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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF ORANGE**

| | |
|---|---|
| KATHRYN JEANINE FAGAN ENGLES, as an individual, on behalf of herself, and all persons similarly situated,<br><br>Plaintiff,<br><br>v.<br><br>PREMIUM BRANDS OPCO LLC, an Ohio limited liability company authorized to do business in California; and DOES 1 through 50 inclusive,<br><br>Defendant. | Case No.: 30-2023-01319973-CU-OE-CXC<br><br>**CLASS AND REPRESENTATIVE ACTION**<br><br>**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**<br><br>[Filed concurrently with Notice of Motion, Declaration of James R. Hawkins and [Proposed] Order]<br><br>Date: March 14, 2025<br>Time: 10:00 a.m.<br>Dept.: Dept. CX105<br>Judge: Hon. Randall J. Sherman<br><br>Trial Date: None set<br>Complaint filed: April 18, 2023 |

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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

Plaintiff and proposed Class Representative Kathryn Jeanine Fagan Engles ("Plaintiff") seeks preliminary approval of a wage and hour class action settlement on behalf of a Class of all current and former non-exempt employees of Defendant Premium Brands Opco LLC ("Defendant") who worked in California at any time between January 1, 2021 through April 30, 2024. Defendant's records indicate that there are approximately 2,974 Class Members.[1]

After engaging in substantial independent investigation, a full-day mediation before well-respected and highly experienced class action mediator Lisa Klerman, and hard-fought negotiations, the parties agreed to a non-reversionary gross settlement amount of $1,500,000, exclusive of employer-side payroll taxes. The settlement is strongly supported by experienced counsel, who carefully considered the strength of the claims and Defendant's potential defenses, as well as the expense, complexity, risks, and likely duration of continued litigation.

Subject to Court-approval, and after deductions for a payment to the Labor Workforce and Development Agency pursuant to the Private Attorneys General Act of 2004 ("PAGA"), Settlement Administration Costs, Incentive Payment to Plaintiff, and attorneys' fees and costs to Class Counsel, the remaining amount will be distributed to Class Members who did not opt-out of the Settlement as follows:

| | |
|---|---:|
| Gross Settlement Amount | $1,500,000 |
| PAGA Allocation | $100,000 |
| Settlement Administration Expenses | $19,500 |
| Incentive Payment | Up to $10,000 |
| Class Counsel Fees | Up to $500,000 |
| Class Counsel Litigation Expenses | Up to $23,000 |
| Net Settlement Amount | At least $847,500 |

Through this motion, Plaintiff respectfully requests that the Court enter an order: (1) provisionally certifying the Class under Code of Civil Procedure section 382 and California Rule of Court 3.769(c) for settlement purposes; (2) preliminarily approving the Settlement; (3) approving as to form and content the

[1] To the extent the terms used in this declaration are defined in the Class Action and PAGA Representative Action Settlement Agreement ("Settlement Agreement"), the defined terms contained herein shall have the same meaning as set forth in the Settlement Agreement.

Notice of Class Action Settlement and ordering that the Notice of Class Action Settlement be distributed to all Class Members; (4) appointing Plaintiff Kathryn Jeanine Fagan Engles as the Class Representative; (5) appointing CPT Group, Inc. as the Settlement Administrator; (6) appointing James Hawkins APLC as Class Counsel; and (7) setting this matter for a hearing on the issues of final approval of the proposed Settlement, approval of the Class Representative Incentive Payment, approval of Class Counsel's attorneys' fees and litigation costs, and approval of the administration expenses.

## II. PROCEDURAL AND FACTUAL BACKGROUND

### A. Plaintiff's Claims And Relevant Background

From December 1, 2021, through February 10, 2022, Plaintiff Engles was employed by Defendant as a Sales Associates at the LOFT store located in San Clemente, California. (Declaration of James R. Hawkins ["Hawkins Decl."], ¶ 6.) At all times, she was classified as a nonexempt employee and was paid on an hourly basis. (*Ibid*.) Plaintiff Engles contends that over the course of her employment, Defendant failed to include shift differentials in her regular rate of pay for purposes of overtime, sick leave, and meal and rest period premiums; often required her to perform off-the-clock work and through meal and rest periods; failed to timely pay all wages owed during employment and at separation from employment; failed to reimburse her for expenses she incurred, including her personal cellphone for business purposes and company-mandated purchases of company-sold clothing; and failed to provide accurate, itemized wage statements. (*Ibid*.)

On February 10, 2023, Plaintiff notified the California Labor and Workforce Development Agency ("LWDA") and Defendant of her intent to assert the rights granted to her under PAGA. (Hawkins Decl., ¶ 7.) Shortly thereafter, on February 21, 2023, Plaintiff filed a putative class action in this Court asserting claims for (1) failure to pay minimum wages; (2) failure to authorize and permit rest periods; (3) failure to timely pay wages during employment; (4) failure to timely pay wages owed upon separation from employment; (5) failure to reimburse necessary business expenses; (6) failure to provide accurate itemized wage statements; and (7) violation of Business and Professions Code section 17200 et seq. (*Ibid*.)

On April 18, 2023, after providing notice to the LWDA, Plaintiff filed a separate PAGA-only complaint asserting violations of the California Labor Code and applicable Industrial Welfare Commission ("IWC") Wage Order for: (1) failure to pay minimum wages; (2) failure to pay overtime



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wages; (3) failure to provide lawful meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay wages during employment; (6) failure to timely pay wages owed upon separation from employment; (7) failure to reimburse necessary expenses; (8) knowing and intentional failure to comply with itemized wage statement provisions; (9) failure to maintain accurate employment records; (10) failure to provide suitable seating; and (11) failure to pay sick pay at the proper rate. (Hawkins Decl., ¶ 8.)

On May 3, 2023, Defendant filed a notice of removal, removing Plaintiff's class action (30-2023-01309041-CU-OE-CXC) to the Central District of California. On November 30, 2023, the Parties attended mediation, as discussed below, and achieved a resolution. (Hawkins Decl., ¶ 9.) On September 23, 2024, the parties submitted a stipulation asking the Court to grant Plaintiff leave to file a First Amended Complaint (FAC) for settlement purposes, enabling Plaintiff to add her class claims to her PAGA action, and subsequently to dismiss the class action, per the terms of resolution achieved through mediation. (*Ibid*.) The FAC, filed on September 24, 2024 is, for settlement purposes, the operative complaint.

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### B. Investigation And Evaluation Of The Claims

Prior to filing the lawsuits, Class Counsel thoroughly investigated the facts and circumstances underlying each of Plaintiff's potential claims. (Hawkins Decl., ¶ 10.) This required, among other things, numerous telephonic conferences with Plaintiff, analysis of documents and other information provided by Plaintiff, investigation into the viability of class treatment of the potential claims, and research of the applicable law. (*Ibid*.) After conducting their initial investigation, Class Counsel determined that Plaintiff's claims were well suited for class adjudication based on what appeared to be a common course of conduct affecting a similarly-situated group of employees. (*Ibid*.)

After filing the lawsuit, Class Counsel conducted further investigation of the facts and claims giving rise to the action, including: (1) conducting extensive informal and formal discovery; (2) reviewing and analyzing thousands of timekeeping and payroll records, Defendant's employee handbook, Plaintiff's personnel files, and relevant policies and procedures; (3) researching the applicable law and potential defenses; (4) interviewing Class Members regarding their experience and the claims asserted; and (5) analyzing and calculating Defendant's potential liability based on interpretations of California law. (Hawkins Decl., ¶ 11, 14–15.) After analyzing the relevant documents and data, Class Counsel determined that this case was likely suitable for resolution via mediation. (Hawkins Decl., ¶ 12.) Given the high degree of risk for both sides, the parties elected to mediate Plaintiff's claims and explore the possibility of settlement. (*Ibid.*)

### C. Mediation And Settlement Efforts

On November 30, 2023, the parties participated in a full-day mediation with Lisa Klerman, a well-respected and highly experienced wage and hour class action mediator. (Hawkins Decl., ¶ 18.) During the mediation, the parties discussed all aspects of the case, including the relative strengths and weaknesses of Plaintiff's claims, the risks and delays further litigation would present, the current state of the law as it related to Plaintiff's claims, and the difficulty Plaintiff would likely have in obtaining and maintaining class certification of each claim. (*Ibid.*) Ms. Klerman's role in mediating this case was extremely helpful in managing the parties' expectations and providing a useful and neutral analysis of the issues and risks to both parties. (Hawkins Decl., ¶ 20.) Following thorough evaluation and advocacy on both sides, the parties agreed to consider a mediator's proposal, and ultimately agreed to settle the claims asserted for the Gross Settlement Amount of $1,500,000. (Hawkins Decl., ¶ 19.)

Class Counsel believes the Settlement is fair and reasonable, taking into consideration the strengths and weaknesses of the claims asserted, the amounts received in other wage and hour class actions, the risks inherent in complex litigation, and the defenses asserted. (Hawkins Decl., ¶¶ 17–18, 22.) At all times, the parties' negotiations were hard-fought and conducted at arm's-length between attorneys who are highly experienced in wage and hour litigation, and the Settlement is evidence of the parties' substantial efforts to reach a mutually agreeable compromise. . (Hawkins Decl., ¶¶ 20, 24.) Nothing about the Settlement is an admission of liability or wrongdoing by Defendant, which it expressly denies. (Settlement Agreement, ¶ 51.a.)

## III. THE TERMS OF THE PROPOSED SETTLEMENT

Subject to Court approval, and pursuant to Code of Civil Procedure section 382 and California Rules of Court, rule 3.769 et seq., the parties have agreed to settle the claims in the operative complaint upon the terms and conditions and for the consideration set forth in the Settlement Agreement, a copy of which is attached as Exhibit 1 to the Declaration of James R. Hawkins and is incorporated herein by reference in its entirety. The following is a summary of the principal terms of the Settlement Agreement:

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### A. Class Definition

The Class is defined as “any person who worked for Defendant as a non-exempt, hourly employee in the State of California at any time during the Class Period, and who does not timely opt-out of the Settlement. (Settlement Agreement, ¶ 6.) The Class Period is defined as the period from January 1, 2021, through and including April 30, 2024. (*Id.*, ¶ 7.) Defendant’s records indicate that there are approximately 2,974 Class Members.

In addition, the Settlement Agreement defines PAGA Members as any person who worked for Defendant as a non-exempt hourly employee in the State of California between February 12, 2022, and April 30, 2024. (Settlement Agreement at ¶¶ 28, 30.) As set forth below, any Class Member who opts out of the Settlement will nonetheless remain eligible for to receive a pro-rata portion of the PAGA Member Payment and will be bound by the Release of PAGA Claims. (*Id.* at ¶ 51.h.)

### B. The Gross Settlement Amount And Allocation Of Settlement Funds

The non-reversionary Gross Settlement Amount is the $1,500,000 that Defendant has agreed to pay to settle the claims asserted in the operative complaint. (Settlement Agreement, ¶ 51.e.) In addition to payments to Class Members and PAGA Members for their portion of the Net Settlement Amount, the Gross Settlement Amount includes: (1) Class Counsel’s Fees Payment of up to $500,000; (2) Class Counsel’s Litigation Expenses Payment of up to $23,000; (3) Settlement Administration Expenses of up to $19,500; (4) Class Representative’s Incentive Payment to Plaintiff of up to $10,000; and (5) the LWDA PAGA Payment in the amount of $75,000 to the LWDA for its share of the Settlement attributable to PAGA penalties. (*Id.*, ¶¶ 51.e.i–v.) In addition, Defendant will separately pay the applicable employer-side payroll taxes owed on the wage portions of the Individual Class Payments. (*Id.*, ¶ 54.)

### C. Net Funds Available To Class Members

After all Court-approved deductions from the Gross Settlement Amount, Class Counsel estimates that at least $847,500 (the “Net Settlement Amount”) will be distributed to Class Members. The Net Settlement Amount will be distributed on a pro rata based on the number of Workweeks a Class Member worked during the Class Period. (Settlement Agreement, ¶ 40.) Class Members will be provided with notice of the Settlement and its terms, their estimated share of the Settlement and share of the PAGA Member Payment, their right to opt-out or object to the non-PAGA portion of the Settlement, and their

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right to appear at the fairness hearing. (*Id.*, ¶¶ 51.e.vii, 62, 64.)

### D. Release

Upon the Settlement Effective Date and Defendant's full funding of the Gross Settlement Amount and the employer's share of payroll taxes, Class Members who do not seek to be excluded from the settlement will release Defendant and the Released Parties from all claims, obligations, demands, rights, causes of action, and liabilities that have been asserted in the Complaint, or that reasonably could have been asserted in the Complaint, and any amendments thereto, based on the facts, matters, and/or allegations pled therein, including claims under Labor Code sections 201, 202, 203, 204, 210, 218.5, 218.6, 221-224, 226, 226.3, 226.7, 245-249, 510, 512, 516, 558, 1174, 1194, 1194.2, 1195, 1197, 1198, 2802, and Business and Professions Code § 17200, *et seq.*, for (a) failure to pay minimum wages, overtime wages, and other wages, including at the regular rate, for all hours worked; (b) failure to provide meal periods and/or pay meal period premiums; (c) failure to provide rest periods and/or pay rest period premiums; (d) failure to timely pay wages during employment; (e) failure to timely pay wages at termination; (f) failure to provide accurate or otherwise compliant wage statements; (g) failure to maintain payroll records; (h) failure to reimburse for necessary business expenses; and (i) unfair business practices (Business and Professions Code section 17200 et seq.). (Settlement Agreement, ¶ 79.)

PAGA Members and the LWDA will similarly release Defendant and the Released Parties from all claims, obligations, demands, rights, causes of action, and liabilities that have been asserted in the Complaint and/or the PAGA letter to the LWDA, and any amendments thereto, or that reasonably could have been asserted in the Complaint, and the PAGA letter to the LWDA, and any amendments thereto, based on the facts, matters, and/or allegations pled therein, including claims for penalties under PAGA for alleged violations of Labor Code sections 201, 202, 203, 204, 210, 216, 225.5, 226, 226.3 226.7, 245-249, 510, 512, 558, 1174, 1182.12, 1194, 1197, 1197.1, and 1198 for (a) failure to pay minimum wages, overtime wages, paid sick leave, and other wages, including at the regular rate, for all hours worked; (b) failure to provide meal periods and/or pay meal period premiums; (c) failure to provide rest periods and/or pay rest period premiums; (d) failure to timely pay wages during employment; (e) failure to timely pay wages at termination; (f) failure to provide accurate or otherwise compliant wage statements; (g) failure to maintain payroll records; and (h) failure to provide suitable seating. (Settlement Agreement, ¶ 80.)

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The release of the Released Claims shall be effective as to the entire PAGA Period and entire Class Period, both defined above.

In addition to the release given by each Settlement Class Member and PAGA Member, and in exchange for the proposed Class Representative Incentive Payment, Plaintiff will generally release any and all charges, complaints, claims, causes of action, demands, disputes, damages, business expenses, attorneys' fees, costs, losses, and liabilities of any kind or nature whatsoever, known or unknown, suspected or unsuspected, asserted or unasserted, which Plaintiff, at any time had, claimed to have, or may have against the Released Parties, including waiving their rights under Civil Code § 1542. (Settlement Agreement, ¶ 81.)

**E. Class Notice And Settlement Administration**

Subject to Court approval, the parties agreed to retain CPT Group, Inc. as the Settlement Administrator ("Administrator"), who will be responsible for mailing the Class Notice to Class Members, posting notice of entry of final order and judgment certifying the Class Settlement and approving the Settlement Agreement, handling inquiries from Class Members concerning the Class Notice, determining Settlement Payments and PAGA Payments, maintaining the settlement funds in an appropriate account, distributing all Court-approved payments under the Settlement, issuing a final report on the disbursement of funds, and performing such other duties as the parties may direct. (Settlement Agreement, ¶¶ 51–52, 55–56, 64.) Additionally, the Settlement Administrator will handle all tax document preparation and reporting. (*Id.*, ¶ 76.)

On a weekly basis, the Administrator will provide reports to Class Counsel and Defense Counsel with summary information updating them as to the number of validated and timely objections and requests for exclusion. (Settlement Agreement, ¶ 56.)

The Administrator shall provide to Class Counsel and Defense Counsel all requests for exclusion and/or recissions of such requests, no later than five (5) business days after receipt, or immediately if received within five (5) business days of the Final Approval Hearing. (Settlement Agreement, ¶¶ 56, 72–73.)

The Class Notice will inform Class Members of their estimated Settlement Payment, their estimated PAGA Payment, and the number of Workweeks and Pay Periods they worked during the Class

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Period and PAGA Period. (Settlement Agreement, ¶ 64.) Class Members may challenge the number of Workweeks and/or Pay Periods allocated to them in the Class Notice by contacting the Administrator no later than 45 days after being mailed the Class Notice. (*Id.*, ¶ 26, 51.g–h, 65.) Challenges will be resolved without hearing by the Administrator, who will make a decision based on Defendant's records and any documents or other information presented by the Class Member making the challenge, Class Counsel, or Defendant. (Settlement Agreement ¶ 71) The Administrator's determination of each Class Member's allocation of Workweeks and Pay Periods shall be final and not appealable. (*Ibid.*) The Administrator shall promptly provide copies of all challenges to the calculation of Workweeks and Pay Periods to Defense Counsel and Class Counsel, along with the Administrator's determination of the challenges. (*Ibid.*)

**F. Notice Process**

Class Members who wish to exclude themselves from the Settlement must send the Administrator, by fax or mail, a signed written request for exclusion not later than 45 days after the Administrator mails the Class Notice (plus an additional 15 calendar days for Class Members whose Class Notice is re-mailed). (Settlement Agreement, ¶ 65.) To be valid, a request for exclusion must be timely faxed or postmarked by the response deadline. (*Id.*, ¶ 51.h.) Every Class Member who does not submit a timely and valid request for exclusion will be entitled to all benefits and bound by all terms and conditions of the Settlement. (*Ibid.*) Any Class Member who submits a valid and timely request for exclusion will not receive a Settlement Payment or have the right to object to the class action components of the Settlement but will nonetheless be entitled to a PAGA Payment and will be bound by the Release of PAGA Claims if they are a PAGA Member. (*Id.*, ¶ 51.g–h.)

Class Members may send written objections to the Administrator by fax or mail. (Settlement Agreement, ¶ 51.g.) Class Members may also appear in Court (or retain an attorney to appear on their behalf) to present verbal objections at the Final Approval Hearing. (*Ibid.*) A Class Member who elects to send a written objection to the Administrator must do so not later than 45 calendar days after the Administrator's mailing of the Class Notice (plus an additional 15 calendar days for Class Members whose Class Notice was re-mailed). (*Id.* ¶ 63, 65.)

Upon completion of administration of the Settlement, the Administrator shall provide written certification of such completion to the Court, Class Counsel and Defendant's Counsel. (Settlement

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Agreement, ¶ 85.a–e.) Any funds associated with checks that have not been cashed within 180 days, will become void and the payment associated with the uncashed check will be distributed to the California Controller's Unclaimed Property Fund in the name of each Class Member or PAGA Member, pursuant to Code of Civil Procedure section 384. (*Id.*, ¶ 77.)

### G. Tax Treatment Of Individual Payments

Under the terms of the Settlement, 40% of each Class Member's Settlement Payment will be allocated to the settlement of wage claims and will be subject to tax withholding and reported on an IRS Form W-2. (Settlement Agreement, ¶ 59.) The remaining 60% of each Settlement Payment shall constitute interest and penalties, and each Class Member will be issued an IRS Form 1099 for such payment. (*Ibid.*) PAGA Payments will be treated as penalties for tax purposes, and if applicable, the Administrator will issue each recipient an IRS Form 1099. (*Ibid.*)

## IV. PROVISIONAL CERTIFICATION IS APPROPRIATE

Courts generally find class action suits are appropriate "when the question is one of a common or general interest . . . or when the parties are numerous, and it is impracticable to bring them all before the court." (Code Civ. Proc. § 382; see *Richmond v. Dart Indus., Inc*. (1981) 29 Cal.3d 462, 469-475.) In order to sustain a class action, two requirements must be met: (1) there must be an ascertainable class; and (2) there must be a "well-defined community of interest in the questions of law and fact involved affecting the parties to be represented." (*Daar v. Yellow Cab. Co.* (1967) 67 Cal.2d 695, 704.)

To ensure efficient use of judicial resources, California law and policy favor the fullest and most flexible use of the class action device. (*Richmond, supra,* 29 Cal. 3d at pp. 469-475.) Indeed, courts have acknowledged "the importance of class actions as a means to prevent a failure of justice in our judicial system" particularly where the rights of numerous "small claimants" are at issue. (See *Linder v. Thrifty Oil Co*. (2000) 23 Cal.4th 429, 434-435, 445.) Any doubt as to the appropriateness of class treatment should be resolved in favor of certification. (*Richmond, supra*, 29 Cal.3d at pp. 473-475.)

### A. There Is A Numerous And Ascertainable Class

The numerosity requirement is satisfied where a proposed class is so large that joinder of all members would be impracticable. (See Code Civ. Proc. § 382.) Whether a class is ascertainable is determined by examining the class definition, the size of the class, and the reasonable means available for

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identifying members of the class. (See *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal.App.3d 1263, 1271.) Class members are "ascertainable" where they may be readily identified without unreasonable expense or time. (*Id.* at p. 1275 [citing *Hypolite v. Carleson* (1975) 52 Cal.App.3d 566, 578-579].)

Plaintiff contends, and Defendant does not dispute, that for settlement purposes only, there is a numerous and ascertainable class. (Settlement Agreement, ¶ 51.b.) Class Members are all current and former nonexempt employees of Defendant who worked in California at any time during the Class Period, other than those who timely opt-out. (*Id.*, ¶ 6.) Documents and information exchanged between the parties reflect a class of approximately 2974 Class Members. (Hawkins Decl., ¶ 11.) Moreover, Class Members have already been identified by reference to Defendant's payroll and personnel records. (*Ibid.*)

Because joinder of nearly 3,000 employees would be impracticable, and Class Members can readily be determined by Defendant's personnel records, there is a numerous and ascertainable class that is suitable for provisional certification.

**B. There Is A Well-Defined Community Of Interest**

As a general rule, a community of interest is established where (1) there are predominant common questions of law or fact; (2) the named plaintiff has "claims or defenses typical of the class"; and (3) the named plaintiff is able to adequately represent the class. (See *Dunk v. Ford Motor. Co.* (1996) 48 Cal.App.4th 1794, 1806.)

**1. Common Questions Of Law And Fact Exist**

Whether a class action is the appropriate mechanism will depend largely upon "whether the common questions are sufficiently pervasive to permit adjudication in a class action rather than in a multiplicity of suits." (*Richmond, supra,* 29 Cal.3d at pp. 477-478.) In determining whether common questions of law and fact exist, courts generally look at the allegations in the complaint, as well as the declarations of class counsel. (*Id.* at p. 478.) The primary purpose of this inquiry is to ascertain whether the proposed class is sufficiently cohesive to warrant adjudication by representation. (See, e.g., *Clothesrigger, Inc. v. GTE Corp*. (1987) 191 Cal.App.3d 605, 612; *Lazar v. Hertz Corp*. (1983) 143 Cal.App.3d 128, 138-139; *Hogya v. Superior Court* (1977) 75 Cal.App.3d 122, 142.) Simply because class members must prove their own damages does not mean that individual questions predominate.

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(*Clothesrigger, Inc., supra,* 191 Cal.App.3d at p. 617.)

Common questions of law and fact exist among Class Members in this case. The operative complaint alleges causes of action for: (1) failure to pay minimum wages; (2) failure to provide lawful rest periods; (3) failure to provide lawful meal periods; (4) failure to timely pay all wages during employment; (5) failure to timely pay wages owed upon separation of employment; (6) failure to reimburse necessary expenses; (7) failure to comply with itemized wage statement provisions; (8) violation of the unfair competition law; and (9) civil penalties pursuant to PAGA. (Hawkins Decl., ¶¶ 68–69.) Thus, at minimum, some of the common questions of law and fact that affect the Class are, without limitation, whether Defendant included shift differentials and other forms of remuneration when calculating Class Members' regular rate of pay for purposes of paying sick leave and meal and rest period premiums; whether Class Members were provided compliant meal and rest periods; whether Defendant was required to reimburse Class Members for expenses incurred in using their personal cellphones for business purposes, and for company-mandated purchases of company-sold clothing; whether the wage statements Defendant provided to Class Members complied with California law; whether Defendant failed to maintain accurate employment records as required under Labor Code sections 1174 and 1174.5; and whether Defendant's policies and practices constitute unfair business practices for purposes of Business and Professions Code section 17200 et seq. (*Id.*, ¶ 70.)

Here, the required commonality element is satisfied because there are questions of law and fact common to Plaintiff and the Class, and those questions predominate over any such questions affecting only Plaintiff or individual Class Members. As such, the underlying claims are sufficiently cohesive to warrant adjudication by representation. (See *Clothesrigger, Inc., supra,* 191 Cal.App.3d at p. 612.)

### 2. Plaintiff's Claims Are Typical Of Class Members' Claims

The typicality requirement for purposes of class certification focuses on the typicality of the named Plaintiff's claims as they relate to the Defendant's policies and practices. (See *Medrazo v. Honda of North Hollywood* (2008) 166 Cal.App.4th 89, 99 [typicality met where plaintiff alleged that defendant subjected her to the same unlawful conduct that other putative class members were subjected to].) Indeed, the mere fact that a defendant may raise defenses against some members of the class does not negate the typicality of the plaintiff's claims. (*Ibid.*)

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Here, Plaintiff's claims are typical of the claims of the Class. As detailed in the operative complaint, Class Members were all subject to the same policies and practices while working for Defendant, including the company's payroll and timekeeping policies, meal and rest period policies, and failure to reimburse employees for expenses incurred in using their personal cellphones for work purposes, and as a result of company-mandated purchases of company-sold clothing. (Hawkins Decl., ¶¶ 6, 33.) As such, all sustained the same or similar damages resulting from Defendant's alleged violations of California wage-and-hour laws, including unpaid regular, minimum and overtime wages, noncompliant meal and rest periods and/or unpaid premiums, inaccurate wage statements, and unreimbursed business expenses. (*Ibid.*) Because each Class Member would be required to demonstrate the same elements in order to recover on their claims against Defendant, Class Members' interests are sufficiently aligned with Plaintiff's so as to meet the typicality requirement. (See *Medrazo, supra,* 166 Cal.App.4th at p. 99.)

**3. Plaintiff And Class Counsel Have And Will Continue To Adequately Represent The Class**

A class representative is an adequate representative of the class so long as his or her interests are not antagonistic or in conflict with the objectives that he or she purports to represent. (*Richmond, supra*, 29 Cal.3d at p. 470.) Additionally, Class Counsel "must be qualified, experienced and generally able to conduct the proposed litigation." (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 875.) Here, both Plaintiff and Plaintiff's Counsel, the proposed Class Counsel, meet the necessary requirements to adequately represent the Class.

First, Plaintiff's interests are not antagonistic to the interests of the Class. As previously explained, Plaintiff alleges that Class Members were all subject to the same unlawful policies and practices by Defendant, and thus suffered identical harm. Consequently, Plaintiff seeks the same relief sought by every other member of the Class. (See *Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 591, 625-26 ["[A] class representative must be part of the class and possess the same interest and suffer the same injury as the class members."].) For more than a year and a half, Plaintiff has prosecuted this case on behalf of the other Class Members.[2] (Hawkins Decl., ¶ 52.) She spent numerous hours reviewing documents, meeting

[2] Plaintiff will provide a declaration with her final approval motion detailing the work she performed in bringing and prosecuting this case.

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and corresponding with Class Counsel, answering questions regarding her experiences while working for Defendant, and evaluating settlement options. (*Ibid.*)

In addition, Plaintiff has retained counsel with extensive experience prosecuting complex wage and hour class actions, who have worked diligently to obtain the Settlement on behalf of the Class. (Hawkins Decl., ¶70.) Class Counsel thoroughly investigated the claims raised in this action, the underlying case law, the merits of Defendant's defenses, and meticulously reviewed the information and documents exchanged prior to attending mediation. (Hawkins Decl., ¶¶10–15, 22.) Class Counsel was sufficiently informed prior to engaging in settlement negotiations. (*Ibid.*) Furthermore, the negotiations which the Settlement before the Court were themselves informed, conducted at all times in an arms-length, non-collusive manner, and overseen by a highly experienced mediator, Lisa Klerman. (Hawkins Decl., ¶18.) Over the course of this litigation, Plaintiff and Class Counsel have adequately represented the interests of the Class and will continue to do so.

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

### A. The Proposed Settlement Meets The Standards For Preliminary Approval

California Rules of Court, rule 3.769, requires court approval for class action settlements. "Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement." (Cal. R. Ct. 3.769(g).) Courts act within their discretion in approving settlements that are fair, not collusive, and take into account "all the normal perils of litigation as well as the additional uncertainties inherent in complex class actions." (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179, *cert. den. sub nom. Iowa Beef Processors. Inc. v. Meat Price Investigators Ass'n* (1981) 452 U.S. 905.)

The purpose of the preliminary evaluation of class action settlements is to determine only whether the proposed settlement is within the range of reasonableness, and, therefore, whether notice to the class and the scheduling of a formal fairness hearing are warranted. (*Wershba v. Apple Computer. Inc.* (2001) 91 Cal.App.4th 224, 234-235; *Newberg on Class Actions* (4th Ed.) § 11:25.) Courts have broad powers to determine whether a proposed settlement is fair under the circumstances of the case. (*Wershba, supra*, 91 Cal.App.4th at 234-235; *Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438.) In determining whether a settlement meets the standards for preliminary approval, courts must consider several relevant

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factors, including "the strength of the 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, [and] the experience and views of counsel . . . ." (*Dunk, supra*, 48 Cal.App.4th at 1801.) "The list of factors is not exclusive, and the court is free to engage in a balancing and weighing, of the factors depending on the circumstances of each case." (*Wershba, supra*, 91 Cal.App.4th at 245.) Furthermore, courts must give "proper deference to the private consensual decision of the parties" because "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit 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, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027.)

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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 *Newberg* § 11:25.) 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, supra*, 48 Cal.App.4th at p. 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, supra*, 48 Cal.App.4th at p. 1802 [citing *Newberg* § 11:41].)

As demonstrated below, the proposed Settlement in this case falls well within the range of possible approval and there are no grounds to doubt its fairness.

**1. The Settlement Is The Result Of Serious, Informed, Non-Collusive Negotiations Overseen By A Highly Experienced Mediator**

The proposed Settlement, which came only after significant investigation of the facts and law both during and in preparation for mediation, was reached as a result of arm's-length negotiations facilitated by an experienced mediator. (Hawkins Decl., ¶15–18.) The settlement negotiations have been, at all times, adversarial and non-collusive in nature. Indeed, continued good-faith but occasionally contentious negotiations were required to ultimately reach an agreement following a full-day mediation with respected class action mediator, Lisa Klerman. While Plaintiff believes in the merits of her case, she also recognizes the inherent risks of litigation. She also understands the benefits to the Class of receiving settlement funds immediately as opposed to delaying payment or risking an unfavorable decision on summary adjudication, motion for class certification, at trial or on appeal, all of which have the potential to eliminate any relief for Class Members. (Hawkins Decl., ¶46.)

**2. The Extent Of The Information Provided Through Discovery And The Stage Of The Proceedings Support The Settlement**

There is a presumption that a proposed settlement is fair and reasonable when there has been sufficient investigation and discovery to permit counsel and the Court to act intelligently, and counsel are experienced in similar litigation. (*Dunk, supra*, 48 Cal.App.4th at 1802.)

Here, the parties thoroughly investigated and evaluated the factual and legal strengths and weaknesses of this case before reaching the Settlement. (Hawkins Decl., ¶¶ 15–18.) The Settlement was reached in consideration of the parties' thorough calculations and risk evaluation, substantial written discovery, including special interrogatories, form interrogatories, and requests for production of documents, and a thorough evaluation of timekeeping and payroll data for 76 percent of the Class. (Hawkins Decl., ¶ 67.) Plaintiff retained an expert to evaluate the data and to provide calculations regarding Defendant's potential exposure. (*Ibid.*) Counsel for the parties have investigated the law as applied to the facts and thus evaluated the claims asserted and potential defenses thereto. (Hawkins Decl., ¶ 22.)

The proposed Settlement came only after the case was fully investigated by experienced counsel. (Hawkins Decl., ¶¶ 22–24.) This litigation, therefore, had reached the stage where the parties had a clear view of the strengths and weaknesses of their cases, sufficient to support the Settlement. (See *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 617.)

**3. Class Counsel Is Experienced In Similar Litigation**

Experienced counsel, operating at arm's-length, have weighed the strengths of the case and examined all of the issues and risks of litigation and endorses the proposed settlement. The view of the attorneys actively conducting the litigation is entitled to significant weight in deciding whether to approve

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a settlement. (*Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, affd. (9th Cir. 1981) 661 F.2d 939.)

Throughout this litigation, Class Members have been represented by well-qualified counsel who have years of experience in wage and hour class action litigation. (Hawkins Decl., ¶¶ 74–80.) In total, Class Counsel have litigated hundreds of complex class and representative actions, the vast majority of which they served as Plaintiff's counsel. (*Ibid.*) In short, Class Counsel are experienced and qualified to evaluate the class claims, to evaluate the benefits of settlement versus trial on a fully informed basis, and to evaluate the viability of the defenses asserted. (Hawkins Decl., ¶¶ 50, 83.) Counsel on both sides share the view—endorsed by an experienced class action mediator—that this is a fair and reasonable settlement in light of the complexities of the case, the state of the law and uncertainties of litigation and trial, and the benefit the Settlement confers on the Class. (Hawkins Decl., ¶ 27.) Given the risks inherent in litigation, in class certification proceedings, and in the defenses asserted, this Settlement is fair, adequate, and reasonable and in the best interests of the class. (Hawkins Decl., ¶ 36.)

**4. The Settlement Is Fair And Reasonable Based On The Strengths Of Plaintiff's Case And The Risks And Costs Of Further Litigation**

Plaintiff and her counsel have concluded it was reasonable to enter into the proposed Settlement. Defendant has contested and continues to contest liability for the claims asserted in this action. (Settlement Agreement, ¶ 51.a.) Although Defendant believes it is unlikely that Plaintiff would succeed on the merits of her claims, Defendant nonetheless agreed to resolve this action through settlement to avoid the expense, distraction, and uncertainty of protracted litigation. (*Ibid.*)

There are significant legal uncertainties associated with cases such as this, as they can be factually complex and require protracted litigation to resolve. (Hawkins Decl., ¶ 46.) A settlement is not judged solely against what might have been recovered had the Plaintiff prevailed at trial, nor does the settlement have to provide 100 percent of the damages sought to be fair and reasonable. (*Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242; *Wershba, supra*, 91 Cal.App.4th at pp. 246, 250; *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1139.) Instead:

> Compromise is inherent and necessary in the settlement process . . . even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public



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> interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.

(*Wershba, supra*, 91 Cal.App.4th at p. 250.) Based on information obtained through formal and informal discovery, Class Counsel were able to assess the strengths and weaknesses of the claims and the benefits of an early settlement. (Hawkins Decl., ¶¶ 11–12.) As a result, Class Counsel believes that the Settlement before the Court represents a very favorable resolution for the Class. (Hawkins Decl., ¶ 22.)

**5. The Proposed Settlement Is A Reasonable Compromise Of Claims**

a. *The Settlement Provides Relief to Class Members in Light of the Significant Risks and Expense of Further Litigation*

To evaluate a settlement, the trial court must receive "basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) The record need not contain an explicit statement of the maximum theoretical recovery, but rather evidence sufficient to allow "an understanding of the amount that is in controversy and the realistic ranges of outcomes of the litigation." (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409 [citing *Kullar, supra*, 168 Cal.App.4th at p. 120].)

Here, the Settlement results in a significant benefit to Class Members and the Gross Settlement Amount of $1,500,000 is a good result by any measure. (Hawkins Decl., ¶ 22.) In reaching this Settlement, Class Counsel carefully considered the strength of the case versus the amount offered in settlement; the risk, expense, complexity, and likely duration of further litigation and maintaining class certification through trial; the present state of the law as it applies to wage and hour class actions; and the burdens of proof necessary to establish liability against Defendant. (Hawkins Decl., ¶18.)

Although Plaintiff maintains all claims are meritorious and believes she would have prevailed had she taken her case to trial, she also acknowledges that Defendant has legitimate defenses to liability, class certification, and manageability. (Hawkins Decl., ¶46.) Defendant has consistently denied all material allegations in the complaint, that it violated any applicable laws, that it is liable for damages, penalties, interest, restitution, attorneys' fees, or for any other remedy on account of the claims asserted, and that class certification or representative treatment is appropriate as to any claim. (Hawkins Decl., ¶23.); see also Settlement Agreement, ¶¶ 46, 51.a.) Such considerations pose a substantial obstacle for Plaintiff to maintain her claims, as well as establishing the full amount of Plaintiff's estimated damages and civil penalties for such claims at trial. (Hawkins Decl., ¶ 36.)

Under the terms of the Settlement, each Class Member will be entitled to receive a pro rata portion of the Net Settlement Amount available for distribution based upon his or her respective number of Workweeks during the Class Period. (Settlement Agreement, ¶¶ 40, 67.) This means that Class Members who worked a greater number of Workweeks during the Class Period will receive a larger portion of the Settlement. (Hawkins Decl., ¶ 47.) All Class Members are therefore treated equitably and fairly, and no Class Member is granted improper preferential treatment, as distribution of the Net Settlement Amount takes into consideration the length of employment for each Class Member and the respective number of violations, he or she would have suffered during the Class Period. (*Ibid*.)

b. *The Amount Offered in Settlement Given the Estimated Value of the Claims Favors Preliminary Approval of the Settlement*

As set forth in the accompanying Declaration of James R. Hawkins, Class Counsel estimated Defendant's maximum-possible exposure to be approximately $23,371,185 for the Class Claims and $18,951,200 for the PAGA claims. (Hawkins Decl., ¶ 25.) This estimate assumed that class certification would be granted, and that Plaintiff would prevail on all claims at trial, as well as recover the full amount of the estimated damages and the maximum amount of civil penalties under PAGA. (*Id*., ¶¶ 25, 34.) It also assumes PAGA penalties can be stacked – a question unsettled by California courts. (*Id*., ¶ 25.) Accordingly, the estimated value of the class claims is premised on a likely inflated "everything goes right" scenario. (*Ibid*.)

With nearly 3,000 Class Members holding dozens of different nonexempt positions in numerous retail stores throughout the state, class certification is by no means a certainty. (Hawkins Decl., ¶ 26.) As such, for purposes of settlement, Class Counsel assumes a 65 percent discount on the merits to account for the possibility that Plaintiff will not prevail on all claims and the potential for a reduction in any PAGA penalties awarded. (*Ibid.*) Accordingly, Class Counsel believes a more realistic valuation of the claims in this case after incorporating discounts is $8,452,500. (*Ibid.*)

While the $1,500,000 Gross Settlement Amount represents a significant discount on Plaintiff's





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estimate of Defendant's potential exposure in this matter, the reduction represents an extremely reasonable compromise considering the substantial risks that Plaintiff and Class Members faced in this litigation. (Hawkins Decl., ¶ 35.) As explained above, Defendant has legitimate defenses to class certification, manageability, and the merits of the underlying claims. (*Id.*, ¶¶ 27, 35.) In negotiating the Settlement before the Court, Class Counsel considered the likelihood of obtaining and maintaining class certification of Plaintiff's claims through trial, and obtaining 100 percent of the damages sought. (*Id.*, ¶ 36.) Moreover, Plaintiff considered the significant risk that the Court may deny class certification or reverse a favorable ruling on the merits on appeal – risks that are obviated by the Settlement. (*Ibid.*) In addition, continued litigation would likely be extremely expensive, reducing and substantially delaying any recovery by Class Members. (*Id.*, ¶¶ 46–48.) In contrast, the proposed Settlement will guarantee that Class Members receive timely relief and avoid the risk of an unfavorable judgment. (*Ibid.*)

Finally, as it relates to the imposition of any penalties under PAGA, there was a very real risk that the Court would exercise its discretion and reduce the award because it was unjust, arbitrary, or confiscatory. (Hawkins Decl., ¶ 34.) This is particularly true because throughout the Class and PAGA Periods, Defendant maintained facially lawful written policies regarding many of the claims asserted. (*Id.*, ¶ 23.)

**B. The PAGA Settlement Should Be Approved**

Where a settlement includes a good faith amount for PAGA penalties and "there is no indication that this amount was the result of self-interest at the expense of other" class members, such amounts are generally considered reasonable. (*Hopson v. Hanesbrands, Inc.* (N.D. Cal. Apr. 3, 2009) 2009 WL 928133 at *1, *9.) Courts routinely approve settlements where only a small portion of the gross settlement amount is allocated to PAGA penalties. (See *Nordstrom Commission Cases* (2010) 186 Cal.App.4th 576 [approving a settlement where no portion was allocated to PAGA penalties; *Jack v. Hartford Fire Ins. Co.* (S.D. Cal. Oct. 13, 2011) 2011 WL 4899942 at *6 [approving a PAGA payment of 0.25%]; *McKenzie v. Fed. Express Corp.* (C.D. Cal. Jan. 23, 2012) 2012 WL 12882124 at *5 [acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement].) Here, the parties negotiated a good faith settlement amount of $100,000, 75% percent of which ($75,000) will be paid to the LWDA, with the remaining 25% ($25,000) to be distributed to PAGA Members. (Settlement

Agreement at ¶¶ 23, 29.) The $100,000 allocated to PAGA penalties equates to 6.7% of the Gross Settlement Amount, which is in line with amounts that are routinely approved by courts in this state. Therefore, the settlement of the claim for penalties under PAGA is reasonable because it was negotiated in good faith and was not the result of self-interest at the expense of any Class Member. (Hawkins Decl., ¶ 34)

Had a higher amount been allocated to the PAGA claim, the burden to pay civil penalties would have effectively shifted to the PAGA Members as it would reduce the amount that they ultimately receive under the Settlement. Although this burden shifting may achieve the enforcement objective of the PAGA statute, it would do so at the expense of the same employees that the statute was designed to protect. The Settlement has been submitted to the LWDA as required by statute. (Hawkins Decl., ¶ 5, Ex. 2.) Accordingly, the proposed $100,000 allocation to PAGA penalties strikes a balance between the interests of all parties, including the LWDA and the general public, by penalizing the employer and providing relief to the PAGA Members. As such, Plaintiff respectfully request that the Court approve the allocation of $100,000 to PAGA penalties.

**C. The Requested Class Representative Incentive Payment Is Fair And Reasonable**

Courts routinely approve class representative payments to compensate named Plaintiff for the services they provide and the risks they incur during the course of class litigation. (See *Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726 [upholding service payments to Plaintiff for their efforts in bringing a class case]; *Manual for Complex Litigation* (Fourth) (2004) § 21.62 n. 971 [noting that service awards are warranted].) In approving such payments, California courts frequently approve awards of $10,000 or more. (*In re Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-1395 [upholding $10,000 service award to each of four class representatives]; *West v. Circle K Stores, Inc.* (E.D. Cal. Oct. 19, 2006) 2006 U.S. Dist. LEXIS 76558, *28 ["the court finds Plaintiff's enhancement payments of $ 15,000 each to be reasonable"]; *Glass v. UBS Fin. Servs.* (N.D. Cal. Jan. 26, 2007) 2007 U.S. Dist. LEXIS 8476, *52 [finding "requested payment of $ 25,000 to each of the named Plaintiff is appropriate" in wage and hour settlement].) The factors courts use in determining the amount of an award include: (1) a comparison between the service awards and the range of monetary recovery available to the class; (2) time and effort put into the litigation; (3) whether the litigation will further the public policy underlying

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the statutory scheme; and (4) the risk of retaliation. (*Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 608, 804.)

By being the named class representative in this action, Plaintiff put their name forward on the public record at the risk of potential employers choosing not to hire them. (Hawkins Decl., ¶ 53.) Plaintiff also ran the risk of being liable for Defendant's attorneys' fees and costs as a result of the fee shifting provisions of the Labor Code. (See, e.g., Labor Code § 218.5.) Over the course of this litigation, Plaintiff spent a significant amount of time reviewing documents, communicating with counsel, assisting with the preparation of the complaint and witness questionnaire, identifying potential witnesses, and helping Class Counsel prepare for mediation. (Hawkins Decl., ¶ 52.) As part of the proposed Settlement, Plaintiff have also agreed to a general release of any and all claims to the furthest extent permitted by law. (Hawkins Decl., ¶ 54; Settlement Agreement, ¶ 81.) The proposed Class Representative Incentive Payment in the amount of $10,000 to Plaintiff is fair and reasonable given the risk she took and the work she performed for the benefit of the Class. (Hawkins Decl., ¶ 55.)

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### D. The Requested Attorneys' Fees And Costs Are Fair And Reasonable

The California Supreme Court has unanimously held:

> 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.

(*Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503.) The Court further held that although trial courts have discretion to use a lodestar multiplier cross-check or to forego a lodestar multiplier cross-check if some other means to evaluate the reasonableness of a requested fee percentage exists, "the percentage method is a valuable tool that should not be denied our trial court." (*Id*. at pp. 503-506.) California courts have awarded common fund fees calculated using a percentage-of-fund method that is not dependent on counsel's lodestar amount. (Pearl, *California Attorney Fee Awards* (CEB 3d Ed. 2010) § 5.19 [citing *In re Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512]; *Bell*, *supra*, 115 Cal.App.4th at p. 726; *Apple Computer, Inc. v. Superior Ct.* (2005) 126 Cal.App.4th 1253, 1270.)

Here, the Settlement provides that Class Counsel may seek attorneys' fees of up to $500,000 (one-third of the Gross Settlement Amount), in addition to reimbursement for actual litigation expenses in an amount not to exceed $23,000. (Settlement Agreement, ¶¶ 51.e.i.) As demonstrated in the Declaration of James R. Hawkins, Class Counsel performed a significant amount of work litigating this action, including performing extensive legal and factual research, which counsel used to measure the relative strengths and weaknesses of Plaintiff's claims to better identify an appropriate range of settlement figures. (Hawkins Decl., ¶¶ 57–62.) Class Counsel committed, and continue to commit, significant financial and staffing resources to this case, diverted many of their resources in order to contend with Defendant's vigorous defense, and undertook this action on a contingency basis, thereby bearing all the costs of this complex, risky, expensive, and time-consuming litigation. (*Ibid.*) The requested Attorneys' Fees and Litigation Costs payments are fair and reasonable and should be preliminarily approved.

## V. THE COURT SHOULD SCHEDULE A FINAL APPROVAL HEARING

The final step in the settlement approval process is a final approval hearing, at which time the Court may hear all evidence and arguments necessary to conclusively evaluate the proposed Settlement. Should the Court grant Plaintiff's motion for preliminary approval, Plaintiff requests that a hearing on the issues of final approval of the Settlement, approval of the Class Representative Incentive Payment to Plaintiff, approval of the Class Counsel's Attorneys' Fees and Litigation Costs, and approval of the Administration Expenses be scheduled approximately 120 days after preliminary approval.

## VI. CONCLUSION

Plaintiff respectfully requests this Court enter an Order: (1) provisionally certifying the Class under Code of Civil Procedure section 382 and California Rule of Court 3.769(c) for settlement purposes; (2) preliminarily approving the Settlement; (3) approving as to form and content the Notice of Class Action Settlement and ordering the Notice of Class Action Settlement be distributed to all Class Members; (4) appointing Plaintiff Engles as Class Representative; (5) appointing CPT Group, Inc. as the Settlement Administrator; (6) appointing James Hawkins APLC as Class Counsel; and (7) setting this matter for a hearing on the issues of final approval of the proposed Settlement, approval of the Class Representative Incentive Payment, approval of Attorneys' Fees and Costs, and approval of the Administration Fees and Costs.

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Respectfully submitted,

Dated: October 30, 2024

**JAMES HAWKINS APLC**

By: ______________________

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