiff's Motion for Preliminary Approval ("Pyle Decl."), ¶ 17.)

In addition to being thoroughly familiar with this case, Plaintiff's counsel has expertise in handling wage and hour class actions such as this and, therefore, is well-qualified to represent the Plaintiff and the Settlement Class Members. (Fiester Decl., ¶¶ 4-8; Pyle Decl., ¶¶ 3-16.) Therefore, the recommendation of Plaintiff's counsel also weighs in favor of Settlement approval.

6. The Proposed Release is Narrowly Tailored

The release of claims in the Settlement is narrowly tailored. Paragraph 42 of the Settlement Agreement provides that Participating Class Members will release the following wage and hour claims against Defendant during the Settlement Class Period: (1) failure to reimburse business expenses and (2) unfair business practices. (Settlement, ¶ 42.)

The release is limited to claims that were asserted in the Litigation or arising from or related to the facts and claims alleged in the Litigation during the Settlement Class Period. (Settlement, ¶ 42.) Should Participating Class Members have claims that are not asserted in the Litigation or arising from or related to the facts and claims alleged in the Litigation during the Settlement Class Period, they will not be released by this Settlement. (*Ibid*; Fiester Decl., ¶ 32.)

The PAGA release is also narrowly tailored. Paragraph 43 of the Settlement provides that Plaintiff, acting in her capacity as private attorney general on behalf of the State of California, and on behalf of the Labor and Workforce Development Agency, agrees to release Defendant from PAGA violations of Labor Code section 2802 for PAGA Employees which occurred during the PAGA Settlement Period that were alleged in Plaintiff's PAGA letter. (Settlement, ¶ 43, Exh. B.)

7. The Proposed Class Notice Satisfies the Rules of Court

The form and content of class notice, and the method used to notify the class, are within the trial court's discretion. (*See Wershba*, 91 Cal. App. 4th at 251.)

The Class Notice in this case satisfies the criteria under Rule of Court 3.769 and "fairly apprise(s) the class members of the terms of the proposed settlement and of the options open to dissenting class members." The Class Notice informs Settlement Class Members about the Litigation, the terms of the Settlement, the scope of the release, the right to receive a payment, the right to opt-out of the Settlement, the right to object to the Settlement, how Net Settlement Payments and PAGA Payments are calculated, how to challenge the data used to calculate the Net Settlement Payments and Individual PAGA Payments, the maximum attorneys' fees and costs requested, the maximum service payment awards requested, and the date, time and location of the final approval hearing. (Settlement, ¶ 47, Exh. A.) The Class Notice is therefore crafted to ensure that Settlement Class Members are alerted to the terms of the settlement. (*Ibid.*; Fiester Decl., ¶ 36.)

The means of giving notice is reasonably calculated to reach a substantial percentage of Class Members and meets the requirements of Rule of Court 3.766, subdivision (e). (See *Wershba*, *supra*, 91 Cal.App.4th at 251 ["[The] standard is whether the notice has a 'reasonable chance of reaching a substantial percentage of the class members.'"].)

For these reasons, the proposed Class Notice is reasonable and should be approved by the Court.

V. THE COURT SHOULD PROVISIONALLY CERTIFY THE SETTLEMENT CLASS

The proposed Settlement Class satisfies the criteria for certification of a settlement class under California law because: 1) the individuals in the Settlement Class are so numerous that joinder would be impractical; 2) common questions of law and fact predominate over individual questions such that class certification is the most efficient and desirable way to maintain this litigation; 3) Plaintiff's claims are typical of the Settlement Class' claims; and 4) Plaintiff and her counsel will fairly and adequately represent the interests of the absent Settlement Class members. (Code Civ. Proc. § 382.)

A. THE PROPOSED SETTLEMENT CLASS IS ASCERTAINABLE AND NUMEROUS

A class is "ascertainable" where members "may be readily identified without unreason-able expense or time by reference to official [or business] records." (*See Sevidal v. Target Corp*. (2010) 189 Cal. App. 4th 905, 919 [alterations in original].) Here, the proposed Settlement Class is defined as: current and former employees of Defendant Neogen who worked for Defendant Neogen in California as a registered nurse during the period of June 23, 2017 to April 2, 2024. (Settlement, ¶ 27.)

Settlement Class Members can easily be identified from Defendant's employment records. (Fiester Decl., ¶ 60.) Defendant represents that there are 1,497 Settlement Class Members, rendering it impracticable to bring all Settlement Class Members before the Court. (Settlement, ¶ 33.)

B. COMMON ISSUES OF LAW AND FACT PREDOMINATE

The focus on certification is on what types of questions, "common or individual," are likely to arise in the action. (*See Sav-On Drug Store, Inc. v. Sup. Ct.* (2004) 34 Cal. 4th 319, 327.) Plaintiff's claims are predicated on allegedly unlawful policies including Defendant's reimbursement practices related to personal cell phone use for business-related purposes. (Fiester Decl., ¶ 60.) These claims are commonly held to be proper for class certification. (*See, e.g., Castro v. ABM Industries, Inc.* (N.D. Cal. 2018) 325 F.R.D. 332, 338, as *modified* (N.D. Cal., May 14, 2018, No. 17-CV-3026-YGR) 2018 WL 2197527 [granting class certification for failure to reimburse cell phone business expenses]; *Richie v. Blue Shield of California* (N.D. Cal., Dec. 9, 2014, No. C-13-2693 EMC) 2014 WL 6982943, at *17 [same].)

C. THE CLAIMS OF THE PROPOSED CLASS REPRESENTATIVE ARE TYPICAL

Typicality is satisfied where class representatives have claims that are typical of those of the class. (*B.W.I. Custom Kitchen v. Owens-Illinois* (1987) 191 Cal. App. 3d 1341, 1347.) Here, Plaintiff, is seeking preliminary appointment as Class Representative. Plaintiff's claims are typical of those held by the Settlement Class Members. (Fiester Decl., ¶ 61.) Plaintiff was employed by Defendant during the Settlement Period and used her personal cell phone to access TSheets. Plaintiff was injured by the same challenged reimbursement policies that injured the Settlement Class. (*Ibid*.)

D. THE PROPOSED CLASS REPRESENTATIVE AND COUNSEL WILL ADEQUATELY REPRESENT THE CLASS

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. (*Capital People First v. State Dept. of Developmental Svcs.* (2007) 155 Cal. App. 4th 676, 697.) Plaintiff and her counsel will adequately represent the Settlement Class as there are no conflicts between Plaintiff and the Settlement Class she seeks to represent, and Plaintiff possess claims that are in line with those of the class. Plaintiff's counsel also have extensive experience in wage and hour class action litigation. (Fiester Decl., ¶ 62.)

Plaintiff has provided a declaration that demonstrates her participation in the Litigation thus far and shows she has diligently represented the Settlement Class. (*See generally* Enriquez Decl.) In this declaration, Plaintiff describes the great personal and professional risks she faced in bringing this lawsuit. (*Ibid*.)

VI. THE COURT SHOULD APPROVE THE CLASS NOTICE OF SETTLEMENT AND SET A FINAL APPROVAL HEARING

In addition to requesting approval of the Settlement and provisional certification of the Settlement Class, the parties request that the Court approve the form, content, and distribution of the Class Notice, and set a date for a final approval hearing.

VII. CONCLUSION

The arm's-length settlement of this matter avoids significant litigation and financial risk and provides for a monetary distribution to all Settlement Class Members. For these reasons, the parties respectfully request that the Court enter an order:

1. Preliminarily approving the proposed Joint Stipulation for Class and Representative Action Settlement;

2. Provisionally certifying, pursuant to Section 382 of the California Code of Civil Procedure, for settlement purposes only, the proposed Settlement Class defined as follows: All individuals whom Defendant employed throughout California who used the TSheets timekeeping application in any workweek from November 22, 2018 through July 21, 2024;

3. Appointing Josephine Enriquez as Class Representative;

4. Appointing Hunter Pyle and Katie Fiester of Hunter Pyle Law as Class Counsel;

5. Scheduling a final approval hearing to consider whether the Settlement should be finally approved and to award an amount for service payment to the Class Representative, and attorneys' fees and costs to Class Counsel;

6. Appointing Simpluris as the third-party Settlement Administrator;

7. Approving the proposed Class Notice, and ordering that it be disseminated to the proposed Settlement Class as provided in the Settlement.

DATED: March 26, 2025

HUNTER PYLE LAW, PC

By: Katie Fiester
Hunter Pyle
Katie Fiester

Attorney for Plaintiff and the Putative Class

Superior Court of Alameda County Public Portal

Make a Reservation

ENRIQUEZ vs INSYNC CONSULTING SERVICES, LLC A DELAWARE LIMITED LIABILITY COMPANY, et al.

Case Number: 22CV022533 Case Type: Civil Unlimited Category: Other Employment Complaint Case
Date Filed: 2022-11-22 Location: Rene C. Davidson Courthouse - Department 23

Reservation

Case Name: ENRIQUEZ vs INSYNC CONSULTING SERVICES, LLC A DELAWARE LIMITED LIABILITY COMPANY, et al.	Case Number: 22CV022533
Type: Motion re: (Preliminary Approval)	Status: RESERVED
Filing Party: JOSEPHINE ENRIQUEZ (Plaintiff)	Location: Rene C. Davidson Courthouse - Department 23
Date/Time: 04/22/2025 10:00 AM	Number of Motions: 1
Reservation ID: 553096906648	Confirmation Code: CR-WWZ6O9RCP4BYL58TH

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	0.00	1	0.00
Court Technology Fee	1.00	1	1.00
TOTAL			**$1.00**

Payment

Amount: $1.00	Type: Visa
Account Number: XXXX5060	Authorization: 08802G
Payment Date: n/a	

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