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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF ORANGE**
15

16 MARISOL FLORES, individually and on behalf
17 of others similarly situated, and as an aggrieved
18 employee and Private Attorney General,

19 Plaintiff,

20 vs.

21 ASPEN MEDICAL PRODUCTS, LLC, a
22 California limited liability company; and DOES
1 through 50, inclusive,

23 Defendants.
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27
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Case No.: 30-2023-01320570-CU-OE-CXC

*Assigned for all purposes to the Honorable
Randall J. Sherman, Dept. CX105*

**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 19, 2024

Time: 10:00 a.m.

Dept.: CX105

Reservation No.: 74257540

Complaint Filed: April 21, 2023

FAC Filed: May 17, 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 19, 2024, at 10:00 a.m. or as soon thereafter as may
4 be heard in Department CX105 of the above-entitled court, located at located at 751 W. Santa Ana
5 Blvd., Santa Ana, California 92701, pursuant to Code of Civil Procedure § 382 and California Rules
6 of Court 3.769, Plaintiff Marisol Flores (“Plaintiff”) will, and hereby does, move the Court for entry
7 of an order granting preliminary approval of the proposed Joint Stipulation of Class Action and PAGA
8 Settlement entered between Plaintiff and Defendant Aspen Medical Products, LLC (“Defendant”).
9 Specifically, 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 Request for Exclusion Form attached as Exhibit
15 B to the Agreement, and the proposed deadlines for the settlement administration process;

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

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

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

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

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

23 8. Directing Defendant to furnish the full names, last known mailing address, telephone
24 number, social security numbers, start and end dates of active employment as a non-exempt employee
25 of Defendant in the State of California, total Workweeks during the Class Period, and total workweeks
26 during the PAGA Period for all Class Members to the Administrator no later than fourteen (14)
27 business days after the Court grants preliminary approval of the Settlement, as well as any other
28 information the Administrator may reasonably require to administer the Settlement;

1 9. Scheduling a final approval hearing.

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

6 Pursuant to California Labor Code § 2699(1)(2), a copy of the proposed Settlement, as well as
7 information regarding the preliminary approval hearing on this matter, were submitted to the
8 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)
9 [Attorneys-General-Act/Private-Attorneys-General-Act.html](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html) on March 27, 2024. *See* Minne Decl. ¶
10 66, Exh. 6.

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

16 The motion is based upon this notice, the attached memorandum of points and authorities; the
17 Declaration of S. Emi Minne, Benjamin Smith, Marisol Flores, and Sean Hartranft, and any exhibits
18 thereto; the pleadings and other records on file with the Court in this matter; and any other further
19 evidence or argument that the Court may properly receive at or before the hearing.

20 Respectfully submitted,

21 Dated: March 27, 2024

PARKER & MINNE, LLP

22
23 By:



24 S. Emi Minne
25 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 Marisol Flores (“Plaintiff”) against Defendant Aspen Medical Products, LLC 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”)¹ which will resolve the Action in its entirety. The key terms of the Agreement are as follows:

- Size of the Class: approximately 63 individuals.
- Gross Settlement Amount: \$315,000.00, exclusive of employer payroll taxes.
- Settlement Administration Costs: estimated not to exceed \$6,500.00.
- Requested Class Representative Enhancement Payment: \$5,000.00.
- Requested Attorney’s Fees and Costs: \$105,000.00, plus costs not to exceed \$30,000.00.
- PAGA Penalties: \$20,000.00, 75% of which will be paid to the LWDA, with the remaining 25% paid to PAGA Members.
- Estimated Net Settlement Amount: \$148,500.00.
- Average Estimated Individual Class Payment: \$2,357.14.
- Average Estimated Individual PAGA Payment: \$151.52.

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 producer and distributor of spinal bracing orthotics based in Irvine, California. (Minne Decl., ¶ 3.) Plaintiff is a former non-exempt, hourly-paid employee of Defendant who was employed by Defendant as a Customer Service Representative from approximately September 2022 to November 2022. (Minne Decl., ¶ 4; Declaration of Marisol Flores [“Flores Decl.”], ¶ 3.)

¹ 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 21, 2023, Plaintiff filed a putative class action complaint against Defendant entitled
6 *Marisol Flores v. Aspen Medical Products, LLC* (Orange County Superior Court Case No. 30-2023-
7 01320570-CU-OE-CXC, hereinafter “Action”). The Complaint alleged the following causes of action:
8 (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime Wages); (2) Violation of
9 California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of
10 California Labor Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor
11 Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code
12 §§ 201, 202 and 203 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 226(a)
13 (Failure to Provide Accurate Wage Statements); (7) Violation of California Labor Code §§ 2800 and
14 2802 (Failure to Reimburse Necessary Business Expenses); and (8) Violation of California Business
15 and Professions Code §§ 17200, et seq. (*Id.*, ¶ 6.) On May 17, 2023, Plaintiff filed a First Amended
16 Complaint adding an additional representative cause of action seeking the recovery of civil penalties
17 pursuant to California Labor Code § 2698, et seq. (California Labor Code Private Attorneys General
18 Act of 2004. (Minne Decl., ¶ 7.) Defendant filed its Answer to the First Amended Complaint on June
19 22, 2023. (*Id.*, ¶ 8.)

20 On June 22, 2023, Plaintiff served her first set of written discovery requests on Defendant
21 consisting of Form Interrogatories – General, Special Interrogatories, and Requests for Production of
22 Documents. Plaintiff also served a notice to depose Defendant’s person most qualified. (*Id.*, ¶ 9.)

23 Shortly after Plaintiff served her initial discovery requests, Class Counsel met and conferred
24 with Defendant’s counsel regarding the potential for resolution of the Action. (*Id.*, ¶ 10.) Pursuant to
25 these discussions, the Parties agreed to stay formal discovery, exchange informal discovery, engage
26 in private mediation, and stay formal discovery pending the completion of mediation. (*Id.*) As a further
27 pre-condition for early mediation, Defendant also formally stipulated that: (1) the Parties would
28 finalize the format of a *Belaire-West* notice prior to mediation, and that the *Belaire-West* notice would

1 be promptly sent to all putative class members in the event mediation was unsuccessful; (2) that
2 Defendant would not obtain declarations from putative class members during the pendency of
3 mediation; and (3) that Defendant would not engage in a mass release campaign (commonly known
4 as a “*Pick-up Stix*” process) prior to mediation. An order approving the Parties’ stipulations was
5 entered by this Court on July 26, 2023. (*Id.*)

6 Per the Parties’ agreement, Defendant provided Class Counsel with extensive informal
7 discovery prior to mediation, which included a 25% sampling of Class Members’ time and payroll
8 records. (*Id.*, ¶ 11.) The sampling was randomly selected and included employees across the Class
9 Period. (*Id.*) Defendant also provided Class Counsel with all versions of Defendant’s employee
10 handbooks in use during the Class Period and other documents evidencing its relevant wage and hour
11 policies and procedures. (*Id.*) Finally, Defendant provided Class Counsel with key data points
12 regarding the size and composition of the Class, such as the number of Class Members and PAGA
13 Members (including the number of current versus former employees), the total number of workweek
14 and pay periods worked by Class Members, the number of pay periods worked by PAGA Members,
15 and the average rates of pay for the Class. (*Id.*)

16 Prior to mediation, Class Counsel thoroughly reviewed the informal discovery produced by
17 Defendant, which included consulting with an expert to analyze Class Members’ time and payroll
18 records. (*Id.*, ¶ 12.) Class Counsel also engaged in further independent investigation, and conducted
19 further legal research regarding the merits of Plaintiff’s claims and Defendant’s potential defenses
20 thereto. (*Id.*) Based on this investigation and informal discovery, Class Counsel prepared a detailed
21 and informed assessment of Defendant’s potential liability in advance of mediation. (*Id.*) Class
22 Counsel also prepared a detailed brief addressing Plaintiff’s claims and Defendant’s anticipated
23 defenses, and provided their analysis to the mediator for his consideration. (*Id.*)

24 After completing a thorough investigation and analysis of Plaintiff’s claims, on February 7,
25 2024, the Parties attended a formal mediation with Francis J. Ortman III, Esq., a neutral and respected
26 mediator with extensive experience in complex wage and hour matters. (*Id.*, ¶ 13.) The Parties engaged
27 in a full day of settlement discussions, during which they debated their respective positions and
28 exchanged views regarding the strengths and weaknesses of their claims and defenses. (*Id.*) The

1 settlement discussions were at all times at arm's length and, although conducted with appropriate
2 professional decorum, were adversarial. (*Id.*) Plaintiff and Class Counsel went into mediation willing
3 to explore the potential for a settlement of the Action, but were also prepared to litigate Plaintiff's
4 claims through class certification, trial, and appeal if a settlement was not reached. (*Id.*) Arriving at a
5 settlement that was acceptable to the Parties was not easy, and the Parties vigorously advanced their
6 respective positions throughout the settlement negotiations. After a full day of negotiations, the Parties
7 reached an agreement to settle this action. A memorandum of understanding memorializing the key
8 terms of the agreement was executed on February 7, 2024. (*Id.*)

9 On or about March 14, 2024, after further negotiations, the Parties fully executed a long form
10 Joint Stipulation of Class Action and PAGA Settlement. (*Id.*, ¶ 14, Exh. 1.)

11 **III. SUMMARY OF THE SETTLEMENT TERMS**

12 **A. Definition of the Proposed Class and PAGA Members.**

13 For purposes of Settlement only, the Parties have agreed to certify the following class: “[A]ll
14 current and former hourly-paid, non-exempt employees of Defendant who were employed by
15 Defendant in the State of California at any time during the Class Period.” (Minne Decl., ¶ 16;
16 Agreement, ¶ 6) The Class Period commences on April 21, 2019 and ends on April 7, 2024.² (Minne
17 Decl., ¶ 15; Agreement, ¶ 7.) There are approximately 63 Class Members. (Minne Decl., ¶ 17.)

18 The Settlement also includes a subgroup of “PAGA Members” which consists of all current
19 and former non-exempt employees of Defendant who were employed by Defendant in the state of
20 California at any time during the PAGA Period. (Minne Decl., ¶ 18; Agreement, ¶ 24.) The PAGA
21 Period runs from March 13, 2022, to April 7, 2024.³ (Minne Decl., ¶ 18; Agreement, ¶ 26.) There are
22 approximately 33 PAGA Members. (Minne Decl., ¶ 19.)

23 **B. Gross Settlement Amount**

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27 ² The Agreement defines the Class Period and PAGA as ending on the earlier of: (a) the date of preliminary approval, or
28 (b) April 7, 2024. (Agreement, ¶ 7.) A hearing date on this Motion was not available until July 19, 2024. Accordingly,
the Class Period and PAGA Period end on April 7, 2024.

³ See footnote 2.

1 The Parties have agreed to settle the Class and PAGA claims at issue for Gross Settlement
2 Amount of \$315,000.00. (Minne Decl., ¶ 20; Agreement, ¶¶ 15, 50.) The Gross Settlement Amount is
3 non-reversionary, and does not include employer-side payroll taxes, which shall be separately paid by
4 Defendant. (*Id.*) The Gross Settlement Amount shall be allocated as follows:

- 5 • Attorneys' Fees to Class Counsel in the amount of one-third of the Gross Settlement Amount
6 (i.e., \$105,000.00). (Minne Decl., ¶ 20; Agreement, ¶¶ 4, 54.)
- 7 • Reimbursement of Class Counsel's actual litigation costs and expenses, not to exceed
8 \$30,000.00. (*Id.*)
- 9 • Class Representative Enhancement Payment of \$5,000.00 Plaintiff. (Minne Decl., ¶ 20;
10 Agreement, ¶¶ 8, 55.)
- 11 • Settlement Administration Costs not to exceed \$6,500.00. (Minne Decl., ¶ 20; Agreement, ¶¶
12 37, 56.)
- 13 • PAGA Penalties in the amount of \$20,000.00, 75% of which shall be allocated to the LWDA,
14 and 25% of which shall be distributed to PAGA Members. (Minne Decl., ¶ 20; Agreement, ¶¶
15 22, 57.)

16 The Gross Settlement Amount, less the payments listed above, shall be the "Net Settlement
17 Amount", which shall be distributed to Participating Class Members as Individual Class Payments on
18 a pro rata basis according to the number of workweeks worked during the Class Period. (Minne Decl.,
19 ¶¶ 22-23; Agreement ¶¶ 16, 59.) Individual Class Payments shall be allocated as 20% wages subject
20 to all applicable tax withholdings and 80% non-wage damages, include interest, business expenses,
21 and penalties. (Minne Decl., ¶ 25; Agreement, ¶ 60.) The Net Settlement Amount is currently
22 estimated to be approximately \$148,500.00. (Minne Decl., ¶ 22; Agreement, ¶ 58.) It is further
23 estimated that Class Members will receive an average Individual Class Payment of \$2,357.14, with the
24 highest payment estimated to be approximately \$5,989.02 and the lowest estimated payment estimated
25 to be \$23.12. (Minne Decl., ¶ 24.)

26 In addition to the Individual Class Payments from the Net Settlement Amount, PAGA
27 Members shall receive a pro-rata share of the 25% portion of PAGA Penalties allocated for distribution
28 to PAGA Members. (Minne Decl., ¶ 26; Agreement, ¶ 17, 61.) Individual PAGA Payments will be

distributed on a pro-rata basis based on the number of workweeks worked by PAGA Members during the PAGA Period. (*Id.*) Plaintiff’s counsel currently estimates that the average Individual PAGA Payment to PAGA Members will be \$151.52. (Minne Decl., ¶ 26.)

The Settlement Administrator shall determine the eligibility for, and the amounts of, each Individual Settlement Award under the terms of the Settlement Agreement. (Minne Decl., ¶ 25; Agreement, ¶¶ 39, 53, 64.) All payments owed under the Settlement shall be disbursed within fourteen (14) calendar days of the funding of the Gross Settlement Amount. (Minne Decl., ¶ 27; Agreement ¶ 53.) If an Individual Class Payment check or Individual PAGA Payment check remains uncashed after one hundred eighty (180) days from the initial mailing, the Settlement Administrator shall transfer the value of the uncashed checks to the California Controller’s Unclaimed Property Fund in the name of the Participating Class Member or PAGA Member. (Minne Decl., ¶ 27, Agreement ¶ 78.) As such, no “unpaid residue” under California Code of Civil Procedure § 384 will result from the Settlement. (Minne Decl., ¶ 27.)

C. Release of Class and PAGA Claims.

Upon the funding of the Gross Settlement Amount and all employer payroll taxes, Plaintiff, Participating Class Members, and PAGA Members shall be deemed to have released their respective Released Claims against the Released Parties. (Agreement ¶¶ 31, 84.) The scope of the release is narrowly tailored to release claims based on facts alleged in Class Action, depending on whether Class Members elect to opt-out of the Settlement. (*Id.*) All Class Members who are PAGA Members will release PAGA claims even if they request exclusion from the Class. (*Id.*, ¶¶ 31, 85.) In addition to the release of claims made by all Participating Class Members and PAGA Members, Plaintiff, in her individual capacity, agrees to a general release of all claims against Defendant. (*Id.*, ¶ 87.)

After conducting diligent investigation and research, Plaintiff’s counsel is unaware of any other class, representative, or collective actions pending in any other court that assert claims that are similar to those asserted in this Action. (Minne Decl., ¶ 64; Declaration of Benjamin Smith [“Smith Decl.”], ¶ 10.)

D. The Settlement Administrator

The Parties have selected Apex Class Action LLC to administer the Settlement. (Minne Decl.,

¶ 28; Agreement ¶ 38.)⁴ Apex Class Action LLC has extensive experience in administering class action and PAGA settlements, and has procedures in place to protect the security of class data as well as adequate insurance for errors and omissions. (Declaration of Sean Hartranft [“Hartranft Decl.”], ¶ 2, 4, Exh. A.) The Parties and their counsel do not have any financial interest in Apex Class Action LLC that would create a conflict of interest. (Agreement, ¶ 38; Minne Decl., ¶ 63; Smith Decl., ¶ 8; Flores Decl., ¶ 13; Hartranft 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

⁴ Plaintiff’s counsel also obtained administration estimates from ILYM Group 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., ¶ 28, Exh. 3-5.)

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.⁵

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

The Settlement was reached following a full day of mediation with Francis J. Ortman III, Esq., a highly respected mediator with extensive experience in complex wage and hour litigation. (Minne Decl., ¶ 13.) The settlement negotiations were at arm’s length and, although conducted in a professional manner, were adversarial. (*Id.*) The Parties went into settlement discussions willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate its position through class certification, trial, and appeal if a settlement was not reached. (*Id.*) Arriving at a settlement that was acceptable to the Parties was not easy, and the Parties vigorously advanced their respective positions throughout the settlement negotiations. (*Id.*) After a full day of negotiations, the Parties reached an agreement to settle this action. A memorandum of understanding reflecting the key terms of the agreement was executed on February 7, 2024. (*Id.*)

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

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

Courts typically assess the status of discovery in determining whether a proposed class action settlement is fair, reasonable, and adequate. *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996). As detailed above, prior to reaching the Settlement, Plaintiff’s counsel obtained extensive informal discovery before the mediation, which included: a representative 25% sampling of Class Members’ time and payroll documents; the employee handbooks and other documents evidencing

⁵ 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.

Defendant’s relevant wage and hour policies and procedures; and key data points regarding the size, composition, number of workweeks, number of pay periods, and average rate of pay of the putative class. (Minne Decl., ¶ 11.) Plaintiff’s counsel thoroughly reviewed this informal discovery prior to mediation, which included consulting with an expert to fully analyze Class Members’ time and payroll records for potential wage and hour violations. (*Id.*, ¶ 12.) Plaintiff’s counsel also conducted further independent investigation, and researched Plaintiff’s claims and Defendant’s defenses thereto. (*Id.*) Based on this investigation, Plaintiff’s counsel prepared a detailed assessment of Defendant’s potential liability, and extensively briefed the strengths and weaknesses of Plaintiff’s claims and Defendant’s anticipated defenses prior to mediation. Thus, Plaintiff’s counsel was able to act intelligently and effectively in negotiating the proposed Settlement. (*Id.*)

3. Plaintiff’s Counsel are Experienced in Class Action Litigation.

The settlement negotiations were conducted by highly capable and experienced counsel. Plaintiff’s counsel are respected members of the bar with strong records of effective advocacy for their clients, and are experienced in handling complex wage-and-hour class action litigation. (Minne Decl., ¶¶ 55-61; Smith Decl., ¶¶ 3-7.) Although Plaintiff and her counsel were prepared to litigate the claims in this action, they support the proposed Settlement as being in the best interests of the Class Members. (Minne Decl., ¶ 51; Flores Decl., ¶ 8.)

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

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

1 Plaintiff's counsel has carefully considered Plaintiff's claims and analyzed class-wide
2 violation rates. Based on information gathered by Plaintiff's counsel, including calculations of
3 Defendant's maximum potential liability exposure and the risks associated with continued litigation,
4 Plaintiff's counsel has determined that the proposed Settlement is fair, adequate, and reasonable.
5 (Minne Decl., ¶¶ 29-51.)

6 a. Defendant's Maximum Potential Exposure.

7 Based on information gathered through discovery, Plaintiff's counsel estimated that if all class
8 claims were adjudicated in favor of the Class, Defendant's maximum potential liability for the Class
9 claims is \$1,067,998.36. (*Id.*, ¶ 29.) This estimate can be broken down by claim as follows:
10 \$103,602.92 in unpaid minimum wages and overtime compensation due to off-the-clock work;
11 \$308,874.82 in unpaid meal period premiums; \$296,995.02 in unpaid rest period premiums;
12 \$128,440.00 in unreimbursed business expenses; \$98,085.60 in waiting time penalties under Labor
13 Code § 203; and \$132,000.00 in statutory wage statement penalties under Labor Code § 226(e). (*Id.*,
14 ¶¶ 29-35.)⁶

15 In addition to the damages for the Class claims, Plaintiff's counsel also separately calculated
16 Defendant's potential liability for civil penalties under PAGA to be \$814,546.70, which can be broken
17 down by violation as follows: \$86,350.00 for unpaid overtime; \$172,700.00 for unpaid minimum
18 wages; \$150,421.70 for meal period violations; \$172,700.00 for rest period violations; \$172,700.00
19 for failure to timely pay wages during employment under Labor Code section 204; \$16,500.00 for
20 failure to maintain required payroll records under Labor Code section 1174; and \$43,175.00 for failure
21 to reimburse business expenses. (*Id.*, ¶ 36.)⁷

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

23 While Defendant's maximum potential liability is substantial, such calculations assume that
24 Plaintiff fully prevails on all causes of action at every stage of litigation, from class certification
25

26 ⁶ 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., ¶ 29.)

28 ⁷ 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., ¶ 36.)

1 through trial and appeals. Defendant vociferously denied liability and proffered several defenses to
2 both class certification and the merits of Plaintiff's claims. While Plaintiff and Plaintiff's counsel
3 believed that Plaintiff's claims are fundamentally meritorious, they recognized that there is significant
4 risk and uncertainty associated with protracted litigation of this Action. Consideration of the specific
5 risks associated with each of Plaintiff's primary considerations factored into their decision to enter
6 into the Settlement at this point of litigation. (Minne Decl., ¶¶ 37-50.)

7 For example, Plaintiff's minimum wage and overtime claims were based on Plaintiff's
8 allegations that Defendant implemented policies and practices that placed substantial pressure on Class
9 Members to work off-the-clock without compensation. Defendant denied that employees were
10 required to do any work off-the-clock, and that if employees performed such work it was done without
11 Defendant's knowledge. Defendant also argued that individual liability issues predominate, including:
12 (1) whether each employee worked off-the-clock; and (2) whether Defendant knew or should have
13 known about each employee's off-the-clock work. (*Id.*) Moreover, given that these claims were based
14 on off-the-clock work not reflected in Defendant's time records, Defendant argued that proving
15 damages at trial would not be manageable. While Plaintiff's counsel strongly disagreed with
16 Defendant's contentions, Plaintiff's counsel also recognized that certification of the off-the-clock
17 claims is a particularly uncertain proposition due to potential for individualized issues and lack of
18 records. (Minne Decl., ¶ 38.)

19 Plaintiff also faces significant risks with her meal period claims. Plaintiff contends that
20 Defendant's formal meal period policies were facially deficient, as they failed to provide employees
21 with all meal periods to which they were legally entitled. Plaintiff further contends that, as a matter of
22 actual practice, Class Members were often required to skip meal periods, to delay meal periods after
23 their fifth hour of work, and to cut their meal periods short, and were not paid meal period premiums
24 for such violations. At mediation, Defendant asserted that its written meal period policies substantially
25 complied with California law. Defendant also maintained that Class Members were provided ample
26 opportunity to take meal periods, and that if Class Members did not take compliant meal breaks, it is
27 because they voluntarily chose not to do so. Defendant argued that questions of whether employees
28 had received compliant meal periods, why such meal periods were not taken, and whether such meal

1 periods were voluntarily waived were individualized issues that would bar certification. Defendant
2 also asserted that Class Members worked in a variety of different job positions with different job
3 duties, and that this variation between employees raised highly individualized questions of fact. While
4 Plaintiff's counsel strongly disagreed with Defendant's arguments and contentions, they recognized
5 there was a risk that the Court could ultimately deny class certification based on concerns regarding
6 manageability and/or individualized issues. Plaintiff's counsel also recognized that even if class
7 certification is granted, Plaintiff will be required to oppose attempts to decertify the class, as well as a
8 potential motion for summary judgment. Defendant will also undoubtedly present numerous defenses
9 at trial, including but not limited to arguments that employees voluntarily chose to skip, shorten, or
10 delay meal periods. (Minne Decl., ¶ 39.)

11 Plaintiff's counsel was also cognizant of the challenges associated with maintaining Plaintiff's
12 rest period claims on a class-wide basis. As with meal periods, Plaintiff contends that Defendant's
13 formal policies failed to advise employees of all rest periods to which they were entitled and that, as a
14 matter of actual practice, Class Members were often required to skip or shorten their rest periods, and
15 were not paid rest period premiums for such violations. As with meal periods, Defendant asserted that
16 its written policies substantially complied with California law, that Class Members were allowed to
17 take rest periods, and that Class Members who worked through their rest periods did so voluntarily.
18 Defendant likewise argued that whether Class Members had received compliant rest periods and the
19 reasons why Class Members failed to receive compliant rest periods raised individualized issues that
20 could not be certified. Defendant likewise argued that whether Class Members had received a
21 compliant rest period and the reasons why Class Members failed to receive compliant rest periods
22 raised individualized issues that could not be certified. While Plaintiff's counsel disagreed with
23 Defendant's positions, they also recognized that rest period claims are inherently difficult to certify
24 and prove, given that an employer has no obligation to maintain records of rest periods. Further, just
25 as with meal periods, even if this claim is certified, Plaintiff will be required to defend against an
26 anticipated motion to decertify and motion for summary judgment, and will ultimately bear the burden
27 of establishing liability with at trial. (Minne Decl., ¶ 40.)
28

1 Plaintiff further contends that Defendant failed to reimburse Class Members for business
2 expenses incurred as a result of remote work, such as use of their personal cell phones, home internet,
3 and office supplies. Defendant asserted that Class Members were provided all equipment and supplies
4 necessary to work remotely. Defendant further asserted that individualized inquires as to why a Class
5 Member failed to receive reimbursement for certain expenses would predominate. (Minne Decl., ¶
6 41.)

7 There are also substantial risks attached to Plaintiff's claims for waiting time penalties. Such
8 claims are derivative of Plaintiff's primary claims for meal period, rest period, minimum wage and
9 overtime violations. Thus, if certification is denied on the primary claims, these derivative claims
10 would also likely fail. Moreover, even if Plaintiff prevails on the underlying claims, Plaintiff would
11 still be required to show that Defendant's conduct was willful in order to obtain Labor Code § 203
12 penalties, a difficult prospect. *See, e.g., Choate v. Celite Corp.*, 215 Cal App. 4th 1460, 1468 (2013)
13 (holding that "an employer's reasonable, good faith belief that wages are not owed may negate a
14 finding of willfulness"). Wage statement claims have also seen varying treatment at the appellate level
15 because such claims have an element of discretion attached to them. *Cf., Jaimez v. DAIOHS USA, Inc.*,
16 181 Cal.App.4th 1286 (2010) with *Price v. Starbucks Corp.*, 192 Cal.App.4th 1136 (2011).
17 Accordingly, these claims presented significant risk and uncertainty. (Minne Decl., ¶¶ 42-43.)

18 Taking into account the specific strengths and weaknesses of each claim, and the unique risks
19 associated therewith, Plaintiff's counsel estimated that Defendant faced a risk-adjusted liability of
20 \$301,544.52 for Plaintiff's Class claims. (Minne Decl., ¶ 44.)

21 Plaintiff's counsel also separately contemplated the numerous risks of proceeding with a
22 PAGA claim. First, the same defenses and merits-based risks associated with Plaintiff's direct Labor
23 Code claims are also applicable to a PAGA claim. *See Green v. Lawrence Service Co.*, 2013 U.S. Dist.
24 LEXIS 109270, at *5, fn. 5 (C.D. Cal. 2013) ("whether each PAGA claims succeeds or fails is
25 determined by the merits of the substantive claims on which each is based.") (Minne Decl., ¶ 45.)
26 Defendant would also likely attempt to challenge Plaintiff's fundamental standing as an aggrieved
27 employee. (*Id.*)

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.*, 2024 Cal. LEXIS 12 at *46 (Jan. 18, 2024). Thus, the possibility remains that Defendant could attempt to challenge Plaintiff’s PAGA claims as violating its due process rights. (*Id.*, ¶ 46.)

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 penalties, and that instead a single penalty should apply once per pay period, if at all, rather than cumulative penalties for each separate Labor Code provisions that was violated during a pay period. If this methodology were applied, it would significantly reduce Defendant’s exposure for civil penalties. (*Id.*, ¶ 47.) The Court could also exercise its discretion to find that the imposition of heightened civil penalties was inappropriate, particularly if Plaintiff prevailed on her class claims. Cal. Lab. Code § 2699(2); *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1122 (2012).⁸ (*Id.*, ¶ 48.) Plaintiff’s counsel was cognizant that PAGA is not intended to be compensatory in nature, but is instead intended to facilitate enforcement of California’s labor laws by financing state activities and educating and deterring non-compliance. See Cal. Labor Code § 2699(i); *Arias v. Sup. Ct.*, 46 Cal. 4th 980 *Williams v. Sup. Ct.*, 3 Cal.5th 531, 546 (2017). (Minne Decl., ¶ 48.)

Finally, Plaintiff’s counsel recognized the significant risk and expense generally associated with continued litigation, trial, and possible appeals, all of which would substantially delay and reduce any recovery by the Class Members. Even if Plaintiff prevailed at class certification, proving the amount of wages due to each Class Member would be an expensive, time-consuming, and extremely uncertain proposition. In order to prove liability and damages, Plaintiff’s counsel will need to request

⁸ See also, *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016) (reducing penalties by 97.5%); *Fleming v. 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 and analyze thousands of pages of documents, and obtain numerous declarations at great expense.
2 Obtaining the cooperation of current employees would also be difficult, given the likely reluctance to
3 aid prosecution of a lawsuit against a current employer. On the other hand, Defendant would likely be
4 able to obtain the cooperation of its current employees. Moreover, even if Plaintiff successfully
5 certifies the class on a contested motion and prevails on all claims at trial, possible appeals would
6 substantially delay any recovery by the Class. These risks are all obviated by the Settlement, which if
7 approved by the Court will ensure that class members receive timely relief without the risk of an
8 unfavorable judgment. (Minne Decl., ¶ 50.)

9 Therefore, after considering the strengths and weaknesses of each claim, and the unique risks
10 associated therewith, the general risks of continue litigation, and the significant costs, expenses, and
11 delay that would result from continued litigation, it is clear that the Settlement is fair, reasonable, and
12 adequate, and is in the best interest of the Class. (Minne Decl., ¶ 51; Smith Decl., ¶ 11.) Moreover, the
13 Gross Settlement Amount of \$315,000.00 – which represents 29.49% of Defendant’s maximum
14 potential liability for Plaintiff’s class claims - falls within an acceptable range of recovery for this type
15 of litigation given the strengths and weaknesses of the case and the inherent costs and risks associated
16 with class certification, representative adjudication, trial, and/or appeals. (Minne Decl., ¶ 51.)⁹

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

18 The \$20,000.00 allocated for penalties under PAGA is fair and reasonable. PAGA is
19 fundamentally not intended to be compensatory in nature, but is instead intended to facilitate
20 enforcement of California’s labor laws by financing state activities and educating and deterring non-
21 compliance. *See* Cal. Labor Code § 2699(i); *Arias v. Sup. Ct.*, 46 Cal. 4th 980; *Williams v. Sup. Ct.*, 3
22 Cal.5th at 546; *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal.4th 348, 379 (2014). Where, as
23
24

25 ⁹ *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).

here, the parties reach a substantial class-wide settlement providing employees with monetary compensation for underlying Labor Code violations, many of PAGA's underlying policy objectives are satisfied. Indeed, the \$37,500.00 PAGA Payment is well-within the range approved by California courts. *See Nordstrom Comm. Cases*, 186 Cal.App.4th 576, 589 (2010)(finding no abuse of trial court's discretion in approval of release that included PAGA claims but allocated \$0 to PAGA penalties); *Alcala v. Meyer Logistics, Inc.*, 2019 WL 4452961, *9 (C.D. Cal. June 17, 2019) (settlement of claims for PAGA penalties representing 1.25% of gross settlement amount was reasonable, as it "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, ¶ 49.)

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

1 is defined as all current and former hourly-paid, non-exempt employees of Defendant who were
2 employed by Defendant at any time from April 21, 2019 to April 7, 2024. (Agreement, ¶¶ 6-7.) This
3 provides a clear and definite scope for the proposed class.

4 Next, the class is sufficiently numerous. There is no magic number that satisfies the numerosity
5 requirement. Under the Federal Rules, the minimum number of a class is 100 individuals. Under
6 California law, that number is significantly less. *See e.g., Rose v. City of Haywood*, 126 Cal.App.3d
7 926, 934 (1981) (holding 42 class members sufficient to satisfy numerosity); *Bowles v. Superior Court*,
8 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous). Here, the estimated Class size
9 of 63 individuals plainly favors class certification. (Minne Decl., ¶ 17.)

10 Finally, the question whether class members are easily identifiable turns on whether a plaintiff
11 can establish “the existence of an ascertainable class.” *Daar v. Yellow Cab Co.*, 67 Cal. 2d 695, 706
12 (1967). The existence of an ascertainable class in this case can be established through Defendant’s
13 payroll records, and the class definition is sufficiently specific to enable the parties, potential Class
14 Members and the Court to determine the parameters of the Class.

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

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

20 **1. Common Issues of Law and Fact Predominate.**

21 The commonality criterion requires the existence of common question of law or fact and is
22 generally established with the issues of predominance and typicality. *See Daar*, 67 Cal.2d 695, 706.
23 What is required is that a common question of fact or law exist which predominates over issues unique
24 to individual plaintiffs. The existence of individual issues or facts—generally present in any case
25 arising from employment—is not a bar to class certification as long as they do not render class
26 litigation unmanageable or predominate over the common issues. *See B.W.I. Custom Kitchen v.*
27 *Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1354 (1987).
28

1 Here, Plaintiff's claims present sufficient common issues of law and fact that predominate and
2 warrant class certification. Plaintiff allege that Defendant prohibited employees from taking compliant
3 meal and rest periods, required Class Members to perform work off-the-clock, and required Class
4 Members to pay for work-related expenses out of pocket. These policies and practices meant that
5 Defendant failed to pay required meal period premiums, minimum wages, and overtime wages, failed
6 to reimburse necessary business expenses, and other related claims. Plaintiff alleges that Defendant's
7 policies and practices were uniform as to all Class Members. Thus, class treatment is appropriate.

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

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

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

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

21 The question of adequacy of representation "depends on whether the plaintiff's attorney
22 qualifies to conduct the proposed litigation in the plaintiff's interest or not antagonistic to the interests
23 of the class." *McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976). Here, these considerations
24 are satisfied. Class Counsel are well-regarded and accomplished lawyers who are qualified and
25 experienced in employment-related, class-action litigation, and who do not have any conflicts of
26 interest which would impede their representation of the Class. (Minne Decl., ¶¶ 62-71; Smith Decl.,
27 ¶¶ 3-7.) Furthermore, because Plaintiff's claims are typical of those of other Class Members, and are
28 not based on unique circumstances that might jeopardize the claims of the class, there is no antagonism

1 of interests between Plaintiff and the Class. Plaintiff is also fully aware of her duties as a class
2 representative, and will vigorously and adequately represent the interests of the Class. (Flores Decl.,
3 ¶¶ 4-10.) Therefore, the adequacy requirement is satisfied.

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

5 Under the circumstances, proceeding as a class action is a superior means of resolving this
6 dispute, as the Class Members and the court will derive substantial benefits. Class certification would
7 serve as the only means to deter and redress the alleged violations. *See Linder v. Thrifty Oil Co.*, 23
8 Cal.4th 429, 434 (2000) (relevant considerations include the probability that each class member will
9 come forward to prove her or her separate claim and whether the class approach would actually serve
10 to deter and redress the alleged wrongdoing). Further, individual actions arising out of the same
11 operative facts would unduly burden the courts and could result in inconsistent results. Therefore, class
12 action proceedings are superior to individual litigation.

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

14 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their decisions
15 will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v. Beneficial Cal, Inc.*,
16 82 Cal.App.4th 19, 41 (2000). California law provides that attorney fee awards should be equivalent
17 to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Id.* at 47.
18 In cases where class members present claims against a common fund and the defendant agrees a
19 percentage of the fund as part of the settlement, use of the percentage method is appropriate. *Id.* at 32.

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

Here, the requested attorneys' fees of \$105,000.00 which is one-third of the common fund, is disclosed to Class Members in the proposed Notice of Class Action Settlement. (Agreement, Exh. A.) The requested fee 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 \$30,000.00. (Minne Decl., ¶ 54.)

VII. THE PROPOSED ENHANCEMENT PAYMENT IS REASONABLE.

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

Plaintiff initiated this litigation on behalf of her former co-workers who can now collect monetary payment from the Settlement. Plaintiff invested substantial time and effort into litigation including her own research, reviewing documents, and extensive discussions with Class Counsel. (Flores Decl., ¶¶ 4-8.) Further, the requested Enhancement Payment is extremely reasonable given the benefit gained by other Class Members. The requested Enhancement Payment of \$5,000.00 is also disclosed to Class Members in the Class Notice. (Agreement, Exh. A.) For these reasons, Plaintiff

requests that Enhancement Payment of \$5,000.00 Plaintiff be preliminarily approved by the Court. (Minne Decl., ¶ 53; Flores Decl., ¶ 11.)

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

“The principal purpose of notice to the class is the protection of the integrity of the class action process.” *Cartt v. Superior Court*, 50 Cal.App.3d 960, 970 (1975). The notice ““must fairly apprise the class members of the terms of the proposed compromise and of the options open to the dissenting class members.”” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 251 (2001). Additionally, the notice given should have a reasonable chance of reaching a substantial percentage of the class members. *Cartt*, 50 Cal.App.3d at 974.

The Parties have jointly drafted a Notice of Class Action Settlement (“Class Notice”) and Request for Exclusion Form which will be sent to Class Members in both in both English and Spanish. (Agreement, ¶¶ 19, 35, 66, Exh. A-B). The Class Notice describes the nature of the lawsuit, the key terms of the Settlement, the scope of the Released Class Claims and Released PAGA Claims, Class Members’ estimated Individual Settlement Payment and Individual PAGA Payment, Class Members’ total workweeks during the Class Period, and PAGA Member’s total workweeks during the PAGA Period. (Agreement, Exh. A.) The Class Notice also informs Class Members how to opt-out of the Settlement (including provision of a Request for Exclusion Form), object to the Settlement, and challenge their reported workweeks. (*Id.*) The Class Notice will indicate that the Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate and reasonable, and a final determination of such issues will be made at the final hearing. (*Id.*) The Class Notice also include instructions on how to obtain all relevant Settlement documents (including the contact information for Class counsel, a URL to a website maintained by the Administrator containing the key documents related to the Settlement, and a URL to the Court’s public online portal) and informs Class Members of their right to attend the final approval hearing. (*Id.*).

No later than fourteen (14) business days after the Court enters an order granting Preliminary Approval of the Settlement, Defendant shall provide the Administrator with the Class List containing all Class Members’ names, last-known mailing addresses, last known telephone number, Social

1 Security numbers, start and end dates of active employment with Defendant, and any other information
2 reasonably required by the Administrator to effectuate the terms of the Settlement. (*Id.*, ¶¶ 5, 65.) No
3 later than fourteen (14) calendar days after receiving the Class List from Defendant, the Administrator
4 shall mail copies of the Class Notice to all Class Members via regular First Class U.S. Mail. (*Id.*, ¶
5 66.) Before mailing the Class Notice to Class Members, the Administrator shall perform a search based
6 on the National Change of Address Database to update and correct any known or identifiable address
7 changes. (*Id.*, ¶ 67.)

8 If any Class Notice as undeliverable, the Administrator shall promptly re-mail such returned
9 Class Notices to the forwarding address provided by the USPS. (*Id.*) If no forwarding address is
10 provided, the Administrator shall search for a current address using all readily available resources,
11 such as skip tracing, and re-mail the Class Notice to the most current address obtained. (*Id.*) The
12 Administrator has no obligation to make further attempts to locate or send Class Notice to Class
13 Members whose Class Notice is returned by the USPS a second time. (*Id.*) Class Members shall have
14 sixty (60) calendar days after the mailing of the Class Notice to submit request for exclusions, objection, or
15 workweek dispute by fax, email, or mail. (*Id.*, ¶¶ 36, 69, 70, 74.) Further, Class Members who receive
16 a re-mailed Notice, whether by skip-trace or by request, will have an additional fifteen (15) calendar
17 days to submit an Objection, Request for Exclusion, or Workweek Dispute. (*Id.*, ¶ 36)

18 Direct mail notice to Class Members' last known addresses is the best possible notice under
19 the circumstances. *See Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 319 (1950); *Eisen*
20 *v. Carlisle & Jacquelin*, 417 U.S. 156, 173-176 (1974). Furthermore, the Class Notice comports with
21 the requirements of California Rules of Court, Rules 3.769 and 3.766. Pursuant to Rule 3.769(f), the
22 class notice must contain an explanation of the proposed settlement and procedures for class members
23 to follow in filing written objections to it and arranging to appear at the hearing and state objections to
24 the proposed settlement. Cal. R. Ct. 3.769 (f). Rule 3.766 further requires that the class notice include
25 (1) a brief explanation of the case, including the basic contentions and denials of the parties; (2) a
26 procedure for the class member to follow in requesting exclusion, and a statement that the Court will
27 exclude the Class Member from the Class if he or she so requests by the specified deadline; (3) a
28 statement that the judgment, whether favorable or not, will bind all class members who do not request

1 exclusion; and (4) a statement that any Class Member who does not request exclusion may, if the class
2 member so desires, object and enter an appearance through counsel. The proposed Class Notice satisfies
3 each of these requirements. *See* Agreement, Exh. A.

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

7 **IX. CONCLUSION**

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

12 Respectfully submitted,

13 Dated: March 27, 2024

PARKER & MINNE, LLP

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15 By: _____



16 S. Emi Minne
17 Attorneys for Plaintiff
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