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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

MARILYNN MONROE, individually and on behalf of all others similarly situated, Plaintiff, v. SCIENCE APPLICATIONS INTERNATIONAL CORPORATION, a Delaware Corporation; and DOES 1 to 100, inclusive, Defendants.	CASE NO. 23STCV04908 Complaint Filed: 3/6/2023 CLASS ACTION **NOTICE OF MOTION AND MOTION FOR ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** Judge: Hon. David S. Cunningham III Hearing Date: July 31, 2026 Time: 10:00 a.m. Dept: 11

NOTICE IS HEREBY GIVEN that, on July 31, 2026, at 10:00 a.m., in Department 11 of the Superior Court of California, County of Los Angeles before the Honorable David S. Cunningham III pursuant to Cal. Code of Civ. Pro. § 382, Plaintiff Marilynn Monroe ("Plaintiff") individually and on behalf of all others similarly situated, will and do hereby move this Court for entry of an Order:

1. Preliminarily certifying the Settlement Class for purposes of Settlement;

2. Preliminarily appointing Plaintiff Marilynn Monroe as Class Representatives for purposes of settlement;

3. Preliminarily appointing James M. Treglio of Potter Handy LLP as Class Counsel for purposes of settlement;

4. Preliminarily approving the settlement as fair, adequate, and reasonable, based upon the terms set forth in the Parties' Class Action and PAGA Settlement Agreement ("Settlement Agreement"), including payment by Science Applications International Corporation ("Defendants") of the Gross Settlement Amount ("GSA") of $979,500, for a class of approximately 296 employees of Defendants in California;

5. Preliminarily approving a Service Award of $15,000 for each of the named Plaintiffs from the GSA in recognition of their service to the Settlement Class;

6. Preliminarily approving Plaintiffs' Counsel's request for up to one third of the GSA as attorneys' fees (i.e., up to $326,500), plus reimbursement of actual litigation costs up to $35,000;

7. Preliminary approving a payment of PAGA penalties of $10,000, including payment to the Labor and Workforce Development Agency for its share of penalties pursuant to PAGA in an amount of $7,500.

8. Appointing Simpluris, Inc. as the third-party Claims Administrator for mailing notices and for settlement administration, and approving that $9,000 be deducted from the GSA for the costs of claims administration; and

9. Approving the proposed Notice of Class Action Settlement ("Class Notice") and ordering they be disseminated to the Settlement Class as provided in the Settlement Agreement.

This Motion is based upon the supporting Memorandum of Points and Authorities, the Declarations of James M. Treglio and the attached Exhibits, Marilynn Monroe, the Settlement Agreement, the Class Notice, and the other papers and exhibits filed herewith.

Dated: February 4, 2026 POTTER HANDY, LLP

By: /s/ James M. Treglio_____________

James M. Treglio, Esq.
Attorney for Plaintiff and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Motion seeks preliminary approval of a wage-and-hour class action settlement between Plaintiff Marilynn Monroe ("Plaintiff") and Science Applications International Corporation ("Defendants") for approximately 296 current and former hourly employees of Defendants in California which Plaintiffs maintain provides them with an overall value of $979,500. Plaintiffs seek to represent a Class defined as (a) all former exempt employees of Defendant who worked in California and who received their final pay after the time limits set by Labor Code section 201-202 during the PAGA Period. ("PAGA Settlement Class" or "PAGA Class Members"); and (b) all former exempt employees of Defendant who worked in California and who received their final pay after the time limits set by Labor Code section 201-202 during the Class Period. The "Class" shall not include any person who has signed a release of their final pay claim including, without limitation, a Pick-up Stix release. (collectively, the "Settlement Class" or "Class Members").[1][2]

Because the settlement is fair and reasonable, was negotiated at arm's length between counsel following extensive informal and formal discovery and was reached after attendance at a full-day mediation and continued negotiations over several months, it should be preliminarily approved. Subject to court approval, the Net Settlement Amount to Class Members will be approximately $584,000, as follows:

Gross Settlement Amount	**$979,500.00**
Attorneys' Fees (1/3 of the GSA) Litigation Costs Claims Administration Costs Service Awards to Class Representatives PAGA payment to the LWDA PAGA payment to PAGA Members	($326,500.00) ($35,000.00) ($9,000.00) ($15,000.00) ($7,500.00) ($2,500.00)
Net Payments to Class Members	**$584,000.00**

Through this motion, Plaintiffs request that the Court enter an order: (1) conditionally certifying the Settlement Class under Cal. Code of Civil Procedure § 382 and California Rule of Court 3.769(c) for

[1] Any Class Member hired after the date of preliminary approval shall not be included in the Settlement Class.
[2] Defendants engaged in a Pick-Up Stix scheme, which resulted in $1,493,717.74 in payouts for individuals.

settlement purposes only and preliminarily approving the settlement; (2) approving the proposed Class Notice to be distributed to Class Members pursuant to the Settlement Agreement[3]; (3) appointing Simpluris, Inc. as the Administrator; and (4) scheduling a hearing for final approval.

The settlement fairly considers the significant risks associated with pursuing this litigation further. Those risks include, by way of example only, denial or limitation of class certification, decertification of the class, key factual and legal disputes as to the viability of Plaintiffs' claims under the Labor Code, the potential for the action to be compelled into individual arbitration, and the risk of loss on the merits at trial. Accordingly, Plaintiffs respectfully request that the Court preliminarily approve the settlement as fair, reasonable, and adequate, allow notice to issue, and schedule proceedings for final approval of the settlement.

II. BACKGROUND

A. General Background Information About Defendants and Plaintiffs

Plaintiff and the Class are and were employed by Science Applications International Corporation, a Delaware corporation based in Reston, Virginia. SAIC provides scientific, engineering, and technology applications and solutions consulting services to security, energy, environmental, health, and infrastructure markets worldwide. (*Id*. at ¶ 11.a).

Plaintiff was hired by Defendants as a senior security analyst in January 2019. She was assigned at the Defendants' office in El Segundo, California. (*Id*. at ¶ 11.b). Plaintiff was terminated by Defendants on May 12, 2022. However, Plaintiff only received her final paycheck from Defendants on May 20, 2022, or more than a week after she was terminated. (*Id*. at ¶ 11.c)

Plaintiff was terminated by Defendants on May 12, 2022. However, Plaintiff only received her final paycheck from Defendants on May 20, 2022, or more than a week after she was terminated. Thus, Defendants violated Labor Code § 203. (*Id*. at ¶ 11.d).

B. Procedural History, Informal Discovery, and Mediation

On December 26, 2022, Plaintiff sent a notice letter to the LWDA alleging claims under the PAGA based on Defendants' alleged violation of provisions of the California Labor Code and applicable

[3] The Notice of Pendency of Class Action and Proposed Settlement and Notice of Settlement Payment are attached to the Settlement Agreement as Exhibits B and C, respectively. (*See,* Declaration of James M. Treglio in Support of Plaintiffs' Motion for Order Granting Preliminary Approval of Class Action Settlement ("Treglio Decl."), Exhibits B and C.).

Industrial Welfare Commission Wage Orders. On April 6, 2023, Plaintiffs filed a Complaint against Defendants in Los Angeles Superior Court. Plaintiffs' Complaint alleges causes of action for (1) failure to pay all wages due to former employees; (Labor Code Sections 201-203); (2) PAGA and other penalties (Labor Code Sections 2699, et seq); and (3) unfair competition in violation of California Business & Professions Code Section 17200, et seq. (*Id*. at ¶ 12).

On November 19, 2024, the Parties attended a first full-day mediation with Steven G. Mehta which did not result in the settlement of this Action. Thereafter, the Parties restarted the process of discovery, taking the deposition of Defendant's corporate designee (Jennifer Cushion) (*Id*. at ¶ 13). Additionally, Defendants began a campaign to settle with Class Members on an individual basis, sending settlement offers to all the putative class members. In all, 414 putative class members agreed to settle their 203 claims with Defendant on an individual basis. In total, Defendant paid out $1,493,717.74 for the Pick Up Stix Settlements. (*Id*. at ¶ 14).

On August 23, 2025, Plaintiff and Defendants attended a second full-day mediation before Steven G. Mehta which led to this Agreement to settle the Action. (*Id*. at ¶ 15).

Finally, the Parties were able to execute the long form Settlement Agreement now before the Court for preliminary approval. (*Id*. at ¶ 16).

III. SUMMARY OF THE PROPOSED SETTLEMENT

A. Overview

Under the terms of the Settlement Agreement ("S.A.") Defendants are discharged of all the claims asserted in the pending lawsuit in exchange for Defendants' to pay $979,500 to the Class. The GSA includes (1) the fees and expenses of the Claims Administrator, not to exceed $9,000 (S.A., ¶ 3.2.3); (2) Plaintiffs' proposed Service Awards of $15,000 each (*Id.*); (3) attorneys' fees of up to $326,500 (up to one third of the GSA) (*Id.*); (4) litigation expenses and costs of up to $35,000 (*Id.)*; and (5) a payment to the LWDA for their portion of the PAGA penalties in the amount of $7,500 as its share of the settlement for civil penalties pursuant to PAGA (the $2,500 of PAGA penalties allocated to the aggrieved employees are included in the Net Settlement Amount). (*Id.*). In addition, the Defendant has insured that it will implement steps to ensure compliance with the Wage Order. The remaining amount, an estimated $584,000 (the "Net Settlement Amount") will be available to be claimed by all Class

Members and $2,500 to the PAGA Members. (*Id*.).

An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of days all Participating Class Members' final pay was paid after the time limits set by Labor Code section 201-202 during the Class Period and (b) multiplying the result by the number of days the Participating Class Member's final pay was paid after the time limits set by Labor Code section 201-202 during the Class Period.

Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. (collectively "Class List and Data"). (*Id*., ¶ 4.2.). The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database. (*Id.* ¶ 4.4.1.).

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

Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 60 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class

Notice was re-mailed). (*Id.* ¶ 7.7.2.).

B. Scope of the Release

The proposed release for the putative class members is tailored to the claims that were asserted in the lawsuit or are based on the facts alleged in the complaint. The notice to the putative class members includes a detailed recitation of the release, including how and when it applies to the members of the class. The proposed release for the putative class member is as follows: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from the class claims that Plaintiff alleged in the Operative Complaint against the Released Parties, including: a) failure to pay timely all wages due at termination; (b) all claims under California Unfair Competition Law that were alleged in the Operative Complaint based on the facts and legal theories contained in the Operative Complaint. The time period governing the Released Class Claims shall be the Class Period.

IV. PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS UNDER THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY CONSIDERATION IS APPROPRIATE FOR PURPOSES OF SETTLEMENT

California Rule of Court 3.769(d) provides that the Court may make an order approving certification of a provisional settlement class at the preliminary approval stage. It is well-established that trial courts should use a "lesser standard of scrutiny" for determining the propriety of certifying a settlement class, as opposed to a litigation class. *Dunk*, 48 Cal. App. 4th at 1807, n.19. The reasons include that no trial is anticipated in a settlement class, so the case management issues inherent in determining if the class should be certified need not be confronted; and the trial court's fairness review of the settlement protects the interests of the non-representative class members. *Id.*; *see also Officers for Justice*, 688 F.2d at 633 ("Th[e] relationship between the certification determination and the merits of the case is further attenuated within the context of the settlement evaluation process . . . . [C]ertification issues raised by class action litigation that is resolved short of a decision on the merits must be viewed in a different light."); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1987) ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial."). As discussed below, for settlement purposes only, the Parties ask this Court to provisionally certify the Class, as defined above, under Section 382 of the Code of Civil Procedure.

A. Numerosity and Ascertainability

Numerosity is met if a proposed class is so large that joinder of all members would be impracticable. *See* Cal. Code Civ. Proc. § 382. A proposed settlement class is ascertainable if the class members can be objectively identified and given notice of the litigation without unreasonable time or expense. *See Medrazo v. Honda of N. Hollywood*, 166 Cal. App. 4th 89, 101 (2008). Here, Defendants have informed Plaintiff's counsel that the proposed Class consists of approximately 296 Class Members. (Treglio Decl., ¶ 12.h).

B. Well-Defined Community of Interest

1. Commonality

To justify certification, the class proponent must show that questions of law or fact common to the class predominate over the questions affecting the individual members. *See Arenas v. El Torito Rests., Inc.*, 183 Cal. App. 4th 723, 732 (2010) (citing *Washington Mut. Bank v. Superior Court*, 24 Cal. 4th 906, 913 (2001)). The commonality element is satisfied here.

In this case, there are common legal and factual question as to whether (1) failed to pay all wages due to former employees; (2) PAGA and other penalties based on the foregoing; and (3) Defendants unfair business practices based on the foregoing.

2. Typicality

Typicality "focuses on whether there exists a relationship between the Plaintiff's claims and the claims alleged on behalf of the class." *Newberg,* § 3:13. Here, Plaintiffs' claims are typical of the Class because they were subject to Defendants' failing to pay all wages to former employees, (Monroe Decl., ¶ 2;). Plaintiffs seeks wage and penalties, for themselves and the rest of the Class. (*Id.*).

3. Adequacy of Representation

The proposed class representative must establish that he or she will adequately represent the proposed class. *See Barboza v. West Coast Digital GSM, Inc.*, 179 Cal. App. 4th 540, 546 (2009). Specifically, Plaintiffs are adequate as Class representatives since they are committed to representing the interests of the Class, have no interests that are averse to members of the Class, and understand and accepted their duty to represent the best interests of the class. (Monroe Decl., ¶ 7). Plaintiff provided counsel with information which was crucial to the drafting of the class complaint and mediation brief, discussed settlement strategy with their counsel, spoke to other Class Members about their experiences working for Defendants, and were available for the duration of the two-day mediation, all of which demonstrated her commitments to the Class. (*Id*.).

Adequacy may be established by the fact that counsel are experienced practitioners. *See Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001). Plaintiff is represented by counsel experienced in the litigation of wage and hour class actions, who have no interests averse to Plaintiff or the Class, who have and will continue to vigorously prosecute this action on behalf of the Class alongside Plaintiff, and who have the financial resources to handle this case. (Treglio Decl., ¶¶ 4-9, 36).

4. **Superiority**

Certification of the Class for settlement purposes is superior here because there will be a global resolution of all claims at once, which fosters judicial economy. Class certification is also vastly superior to litigation of numerous individual claims because most of the claims are too small to litigate outside of the class context.

5. **Predominance**

The common issues here, concerning uniform deficiencies to Defendants' failure to pay all wages due to former employees raise predominating factual and legal issues supporting certification of a settlement class.

V. **THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT, WHICH IS FAIR, ADEQUATE, AND REASONABLE**

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

The decision to approve or reject a proposed settlement is committed to the Court's sound discretion. *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1117. The Court has broad powers to determine whether the proposed settlement is fair under the circumstances of the case. *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723.

This is the preliminary approval stage, and final approval will come in a few months, after the Class members have had an opportunity to participate in the settlement, object, or request exclusion from the settlement. The purpose of the preliminary evaluation of a class action settlement is to determine whether the proposed settlement is within the range of possible approval, and thus whether notice to the class of the settlement terms and the scheduling of a formal fairness hearing is worthwhile. *Wershba*, supra, 91 Cal.App.4th at 234–35; 4 Newberg on Class Actions § 13:13 (5th ed.).

The Court's ultimate duty is to determine whether the settlement is fair, adequate, and reasonable. *See Dunk v. Ford Motor Co.* 9 ("*Dunk*"), 48 Cal. App. 4th 1794, 1801 (1996) (setting forth the "fair, adequate, and reasonable" standard) (citing *Officers for Justice*, 688 F.2d at 625); *Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742 43 (2009) (a trial court must approve a class action settlement agreement, but only after determining that it is "'fair, adequate and reasonable,'" considering factors such as the "'risk, expense, [and] complexity'" of continued litigation) (citations omitted). The Court enjoys broad discretion in making its fairness determination, and should consider factors including, but not limited to:

> [T]he strength of Plaintiff's 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, the experience and views of counsel . . . and the reaction of the class members to the proposed settlement.

Dunk, 48 Cal. App. 4th at 1801 (setting forth a non-exhaustive list of factors for the court's consideration at final approval).

The above factors are not exclusive, ". . . and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." *Wershba*, 91 Cal. App. 4th at 245. However, in doing so, the Court must give "[due] regard to what is otherwise a private consensual agreement between the parties." (*Id.*) The inquiry must be limited "to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties." (*Id.*, citation and internal quotation marks omitted).

At the preliminary approval stage, the Court need only determine that the settlement falls within the "range of possible judicial approval," so that notice to the class and the scheduling of the fairness hearing are worthwhile. *See* Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* ("*Newberg*") § 11:25 (4th ed. 2002). Indeed, the Court should grant preliminary approval if there are no "grounds to doubt its fairness or other obvious deficiencies . . . and [the settlement] appears to fall within the range of possible approval." *Manual For Complex Litigation* (Third) § 30.41 (1995); *see Dunk*, 48 Cal. App. 4th at 1802. A "presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Dunk*, 48 Cal. App. 4th at 1802 (citing *Newberg* § 11:41). As shown below, the settlement falls well within the range of approval because there are no grounds to doubt its fairness.

B. The Settlement is the Result of Serious, Informed, Non-Collusive Negotiations

The Settlement is fair and reasonable and was negotiated at arm's length between counsel that included a mediator. (Treglio Decl., ¶ 13-16). Counsel for both parties were thoroughly familiar with the complex legal and factual questions at issue in this litigation. (*Id.*). The Settlement is a product of intensive negotiations, supported by investigation and direct exchanges of information through formal and informal discovery, and during the course of settlement negotiations, including a two full-day mediation. (*Id.*).

C. The Extent of the Pre-Litigation Discovery and Investigation was More Than Sufficient to Permit Preliminary Approval of the Settlement

The Parties and their counsel attended a full-day mediation session before an experienced and well-respected mediator, Steven G. Mehta, which resulted in the resolution of the case on a class basis. (Treglio Decl., ¶ 13). (*Id.*). In addition, the parties are represented by skilled and experienced counsel with extensive backgrounds in complex litigation and experience litigating and settling similar wage and hour class actions. (Treglio Decl., ¶¶ 4-9). Plaintiffs' counsel shares the view that this settlement is fair, adequate, and reasonable, in the best interests of Class Members, and should be preliminarily approved. (Treglio Decl. ¶ 26-30).

D. The Settlement is a Reasonable Compromise of Claims

The Settlement represents a fair compromise given the risks and uncertainties presented by continued litigation. (Treglio Decl. ¶ 30). Defendants asserted and would have continued to assert legal and factual grounds to defend against this action, including the possibility of having to pursue non-certification of claims, and factual and legal defenses on the merits. Moreover, continued litigation would be costly, time consuming, and uncertain in outcome. By contrast, this Settlement ensures timely relief and substantial recovery of penalties Plaintiff contends are owed to the Class.

1. Plaintiffs' Claims and Estimated Damages

Plaintiffs' estimated damages are based on the following facts and figures:

Waiting Time Penalties

As a result of Defendants' misclassification of the Class as independent contractors, and as a result of their failure to pay the Class for all hours worked, including non-productive time, and meal/rest period premiums, Defendants violated Labor Code § 203. Labor Code § 203 provides "if an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty. . ." for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

Due to Defendants faulty policies described above, the Class whose employment with Defendant concluded were not compensated for each and every hour worked or at the appropriate rate. Additionally, Defendants have failed to pay all the Class for all hours worked (including at the proper rates), rest period premiums, and meal period premiums, whose sums were certain, at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter.

Defendant's produced a spreadsheet before mediation which provides information regarding the last date of employment, the date of last payment, and the wages of the employees when broken down by hour. Defendant does not include how the calculation is made, but presumably, the calculation for the salaried employees is the total salary divided by 2000 or 2080 (the total number of working hours per year). There are 723 individuals affected in Defendant's spreadsheet. Defendant helpfully provided a total sum of **$3,444,433.12** in unpaid waiting time penalties. With the payment of **$1,428,392.74** to the Class in individual settlements, there remains **$2,016,040.38** in unpaid waiting time penalties.

Pick Up Stix Settlement

There are 414 putative class members who have executed Pick-Up Settlements as of August 15, 2025. Defendant has provided a total sum of **$1,493,717.74** for the Pick Up Stix Settlement. As a result, value of these claims had to be removed from value of the class claims.

PAGA Penalties

Under California Labor Code § 2699(f)(2) Defendants are subject to a civil penalty of $100 for the initial violation of the aforementioned Labor Code violations, and $200 for each subsequent pay period where the violation occurred. In a recent decision, *Gunther v. Alaska Airlines,* 2021 Cal. App. LEXIS 1008, 2021 WL 5630893 (December 1, 2021) the California Court of Appeal held that the increased $200 civil penalty for "subsequent violations" does not apply unless the plaintiff presents evidence that the "Labor Commission[er] or a court notified [the employer] that it was in violation of the Labor Code."

As such, Plaintiff believes that there is a total of 75 pay periods in between April 6, 2020, through the present. Under California Labor Code § 2699(f)(2), Defendants are subject to a civil penalty based upon the penalty statutes, or the total amount of 203 penalties. Plaintiff estimates the PAGA penalties to be 723 x 32 pay periods (initial) x $100= **$2,313,600.**

The estimated 296 Class Members will enjoy substantial monetary recovery amounting to an estimated average recovery per Class Member of approximately $1,972.97 on a net basis.[4] (*Id*., ¶ 33).

E. <u>The Risks Inherent in Continued Litigation are Great</u>

To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court also should consider "[t]he strength of Plaintiff's case, the risk, expense, complexity and likely duration of further litigation, [and] the risk of maintaining class action status." *See Dunk*, 48 Cal. App. 4th at 1801. As described above, Defendants have strong defenses to Plaintiffs' claims summarized below, which create a real possibility that the claims might not be certified and/or might fail on the merits. Proceeding with litigation would impose significant risk of no recovery as well as ongoing, substantial additional expenditures of time and resources. If settlement were not achieved, continued litigation of the claims would take substantial time and possibly confer no benefit on Class Members. By contrast, the

[4] Net Settlement Amount of $584,000/ 296 Settlement Class Members = $1,972.97.

settlement will yield a prompt, certain, and substantial recovery for Class Members, which also benefits the parties and the Court.

F. Defendants' Defenses

Defendants maintain that it would be able to defeat a class certification motion and/or class claims on the merits, as discussed below. Those defenses can be summarized as follows: (1) the vast majority of the Class Members consented to the late payment of wages either orally or in writing; and (2) by the time the Court reached a decision on class certification, Defendant will have settled with the vast majority of the Class Members through *Pick Up Stix* settlements.

The first defense, the one of consent by the Class Members was not particularly availing, as Labor Code §219(a) discloses such agreements, "Nothing in this article shall in any way limit or prohibit the payment of wages at more frequent intervals, or in greater amounts, or in full when or before due, **but no provision of this article can in any way be contravened or set aside by a private agreement, whether written, oral, or implied."** (Emphasis added).

The second defense, though, was more substantial. In between the first mediation and the second mediation, Defendant began a process of contacting class members and settled with them individually, as allowed under *Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal.App.4th 796. According to the Defendant, 414 class members agreed to the settlement, and Defendant, in total, paid out $1,493,717.74 to these class members. There was a real chance that, if the case dragged on, Plaintiff would represent a class of 1.

Discounts on the PAGA Penalties

Under Labor Code section 2699(e)(2) a court may award a lesser amount than the maximum civil penalty specified under PAGA, if based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary, and oppressive or confiscatory. Courts often exercise their discretion to reduce the amount of PAGA penalties to as little as $5.00 per pay period or 18% of the available PAGA penalties.[5] Additionally, the Labor Commissioner has specifically stated as

[5] *See e.g., Kileigh Carrington v. Starbucks Corporation, et al.*, San Diego Superior Court Case No. 37-2014-00018637-CU-OE-CTL (Apr. 3, 2017) holding that the plaintiff was only entitled to collect the reduced penalty amount of $5.00 for each pay period in which a meal period violation occurred or 5% of the PAGA penalties at issue); *Fleming v. Covidien, Inc.* (C.D. Cal. Aug. 12, 2011) 2011 WL 7563047, at *4 (reducing PAGA penalties by 82%).

recently as last year that the main purpose for assessing PAGA penalties by the Labor and Workforce Development Agency is to enforce California's Labor Code, and obtain compliance. Specifically, with regard to assessing the adequacy of settlements, the penalty amounts are resigned to "promote PAGA's compliance and deterrence goals." Amicus Curiae Brief submitted by the State Labor Commissioner, *Price v. Uber Technologies*, June 16, 2017. Here, Defendants had changed their pay policies and began paying their employees in a timely manner in January 2019, even before Plaintiff's PAGA Notice.

In addition, the settlement value was significantly discounted based on the risk that a PAGA claims could be deemed unmanageable. See *Wesson v. Staples the Office Superstore, LLC*, 68 Cal.App.5th 746 (Sept. 9, 2021). For the same reasons discussed above regarding the potential challenge in maintaining a class action, the need for individualized proof regarding whether employees were provided compliant meal and rest breaks raises manageability concerns.

Therefore, Plaintiffs assessed a 50% discount on the maximum liability for PAGA penalties due to the discretionary nature of PAGA penalties. (Treglio Decl. ¶ 23).

In sum, the settlement amount, negotiated at arms'-length, is fair and reasonable in light of the strengths and weaknesses of Plaintiffs' case and Defendants' defenses.

G. <u>Plaintiffs' Counsel are Experienced in Similar Wage-and-Hour Litigation</u>

Plaintiffs' counsel is experienced in wage-and-hour class actions. Numerous state and federal courts have certified them as adequate and competent class counsel in similar wage and hour class actions. (Treglio Decl., ¶¶ 4-9). Plaintiffs' counsel shares the view that this settlement is fair, adequate, and reasonable, in the best interests of Class Members, and should be preliminarily approved. (Treglio Decl. ¶ 26-30).

Experienced counsel, operating at arm's length, have weighed the strengths and risks of the case, and endorse the proposed settlement. (*Id.*). The view of the attorneys actively conducting the litigation is entitled to significant weight in deciding whether to approve the settlement. *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff'd*, 661 F.2d 939 (9th Cir. 1981); *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008) (court must take into account "the experience and view of counsel") (internal quotation and citation omitted).

H. <u>The Class Notice Plan Conforms to All Applicable Statutes and Rules</u>

The proposed Class Notice should be approved, as it fully informs the Class members of the nature of the lawsuit and each Class Member's rights under the terms of the Settlement Agreement and applicable law. The manner in which the Class Notice shall be disseminated, as outlined above, shall ensure that all or nearly all of the Class Members shall be properly notified of the proposed settlement.

The proposed Class Notice and proposed plan for the Claims Administrator to mail the Class Notice to the last known address of all class members complies with all the requirements of California Rule of Court 3.766(b). The contents of the proposed Class Notice include: (1) the material terms of the settlement; (2) the proposed attorneys' fees, litigation expenses, and the costs of administration; (3) details about the final fairness hearing, how class members may participate in the settlement and receive their settlement share, exclude themselves, or make an objection; and (4) how class members can obtain additional information. *See* Class Notice (S.A., **Exhibit 1**). In addition, the Notice of Settlement Payment will inform Class Members of their Settlement Share and afford them the opportunity to make corrections to their "workweeks" information if they have a dispute. *See* Notice of Settlement Payment (*Id.*; **Exhibit 2)**.

The Court has wide discretion in approving the means of providing notice, so long as the class representative "provide(s) meaningful notice in a form that should have a reasonable chance of reaching a substantial percentage of class members." *Archibald v. Cinerama Hotels*, 15 Cal. 3d 853, 861 (1976). Here, the parties' notice plan is that notice of the Settlement will be disseminated directly to the class members by first class mail by the Claims Administrator, since Defendants have the last known addresses of all class members and the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct for any identifiable address changes.

The notice plan and the class Notice satisfy the requirements of Rule of Court 3.766 and affords Settlement Class Members with all due process protections required by the United States Constitution. Moreover, the contents of the Class Notice are in compliance with Cal. R. Ct. 3.766(d), because the Notice includes, without limitation (1) a detailed explanation of the case, including the basic contentions or denials of the parties; (2) a statement that the court will exclude the member from the class if the member so requests by a specified date; (3) a procedure for the member to follow in requesting exclusion from the class; (4) a statement that the judgment, whether favorable or not, will bind all members who do not request exclusion; and (5) a statement that any member who does not request exclusion may, if the member so desires, enter an appearance through counsel. The 45-day deadline for Class Members to exclude themselves is reasonable, as it provides Class Members with sufficient time to do so and, if they so choose, to seek independent legal advice in the interim.

I. <u>The Class Representative Service Awards are Fair and Appropriate</u>

The Settlement Agreement provides a service award payment of $15,000 to the Named Plaintiff. The proposed service awards are intended to recognize the time, effort, and risk that the named Plaintiff undertook in bringing this case and helping to secure the relief obtained for the members of the Class. *See Bell v. Farmers Ins. Exchange*, 115 Cal.App.4th 715, 726 (2004) (upholding "service payment" to named plaintiff for his efforts in bringing class case); *Rodriguez v. West Publishing*, 563 F.3d 948, 959 (9th Cir. 2009) (stating that incentive awards are "intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general."). To determine the propriety of a service award, courts consider the actions protecting class interests, the benefit provided to the class based on those actions, and the amount of time and effort expended by the plaintiff. *Staton v. Boeing Co.*, 327 F.3d 938, 976-7 (9th Cir. 1993). The service award must be supported by evidence of the time and effort expended by the named plaintiff and a reasoned explanation of the financial and other risks taken by the named Plaintiff in bringing the case. *See Clark v. American Residential Services LLC,* 175 Cal.App.4th 785, 806-7 (2009).

Plaintiff's requested service awards serve to recognize their time and efforts on behalf of the Class, including time spent in meetings with Class Counsel, and their acceptance of the financial risk in pursuing this litigation. (Treglio Decl. ¶¶ 31-34). The service awards also fall within the range of service awards typically awarded to Class Representatives in similar class actions. *See e.g. Bond v. Ferguson Enterprises, Inc.*, No. 1:09–cv–1662 OWW MJS, 2011 WL 2988879 (E.D. Cal. June 30, 2011) (approving $11,250 service award to each of the two class representatives in a trucker meal break class action; *Ross v. US Bank National Association*, No. C 07-02951 SI, 2010 WL 3833922, at *2 (N.D. Cal. Sept. 29, 2010) (approving $20,000 enhancement award to Class Representative in California wage-and-hour class action settlement); *Vasquez v. Coast Valley Roofing, Inc*., 266 F.R.D. 482, 493 (E.D. Cal. 2010) (approving service awards in the amount of $10,000 each from a $300,000 settlement fund in a wage/hour class action); *West v. Circle K Stores, Inc*., NO. CIV. S-04-0438 WBS GGH, 2006 U.S. Dist. LEXIS 76558, at *28 (E.D. Cal. Oct. 19, 2006) ("the court finds Plaintiff's enhancement payments of $15,000 each to be reasonable."); *Glass v. UBS Fin. Servs*., No. C-06-4068 MMC, 2007 U.S. Dist. LEXIS 8476, at *52 (N.D. Cal. Jan. 26, 2007) (finding "requested payment of $ 25,000 to each of the named plaintiffs is appropriate" in wage and hour settlement); *Louie v. Kaiser Found. Health Plan, Inc*., CASE NO. 08cv0795 IEG RBB, 2008 U.S. Dist. LEXIS 78314, at *18 (S.D. Cal. Oct. 6, 2008) (approving "$25,000 incentive award for each Class Representative" in wage an hour settlement); *Garner v. State Farm Mut. Auto. Ins. Co*., No. CV 08 1365 CW (EMC), 2010 WL 1687832, at *17 n.8 (N.D. Cal. Apr. 22, 2010) ("Numerous courts in the Ninth Circuit and elsewhere have approved incentive awards of $20,000 or more where, as here, the class representative has demonstrated a strong commitment to the class"). Thus, when examined in the context of the gross funds obtained on behalf of the Class as a result of Plaintiff's undertaking the role of Class Representative, the requested service awards are proportionally modest, fair and reasonable.

J. <u>The Attorneys' Fee Allocation Under the Settlement Agreement is Fair</u>

In addition, concurrent with final approval, Plaintiffs' counsel will request a Class Counsel Fees Payment of up to $326,500 (*i.e.*, up to one third of the total value of this settlement) and Class Counsel Litigation Expenses Payment of up to $35,000. (S.A. ¶ 3.2.2). Recently, the California Supreme Court approved Superior Courts' usage of the common fund method of awarding attorneys' fees in wage and hour class actions, like this one, and upheld a fee award at 1/3 of the total settlement amount obtained for the class. *See Laffitte v. Robert Half Int'l Inc.*, 1 Cal. 5th 480, 506 (2016); *see also,* 4 Newberg on Class Actions, § 14:6 at 552 ("fee awards in class actions average around one-third of the recovery"). Specifically, in *Laffitte*, the California Supreme Court wrote: "[w]e join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created"). *Id.* at 506. The California Supreme Court also noted that trial courts have the discretion to award fees as a percentage of the common fund, with or without the necessity to conduct a lodestar cross-check. *Id.* ("…[Courts] … retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee.").

The requested fees of up to one-third of the Settlement Amount is also consistent with awards obtained in similar wage and hour class action cases approved by various courts in California. *See e.g., Stuart v. RadioShack Corp*., No. C-07-4499 EMC, 2010 WL 3155645 (N.D. Cal. Aug. 9, 2010) (approving fee award of 1/3 of the total maximum settlement amount of $4.5 million) (the court noted that the fee award of 1/3 of the total settlement was "well within the range of percentages which courts have upheld as reasonable in other class action lawsuits"); Memorandum & Order, *Monterrubio v. Best Buy Stores, L.P*., Case 2:11-cv-03270-MCE-AC, ECF No. 47, at 23 (E.D. Cal. Nov. 20, 2013) (approving fee award of 30%); *Wilson v. Kiewit Pacific Co*., No. 09-cv-03630, ECF No. 119 (N.D. Cal. 2012) (approving fee award of 1/3 of the common fund and noting that such award is fair, reasonable and appropriate); *Singer v. Becton Dickinson and Co*., No. 08-cv-821-IEG (BLM), 2010 WL 2196104, at * 8 (S.D. Cal. June 1, 2010) (approving fee award of 33.33% of the common fund); *Romero v. Producers Dairy Foods, Inc.*, No. 1:05cv0484 DLB, 2007 WL 3492841, at *4 (E.D. Cal. Nov. 14, 2007) (awarding fees of 1/3 of common fund in a wage and hour class action, noting: "[f]ee awards in class actions average around one-third of the recovery."); *Martin v. FedEx Ground Package System, Inc*., No. C 06-6883 VRW, 2008 WL 5478576, at *8 (N.D. Cal. Dec. 31, 2008) (approving attorneys' fees of 1/3 of common fund). Moreover, if it becomes necessary to litigate this matter further, counsel have the financial resources and are prepared to devote whatever time and effort are required to zealously advocate on behalf of Plaintiffs and the Class.

Here, the requested fees represent 1/3 of the total value of this settlement, including payments to the LWDA, injunctive and/or remedial measures, and cash payment to the Class Members.

VI. <u>CONCLUSION</u>

For these reasons, Plaintiffs' motion for preliminary approval of the parties' class action settlement should be granted.

Dated: February 4, 2026 POTTER HANDY, LLP

By: /s/ James M. Treglio_____________

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