

S. Emi Minne (SBN 253179)  
emi@parkermanne.com  
Jill J. Parker (SBN 274230)  
jill@parkermanne.com  
**PARKER & MINNE, LLP**  
700 South Flower Street, Suite 1000  
Los Angeles, California 90017  
Telephone: (310) 882-6833 / Fax: (310) 889-0822

Benjamin Smith (SBN 266712)  
benjy@thesmithlawcorp.com  
**SMITH LAW**  
8605 Santa Monica Boulevard  
PMB 97638  
West Hollywood, California 90069  
Telephone: (818) 839-9700 / Fax: (818) 824-4975

Attorneys for Plaintiff  
TANYA PEREZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF RIVERSIDE**

TANYA PEREZ, individually, and on behalf of  
others similarly situated,

Plaintiff,

vs.

COMMERCIAL LIGHTING INDUSTRIES,  
INC., a California corporation; and DOES 1  
through 50, inclusive,

Defendants.

Case No.: CVRI2301807

*Assigned for all purposes to the Honorable  
Harold W. Hopp, Dept. 1*

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

Date: July 25, 2024

Time: 8:30 a.m.

Dept.: 1

**Reservation ID: 496115880161**

Complaint Filed: April 10, 2023

FAC Filed: June 7, 2023

Trial Date: Not set

1           **TO THE HONORABLE COURT, AND TO ALL PARTIES AND THEIR ATTORNEYS**  
2 **OF RECORD:**

3           **PLEASE TAKE NOTICE** that on July 25, 2024, at 8:30 a.m. or as soon thereafter as may be  
4 heard in Department 1 of the above-entitled court, located at located at 4100 Main Street, Riverside,  
5 California 92501, pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769,  
6 Plaintiff Tanya Perez (“Plaintiff”) will, and hereby does, move the Court for entry of an order granting  
7 preliminary approval of the proposed Joint Stipulation of Class Action and PAGA Settlement entered  
8 between Plaintiff and Defendant Commercial Lighting Industries, Inc. (“Defendant”). Specifically,  
9 Plaintiff requests that the Court enter an order:

10           1.       Granting preliminary approval of the Joint Stipulation of Class Action and PAGA  
11 Settlement attached as Exhibit 1 to the Declaration of S. Emi Minne in support of Motion for  
12 Preliminary Approval (“Agreement” or “Settlement”);

13           2.       Approving the proposed Notice of Proposed Class Action Settlement (“Class Notice”)  
14 attached as Exhibit A to the Agreement, the proposed Objection Form attached as Exhibit B to the  
15 Agreement, the proposed Request for Exclusion Form attached as Exhibit C to the Agreement, and  
16 the proposed deadlines for the settlement administration process;

17           3.       Approving the opt-out and objection procedures set forth in the Agreement and Class  
18 Notice;

19           4.       Provisionally certifying the proposed Class for settlement purposes;

20           5.       Appointing Plaintiff as the Class Representative for the Class for settlement purposes;

21           6.       Appointing S. Emi Minne and Jill J. Parker of Parker & Minne, LLP and Benjamin  
22 Smith of Smith Law as Class Counsel for settlement purposes;

23           7.       Appointing Apex Class Action LLC the Settlement Administrator;

24           8.       Directing Defendant to furnish the full names, last known mailing address, telephone  
25 number, social security numbers, start and end dates of active employment as a non-exempt employee  
26 of Defendant in the State of California, total Workweeks during the Class Period, and total workweeks  
27 during the PAGA Period for all Class Members to the Administrator no later than twenty (20) calendar  
28 days after the Court grants preliminary approval of the Settlement, as well as any other information

1 the Administrator may reasonably require to administer the Settlement;

2 9. Scheduling a final approval hearing for December 6, 2024, at 8:30 a.m., or a date and  
3 time thereafter that is convenient for the Court.

4 Good cause exists for the granting of this motion as the proposed Settlement is fair, adequate,  
5 and reasonable. Additionally, the proposed notice process complies with California Rules of Court,  
6 Rules 3.766 and 3.769, and mailing the proposed Class Notice to the Class Members' last known  
7 addresses is an appropriate form of giving notice.

8 Pursuant to California Labor Code § 2699(1)(2), a copy of the proposed Settlement, as well as  
9 information regarding the preliminary approval hearing on this matter, were submitted to the  
10 California Labor Workforce Development Agency via online filing at [https://www.dir.ca.gov/Private-](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html)  
11 [Attorneys-General-Act/Private-Attorneys-General-Act.html](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html) on June 14, 2024. *See* Minne Decl. ¶ 53,  
12 Exh. 6.

13 Per the terms of the Settlement, Defendant has agreed not to oppose this motion. As the motion  
14 is unopposed, Plaintiff respectfully requests that the Court extend the page limit for the supporting  
15 memorandum of points and authorities pursuant to Rule 3.1113(e) of the California Rules of Court so  
16 that Plaintiff can provide the Court with adequate information to determine whether to grant  
17 preliminary approval of the Settlement and preliminarily certify a class for settlement purposes.

18 The motion is based upon this notice, the attached memorandum of points and authorities; the  
19 Declarations of S. Emi Minne, Benjamin Smith , Tanya Perez, Kieran D. Hartley, Wendy Hertz, and  
20 Sean Hartranft, and any exhibits thereto; the pleadings and other records on file with the Court in this  
21 matter; and any other further evidence or argument that the Court may properly receive at or before  
22 the hearing.

23 Respectfully submitted,

24 Dated: June 14, 2024

**PARKER & MINNE, LLP**

25  
26 By:



27 S. Emi Minne  
28 Attorneys for Plaintiff

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## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

This is a putative class and representative wage and hour action brought by Plaintiff Tanya Perez (“Plaintiff”) against Defendant Commercial Lighting Industries, Inc. (“Defendant”) on behalf of Defendant’s current and former non-exempt employees. By way of this Motion, Plaintiff seeks preliminary approval of a non-reversionary Joint Stipulation of Class Action and PAGA Settlement (“Settlement” or “Agreement”)<sup>1</sup> which will resolve the Action in its entirety. The key terms of the Agreement are as follows:

- Size of the Class: approximately 106 individuals.
- Gross Settlement Amount: \$465,000.00, exclusive of employer payroll taxes.
- Settlement Administration Costs: estimated not to exceed \$6,990.00.
- Requested Class Representative Enhancement Payment: \$10,000.00.
- Requested Attorney’s Fees and Costs: \$155,000.00, plus costs not to exceed \$15,000.00.
- PAGA Penalties: \$30,000.00, 75% of which will be paid to the LWDA, with the remaining 25% paid to PAGA Members.
- Estimated Net Settlement Amount: \$248,010.00.
- Average Estimated Individual Class Payment: \$2,339.72.
- Average Estimated Individual PAGA Payment: \$156.25.

As set forth herein, the Agreement is the product of informed discovery, arms-length negotiations by experienced counsel, and provides a fair, adequate, and reasonable recovery for the Class. Plaintiff therefore respectfully requests that the Court enter an order granting preliminary approval of the proposed Settlement.

### **II. FACTUAL AND PROCEDURAL BACKGROUND**

Defendant is a national lighting distributor based in Indio, California. (Minne Decl., ¶ 3.) Plaintiff was employed by Defendant as a non-exempt, hourly-paid Project Manager from approximately February 2021 to December 2022. (Minne Decl., ¶ 4; Declaration of Tanya Perez [“Perez Decl.”], ¶ 3.)

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<sup>1</sup> The Joint Stipulation of Class Action and PAGA Settlement is attached as Exhibit 1 to the Declaration of S. Emi Minne in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement (“Minne Decl.”).

1 On March 13, 2023, Plaintiff provided written notice to Defendant and the California Labor &  
2 Workforce Development Agency (“LWDA”) of her intent to seek civil penalties pursuant to the Labor  
3 Code Private Attorneys General Act of 2004, Cal. Labor Code sections 2698, et seq. (“PAGA”). The  
4 LWDA did not respond to Plaintiff’s PAGA Notice. (Minne Decl., ¶ 5, Exh. 2.)

5 On April 10, 2023, Plaintiff filed a putative class action complaint against Defendant entitled  
6 *Tanya Perez v. Commercial Lighting Industries, Inc.* (Riverside County Superior Court Case  
7 CVRI2301807, hereinafter “Action”). The Complaint alleged the following causes of action: (1)  
8 Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California  
9 Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of California Labor  
10 Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor Code §§ 1194, 1197,  
11 and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201, 202 and 203  
12 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 226(a) (Failure to Provide  
13 Accurate Wage Statements); (7) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed  
14 Business Expenses); and (8) Violation of California Business and Professions Code §§ 17200, et seq.  
15 (Minne Decl., ¶ 6.)

16 On May 17, 2023, Defendant filed its Answer to the Complaint. (*Id.*, ¶ 7.) On June 7, 2023,  
17 Plaintiff filed a First Amended Complaint adding an additional representative cause of action seeking  
18 the recovery of civil penalties pursuant to PAGA. (*Id.*, ¶ 8.) On July 11, 2023, Defendant filed its  
19 Answer to the First Amended Complaint. (*Id.*, ¶ 9.)

20 Shortly after the Action was initiated, Plaintiff’s counsel met and conferred with Defendant’s  
21 counsel regarding the potential for resolution of the Action. (*Id.*, ¶ 10.) Pursuant to these discussions,  
22 the Parties agreed to exchange informal discovery, engage in private mediation, and stay formal  
23 discovery pending the completion of mediation. (*Id.*) As a further pre-condition for early mediation,  
24 Defendant also formally stipulated that: (1) the Parties would finalize the format of a *Belaire-West*  
25 notice prior to mediation, and that the *Belaire-West* notice would be promptly sent to all putative class  
26 members in the event mediation was unsuccessful; (2) that Defendant would not obtain arbitration  
27 agreements or declarations from putative class members during the pendency of mediation; and (3)  
28 that Defendant would not engage in a mass release campaign (commonly known as a “*Pick-up Stix*”

process) prior to mediation. An order approving the Parties' stipulations was entered by this Court on June 29, 2023. (*Id.*)

Per the Parties' agreement, Defendant provided Plaintiff's counsel with extensive informal discovery prior to mediation, which included a random sampling of Class Members' time and payroll records. Defendant also provided Plaintiff's counsel with all versions of Defendant's employee handbooks in use during the Class Period and other documents evidencing its relevant wage and hour policies and procedures. Finally, Defendant provided Plaintiff's counsel with key data points regarding the size and composition of the Class, such as the number of Class Members and PAGA Members (including the number of current versus former employees), the total number of workweek and pay periods worked by Class Members, the number of pay periods worked by PAGA Members, and the average rates of pay for the Class. (*Id.*, ¶ 11.)

Prior to mediation, Plaintiff's counsel thoroughly reviewed the informal discovery produced by Defendant, as well as an extensive number of emails, text messages, and other documents from Plaintiff which documented the claims alleged in the Action. Plaintiff's counsel also engaged in further independent investigation, and conducted further legal research regarding the merits of Plaintiff's claims and Defendant's potential defenses thereto. Based on this investigation and informal discovery, Plaintiff's counsel prepared a detailed and informed assessment of Defendant's potential liability in advance of mediation. Plaintiff's counsel also prepared a detailed brief addressing Plaintiff's claims and Defendant's anticipated defenses, and provided their analysis to the mediator for her consideration. (*Id.*, ¶ 12.)

After completing a thorough investigation and analysis of Plaintiff's claims, on February 12, 2024, the Parties attended a formal mediation with Monique Ngo-Bonnici, Esq., a neutral and respected mediator with extensive experience in complex wage and hour matters. The Parties engaged in a full day of settlement discussions, during which they debated their respective positions and exchanged views regarding the strengths and weaknesses of their claims and defenses. The settlement discussions were at all times at arm's length and, although conducted with appropriate professional decorum, were adversarial. Plaintiff and Plaintiff's counsel went into mediation willing to explore the potential for a settlement of the Action, but were also prepared to litigate Plaintiff's claims through

1 class certification, trial, and appeal if a settlement was not reached. Arriving at a settlement that was  
2 acceptable to the Parties was not easy, and the Parties vigorously advanced their respective positions  
3 throughout the settlement negotiations. (*Id.*, ¶ 13.)

4 After a full day of negotiations, the mediation culminated in the issuance of a mediator’s  
5 proposal that was accepted by the Parties. A memorandum of understanding reflecting the terms of  
6 the mediator’s proposal was executed on or about on or about February 28, 2024. (*Id.*, ¶ 14.)

7 On or about May 17, 2024, after months of further negotiation, the Parties fully executed a  
8 long form Joint Stipulation of Class Action and PAGA Settlement. (*Id.*, ¶ 15.)

### 9 **III. SUMMARY OF THE SETTLEMENT TERMS**

#### 10 **A. Definition of the Proposed Class and PAGA Members.**

11 For purposes of Settlement only, the Parties have agreed to certify the following class: “[A]ll  
12 current and former hourly-paid, non-exempt employees of Defendant who were employed by  
13 Defendant in the State of California at any time during the Class Period.” (Minne Decl., ¶ 17;  
14 Agreement, ¶ 6.) The Class Period commences on April 10, 2019, and ends on April 12, 2024. (Minne  
15 Decl., ¶ 17; Agreement, ¶ 7.) There are approximately 106 Class Members. (Minne Decl., ¶ 19.)

16 The Settlement also includes a subgroup of “PAGA Members” which consists of all current  
17 and former non-exempt employees of Defendant who were employed by Defendant in the state of  
18 California at any time during the PAGA Period. (Minne Decl., ¶ 18; Agreement, ¶ 25.) The PAGA  
19 Period runs from March 13, 2022, and ends on April 12, 2024. (Minne Decl., ¶ 18; Agreement, ¶ 27.)  
20 There are approximately 48 PAGA Members. (Minne Decl., ¶ 20.)

#### 21 **B. Gross Settlement Amount**

22 The Parties have agreed to settle the Class and PAGA claims at issue for Gross Settlement  
23 Amount of \$465,000.00. (Minne Decl., ¶ 21; Agreement, ¶¶ 15, 51.) The Gross Settlement Amount is  
24 non-reversionary, and does not include employer-side payroll taxes, which shall be separately paid by  
25 Defendant. (*Id.*) The Gross Settlement Amount shall be allocated as follows:

- 26 • Attorneys’ Fees to Plaintiff’s counsel in the amount of one-third (1/3) of the Gross Settlement  
27 Amount (i.e., \$155,000.00). (Minne Decl., ¶ 22; Agreement, ¶¶ 4, 55.)
- 28 • Reimbursement of Plaintiff’s counsel’s actual litigation costs and expenses, not to exceed

1       \$15,000.00. (*Id.*)

- 2       • Class Representative Enhancement Payment of \$10,000.00 to Plaintiff. (Minne Decl., ¶ 22;
- 3       Agreement, ¶¶ 8, 56.)
- 4       • Settlement Administration Costs not to exceed \$6,990.00. (Minne Decl., ¶ 22; Agreement, ¶¶
- 5       40, 57.)
- 6       • PAGA Penalties in the amount of \$30,000.00, 75% of which shall be allocated to the LWDA,
- 7       and 25% of which shall be distributed to PAGA Members. (Minne Decl., ¶ 22; Agreement, ¶¶
- 8       24, 58.)

9       The Gross Settlement Amount, less the payments listed above, shall be the “Net Settlement

10   Amount”, which shall be distributed to Participating Class Members as Individual Class Payments on

11   a pro rata basis according to the number of workweeks worked during the Class Period. (Minne Decl.,

12   ¶¶ 22-23, 26; Agreement ¶¶ 16, 18, 59, 60.) The Net Settlement Amount is currently estimated to be

13   approximately \$248,010.00. (Minne Decl., ¶ 23; Agreement, ¶ 59.)

#### 14       **C. Calculation of Individual Class Payments and Individual PAGA Payments**

15       The Net Settlement Amount will be distributed to Participating Class Members on a pro-rata

16   basis based on the number of Workweeks they worked during the Class Period. (Settlement

17   Agreement, ¶¶ 16, 60.) This method of distribution is commonly used in wage and hour class actions

18   because it: (a) relies upon objective evidence of the length of employment which Class Members can

19   easily review and confirm for themselves; and (b) allows for a distribution that corresponds closely to

20   the alleged damages which are directly related to the amount of time Class Members were employed.

21   This information is readily available from Defendant’s records, and the Settlement Administrator can

22   apply the formula in a fair and transparent manner. (Minne Decl., ¶ 26.)

23       The range of Individual Class Payments will vary based on the total weeks they worked during

24   the Class Period and the number of Class Members who request to be excluded from the Settlement.

25   However, based on Defendant’s representation that that there are approximately 7,163 workweeks in

26   the Class Period, Plaintiff’s counsel estimates that Participating Class Members will receive

27   approximately \$34.62 per workweek. Based on this figure, Plaintiff’s counsel further estimates that

28   the average Individual Class Payment to Participating Class Members will be approximately

1 \$2,339.72, with the lowest potential Individual Class Payment being approximately \$34.62 and the  
2 highest potential Individual Class Payment being approximately \$9,036.80. (Minne Decl., ¶ 27.)  
3 Individual Class Payments to Participating Class Members shall be allocated as 20% wages and 80%  
4 interest and penalties. (Minne Decl., ¶ 28; Agreement, ¶ 61.) Based Plaintiff's Counsel's experience,  
5 these percentages are consistent with the standard allocation between wages, interest, and penalties in  
6 wage and hour settlements involving similar claims. (Minne Decl., ¶ 28.)

7 In addition to the Individual Class Payments from the Net Settlement Amount, PAGA  
8 Members shall receive a pro-rata share of the 25% portion of PAGA Penalties allocated for distribution  
9 to PAGA Members. Individual PAGA Payments will be distributed on a pro-rata basis based on the  
10 number of workweeks worked by PAGA Members during the PAGA Period. (Minne Decl., ¶ 29;  
11 Agreement, ¶ 17, 62.) The estimated average Individual PAGA Payment to PAGA Members is  
12 \$156.25. (Minne Decl., ¶ 29.) Individual PAGA Payments are not subject to withholdings and will be  
13 reported on an IRS Form 1099 by the Settlement Administrator. (Agreement, ¶ 63.)

14 The Settlement Administrator shall determine the eligibility for, and the amounts of, each  
15 Individual Settlement Award under the terms of the Settlement Agreement. (Agreement, ¶¶ 40, 60,  
16 62, 65.) All payments owed under the Settlement shall be disbursed within 14 calendar days of the  
17 funding of the Gross Settlement Amount. (Agreement ¶ 53.) If an Individual Class Payment check or  
18 Individual PAGA Payment check remains uncashed after one hundred eighty (180) days from the  
19 initial mailing, the Settlement Administrator shall transfer the value of the uncashed checks to the  
20 California Controller's Unclaimed Property Fund in the name of the Participating Class Member or  
21 PAGA Member. (Minne Decl., ¶ 30, Agreement ¶ 79.) As such, no "unpaid residue" under California  
22 Code of Civil Procedure §384 will result from the Settlement. (Minne Decl., ¶ 30.) This methodology  
23 ensures that Participating Class Members who do not receive their Settlement checks (e.g., due to the  
24 Administrator being unable to locate a current address notwithstanding skip tracing) or who forget to  
25 cash their Settlement checks can still obtain funds paid in exchange for their release of claims in the  
26 future. (*Id.*)

27 **D. Release of Class and PAGA Claims.**

28 Upon the funding of the Gross Settlement Amount and all employer payroll taxes, Plaintiff and

1 Participating Class Members shall be deemed to have released the Released Parties from any and all  
2 Released Class Claims. (Agreement, ¶¶ 32, 85.) The scope of the Released Class Claims is limited to  
3 claims that are alleged, or reasonably could have been alleged, based on the facts alleged in Class  
4 Action. (*Id.*) Additionally, Plaintiff and the State of California shall be deemed to have released the  
5 Released Parties from any and all Released PAGA Claims. (Agreement, ¶¶ 33, 86.) The scope of the  
6 Released PAGA Claims is limited to claims for civil penalties, attorneys’ fees and costs arising out of  
7 violations that are alleged in the Plaintiff’s PAGA notice to the LWDA that are alleged in the  
8 Complaint. (*Id.*) The release of PAGA claims does not release any PAGA Member’s individual claims  
9 for unpaid wages for damages. (Agreement, ¶ 86.)

10 In addition to the release of claims made by all Participating Class Members, Plaintiff, in her  
11 individual capacity, also agrees to a general release of all claims against Defendant. (Agreement, ¶  
12 87.)

#### 13 **E. The Settlement Administrator**

14 The Parties have selected Apex Class Action LLC to administer the Settlement. (Minne Decl.,  
15 ¶ 31; Agreement ¶ 39.)<sup>2</sup> Apex Class Action LLC has extensive experience in administering class action  
16 and PAGA settlements, and has procedures in place to protect the security of class data as well as  
17 adequate insurance for errors and omissions. (Declaration of Sean Hartranft On Behalf of Apex Class  
18 Action LLC [“Hartranft Decl.”], ¶¶ 4-5, Exh. A.) The Parties and their counsel do not have any  
19 financial interest in Apex Class Action LLC that would create a conflict of interest. (Agreement, ¶ 39;  
20 Minne Decl., ¶ 48; Declaration of Kieran Hartley [“Hartley Decl.”], ¶ 4.)

#### 21 **F. Other Pending Actions Against Defendant**

22 After conducting diligent investigation and research, Plaintiff’s counsel and Defendant’s  
23 Counsel are unaware of any other class, representative, or collective actions pending in any other court  
24 that assert claims that are similar to those alleged in this Action on behalf of a class or group of  
25 individuals who would be members of the class defined in the proposed Settlement of the Action.

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26  
27  
28 <sup>2</sup> Plaintiff’s Counsel also obtained administration estimates from ILYM Group, Inc. and Phoenix Settlement  
Administrators. Apex Class Action LLC was ultimately selected as the Settlement Administrator because it provided the  
lowest estimate and, consequently, would result in the highest net recovery by Participating Class Members. (Minne  
Decl., ¶ 31, Exh. 3-5.)

(Minne Decl., ¶¶ 51-52; Smith Decl., ¶ 10; Hartley Decl., ¶ 3.)

#### **IV. THE COURT SHOULD GRANT PRELIMINARY APPROVAL.**

##### **A. Standard of Review for Preliminary Approval**

The review and approval of a proposed class action settlement involves a two-step process. *See* Cal. Rules of Court, Rule 3.769(c). First, counsel submit the proposed terms of settlement and the Court makes a preliminary assessment of whether the settlement appears to be sufficiently within the range of a fair settlement to justify providing notice of the proposed settlement to class members. Second, after notice is provided to the class, the Court must conduct a second inquiry into whether the proposed settlement is fair, reasonable and adequate. *Id.*

The initial evaluation of a settlement at preliminary approval “is not a fairness hearing.” *Armstrong v. Bd. of Sch. Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980), overruled on other grounds by *Felzen v. Andreas*, 134 F.3d 873, 875 (7th Cir. 1998). Rather, the limited purpose of this initial inquiry is to determine, at a threshold level, whether the proposed settlement is within the range of possible approval and, as a result, “whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing.” *Id.* As set forth below, the Settlement is within the range of possible approval. Accordingly, preliminary approval should be granted.

##### **B. The Settlement is Entitled to a Presumption of Fairness.**

California Courts recognize that 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. *In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 723 (2006); *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal.App.4th 1135, 1146 (2000). Because the proposed Settlement was reached through arm’s-length negotiations based on sufficient investigation and discovery by qualified counsel, it is entitled to a presumption of fairness.<sup>3</sup>

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<sup>3</sup> At preliminary approval, the fourth factor – the percentage of objectors – is not applicable, as notice has not yet been provided to the Class and Class Members have not yet had an opportunity to object to the Settlement.

1                   1. The Proposed Settlement Was Reached Through Arm’s Length Bargaining.

2           The Settlement was reached following a full day of mediation with Monique Ngo-Bonnici, a  
3 highly respected mediator with extensive experience in complex wage and hour litigation. (Minne  
4 Decl., ¶ 13.) The settlement negotiations were at arm’s length and, although conducted in a  
5 professional manner, were adversarial. (*Id.*) The Parties went into settlement discussions willing to  
6 explore the potential for a settlement of the dispute, but each side was also prepared to litigate its  
7 position through class certification, trial, and appeal if a settlement was not reached. (*Id.*) Arriving at  
8 a settlement that was acceptable to the Parties was not easy, and the Parties vigorously advanced their  
9 respective positions throughout the settlement negotiations. (*Id.*) After a full day of negotiations, the  
10 mediation culminated in the issuance of a mediator’s proposal that was accepted by the Parties. A  
11 memorandum of understanding reflecting the terms of the mediator’s proposal was executed on or  
12 about February 28, 2024. (*Id.*, ¶ 14.)

13           The proposed Settlement was reached at the end of a process that was neither fraudulent nor  
14 collusive. To the contrary, counsel for the Parties advanced their respective positions throughout the  
15 settlement negotiations. (Minne Decl., ¶¶ 11, 13.)

16                   2. Plaintiff and Her Counsel Conducted Sufficient Investigation and Discovery to  
17                   Allow the Court and the Parties Act Intelligently.

18           Courts typically assess the status of discovery in determining whether a proposed class action  
19 settlement is fair, reasonable, and adequate. *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801  
20 (1996). As detailed above, prior to reaching the Settlement, Plaintiff’s counsel obtained extensive  
21 informal discovery before the mediation, which included: a random sampling of Class Members’ time  
22 and payroll documents; the employee handbooks and other documents evidencing Defendant’s  
23 relevant wage and hour policies and procedures; and key data points regarding the size, composition,  
24 number of workweeks, number of pay periods, and average rate of pay of the putative class. (Minne  
25 Decl., ¶11.) Plaintiff’s counsel thoroughly reviewed this informal discovery prior to mediation. (*Id.*, ¶  
26 13.) Plaintiff’s counsel also conducted further independent investigation, and researched Plaintiff’s  
27 claims and Defendant defenses thereto. (*Id.*) Based on this investigation, Plaintiff’s counsel prepared  
28 a detailed assessment of Defendant’s potential liability, and extensively briefed the strengths and

1 weaknesses of Plaintiff's claims and Defendant's anticipated defenses prior to mediation. Thus,  
2 Plaintiff's counsel was able to act intelligently and effectively in negotiating the proposed Settlement.  
3 (*Id.*)

4 3. Plaintiff's Counsel are Experienced in Class Action Litigation.

5 The settlement negotiations were conducted by highly capable and experienced counsel.  
6 Plaintiff's counsel are respected members of the bar with strong records of effective advocacy for their  
7 clients, and are experienced in handling complex wage-and-hour class action litigation. (Minne Decl.,  
8 ¶¶ 41-47; Declaration of Benjamin Smith ["Smith Decl."], ¶¶ 3-7.) Although Plaintiff and her counsel  
9 were prepared to litigate the claims in this action, they support the proposed Settlement as being in the  
10 best interests of the Class Members. (Minne Decl., ¶ 37; Smith Decl., ¶11; Perez Decl., ¶ 8.)

11 **C. The Settlement is Fair, Adequate, and Reasonable in Light of the Parties' Respective**  
12 **Positions and Risks of Continued Litigation**

13 A settlement is not judged against what might have been recovered had a plaintiff prevailed at  
14 trial, nor does the settlement have to obtain 100% of the damages sought to be fair and reasonable.  
15 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 246, 250 (2001). In evaluating the  
16 reasonableness of a settlement, a trial court must consider "the strength of plaintiffs' case, the risk,  
17 expense, complexity and likely duration of further litigation, the risk of maintaining class action status  
18 through trial, the amount offered in settlement, the extent of discovery completed and the stage of the  
19 proceedings, the experience and views of counsel, the presence of a governmental participant, and the  
20 reaction of the class members to the proposed settlement." *Kullar v. Foot Locker Retail, Inc.*, 168  
21 Cal.App.4th 116, 128 (2008).

22 Plaintiff's counsel have carefully considered Plaintiff's claims and analyzed class-wide  
23 violation rates. Based on information gathered by Plaintiff's counsel, including calculations of  
24 Defendant's maximum potential liability exposure and the risks associated with continued litigation,  
25 Plaintiff's counsel have determined that the proposed Settlement is fair, adequate, and reasonable.  
26 (Minne Decl., ¶¶ 32-38.)  
27  
28

1                   a. Defendant's Maximum Potential Exposure.

2           Based on information gathered through informal discovery and independent research and  
3 investigation, Plaintiff's counsel estimated that if all class claims were adjudicated in favor of the  
4 Class, Defendant's maximum potential liability for the Class claims is \$1,717,977.02. (*Id.*, ¶ 32.) This  
5 estimate can be broken down by claim as follows: \$289,456.83 in unpaid minimum wages and  
6 overtime compensation due to off-the-clock work; \$370,504.774 in unpaid meal period premiums;  
7 \$482,428.05 in unpaid rest period premiums; \$107,445.00 in unreimbursed business expenses;  
8 \$349,142.40 in waiting time penalties under Labor Code § 203; and \$119,000.00 in statutory wage  
9 statement penalties under Labor Code § 226(e).<sup>4</sup> (*Id.*)

10           In addition to the damages for the Class claims, Plaintiff's counsel also separately calculated  
11 Defendant's potential liability for civil penalties under PAGA to be \$691,700.00, which can be broken  
12 down by violation as follows: \$60,700.00 for unpaid overtime; \$121,400.00 for unpaid minimum  
13 wages; \$121,400.00 for meal period violations; \$121,400.00 for rest period violations; \$121,400.00 for  
14 failure to timely pay wages during employment under Labor Code section 204; \$24,000.00 for failure  
15 to maintain required payroll records under Labor Code section 1174; and \$121,400.00 for failure to  
16 reimburse business expenses.<sup>5</sup> (*Id.*, ¶ 33)

17                   b. Strengths and Weaknesses of Plaintiff's Claims and Risks of Continued Litigation.

18           While Defendant's maximum potential liability is substantial, such calculations assume that  
19 Plaintiff fully prevails on all causes of action at every stage of litigation, from class certification  
20 through trial and appeals. Defendant vociferously denied liability and proffered several defenses to  
21 both class certification and the merits of Plaintiff's claims. While Plaintiff and Plaintiff's counsel  
22 believed that Plaintiff's claims are fundamentally meritorious, they recognized that there is significant  
23 risk and uncertainty associated with protracted litigation of this Action. Consideration of the specific  
24  
25

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26           <sup>4</sup> Penalties associated with violations of Labor Code §§ 204 and 1174, were not considered as part of the Class analysis,  
27 but were instead included in Plaintiff's Counsel's separate calculations regarding Defendant's potential exposure for civil  
penalties under PAGA. (Minne Decl., ¶ 32.)

28           <sup>5</sup> These calculations did not include duplicative penalties that would likely be considered duplicative of statutory penalties  
recoverable as part of the Plaintiff's Class claims, such as waiting time penalties under Labor Code § 203 and wage  
statement penalties under Labor Code § 226. (Minne Decl., ¶ 33.)

1 risks associated with each of Plaintiff primary claims factored into the decision to enter into the  
2 Settlement at this point of litigation. (Minne Decl., ¶¶ 34-38.)

3 As a preliminary matter, Plaintiff faced challenges specific to each of her primary class claims.  
4 For example, Plaintiff minimum wage and overtime claims were based on Plaintiff's allegations that  
5 Defendant implemented policies and practices that placed substantial pressure on Class Members to  
6 work off-the-clock without compensation. Defendant denied that employees were required to do any  
7 work off-the-clock, and that if employees performed such work it was done without Defendant's  
8 knowledge. Defendant also argued that individual liability issues predominate, including: (1) whether  
9 each employee worked off-the-clock; and (2) whether Defendant knew or should have known about  
10 each employee's off-the-clock work. Moreover, given that these claims were based on off-the-clock  
11 work not reflected in Defendant's time records, Defendant argued that proving damages at trial would  
12 not be manageable. While Plaintiff's counsel strongly disagreed with Defendant's contentions,  
13 Plaintiff's counsel also recognized that certification of the off-the-clock claims is a particularly  
14 uncertain proposition due to potential for individualized issues and lack of records. (*Id.*, ¶ 34(a).)

15 Plaintiff also faces significant risks with her meal period claims. Plaintiff contends that  
16 Defendant's formal meal period policies were facially deficient, as they failed to provide employees  
17 with all meal periods to which they were legally entitled. Plaintiff further contends that, as a matter of  
18 actual practice, Class Members were often required to skip meal periods, to delay meal periods after  
19 their fifth hour of work, and to cut their meal periods short, and were not paid meal period premiums  
20 for such violations. At mediation, Defendant maintained that Class Members were provided ample  
21 opportunity to take meal periods, and that if Class Members did not take compliant meal breaks, it is  
22 because they voluntarily chose not to do so. Defendant argued that questions of whether employees  
23 had received compliant meal periods, why such meal periods were not taken, and whether such meal  
24 periods were voluntarily waived were individualized issues that would bar certification. Defendant  
25 also asserted that Class Members worked in a variety of different job positions with different job  
26 duties, and that this variation between employees raised highly individualized questions of fact. While  
27 Plaintiff's counsel strongly disagreed with Defendant's arguments and contentions, they recognized  
28 there was a risk that the Court could ultimately deny class certification based on concerns regarding

1 manageability and/or individualized issues. Plaintiff's counsel also recognized that even if class  
2 certification is granted, Plaintiff will be required to oppose attempts to decertify the class, as well as a  
3 potential motion for summary judgment. (*Id.*, ¶ 34(b).)

4 Plaintiff's counsel was also cognizant of the challenges associated with maintaining Plaintiff  
5 rest period claims on a class-wide basis. As with meal periods, Plaintiff contends that Defendant's  
6 formal policies failed to advise employees of all rest periods to which they were entitled and that, as a  
7 matter of actual practice, Class Members were often required to skip or shorten their rest periods, and  
8 were not paid rest period premiums for such violations. As with meal periods, Defendant asserted that  
9 its written policies substantially complied with California law, that Class Members were allowed to  
10 take rest periods, and that Class Members who worked through their rest periods did so voluntarily.  
11 Defendant argued that whether Class Members had received compliant rest periods and the reasons  
12 why Class Members failed to receive compliant rest periods raised individualized issues that could not  
13 be certified. Defendant likewise argued that whether Class Members had received a compliant rest  
14 period and the reasons why Class Members failed to receive compliant rest periods raised  
15 individualized issues that could not be certified. While Plaintiff's counsel disagreed with Defendant's  
16 positions, they also recognized that rest period claims are inherently difficult to certify and prove,  
17 given that an employer has no obligation to maintain records of rest periods. Further, just as with meal  
18 periods, even if this claim is certified, Plaintiff will be required to defend against an anticipated motion  
19 to decertify and motion for summary judgment, and will ultimately bear the burden of establishing  
20 liability with at trial. (*Id.*, ¶34(c).)

21 Plaintiff further contends that Defendant failed to reimburse Class Members for necessary  
22 business expenses, such as use of their personal cell phones. Defendant asserted that not all Class  
23 Members were not required to use their personal cells phones for work. Defendant further asserted  
24 that individualized inquiries regarding why a Class Member failed to receive reimbursement for  
25 certain expenses would predominate. (*Id.*, ¶ 34(d).)

26 There are also substantial risks attached to Plaintiff's claims for waiting time penalties and  
27 wage statement penalties,. Such claims are derivative of Plaintiff's primary claims for meal period,  
28 rest period, minimum wage and overtime violations. Thus, if certification is denied on the primary

claims, these derivative claims would also likely fail. Moreover, even if Plaintiff prevails on the underlying claims, Plaintiff would still be required to show that Defendant conduct was willful in order to obtain such penalties, a difficult prospect. *See, e.g., Choate v. Celite Corp.*, 215 Cal App. 4th 1460, 1468 (2013) (holding that “an employer’s reasonable, good faith belief that wages are not owed may negate a finding of willfulness”); *Naranjo v. Spectrum Security Services, Inc.*, 15 Cal.5th 1056 (2024) (holding that Cal. Lab. Code § 226 allows for a defense based on good faith belief in compliance). Accordingly, these claims presented significant risk and uncertainty. (Minne Decl., ¶¶ 34(e).)

Taking into account the specific strengths and weaknesses of each claim, and the unique risks associated therewith, Plaintiff’s counsel estimated that Defendant faced a risk-adjusted liability of \$449,988.83 for Plaintiff’s Class claims. (*Id.*, ¶ 34 (a)-(f).)

Plaintiff’s counsel also separately contemplated the numerous risks of proceeding with a PAGA claim. First, the same defenses and merits-based risks associated with Plaintiff’s direct Labor Code claims are also applicable to a PAGA claim. *See Green v. Lawrence Service Co.*, 2013 U.S. Dist. LEXIS 109270, at \*5, fn. 5 (C.D. Cal. 2013) (“whether each PAGA claims succeeds or fails is determined by the merits of the substantive claims on which each is based.”) (Minne Decl., ¶ 35(a).) Defendant would also likely attempt to challenge Plaintiff’s fundamental standing as an aggrieved employee. (*Id.*, ¶ 35(b).)

Further, although the California Supreme Court resolved this conflict by holding that PAGA claims may not be stricken based on “manageability” concerns alone, it left open the possibility that an employer may still attempt to strike PAGA claims if it can be shown that “a trial court’s use of case management techniques so abridged the defendant’s right to present a defense that its right to due process was violated.” *Estrada v. Royalty Carpet Mills, Inc.*, 15 Cal.5th 582, 620 (2024). Thus, the possibility remains that Defendant could attempt to challenge Plaintiff’s PAGA claims as violating its due process rights. (*Id.*, ¶ 35(c).)

Moreover, even if Plaintiff established liability, Plaintiff’s counsel anticipated there would be significant disputes over the calculation of penalties assessed against Defendant. For instance, Defendant would likely contend that multiple Labor Code violations do not give rise to cumulative

1 penalties, and that instead a single penalty should apply once per pay period, if at all, rather than  
2 cumulative penalties for each separate Labor Code provisions that was violated during a pay period.  
3 If this methodology were applied, it would significantly reduce Defendant's exposure for civil  
4 penalties. (*Id.*, ¶ 35(d).) The Court could also exercise its discretion to find that the imposition of  
5 heightened civil penalties was inappropriate, particularly if Plaintiff prevailed on her class claims. Cal.  
6 Lab. Code § 2699(2); *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1122 (2012).<sup>6</sup>  
7 (*Id.*, ¶ 35(e).) Plaintiff's counsel was cognizant that PAGA is not intended to be compensatory in  
8 nature, but is instead is instead intended to facilitate enforcement of California's labor laws by  
9 financing state activities and educating and deterring non-compliance. *See* Cal. Labor Code § 2699(i);  
10 *Arias v. Sup. Ct.*, 46 Cal. 4th 980 *Williams v. Sup. Ct.*, 3 Cal.5th 531, 546 (2017). (Minne Decl., ¶  
11 35(f).) Based on these considerations, Plaintiff's counsel estimated that Defendant faced a risk-  
12 adjusted liability of \$172,925.00 for Plaintiff's PAGA claims. (*Id.*, ¶ 35 (a)-(g).)

13 Finally, Plaintiff's counsel recognized the significant risk and expense generally associated  
14 with continued litigation, trial, and possible appeals, all of which would substantially delay and reduce  
15 any recovery by the Class Members. Even if Plaintiff prevailed at class certification, proving the  
16 amount of wages due to each Class Member would be an expensive, time-consuming, and extremely  
17 uncertain proposition. In order to prove liability and damages, Plaintiff's counsel will need to request  
18 and analyze thousands of pages of documents, and obtain numerous declarations at great expense.  
19 Obtaining the cooperation of current employees would also be difficult, given the likely reluctance to  
20 aid prosecution of a lawsuit against a current employer. On the other hand, Defendant would likely be  
21 able to obtain the cooperation of its current employees. Moreover, even if Plaintiff successfully  
22 certifies the class on a contested motion and prevails on all claims at trial, possible appeals would  
23 substantially delay any recovery by the Class. These risks are all obviated by the Settlement, which if  
24 approved by the Court will ensure that Class Members receive timely relief without the risk of an  
25 unfavorable judgment. (Minne Decl., ¶ 36.)

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27 <sup>6</sup> *See also*, *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016) (reducing penalties by 97.5%); *Fleming v.*  
28 *Covidien*, 2011 U.S. Dist. LEXIS 154590, \*8-9 (C.D. Cal. 2011) (reducing potential PAGA penalties by over 80 percent);  
*Magadia v. Wal-Mart Assocs. et al.*, 384 F. Supp. 3d 1058, 1069 (N.D. Cal. 2019)(applying 67% and 80% reductions to  
PAGA Penalties).

1 Therefore, after considering the strengths and weaknesses of each claim, and the unique risks  
2 associated therewith, the general risks of continue litigation, and the significant costs, expenses, and  
3 delay that would result from continued litigation, it is clear that the Settlement is fair, reasonable, and  
4 adequate, and is in the best interest of the Class. (Minne Decl., ¶ 37; Smith Decl., ¶ 11.) Moreover, the  
5 Gross Settlement Amount of \$465,000.00 – which represents approximately 27% of Defendant’s  
6 maximum potential liability for Plaintiff’s class claims - falls within an acceptable range of recovery  
7 for this type of litigation given the strengths and weaknesses of the case and the inherent costs and  
8 risks associated with class certification, representative adjudication, trial, and/or appeals. (Minne  
9 Decl., ¶ 37.)<sup>7</sup>

10 **D. The PAGA Allocation is Reasonable.**

11 The \$30,000.00 allocated for penalties under PAGA is fair and reasonable. PAGA is  
12 fundamentally not intended to be compensatory in nature, but is instead intended to facilitate  
13 enforcement of California’s labor laws by financing state activities and educating and deterring non-  
14 compliance. *See* Cal. Labor Code § 2699(i); *Arias v. Sup. Ct.*, 46 Cal. 4th 980; *Williams v. Sup. Ct.*, 3  
15 Cal.5th at 546; *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal.4th 348, 379 (2014). Where, as  
16 here, the parties reach a substantial class-wide settlement providing employees with monetary  
17 compensation for underlying Labor Code violations, many of PAGA’s underlying policy objectives  
18 are satisfied. Indeed, the \$30,000.00 PAGA Payment is well-within the range approved by California  
19 courts. *See Nordstrom Comm. Cases*, 186 Cal.App.4th 576, 589 (2010)(finding no abuse of trial  
20 court’s discretion in approval of release that included PAGA claims but allocated \$0 to PAGA  
21 penalties); *Alcala v. Meyer Logistics, Inc.*, 2019 WL 4452961, \*9 (C.D. Cal. June 17, 2019) (settlement  
22 of claims for PAGA penalties representing 1.25% of gross settlement amount was reasonable, as it  
23

24  
25 <sup>7</sup> *See, e.g., Cavazos v. Salas Concrete, Inc.*, 2022 U.S. Dist. LEXIS 132056 (E.D. Cal. 2022)(granting preliminary approval  
26 of settlement representing approximately 5.8% of maximum damages); *Ayala v. UPS Supply Chain Solutions, Inc.*, 2021  
27 U.S. Dist. LEXIS 194362 (C.D. Cal. 2021)(granting preliminary approval of settlement representing approximately 7.8%  
28 of maximum damages); *Avila v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS 130878 (E.D. Cal 2017) (approving  
settlement where gross recovery was 11% of the maximum damages); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S.  
Dist. LEXIS 78671 (N.D. Cal. 2015) (granting final approval of settlement amount representing approximately 10% of the  
maximum ); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 256 (N.D. Cal. 2015) (approving settlement  
representing approximately 8.5% of the maximum damages).

“falls within the zero to two percent range for PAGA claims approved by courts.”); *In re M.L. Stern Overtime Litig.*, 2009 WL 995864, \*1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2%); *Hopson v. Hanesbrands, Inc.*, 2008 WL 3385452, \*1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 0.3%). (Minne Decl., ¶ 55.)

**V. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED.**

Code of Civil Procedure § 382 provides that three basic requirements must be met in order to sustain any class action: (1) there must be an ascertainable class; (2) there must be a well-defined community of interest in the question of law or fact affecting the parties to be represented; and (3) certification will provide substantial benefits to litigants and the courts, i.e., proceeding as a class is superior to other methods. *Fireside Bank v. Superior Court*, 40 Cal.4th 1069, 1089 (2007); *see also Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 326 (2004). Courts utilize a less stringent standard for class certification during settlement. *Global Minerals & Metals Corp. v. Superior Court*, 113 Cal.App.4th 836, 859 (2003). The reason: “no trial is anticipated in a settlement class case, so the case management issues inherent in the ascertainable class determination need not be confronted.” *Id.*

As demonstrated below, all three requirements for certification of the Class as defined by the Settlement are satisfied. Furthermore, Defendant has stipulated to certification of the proposed Class for settlement purposes only. (Agreement, ¶ 50.)

**A. There is an Ascertainable Class.**

Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of the class, and (3) the means of identifying the class members. *See Miller v. Woods*, 148 Cal.App.3d 862, 873 (1983). In this case, all three considerations strongly favor class certification. Here, the Class is defined as all current and former hourly-paid, non-exempt employees of Defendant who were employed by Defendant at any time from April 10, 2019 to April 12, 2024. (Agreement, ¶¶ 6-7.) This provides a clear and definite scope for the proposed class.

Next, the class is sufficiently numerous. There is no magic number that satisfies the numerosity requirement. Under the Federal Rules, the minimum number of a class is 100 individuals. Under California law, that number is significantly less. *See e.g., Rose v. City of Haywood*, 126 Cal.App.3d 926, 934 (1981) (holding 42 class members sufficient to satisfy numerosity); *Bowles v. Superior Court*,

1 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous). Here, the estimated Class size  
2 of 106 individuals plainly favors class certification.

3 Finally, the question whether class members are easily identifiable turns on whether a plaintiff  
4 can establish “the existence of an ascertainable class.” *Daar v. Yellow Cab Co.*, 67 Cal. 2d 695, 706  
5 (1967). The existence of an ascertainable class in this case can be established through Defendant’s  
6 payroll records, and the class definition is sufficiently specific to enable the parties, potential Class  
7 Members and the Court to determine the parameters of the Class.

8 **B. The Class Shares a Well-Defined Community of Interest.**

9 The community of interest requirement embodies three factors: (1) predominant questions of  
10 law and fact; (2) class representatives with claims or defenses typical of the class; and (3) class  
11 representatives who can adequately represent the class. *Dunk*, 48 Cal.App.4th at 1806. This case  
12 satisfies all three requirements.

13 1. Common Issues of Law and Fact Predominate.

14 The commonality criterion requires the existence of common question of law or fact and is  
15 generally established with the issues of predominance and typicality. *See Daar*, 67 Cal.2d 695, 706.  
16 What is required is that a common question of fact or law exist which predominates over issues unique  
17 to individual plaintiffs. The existence of individual issues or facts—generally present in any case  
18 arising from employment—is not a bar to class certification as long as they do not render class  
19 litigation unmanageable or predominate over the common issues. *See B.W.I. Custom Kitchen v.*  
20 *Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1354 (1987).

21 Here, Plaintiff’s claims present sufficient common issues of law and fact that predominate and  
22 warrant class certification. Plaintiff alleges that Defendant prohibited Class Members from taking  
23 compliant meal and rest periods, required Class Members to perform work off-the-clock, and required  
24 Class Members to pay for work-related expenses out of pocket. These policies and practices meant  
25 that Defendant failed to pay required meal period premiums, minimum wages, and overtime wages,  
26 failed to maintain required time records, failed to reimburse necessary business expenses, and other  
27 related claims. Plaintiff alleges that Defendant’s policies and practices were uniform as to all Class  
28 Members. Thus, class treatment is appropriate.

1                   2. Plaintiff's Claims are Typical of the Class.

2           To satisfy the typicality requirement, California law does not require that Plaintiff have claims  
3 identical to the other class members. Rather, the test of typicality for a class representative is whether  
4 other members have the same or similar injury, whether the action is based on conduct which is not  
5 unique to the named plaintiff, and whether other class members have been injured by the same course  
6 of conduct. *See Seastrom v. Neways, Inc.*, 149 Cal.App.4th 1496, 1502 (2007). The typicality  
7 requirement for a class representative refers to the nature of the claim or defense of the representative,  
8 and not to the specific facts from which it arose or the relief sought. *See Id.*

9           Here, Plaintiff alleges that her claims are based on the same legal theories, arise out of the same  
10 unlawful policies and practices, and seek the same relief. Because Plaintiff's claims are based on the  
11 same alleged conduct and business practices as the claims of the other Class Members, the typicality  
12 requirement is satisfied.

13                   3. Plaintiff and Her Counsel Will Fairly and Adequately Represent the Class.

14           The question of adequacy of representation "depends on whether the plaintiff's attorney  
15 qualifies to conduct the proposed litigation in the plaintiff's interest or not antagonistic to the interests  
16 of the class." *McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976). Here, these considerations  
17 are satisfied. Plaintiff's counsel are well-regarded and accomplished lawyers who are qualified and  
18 experienced in employment-related, class-action litigation, and who do not have any conflicts of  
19 interest which would impede their representation of the Class. (Minne Decl., ¶¶ 41-49; Smith Decl.,  
20 ¶¶ 3-7.) Furthermore, because Plaintiff's claims are typical of those of other Class Members, and are  
21 not based on unique circumstances that might jeopardize the claims of the class, there is no antagonism  
22 of interests between Plaintiff and the Class. Plaintiff is also fully aware of her duties as a class  
23 representative, and will vigorously and adequately represent the interests of the Class. (Perez Decl.,  
24 ¶¶ 4-10.) Therefore, the adequacy requirement is satisfied.

25                   **C. A Class Action is Superior to a Multiplicity of Litigation.**

26           Under the circumstances, proceeding as a class action is a superior means of resolving this  
27 dispute, as the Class Members and the court will derive substantial benefits. Class certification would  
28 serve as the only means to deter and redress the alleged violations. *See Linder v. Thrifty Oil Co.*, 23

Cal.4th 429, 434 (2000) (relevant considerations include the probability that each class member will come forward to prove her or her separate claim and whether the class approach would actually serve to deter and redress the alleged wrongdoing). Further, individual actions arising out of the same operative facts would unduly burden the courts and could result in inconsistent results. Therefore, class action proceedings are superior to individual litigation.

**VI. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE.**

Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v. Beneficial Cal, Inc.*, 82 Cal.App.4th 19, 41 (2000). California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Id.* at 47. In cases where class members present claims against a common fund and the defendant agrees a percentage of the fund as part of the settlement, use of the percentage method is appropriate. *Id.* at 32.

Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. *Newberg on Class Actions*, § 14.03 (4<sup>th</sup> Ed.); *see also In re Ampicillin Antitrust Litig.*, 526 F.Supp. 494 (D.D.C. 1981) (awarding attorneys’ fees in the amount of 45% of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys’ fees). California courts routinely approve class action attorneys’ fee awards averaging around one-third of the recovery. *In re Consumer Privacy Cases*, 175 Cal.App.4th 545, 558 at n.13 (2009); *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions.)

Here, the requested attorneys’ fees in the amount of one-third (1/3) of the common fund, or \$155,000,000, is disclosed to Class Members in the proposed Notice of Class Action Settlement. (Agreement, Exh. A.) The requested fee award was freely negotiated, is common in the legal marketplace, and is not opposed by Defendant. The Motion for Final Approval will elaborate on the nature of the legal services provided and will also support Plaintiff’s counsel’s request for the reimbursement of litigation costs not to exceed \$15,000.00. (Minne Decl., ¶ 40.)

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1 **VII. THE PROPOSED ENHANCEMENT PAYMENT IS REASONABLE.**

2 Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as  
3 compensation “for the expense or risk they have incurred in conferring a benefit on other members of  
4 the class.” *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010). Courts routinely  
5 grant approval of class action settlement agreements containing enhancements for the class  
6 representative, which are necessary to provide incentive to represent the class and are appropriate  
7 given the benefit the class representatives help to bring about for the class. *See Van Vranken v. Atlantic*  
8 *Richfield Co.*, 901 F.Supp. 294, 299 (N.D. Cal. 1995) (approving \$50,000.00 enhancement); *In re*  
9 *Online DVD Rental*, 779 F.3d 934, 947-948 (9th Cir. 2014) (approving incentive award 417 times  
10 larger than individual payments where incentive award made up a mere .17% of the settlement);  
11 *Gaudin v. Saxon Mortgage Servs., Inc.*, 2015 WL 7454183, at \*10 (N.D. Cal. Nov. 23, 2015) (finding  
12 service award of \$15,000 to be “fair and reasonable”); *Miller v. CEVA Logistics USA, Inc.*, 2015 WL  
13 4730176, at \* 9 (E.D. Cal. Aug. 10, 2015)(approving service award of \$15,000 to each plaintiff); *Glass*  
14 *v. UBS Financial Services, Inc.*, 2007 WL 221862 at \*16 (N.D. Cal. 2007) (approving payments of \$25,000  
15 to each named plaintiff); *In re Heritage Bond Litigation*, 2005 WL 1594403 at \*18 (C.D. Cal. 2005)  
16 (awarding incentive payments between \$5,000 and \$18,000).

17 Plaintiff initiated this litigation on behalf of her former co-workers who can now collect  
18 monetary payment from the Settlement. Plaintiff assumed significant risk in serving as the named  
19 plaintiff, and invested substantial time and effort into litigation including her own research, reviewing  
20 documents, and extensive discussions with Plaintiff’s counsel. (Perez Decl., ¶¶ 4-10.) Further, the  
21 requested Enhancement Payment is extremely reasonable given the benefit gained by other Class  
22 Members. The requested Enhancement Payment of \$10,000.00 is also disclosed to Class Members in  
23 the Class Notice. (Agreement, Exh. A.) For these reasons, Plaintiff requests that Enhancement  
24 Payment be preliminarily approved by the Court. (Minne Decl., ¶ 39; Perez Decl., ¶ 11.)

25 **VIII. THE PROPOSED CLASS NOTICE, AND OPT-OUT AND OBJECTION**  
26 **PROCEDURES SATISFY DUE PROCESS REQUIREMENTS**

27 “The principal purpose of notice to the class is the protection of the integrity of the class action  
28 process.” *Cartt v. Superior Court*, 50 Cal.App.3d 960, 970 (1975). The notice ““must fairly apprise

1 the class members of the terms of the proposed compromise and of the options open to the  
2 dissenting class members.” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 251 (2001).  
3 Additionally, the notice given should have a reasonable chance of reaching a substantial percentage  
4 of the class members. *Cartt*, 50 Cal.App.3d at 974.

5 The Parties have jointly drafted a Notice of Class Action Settlement (“Class Notice”) which  
6 will be sent to Class Members in both in both English and Spanish. (Agreement, ¶ 19, Exh. A). The  
7 Class Notice describes the nature of the lawsuit, the key terms of the Settlement, the scope of the  
8 Released Class Claims and Released PAGA Claims, Class Members’ estimated Individual Settlement  
9 Payment and Individual PAGA Payment, Class Members’ total workweeks during the Class Period,  
10 and PAGA Member’s total workweeks during the PAGA Period. (Agreement, Exh. A.) The Class  
11 Notice also informs Class Members how to opt-out of the Settlement, object to the Settlement, and  
12 challenge their reported workweeks. (*Id.*) The Class Notice will indicate that the Court has determined  
13 only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate  
14 and reasonable, and a final determination of such issues will be made at the final hearing. (*Id.*) The  
15 Class Notice also include instructions on how to obtain all relevant Settlement documents (including  
16 the contact information for Plaintiff’s counsel, a URL to a website maintained by the Administrator  
17 containing the key documents related to the Settlement, and a URL to the Court’s public online portal),  
18 and informs Class Members of their right to attend the final approval hearing. (*Id.*). Per the Court’s  
19 Case Management Order, the Class Notice will also include an Objection Form and Request for  
20 Exclusion Form that may be used by Class Members to object to or opt-out from the Settlement.  
21 (Agreement, Exh. B-C.)

22 No later than twenty (20) calendar days after the Court grants Preliminary Approval of the  
23 Settlement, Defendant shall provide the Administrator with the Class List containing all Class  
24 Members’ names, last-known mailing addresses, Social Security numbers, start and end dates of active  
25 employment with Defendant, total Workweeks during the Class Period, and total Workweeks during  
26 the PAGA Period. (Agreement, ¶¶ 5, 66.) No later than fourteen (14) calendar days after receiving the  
27 Class List from Defendant, the Administrator shall mail copies of the Class Notice to all Class  
28 Members via regular First Class U.S. Mail. (*Id.*, ¶ 67.) Before mailing the Class Notice to Class

Members, the Administrator shall perform a search based on the National Change of Address Database to update and correct any known or identifiable address changes. (*Id.*, ¶ 68.)

If any Class Notice is returned as undeliverable, the Administrator shall promptly re-mail such returned Class Notices to the forwarding address provided by the USPS. (*Id.*) If no forwarding address is provided, the Administrator shall search for a current address using all readily available resources, such as skip tracing, and re-mail the Class Notice to the most current address obtained. (*Id.*) Class Members shall have sixty (60) calendar days after the mailing of the Class Notice to submit request for exclusions, objection, or workweek dispute by fax, email, or mail. (*Id.*, ¶¶ 37, 70, 71, 75.) Further, any Class Members who receive a re-mailed Notice, whether by skip-trace or by request, will have an additional fifteen (15) calendar days to submit an Objection, Request for Exclusion, or Workweek Dispute. (*Id.*)

Direct mail notice to Class Members' last known addresses is the best possible notice under the circumstances. *See Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 319 (1950); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-176 (1974). Furthermore, the Class Notice comports with the requirements of California Rules of Court, Rules 3.769 and 3.766. Pursuant to Rule 3.769(f), the class notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and arranging to appear at the hearing and state objections to the proposed settlement. Cal. R. Ct. 3.769(f). Rule 3.766 further requires that the class notice include (1) a brief explanation of the case, including the basic contentions and denials of the parties; (2) a procedure for the class member to follow in requesting exclusion, and a statement that the Court will exclude the Class Member from the Class if he or she so requests by the specified deadline; (3) a statement that the judgment, whether favorable or not, will bind all class members who do not request exclusion; and (4) a statement that any Class Member who does not request exclusion may, if the class member so desires, object and enter an appearance through counsel. The proposed Class Notice satisfies each of these requirements. *See* Agreement, Exh. A. Additionally, per Case Management Order § 6(3)(k)(ii), a declaration from Defendant describing the likely age, education, and experience of Class Members is filed concurrently with this Motion. *See* Declaration of Wendy Hertz, ¶¶ 3-7.

1 Accordingly, Plaintiff respectfully requests that the Court appoint Apex Class Action LLC as  
2 the Settlement Administrator and direct the mailing of the Class Notice to the Class Members in the  
3 manner outlined and based on the proposed deadlines set forth in the Agreement.

4 **IX. CONCLUSION**

5 For the reasons set forth above, Plaintiff respectfully requests that the Court: (1) grant  
6 Preliminary Approval of the Settlement; (2) approve the Class Notice, Objection Form, Request for  
7 Exclusion Form, and plan for distribution of the Class Notice; (3) provisionally certify the Class for  
8 settlement purposes only; and (4) schedule a hearing on Final Approval of the Settlement.

9  
10 Respectfully submitted,

11 Dated: June 14, 2024

**PARKER & MINNE, LLP**

12  
13 By: \_\_\_\_\_



14 S. Emi Minne  
15 Attorneys for Plaintiff  
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