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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

YESENIA GUTIERREZ and KATHY CHAN, individually and on behalf of all others similarly situated, Plaintiffs, vs. ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC., a California Corporation, Defendant.	Case No. CIVSB2300014 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT** Date: June 9, 2025 Time: 8:30 a.m. Dept.: S26 Judge: Hon. Christian Towns

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I. INTRODUCTION

Yesenia Gutierrez and Kathy Chan ("Plaintiffs") seek preliminary approval of a non-reversionary $4,910,000[1] settlement of their class and representative Private Attorneys' General Act ("PAGA") claims against Environmental Systems Research Institute, Inc. ("Defendant" or "Esri") on behalf of approximately (1) 3,873 current and former California employees of Defendant subject to Defendant's Bank Time Policy, whom Defendant classified as exempt at any time from November 15, 2018 to June 9, 2025[2] ("Alleged Misclassification Class"), and (2) 4,569 current and former California employees (exempt and non-exempt) of Defendant employed at any time from March 16, 2020 to June 9, 2025 ("Alleged Reimbursement Class").[3] The Settlement Agreement is attached as Exhibit 1 to the Hammond Decl. The key financial terms of the settlement are as follows:

Gross Settlement Amount	**$4,910,000.00**
Attorneys' Fees	(up to $1,636,666.67)
Litigation Costs	(up to $50,000.00)
Settlement Administration Costs	(up to $57,250.00)
General Release Payments to Plaintiffs	(up to $15,000.00)
PAGA penalties	$100,000.00
Net Settlement Sum	$3,051,083.33
Employer-side payroll taxes (estimated)	$128,145.50
Net Settlement Sum allocated to Misclassification Class (less employer-side payroll taxes)	$2,007,612.83
Net Settlement Sum allocated to Reimbursement Class	$915,325.00

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[1] The Class and PAGA Settlement Agreement and Release ("Settlement Agreement" or "SA") contains an escalator clause that, if triggered, allows Defendant to either pay an additional sum towards the Gross Settlement Amount ("GSA") *or* to end the relevant class period(s) on an earlier date to avoid triggering the clause. SA § 4.12. Based on the data currently available, the escalator clause has been triggered as to both the Misclassification Class and the Reimbursement Class. Accordingly, if Defendant elects to pay an additional sum, the GSA will increase. The parties will update the Court at or before the hearing as to whether Defendant will elect to end the class periods earlier than June 9, 2025. Declaration of Julian Hammond ("Hammond Decl."), filed herewith, ¶ 3, fn. 2.

[2] The Settlement Agreement provides that the class periods will end on "the date on which Plaintiffs' motion for Preliminary Approval of this Settlement is first scheduled to be heard by the Court", which is June 9, 2025. SA §§ 2.3, 2.5. As discussed in fn. 1, above, the escalator clause allows Defendant to end either of the relevant periods on an earlier date.

[3] Approximately 4,199 of the Class Members are also Aggrieved Employees. SA §§ 2.34, 2.36.

The Settlement is a product of well-informed, arm's-length settlement negotiations between experienced counsel, facilitated by a well-respected mediator, and preceded by extensive investigation and production of extensive informal discovery and class data. The Gross Settlement Amount represents 36% of Defendant's realistic, risk-adjusted exposure (excluding PAGA), which is an excellent result in light of the many serious risks posed by continued litigation, including the risks of an adverse ruling on the misclassification theory, upon which all claims of the Misclassification Class Members hinge, as well as risks of non-certification and adverse findings on other merits issues. Class Members[4] will not be required to submit claim forms to receive payment. If approved, the Settlement will provide average recoveries to Alleged Misclassification Class Members ("Misclassification CMs") of approximately $887.43 gross and $518.36 net, and to Alleged Reimbursement Class Members ("Reimbursement CMs") of approximately $322.39 gross, and $200.33 net. Hammond Decl. ¶¶ 51-52. On a pay period basis, Misclassification CMs will receive approximately $8.07 gross and $4.71 net per pay period,[5] and Reimbursement Class Members will receive approximately $3.33 gross and $2.07 net per pay period.[6] *Id.*

For the reasons set forth below, the terms of the Settlement are fair and reasonable and satisfy the criteria for judicial approval. Accordingly, Plaintiffs respectfully request that the Court enter the proposed Order submitted herewith, which: grants preliminary approval of the Settlement, preliminarily certifies the Class for purposes of the Settlement, approves the content and form of the Class Notice and directs that notice be given to the Class Members, and schedules a hearing at which the Court will consider final approval of the Settlement.

II. SUMMARY OF CLAIMS AND PROCEDURAL HISTORY

A. Parties and Pleadings

Esri is a privately held geographic information systems (GIS) software developer headquartered in Redlands, California.[7] Esri offers a variety of GIS software products and services, including one of its best-known products – ArcGIS, the world's leading ArcGIS mapping software. Esri's software is used by thousands of companies, including 90% of Fortune 100 companies, as well

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[4] The Misclassification Class and Reimbursement Class and/or its members are together referred to herein as "Class Members" or "CMs."

[5] Misclassification CMs worked a total of approximately 426,024 pay periods during the relevant period (November 20, 2018 to June 9, 2025). Hammond Decl. ¶ 51.

[6] Reimbursement CMs worked a total of approximately 442,560 pay periods during the relevant period (March 16, 2020 to June 9, 2025). Hammond Decl. ¶ 52.

[7] https://www.esri.com/en-us/home

as national, city and local governments, all 50 states, and 12,000 universities.[8] Plaintiffs and Class Members are employed by Esri in various areas, including engineering and design, solution engineering, information technology, business development, product management, finance and accounting. Hammond Decl. ¶ 10.

B. Procedural Background and Claims Alleged

On November 15, 2022,[9] Plaintiff Gutierrez filed this putative class action against Esri alleging that it: (1) failed to pay overtime wages at premium rates pursuant to Labor Code §§ 510, 1194 and Wage Order No. 4, § 3, (2) failed to pay all wages due upon termination pursuant to Labor Code §§ 201-203, (3) failed to issue accurate itemized wage statements pursuant to Labor Code § 226(a), (e), (4) failed to reimburse business expenses pursuant to Labor Code § 2802, and (5) unfair, unlawful, or fraudulent business practices pursuant to Bus. & Prof. Code §§ 17200 *et seq.* The original Complaint alleged the first three causes of action on behalf of allegedly misclassified computer software employees, and the fourth cause of action on behalf of all employees, whether exempt or non-exempt, for the failure to reimburse their home office business expenses incurred as a result of remote work during the COVID-19 pandemic. The fifth cause of action was alleged on behalf of all class members. Hammond Decl. ¶ 11.

On April 11, 2023, Gutierrez filed a First Amended Complaint adding Plaintiff Chan as a named plaintiff and adding a cause of action for civil penalties under the Labor Code's Private Attorneys General Act, Labor Code §§ 2698 *et seq.* ("PAGA"), pursuant to the initial and first amended PAGA notices. Hammond Decl. ¶ 12.

On January 9, 2023, Plaintiffs filed a second amended PAGA notice to include Chan as an alleged representative and to allege claims for (1) failure to pay overtime wages; (2) failure to pay all wages due upon termination; and (3) failure to issue accurate itemized wage statements, as alleged in the Complaint, on behalf of allegedly misclassified computer software employees. In or about October 2023, Plaintiffs informed Defendant that they would seek to amend their complaint to allege claims for unpaid overtime, failure to pay upon termination, and inaccurate wage statements on behalf

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[8] https://www.esri.com/en-us/about/about-esri/company

[9] Due to issues with the filing service, Plaintiff Gutierrez did not receive conformed copies of her original complaint, assigned case number CIVSB2225691, until March 2023. Because of this, Gutierrez filed an identical complaint on January 4, 2023, in this case, case number CIVSB2300014. After conferring, Esri and Gutierrez agreed that the original Complaint would be dismissed and the Complaint in this case would be amended to extend the class period back to November 15, 2018, based on the original date of filing. SA § 1.2.

of all employees (not just computer software employees) subject to the Bank Time Policy. Hammond Decl. ¶ 13.

On April 17, 2024, Plaintiffs filed a third amended PAGA letter, seeking to represent all Esri employees classified as exempt in the State of California who have been paid allegedly on an hourly basis pursuant to their offer letters and Esri Bank Time Policy and adding claims for meal and rest break violations. *Id.* ¶ 14. On February 25, 2025, as part of the settlement and pursuant to the parties' stipulation, Plaintiffs filed a Second Amended Complaint adding claims based on the allegations and theories set out in Plaintiffs' third amended PAGA letter, including the addition of claims for alleged failure to provide meal breaks and alleged failure to permit and authorize rest breaks. *Id.* ¶ 15.

C. Discovery, Investigation, and Settlement Efforts

The parties engaged in extensive informal discovery that informed their settlement discussions. Defendant produced the personnel files of both Plaintiffs and three other employees, including their offer letters and wage statements, Esri's Bank Time Policy, Employee Handbooks, and an excel spreadsheet showing, for each putative Class Member, the following information for the period from November 15, 2018 through to July 15, 2024: his/her job title; hire date; termination date, if any; annualized salary; gross wages earned; effective hourly rate; bank hours accrued; and bank hour remaining as of the end of the year (positive or negative). Defendant's counsel also represented that if an employee had a negative bank balance in December or February, when Esri pays out unused banked hours for the previous year, the negative bank balances were forgiven and no deductions were made from the employee's paycheck. Hammond Decl. ¶¶ 18-19.

Based on Plaintiffs' analysis of the spreadsheet, Plaintiffs were able to calculate the number of Misclassification CMs the number of pay periods they worked during the relevant period, and the number of pay periods they worked remotely from home. *Id.* ¶ 19. In addition, Defendant provided the class size for all the Reimbursement CMs and the number of pay periods they worked remotely from home. *Id.* Defendant also provided Esri's office furniture expense reimbursement policy, the number of Reimbursement CMs who submitted reimbursement requests pursuant to that policy and the dollar amount Esri reimbursed them, and Esri's communications regarding its COVID-19 office closures and reopening. *Id.*

Plaintiffs' counsel also conducted their own research and investigation, gathered and reviewed publicly available documents about Esri, conducted online surveys of current and former employees (to which they received over 70 responses), conducted detailed interviews of several survey respondents and gathered additional documents from them. *Id.* ¶¶ 16-17.

The parties participated in a private mediation on October 1, 2024 with the assistance of a well-respected and skilled mediator Stephanie Chow. Prior to the session, Plaintiffs provided to the mediator and to the Defendant a detailed brief supported by the evidence obtained as part of informal discovery and through Plaintiffs' counsel's own research and investigation. The parties did not reach an agreement after the mediation session, and the mediator made a mediator's proposal, which was ultimately accepted by the parties. Following the mediation, the parties agreed to settle the case on the terms memorialized in the Settlement Agreement. Hammond Decl. ¶¶ 20-23.

D. Related Cases

There were previously two related actions pending—an individual action in the San Bernardino Superior Court and a class action in Riverside County Superior Court. The individual case, styled *Arnold Castano v. Environmental Systems Research Institute, Inc.,* Case No. CIVSB2417865 (May 21, 2024, San Bernardino Cnty. Sup. Ct.), was dismissed with prejudice on December 17, 2024. Hammond Decl. ¶ 6. The plaintiff in the class action, styled *Laura Provonsha v. Environmental Systems Research Institute, Inc.,* Case No. CVRI2401687 (March 28, 2024 Riverside Cnty. Sup. Ct.), filed an amended complaint carving out the claims alleged in the instant case from her complaint. Accordingly, *Provonsha* is no longer a related case. *Id.*

III. SUMMARY OF SETTLEMENT TERMS

The proposed settlement involves all claims of the Plaintiffs and Class Members against Esri, as set forth in the Second Amended Complaint. The details of the settlement are contained in the proposed Settlement Agreement, and a summary of the settlement terms is as follows:

1. Settlement Classes – The Settlement classes are defined as follows: The "Alleged Misclassification Class" is defined as "all current and former employees of Defendant in the State of California subject to Defendant's Bank Time Policy and whom Defendant classified as exempt at any time from November 15, 2018 to [June 9, 2025]." The "Alleged Reimbursement Class" is defined as "all current and former employees (whether exempt or non-exempt) of Defendant in the State of California from March 16, 2020 to [June 9, 2025]."[10]

2. Gross Settlement Amount ("GSA") – Esri will pay $4,910,000, inclusive of employer's-side payroll taxes arising from the wages portion of the settlement of Misclassification CMs. General Release Payments to the Plaintiffs, attorneys' fees and litigation costs, and

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[10] The relevant periods of the Settlement Classes are subject to an escalator clause, which allows Defendant to end either of the relevant periods on an earlier date if the escalator clause is triggered. *See* discussion at fn. 1, *supra*.

administration costs, subject to approval by the Court, will be deducted from the GSA. SA § 2.24. Plaintiffs are requesting that the Court award a total of $15,000 in incentive awards ($7,500 to Plaintiff Gutierrez, and $7,500 to Plaintiff Chan) for their efforts and time spent on behalf of the Classes and for the general release into which they are entering as part of the settlement. SA § 3.6. Plaintiffs are also requesting that the Court award Plaintiffs' counsel out of pocket litigation costs of up to $50,000 and attorneys' fees in the amount of $1,636,666.67 - one-third of the GSA. SA § 3.5.

3. PAGA Settlement Amount – The Settlement allocates $100,000 to the PAGA claim. SA § 2.37. The LWDA will be paid 75% of that amount and the remaining $25,000 ("PAGA Fund") will be paid on a pro-rata basis to the PAGA Group Members as follows: seventy (70%) percent of the PAGA Fund will be paid pro-rata to the members of the Alleged Misclassification PAGA Group[11] and thirty (30%) percent will of the PAGA Fund will be paid pro-rata to the members of the Alleged Reimbursement PAGA Group.[12] SA §§ 2.33, 2.37.

4. Net Settlement Sum ("NSS") – The NSS is approximately $3,051,083.33. Hammond Decl. ¶ 48. This is the amount remaining after subtracting from the GSA attorneys' fees, costs, general release payments to Plaintiffs, withholdings and taxes (from the portion of the NSS allocated to the Misclassification CMs), settlement administration costs, and the PAGA Settlement Amount. The employer-side payroll taxes are estimated to be $128,145.50. Hammond Decl. ¶ 48.

5. Calculation of Individual Settlement Awards - The NSS will be allocated as follows: 70% to the Misclassification Class (including withholdings and taxes); 30% to the Reimbursement Class. Each portion will be distributed among the members of each Class on a pro-rata basis based on the number of pay periods worked during the relevant period. SA § 4.5.

6. Class Notice – Within 15 business days of preliminary approval, Defendant will provide the Administrator with the information regarding Class Members necessary for the mailing of the Notice. SA § 4.2.1. Within 10 business days of receiving Class Data, and after updating the addresses, the Administrator will mail each Class Member a Notice substantially in the form attached as Exhibit A to the Settlement Agreement. SA § 4.2.3. For all returned Notices, the Settlement

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[11] Alleged Misclassification PAGA Group means all current and former employees of Defendant in the State of California subject to Defendant's Bank Time Policy and whom Defendant classified as exempt at any time from February 5, 2022 to the date on which Plaintiffs' motion for Preliminary Approval is first scheduled to be heard by the Court. SA § 2.4.

[12] Alleged Reimbursement PAGA Group means all current and former employees of Defendant in the State of California from February 5, 2022 to the date on which Plaintiffs' motion for Preliminary Approval is first scheduled to be heard by the Court. SA § 2.6.

Administrator (Settlement Services, Inc.) will initiate a second mailing after skip tracing. *Id.*

7. Automatic Participation – The Settlement is non-reversionary, and each Class Member will automatically receive his/ her share of the NSA, unless he/ she opts out. SA §§ 4.3.5, 4.8.4. Each PAGA Group Member will receive a share of the PAGA Fund even if they opt out of the class settlement. SA §§ 4.3.8.

8. Opting Out or Objecting – CMs who wish to opt out must send a written Request for Exclusion to the Settlement Administrator within 45 calendar days of the date the Notices are mailed. SA §§ 2.49, 4.3. Any Class Member who properly requests to opt out will not be entitled to receive any payment under and will not be bound by the Settlement, except that they will still receive their share of PAGA Penalties and be bound by the release of PAGA claims. SA §§ 4.3.4, 4.3.8. Alternatively, a Class Member may object to the Settlement by sending the Settlement Administrator a written statement objecting to the Settlement or by appearing at the final approval hearing and making an oral objection. SA § 4.4.

9. Tax Consequences of Settlement Payments – For tax purposes, Settlement payments made to the Misclassification CMs will be treated as 40% wages and 60% as interest, penalties, and non-wage damages. Settlement payments made to the Reimbursement CMs will be treated as non-wage damages. SA § 4.6.1. PAGA payments will be allocated as penalties. SA § 4.6.2.

10. Uncashed Checks – Settlement checks not cashed within 180 days of the date of mailing will be voided and funds will be tendered to Child Advocates of San Bernardino County (CASA) as *cy pres* recipient under Cal. Code of Civ. Proc. § 384. SA § 4.8.3.

11. Scope of Release – Settlement CMs will release all claims alleged or that could have been alleged against Defendant based on the facts set out in the Complaints and PAGA Notices, as set out in SA §§ 2.45, 5.4, 5.5. Specifically, "for the Settlement Class Members of the Alleged Misclassification Class, released claims include, without limitation, claims under Labor Code sections 201-203, 226, 226(a), 226(e), 226.7, 510, 512, 1194, and 2698 et seq.; Business and Professions Code section 17200 et seq.; and Code of Civil Procedure section 1021.5. For the Settlement Class Members of the Alleged Reimbursement Class, released claims include, without limitation, claims under Labor Code sections 2802 and any derivative claims; Business and Professions Code section 17200 *et seq.*; and Code of Civil Procedure section 1021.5." SA § 2.45.

IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS MERITED

When a negotiated class action settlement is reached prior to certification, the Court may approve certification of a provisional settlement class. Cal. Rules of Court, Rule 3.769(d). A class is certifiable if (1) it is ascertainable and sufficiently numerous; (2) there is a well-defined community of interest; and (3) a class action would be a superior method of adjudication. *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1021 (2012).

A. The Class Is Ascertainable and Sufficiently Numerous

CMs here are "ascertainable" because they may be readily identified from Esri's records. *See Reyes v. Bd. of Supervisors*, 196 Cal. App. 3d 1263, 1271 (1987); *Noel v. Thrifty Payless, Inc.*, 7 Cal. 5th 955, 986 n.15 (2019). The Class is sufficiently numerous with approximately 3,873 Misclassification CMs and approximately 4,569 Reimbursement CMs. Hammond Decl. ¶ 3.

B. A "Community of Interest" Exists Among CMs

The "community of interest" requirement has three factors: (1) common questions of law or fact that predominate; (2) class representatives with typical claims; and (3) class representatives who can adequately represent the class. *Fireside Bank v. Super. Ct.*, 40 Cal. 4th 1069, 1089 (2007).

1. Common Questions of Law and Fact Predominate

Where the defendant employer's policies or conduct is uniformly directed at a class or classes of employees, as Plaintiffs contend it is here, the class-wide impact of the defendant's policies satisfies the commonality requirement. *See Sav-On Drugs Stores, Inc. v. Super. Ct.*, 34 Cal. 4th 319, 331 (2004) (upholding class certification, where the common issue was whether the employer properly classified grocery store managers as exempt from California's overtime requirements).

Plaintiffs challenge Defendant's compensation scheme and expense reimbursement policies, which Plaintiffs contend raise common questions of law and fact: whether Esri's Bank Time Policy allowed for reductions in pay based on hours worked such that Esri lost the ability to properly classify Misclassification CMs as non-exempt employees; whether Esri could classify Misclassification CMs as exempt if, as matter of practice, Esri never reduced pay based on hours worked even if Esri's Bank Time Policy allowed for such reduction; whether Reimbursement CMs incurred necessary and reasonable business expenses as a result of working remotely from home; and whether Defendant was required to reimburse them.

2. Plaintiffs' Claims Are Typical

Plaintiffs contend that their claims are similar to those of all Misclassification CMs they seek to present because they were subject to the same Bank Time Policy, received the same standardized wage statements, and were subject to the same work from home and expense reimbursement policies, and, as a result, suffered the same types of injury, and seek the same types of relief as the members of the Classes. *See Seastrom v. Neways, Inc.,* 149 Cal. App. 4th 1496, 1502 (2007); Declaration of Kathy Chan ("Chan Decl."), filed herewith, ¶¶ 2-6; Declaration of Yesenia Gutierrez ("Gutierrez Decl."), filed herewith, ¶¶ 2-5.

3. Plaintiffs and Their Attorneys Will Adequately Represent the Class

"'Adequacy of representation depends on whether the plaintiff's attorney is qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the class.'" *Caro v. Procter & Gamble Co*., 18 Cal. App. 4th 644, 669 n.21 (1993) (citations omitted). Plaintiffs contend that both elements are satisfied here. HammondLaw has extensive class action litigation experience, and in particular class actions alleging wage and hour violations. Hammond Decl. ¶ 7 & Ex. 2. HammondLaw has been appointed class counsel in numerous class actions and has represented thousands of employees in similar cases. *Id.* ¶ 7. Plaintiffs are committed to representing the interests of and do not have any conflicts with any CM, and their interests are virtually coextensive with those of the CMs. *Id.* ¶ 4; *see also* Chan Decl. ¶¶ 7-8, 19; Gutierrez Decl. ¶ 6.

C. A Class Action Is a Superior Method of Adjudication

Because Plaintiffs' claims depend on common evidence, including Defendant's Bank Time policy, standardized offer letters and wage statements, and remote work requirements and/or expectations and expense reimbursement policy, and given the relatively small size of individual claims, a class action is the fairest and most efficient means of addresses CMs' claims. Hammond Decl. ¶¶ 18, 25-26, 36, 41. It would be inefficient to resolve these claims at separate trials. *See Daar v. Yellow Cab. Co.,* 67 Cal. 2d 695 (1967); *Bufil v. Dollar Fin. Grp., Inc.*, 162 Cal. App. 4th 1193, 1208 (2008).

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

A. The Two-Step Settlement Approval Process

Court approval of a class action settlement is a two-step process: (1) a preliminary review and contingent approval by the trial court, and (2) after notice has been distributed to the class members, a hearing and a detailed review that includes their responses. Cal. Rules of Court, Rule 3.769(a); *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1800-1801 (1996). Thus, the trial court's preliminary approval of the settlement is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. *See, e.g.*, 4 Newberg on Class Actions § 11.25 (4th ed. 2002). Applying the criteria for preliminary approval in this case reveals a substantial basis for granting the preliminary approval this Motion seeks.

B. The Settlement is Fair and Reasonable

In analyzing whether a settlement is fair and reasonable, courts consider a number of factors: (1) the strength of the plaintiff's case balanced against the settlement amount; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the extent of discovery completed and the stage of the proceedings; (5) the experience and views of counsel; and (6) the reaction of the class members to the proposed settlement. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116 (2008). Indeed, a settlement is initially "presumed to be fair" when (1) it "is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 52 (2008) (quoting *Dunk*, 48 Cal. App. 4th at 1802).

1. The Settlement Was a Product of Informed, Non-Collusive Negotiations

The settlement is the result of hard-fought extensive settlement negotiations between the parties, conducted at arm's length, and informed by substantial factual and legal investigation. Plaintiffs and the Class have been represented by experienced counsel, who have successfully litigated numerous similar wage and hour class actions, and who litigated one such class action all the way through verdict and appeal – an exceedingly rare occurrence. Plaintiffs' Counsel have been approved as adequate class counsel by federal and state courts. Hammond Decl. ¶¶ 7, 16-22. Class Counsel have spent a considerable amount of time prosecuting this case, including drafting multiple pleadings; conducted extensive investigation including reviewing publicly available documents and information concerning Defendant; surveying Class Members, and conducting detailed interviews of several respondents including gathering documents from them. Class Counsel also conducted extensive research of applicable law including an in-depth analysis of case law and United States Department of Labor and California Industrial Relations opinion letters regarding bank time policies, salary basis, and computer software exemption requirements; developed theories of the case; met and conferred with Defendant's counsel regarding informal discovery and data needed to evaluate class claims for settlement; retained an expert to analyze data and documents produced by Defendant; and prepared a detailed mediation statement that included factual, legal, and damages analysis. After the parties agreed on a settlement in principle, Class Counsel engaged in post-mediation negotiations, including negotiating the terms of the Memorandum of Understanding and ultimately negotiating the settlement agreement and related documents. *Id.* ¶¶ 16, 19-23, 62.

2. The Settlement Amount is Fair and Reasonable Considering Potential Recovery and the Risks of Litigating this Case

Comparison of the extent of the class recovery to the strength of Plaintiffs' case is the most important factor in analyzing the fairness of the settlement. *Kullar,* 168 Cal. App. 4th at 130. Based on the data produced by Defendant, Plaintiffs were able to establish a maximum theoretical exposure for this case of approximately $66 million. Although Plaintiffs believe that the CMs have strong claims, Plaintiffs recognize that they faced considerable risks on both the merits and certification and applied various discounts for settlement purposes, based on Defendant's actual and potential defenses. Based on Plaintiffs' analysis, the GSA here represents 36% of Defendant's realistic, risk-adjusted, exposure on all class claims. Hammond Decl. ¶ 47.

The allocation of the settlement funds between the two sets of claims (unpaid wages and related claims and unreimbursed expenses) is reasonable and corresponds to the realistic value of each set of claims. Misclassification CMs will receive an average (pre-tax) award of approximately $518.36 net and Reimbursement CMs will receive an average (pre-tax) award of $200.33 net. For individuals who are members of both Classes, the average (pre-tax) awards will be $718.69 net. These amounts are eminently reasonable given the material and substantial risks Plaintiffs faced of losing on the misclassification claim (which was the basis for all the claims except for the reimbursement claim), the risk of losing class certification, and the degree of risk involved in further litigation, as explained below.

a. Claims Alleged on Behalf of the Misclassification Class and Risks

Under California law, for employees to maintain their exempt status, they must be paid on a salary basis, save a few exceptions. *See* Lab. Code § 515(a)-(c); Wage Order No. 4, § 1(A)(2)(g), (3)(d). Under the "salary basis" test, an employee must "receive his full salary for any week in which he performs any work" and his salary may "not [be] subject to reduction" based on "quality or quantity of the work performed." 29 C.F.R. § 541.118(a); *see also Negri v. Konig & Associates,* 216 Cal. App. 4th 392, 397-98 (2013) (looking to federal law for the definition of "salary"); *Rhea v. General Atomics,* 227 Cal. App. 4th 1560, 1567-1568 (2014) ("because California law was patterned to some extent on federal law, the general approach in interpreting California law has been to use the federal salary basis test…").

i. Risks Inherent in Plaintiffs' Underlying Misclassification Theory

Plaintiffs' claims alleged on behalf of the Misclassification Class are premised on the theory that Esri's Bank Time Policy, which applied to the members of the Misclassification Class, violated the salary basis because it allowed pay to be reduced based on quantity of the work performed. Specifically, pursuant to the policy, Misclassification CMs were required to record and report their hours worked each week. Any hours worked over forty in a given week were banked as "comp" time for future use. If an employee worked fewer than forty hours in a given week, banked hours were used to make up the difference. If no banked hours were available, the employee would incur a negative bank balance. For example, if an employee worked 36 in a week, they would either need to use four hours of banked time or face a negative balance of four hours. This negative balance would be offset in a subsequent week if the employee worked overtime, effectively cancelling out the deficit. With respect to negative balances, the Bank Time Policy stated that if an employee had a negative bank balance at the end of the year (or when bank time was balanced by Esri), the employee had to discuss it with his supervisor. Plaintiffs' theory of misclassification was grounded in this provision, as it formed the basis of Plaintiffs' argument that the Bank Time Policy made Misclassification CMs' pay subject to deductions by not automatically forgiving any negative balances. Hammond Decl. ¶¶ 24-25. Plaintiffs thus allege that by violating the salary basis test, Esri lost the ability to classify these employees as exempt. In addition, Plaintiffs allege that even those members of the Misclassification Class who were employed as computer software employees and could be classified as exempt while being paid on an hourly basis, still were not property classified as exempt because they were not paid enough to meet the minimum pay requirements of the computer software exemption. *See* Wage Order No. 4, § 1(A)(3)(h). Hammond Decl. ¶ 26.

Based on their theory that Esri misclassified its employees as exempt, Plaintiffs allege that Esri was required, but failed, to: (1) pay overtime wages at the premium overtime rate, (2) provide off-duty meal and rest breaks, (3) issue accurate itemized wage statements, and (4) pay all wages due at the time of discharge from employment.

Defendant strongly denied the merits of Plaintiffs' misclassification claim. While the Bank Time Policy required Misclassification CMs to discuss their end-of-the-year negative bank balances with their supervisors, Defendant asserted that, as a matter of practice, it consistently forgave any negative balances. Defendant maintained that it never reduced pay based on the amount of work performed and instead always guaranteed a predetermined, weekly salary that exceeded the minimum salary required for exemption under both California state and federal law. Defendant pointed out that neither Plaintiff had ever had their pay reduced, and stated that review of all Misclassification CMs' pay records would show that employees consistently received the same pay each week. Hammond Decl. ¶ 27.

Finally, Defendant argued that Plaintiffs misunderstood the nature of its compensation system, which does not make deductions based on the number of hours worked, but rather rewards hard working employees with additional pay for hours worked over forty in week that it is not otherwise obligated to provide. *Id.* ¶ 28. Defendant's position found some support in case law. In *Coates v. Dassault Falcon Jet Corp.,* 961 F.3d 1039, 1043 (8th Cir. 2020), for example, the Eight Circuit explained that "'the exemption is not lost if an exempt employee who is guaranteed [the minimum weekly salary amount] also receives additional compensation based on hours worked for work beyond the normal workweek. Such additional compensation may be paid on any basis (e.g. ... straight-time hourly amount ...), and may include paid time off.' § 541.604(a)." The Eight Circuit further explained that "[e]mployers 'may take deductions from [salaried employee] leave accounts" and may require exempt employees "to record and track hours," so long as the employee's predetermined salary is not reduced." *Id.,* citing *Ellis v. J.R.'s Country Stores, Inc.,* 779 F.3d 1184, 1200 (10th Cir. 2015). (citations omitted). And, "[a]n employer using an hourly-based payroll system may be entitled to summary judgment if there is no evidence of an actual practice of reducing the guaranteed minimum salary of exempt employees, and undisputed evidence shows that no exempt employee was paid less than this amount." *Id.* at 1045.

Plaintiffs calculated Defendant's maximum potential exposure on the claims alleged on behalf of the Misclassification Class and the realistic exposure based on Defendant's actual and potential defenses to these claims, including defenses discussed above, as follows.

ii. Risks on the Overtime Claim

Based on the data provided by Defendant, Plaintiffs calculated Defendant's maximum potential exposure for unpaid overtime as $19,252,300. Hammond Decl. ¶¶ 30-31. However, Plaintiffs could not identify any instances of pay deductions based on negative bank balances, and Defendant asserted that no such deductions were made. Defendant also contended that Plaintiffs would not be able to certify this or their other claims. Plaintiffs believed that their claim had merit, but they recognized that even if they were able to certify the overtime claim, they faced a material and substantial risk of losing on the merits. For settlement purposes, Plaintiffs applied a 20% discount for the risk on class certification based on the potential that a court would find that different exemption defenses applied to different employees or that some employees had potentially inflated hours, particularly during the pandemic when they worked from home, and a further 70% discount for the risk of losing on the misclassification issue, reducing Defendant's exposure to **$4,620,552**. Hammond Decl. ¶ 32.

iii. Risks on the Meal and Rest Break Claims

Based on the data provided by Defendant, Plaintiffs calculated Defendant's maximum exposure to the claims for missed meal and rest breaks, for settlement purposes, based on Plaintiffs' estimate that Esri owed at least one premium pay for each week during which a Misclassification Class Member worked. On that basis, Plaintiffs calculated unpaid premium pay to be $20,762,279.64. Hammond Decl. ¶ 34. Defendant argued that Plaintiffs would lose on certification because a lack of a written meal/rest break policy alone, without a showing of an actual practice of denying breaks, is insufficient to certify meal and/or rest breaks claims. *See e.g. Dailey v. Sears, Roebuck and Co.*, 214

Cal. App. 4th 974, 1001-1002 (2013) ("the absence of a formal written policy explaining [putative class members'] rights to meal and rest periods does not necessarily imply the existence of a uniform policy or widespread practice of either depriving these employees of meal and rest periods or requiring them to work during those periods."); *see also Cortes v. Market Connect Group, Inc.*, 2015 WL 5772857, at *6 (S.D. Cal. Sept. 30, 2015) (denying certification on a meal and rest break claim where plaintiff failed to produce evidence that defendant's facially invalid policy actually reflected defendant's in-store practice of implementing compliant meal and rest breaks). Moreover, Defendant, again, argued that Plaintiffs could not win these claims on the merits simply because Misclassification Class Members were paid a salary and were properly classified as exempt, and, as exempt employees, were not entitled to meal and/or rest breaks. Based on these arguments, Plaintiffs applied a 70% discount to the maximum exposure based on the risk of losing on the misclassification issues, a further 50% discount for the risk of losing class certification and on the merits of the meal/ rest break claims if evidence showed that Class Members could freely take breaks, reducing Defendant's realistic potential exposure to **$3,114,341.95.** Hammond Decl. ¶ 35.

iv. Risks on the Wage Statement and Waiting Time Penalties Claims

Plaintiffs' wage statement and waiting time penalties claims hinge on Plaintiffs' misclassification theory, and both claims are entirely derivative of Plaintiff's overtime and meal and rest breaks claims. For settlement purposes, Plaintiffs calculated Defendant's exposure to the wage statement penalties under Labor Code § 226(e) as $11,565,538.95 and to the waiting time penalties under Labor Code § 203 as $4,231,200. Hammond Decl. ¶ 38. Plaintiffs applied the following discounts for the risks Plaintiffs faced on both claims: a minimal 10% discount for the risk of losing on class certification, and a further 70% discount for the risk of losing on the misclassification issue. Plaintiffs also applied a further 50% discount based on Defendant's good faith defense that it classified Misclassification CMs as exempt in good faith and any violation of § 226(a) or § 203 was not knowing and intentional, thus negating any liability. *Naranjo v. Spectrum Security Services, Inc.,* 88 Cal. App. 5th 937, 944-951 (2023) (holding that a good faith dispute/defense precludes a "knowing and intentional" violation finding necessary for an award of penalties under § 226(e) and § 203); *Barnhill v. Roberts Saunders & Co.,* 125 Cal. App. 3d 1, 8-9 (1981) (an employer's failure to pay wages is not "willful" if the legal duty to pay them was unclear at the time of the violation). Thus, Plaintiffs calculated Defendant's potential exposure on these claims as **$2,132,559.76** ($1,561,347.76 + $571,212.00). Hammond Decl. ¶¶ 39-40.

b. Claims Alleged on Behalf of the Reimbursement Class and Risks

As a result of the COVID-19 pandemic and the state of emergency declared in California, Defendant began requiring and/or expecting its employees to work remotely from home beginning on or about March 16, 2020. According to the documents provided by Defendant, Esri's main office in Redlands, California reopened in January 2022 and employees were permitted to return to work from the office on a voluntary basis. Hammond Decl. ¶ 41. Plaintiffs alleged, however, that many of the employees continued to work remotely from home at least on a hybrid basis. *Id*. Plaintiffs allege that as a result of working remotely, Defendant's employees paid out of pocket for their home internet and cell phone service in order to carry out their job duties, yet Defendant did not reimburse them for these out-of-pocket expenses in violation of Labor Code § 2802. *Id.* Plaintiffs calculated Defendant's maximum potential exposure for unreimbursed expenses as $10,502,405.02 ($7,596,006.28 for the period between March 2020 and January 2022, and $2,906,398.74 for the period after January 2022). *Id.* ¶ 42.

Defendant contended that any expenses incurred after January 2022 were not compensable as they were not necessary or reasonable (*see* Lab. Code § 2802(a), (c)) because all Reimbursement CMs could return to work from the offices, and any employee who chose not to did so out of his or her own convenience, not because Defendant required and/or expected them to. Defendant also argued that even before January 2022, and for most of the time after March 2020, Reimbursement CMs would work from the office because, unlike other employers, Defendant's California office in Redlands remained open and available to employees to work from. Hammond Decl. ¶ 43. Defendant also argued that it provided company phones to employees who wanted them and that those phones came equipped with wifi, which Reimbursement CMs could use to connect to the internet at home, in addition to make work calls. *Id.* Defendant also could have argued that Reimbursement CMs' work-related mobile phone usage was minimal, and that Plaintiffs' estimate of unreimbursed monthly expense was overinflated. *Id.* Finally, Defendant pointed to the fact that it provided reimbursement for home office furniture and that over 2,000 Reimbursement CMs (of the 3,300 who worked during height of the pandemic from March 2020 to January 2022), requested such reimbursement. Pursuant to these requests, Defendant paid $459,485.90 in reimbursements. *Id.*

Defendant also argued that Plaintiffs would not be able to certify this claim because determining which employees incurred expenses, and whether those expenses were reasonable and necessary, would require individualized inquires. Defendant also disputed whether remote work was required or voluntarily chosen by employees for their own convenience. Finally, Defendant also could have argued that many employees moved out of state during the pandemic (e.g. to live with their parents, or extended families out of state) which would lead to further individualized inquiries regarding where the employee was located, and whether the employee qualified for reimbursement under Labor Code § 2802. Hammond Decl. ¶ 44.

Based on Defendant's actual and potential arguments discussed above, Plaintiffs applied a 40% discount for the certification risk, and a further 40% discount for the merits risk. This reduced Defendant's realistic damages on this claim to $3,780,865.81. *Id.* ¶ 45. Plaintiffs applied no reduction to their estimated damages for the approximately $500,000 that Defendant paid out in reimbursement because these reimbursements were for home office furniture and not ongoing home internet and mobile phone expenses. *Id.*

c. <u>The Allocations Between the Two Classes is Fair and Appropriate</u>

The allocation of the Settlement funds (70/30) between the Misclassification Class and the Reimbursement Class is fair and reasonable and is based on the realistic value of the claims of each Class. The realistic exposure on the claims of the Misclassification Class represents approximately 72.3% of the total realistic exposure,[13] and realistic exposure on the claims of the Reimbursement Class represents approximately 27.7% of Defendant's total realistic exposure.[14] *Id.* ¶ 49.

3. <u>The Amount Allocated to PAGA Penalty is Fair and Adequate</u>

Plaintiffs calculate Defendant's maximum potential liability for PAGA penalties (based on court's discretion) as approximately 2.86 million (10% of the maximum available penalties calculated at $100 penalty for each pay period during the PAGA Period). Hammond Decl. ¶ 54; *see* e.g. *Carrington v. Starbucks Corp.,* 30 Cal. App. 5th 504, 529 (2018) (reducing PAGA penalties to 10%, based on "good faith attempts" to comply with meal break obligations); *see also* Jennifer Kramer, et al. "PAGA At 20: What Happens When Cases Go To Trial?" (2024) (analyzing 70 judgments in PAGA cases and finding that the median amount of penalties awarded was just 6.6% of the median requested).[15] The $100,000 allocated to PAGA penalties represents approximately 3.5% of Defendant's potential exposure to PAGA penalties. Hammond Decl. ¶ 55.

This allocation is fair and reasonable for several reasons. First, the overall settlement resulted in robust relief, particularly when measured against the material, substantial risks Plaintiffs faced on

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[13] Defendant's total realistic exposure is $13,648,319.51. Hammond Decl. ¶ 46. Realistic exposure on the overtime, meal and rest break, wage statement, and waiting time penalties claims is $9,867,453.70 ($9,867,453.70/ $13,648,319.51 = 72.3%).

[14] Realistic exposure on the expense reimbursement claim is $4,624,464.70 ($3,780,865.81/ $13,648,319.51 = 27.7%).

[15] https://stevepearlmediation.com/wp-content/uploads/2024/09/PAGA-at-20-CLA-LE-Law-Review.pdf

the merits, which is what courts look at when assessing the amount attributed to PAGA penalties. *O'Connor v. Uber Techs., Inc.*, No. 201 F. Supp. 3d 1110, 1134 (N.D. Cal. Aug. 18, 2016) (where settlement for the class claims is robust, the purpose of PAGA may be fulfilled because by providing fair compensation to class members, the settlement has a deterrent effect on defendant and other employers, thus fulfilling the purpose of PAGA). Hammond Decl. ¶ 55. Second, Defendant could contend that Plaintiffs' PAGA claims would fail for the same reasons their underlying claims failed. Third, although class certification requirements do not apply to PAGA claims, "such claims can be stricken if they are found to be 'unmanageable,'" and because only CMs who actually incurred unreimbursed expenses during a particular pay period could recover PAGA penalties for those violations, Defendants could have disputed that there is a manageable way to determine who was entitled to such penalties. *See, e.g.*, *Raphael v. Tesoro Ref & Mktg. Co.*, No. 2:15-cv-02862-ODW, 2015 U.S. Dist. LEXIS 130532, at *5 (C.D. Cal. Sept. 25, 2015). Plaintiffs will submit the proposed Settlement Agreement to the LWDA immediately after the filing of the instant Motion, along with all the Motion papers filed with the Court.

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

If litigation were to proceed, Plaintiffs would face a serious risk posed by Defendant's actual and potential defense that Plaintiffs would not be able to certify their claims, that they would lose on the misclassification issues (as well as all the claims that are dependent on that theory), and that they would lose the reimbursement claim at least for the period after January 4, 2022. Hammond Decl. ¶¶ 56-57. Defendant also argued that it would take years before this case could go to trial. *Id.* ¶ 58. Even if this matter proceeded to trial, voluminous evidence would be needed to prove damages; expert testimony could be required to prove the damage calculations; and trial would be complex given the number of employees and claims involved. *Id*. Regardless of which side prevailed on the misclassification issue, on class certification, or at trial, an appeal would be likely, creating additional delay and uncertainty of any recovery. *Id.* This Settlement provides an efficient resolution of this dispute, and Class Members will obtain a substantial recovery now without the major risks and lengthy delays that further litigation would entail. *Id.* ¶ 59.

5. <u>Extent of Discovery Completed and The Stage of the Proceedings</u>

As discussed in the Hammond Declaration, the Settlement was informed by substantial discovery and investigation. Hammond Decl. ¶¶ 16-19. Plaintiffs' data analysts analyzed key payroll data, including records of overtime hours worked; reviewed documents provided by Defendant; surveyed Class Members and conducted detailed interviews of many of those who responded to the survey, including gathering documents from them; reviewed publicly available documents about Esri; and conducted in-depth research related to the misclassification issue. *Id.* Plaintiffs were therefore well-informed about the strengths and weaknesses of their claims, and well-positioned to conclude that this Settlement was an excellent outcome for the Classes.

6. Views of Experienced Counsel Support the Settlement

Class Counsel has extensive experience in class action litigation, and, in particular wage-and-hour and unreimbursed expense class actions, and has been repeatedly determined by numerous courts to be adequate class counsel. Hammond Decl. ¶ 7 & Ex. 1. Class Counsel considers the settlement to be fair, reasonable and overall an excellent result for the Classes, particularly when considering Defendant's many defenses discussed above.[16] *Id.* ¶¶ 5, 47.

C. The Proposed Class Notice Content and Procedure Are Adequate

The proposed Class Notice provides information to allow CMs to make an informed decision to accept or object to the settlement. *See Wershba v. Apple Comput., Inc.*, 91 Cal. App. 4th 224, 251-52 (2001). The proposed Notice informs CMs of (1) the material terms of the settlement, (2) the proposed fees and costs of Class Counsel and for settlement administration, (3) the proposed general release payments to each Named Plaintiff, (4) how CMs may opt out of, or object to, the Settlement; (5) details about the court hearing on settlement approval, and (6) how CMs can obtain additional information. *See* Cal. Rules of Court, Rule 3.766 and Exhibit A to the Settlement Agreement. In addition, the proposed Notice contains information about each CM's estimated award under the distribution formula (and how they can challenge the data used in calculating their settlement awards), the tax treatment, and possible tax consequences of their awards.

The procedure for distribution of Notice has "a reasonable chance of reaching a substantial percentage of the [CMs]." *Cartt v. Super. Ct.*, 50 Cal. App. 3d 960, 974 (1975). The Notice will be sent by first class mail to the most recent address of each CM. SA § 4.2.3. If a Notice is returned as undeliverable, the Administrator will use skip tracing and resend it if a new address is identified. SA § 4.2.2-4.2.3.

D. The Requested General Release Payments Are Preliminarily Reasonable

If the Court grants preliminary approval, in conjunction with seeking final approval, Plaintiffs will move for approval of General Release Payments of $7,500 each to recognize the time and effort they expended for the Class, the risk they undertook in bringing this case against their former

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[16] The final prong of the *Kullar* test – the reaction of the Class – will be evaluated at final approval.

employer, and the general release they are each giving Esri. Hammond Decl. ¶¶ 65-67; Chan Decl. ¶¶ 7-19; Gutierrez Decl. ¶¶ 5-14. The requested payments make up a very modest portion of class recoveries and fall well within the range of service payments typically awarded to class representatives in similar class actions. *See, e.g.*, *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1393 (2010) (affirming awards of $10,000); *Cathers v. Mt. Saint Mary's University,* No. 22STCV02941 (Los Angeles Cnty. Super. Ct., March 8, 2024) (granting award of $7,500); *Beck v. University of San Francisco,* Case No. CGC-21-588930 (San Francisco Cnty. Super. Ct., February 14, 2025) (granting awards of $7,500 and $5,000); *Vissing v. Coalition for the Common Good,* Case No. 23STCV07770 (Los Angeles Cnty. Super. Ct., March 28, 2025) (granting award of $7,500). Although the requested awards are higher than the average settlement awards, they are not out of line with those awards. An average award for a members of both Classes will be about $1,200 and the highest award will be about $3,600. Hammond Decl. ¶ 66, fn. 12.

E. The Requested Attorneys' Fees and Costs Are Preliminarily Reasonable

Also in conjunction with final approval, Plaintiffs will move for an award of attorneys' fees of one-third of the GSA, or $1,636,666.67. SA § 3.5. Courts in California have long recognized the equitable "common fund doctrine under which attorneys who create a common find or benefit for a group of persons may be awarded their fees and costs out of that fund. The requested fee amount is fair, reasonable and represents the one-third of the GSA, which is in line with the prevailing guidelines establishes under California case law and academic literature, and routinely approved by California courts. *See, e.g., Laffitte v. Robert Half Internat. Inc.,* 1 Cal. 5th 480, 487, 596 (2016); *Chavez v. Netflix, Inc.,* 162 Cal. App. 4th 43, 66, n. 11 (2008) ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.") The fee requested is also warranted in light of the contingent nature of representation, the risk Plaintiffs' counsel undertook that they would neither recoup their advanced costs nor be paid for their time, the excellent result achieved for the Classes, and skill Plaintiffs' counsel displayed in achieving that result. Hammond Decl. ¶¶ 60-62.

Plaintiffs have, to date, incurred approximately $425,000 in reasonable attorneys' fees and anticipate that before the case is concluded they will incur an additional $100,000 in fees. Plaintiffs anticipate that this additional time will be spent finalizing the instant motion papers, preparing for and attending the preliminary approval hearing, working with the settlement administrator to provide notice to the Class Members, respond to questions from Class Members during the notice process, preparing the final approval and fees motions and attending hearing on those motions, and seeing the settlement through to completion and final accounting. In a recent case of similar size and with similar claims, following preliminary approval, Plaintiffs' counsel received and responded to questions about the settlement from more than 75 class members, and continued to respond to numerous questions from class members following final approval, including about timing of settlement awards, missing checks, and tax related inquiries. Hammond Decl. ¶ 62.

Plaintiffs will also request reimbursement for out-of-pocket litigation costs up to $50,000. *See* SA § 3.5. Plaintiffs' counsel have thus far incurred approximately $21,972.51 in reasonable litigation costs, and anticipate that they will incur additional costs related to the filing of the instant and the final approval motion, and final accounting declaration. These costs are commonly taxable and reimbursed costs, including court-filing and process-serving fees, mediation costs, and professional fees paid to a data analysts who assisted in analyzing the voluminous class data. Plaintiffs will submit a detailed breakdown of the actual costs incurred at the time of final approval. Hammond Decl. ¶ 63.

F. <u>The Cy Pres Designee is Appropriate</u>

The Settlement designates Child Advocates of San Bernardino County, as *cy pres* recipient under Code of Civ. Proc. § 384. SA § 4.8.3. CASA is a 501(c)(3) non-profit organization that directly serves the interests of children and youth in the foster care system. Funds received through this cy pres designation would be used to support services such as court advocacy, mentorship, and critical resource support for foster youth. Declaration of Elizabeth Contreras-Martinez ¶ 3. In compliance with § 382.4, Plaintiff's Counsel, Esri's counsel, and Esri certify that they have no connection to or relationship with CASA that could reasonably create the appearance of impropriety as between the selection of the recipient of the money or thing of value and the interests of the class. Hammond Decl. ¶ 70; Declaration of Chris Nowlin, ¶¶ 2-3; Declaration of Alexandra P. Barlow, ¶¶ 2-6.

VI. CONCLUSION

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

DATED: May 15, 2025

Respectfully submitted,

HAMMONDLAW, P.C.

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