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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

CARLA OLSON individually and on behalf of all others similarly situated, Plaintiff, v. YERBAE, LLC, a Delaware limited liability company; and DOES 1 to 100, inclusive Defendants. .	CASE NO. 25CU002722C Complaint Filed: January 16, 2025 <u>CLASS ACTION</u> **NOTICE OF MOTION AND MOTION FOR ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** Judge: Hon. Wendy M. Behan Hearing Date: April 23, 2027 Time: 10:15 A.M. Dept: C-66

NOTICE IS HEREBY GIVEN that, on April 23, 2027 at 10:15 A.M., or as soon thereafter as the matter may be heard, in Department C-66 of the Superior Court of California, County of San Diego before the Honorable Wendy M. Behan, pursuant to Cal. Code of Civ. Pro. § 382, Plaintiff Carla Olson ("Plaintiff") individually and on behalf of all others similarly situated, will and do hereby move this Court for entry of an Order:

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

2. Preliminarily appointing Plaintiff Carla Olson as Class Representative for purposes of settlement;

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

4. Preliminarily approving the settlement as fair, adequate, and reasonable, based upon the terms set forth in the Parties' Class Action Settlement Agreement ("Settlement Agreement"), including payment by Defendant Yerbae, LLC ("Defendant") of the Settlement Fund ("SF") of $75,000.00;

5. Preliminarily approving a Service Enhancement of $5,000.00 for the named Plaintiff from the SF in recognition of her service to the Settlement Class;

6. Preliminarily approving Plaintiff's Counsel's request for up to 33% of the SF as attorneys' fees (i.e., up to $24,750.00), plus reimbursement of actual litigation costs up to $10,000.00;

7. Preliminarily approving a payment of PAGA penalties of $4,000.00, including payment to the Labor and Workforce Development Agency for its share of penalties pursuant to PAGA in an amount of $3,000.00;

8. Appointing ILYM Group, Inc. as the third-party Settlement Administrator for mailing notices and for settlement administration, and approving that up to $6,500.00 be deducted from the SF for the costs of settlement administration (S.A., 3.2.3); and

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

This Motion is based upon the supporting Memorandum of Points and Authorities, the Declarations of James M. Treglio, Carla Olson, and Lisa Mullins, the Settlement Agreement, the Class Notice, and the other papers and exhibits filed herewith.

Dated: August 12, 2026

Respectfully submitted,
POTTER HANDY LLP

By: _/s/ James M. Treglio__________________
James M. Treglio, Esq.
Attorneys for Plaintiff and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Motion seeks preliminary approval of a wage-and-hour class action settlement between Plaintiff Carla Olson ("Plaintiff") and Defendant Yerbae, LLC ("Defendants") for approximately 52 current and former hourly employees of Defendant in California which provides them with an overall value of $75,000.00. Plaintiff seeks to represent a Class defined as (a) all current and former individuals who worked for Yerbae in California as brand ambassadors or in any similar capacity and who were classified as independent contractors at any time during the PAGA period ("PAGA Settlement Class" or "PAGA Class Members"); and (b) Plaintiff and all other California residents who are or have been employed by Defendants and/or their predecessor or merged entities in California who worked as brand ambassadors or in any similar capacity, who signed independent contractor agreements with Defendants, and who were classified as independent contractors during the Class Period (collectively, the "Class Members").[1] Among other things, Plaintiff alleged that Defendant violated California's wage and hour laws and unfair competition laws.

Through this motion, Plaintiff requests that the Court enter an order: (1) conditionally certifying the Settlement Class under Cal. Code of Civil Procedure § 382 and California Rule of Court 3.769(c) for settlement purposes only and preliminarily approving the settlement; (2) approving the proposed Class Notice to be distributed to Class Members pursuant to the Settlement Agreement[2]; (3) appointing ILYM Group, Inc. as the Administrator; and (4) scheduling a hearing for final approval.

Because the settlement is fair and reasonable, was negotiated at arm's length between counsel following extensive informal discovery and was reached after attendance at a full-day mediation, it should be preliminarily approved. Subject to court approval, the Net Settlement Amount to Class Members of approximately $24,750.00, and the PAGA penalty to the PAGA class of $1,000.00, will be distributed to Class Members, as follows:

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[1] Any Class Member hired after the date of preliminary approval shall not be included in the Settlement Class.

[2] The Notice of Class Action Settlement and Claim Form are attached to the Settlement Agreement as Exhibit A. (*See* Declaration of James M. Treglio in Support of Plaintiffs' Motion for Order Granting Preliminary Approval of Class Action Settlement ("Treglio Decl."), Exhibit 1 (Settlement Agreement), Exhibit A thereto).

Monetary Component of Settlement	**$75,000.00**
Attorneys' Fees (33% of the SF) Litigation Costs Settlement Administration Costs Service Award to Class Representative PAGA payment to the LWDA PAGA payment to PAGA Members	($24,750.00) ($10,000.00) ($6,500.00) ($5,000.00) ($3,000.00) ($1,000.00)
Net Payments to Class Members	**$24,750.00**

II. BACKGROUND

A. General Background Information About Defendants and Plaintiffs

Yerbae, LLC, a Delaware-registered limited liability company headquartered in Scottsdale, Arizona, is a company that manufactures naturally caffeinated energy drinks and seltzers. It contracts with brand ambassadors, such as the Plaintiff, to sell Yerbae products in different retail locations. It operates in different cities throughout the State of California. Treglio Decl. ¶ 13.

Plaintiff Carla Olson began her employment with Defendants in or about December 2022, when she, like the other Class Members, was hired as a brand ambassador, in which she, and the other Class Members were tasked to sell Yerbae products in various retail locations. Plaintiff was assigned to work at the Costco branch in Carmel Valley. Plaintiff was to be paid $30.00 per hour. Treglio Decl., ¶ 14.

As brand ambassadors for Defendants, Plaintiff and the Class Members are required to comply with terms of service and provide Services to Yerbae Customers and must adhere to standards of conduct. If Plaintiff and the Class Members fail to comply with these standards of conduct, Plaintiff and the Class Members' contracts with Defendants can and will be terminated. Plaintiff and the Class Members were provided with information regarding their assignments by Defendants. Treglio Decl., ¶ 15.

When Plaintiff started her employment with Defendants, she, like the other Class Members, was asked to sign an agreement with Defendants, stating that she was an independent contractor of Defendants and paid a fee for Services performed for Defendants' Customers. To perform her duties, Plaintiff used and paid for her own phone and data expenses. Treglio Decl., ¶ 16.

As a consequence of being misclassified as independent contractors, Plaintiff and the Class Members were also not provided with legally compliant rest and meal periods. While there were times when Plaintiff and the Class Members were allowed to take their meal and rest periods, these were often interrupted or cut short because there was no one to relieve them from their duties or they were asked to run errands. Treglio Decl., ¶ 17.

Defendants also required Plaintiff and the Class Members to purchase items that were needed to sell Yerbae products. For instance, Plaintiff was assigned to work in a Costco branch that did not sell ice. Defendants then required Plaintiff and the Class Members to buy ice from other stores using their own money during their rest or meal periods. Defendants never reimbursed Plaintiff and the Class Members for these expenses. Treglio Decl., ¶ 18.

When Plaintiff got sick after working for two days, Defendants removed Plaintiff from the group text thread. Plaintiff was not informed by Defendants if she was still working for the company and when she can expect to be paid for the days that she worked. Instead, Plaintiff was taken off jobs that were already assigned to her and were sent assignments which were unavailable and were too far from Plaintiff's residence. Defendants only paid Plaintiff two to three weeks after she was removed from the group text thread and after she was taken off jobs previously assigned to her. Defendants have yet to provide Plaintiff with her paystub despite repeated requests from Plaintiff. Treglio Decl., ¶ 19.

B. Procedural History, Informal Discovery, and Mediation

On March 10, 2023, Plaintiff filed her PAGA Notice with the Labor Workforce Development Agency ("LWDA"), paid the $75 filing fee, and sent notice to Defendants setting forth the facts and theories of the violations supporting their allegations. Treglio Decl., ¶ 20.

On January 16, 2025, Plaintiff filed her complaint before the Superior Court for the County of San Diego. The Complaint alleges causes of action for (1) misclassification of Plaintiff and the Class as independent contractors; (2) failure to pay Plaintiff and her fellow employees in California for all hours worked; (3) failure to provide Plaintiff and the Class legally compliant meal periods; (4) failure to provide Plaintiff and the Class legally compliant rest periods; (5) failure to pay all wages owed in a timely manner; (6) failure to provide complete wage statements to Plaintiff and her fellow employees within the four years prior to the filing of this Complaint; (7) failure to pay all wages due to former employees based on the foregoing; (8) failure to reimburse business expenses; (9) PAGA and other penalties based on the foregoing; and (10) unfair business practices based on the foregoing.. Treglio Decl., ¶ 21.

The parties agreed to engage in an informal exchange of documents and data to facilitate a productive mediation. Consequently, Defendant produced certain employment and payroll-related documents. Treglio Decl., ¶ 22.

On December 15, 2025, the Parties participated in an all-day mediation presided over by Anthony F. Pantoni, Esq. which led to settle this Action. The Parties were able to execute the long form Settlement Agreement now before the Court for preliminary approval. Treglio Decl., ¶¶ 23, 24.

III. SUMMARY OF THE PROPOSED SETTLEMENT

A. Overview

Under the terms of the Settlement Agreement ("S.A."), Defendant is discharged of all the claims asserted in the pending lawsuit in exchange for Defendant's to (1) pay $75,000.00 SF (S.A., ¶ 3.1); (2) the fees and expenses of the Settlement Administrator, not to exceed $6,500.00 (S.A., ¶ 3.2.3), which the Administrator has bid on a "not to exceed' basis at $5,850.00 (Mullins Decl., ¶ 10 & Exh. C). Any Difference between the amount approved and the Administrator's actual expenses remains in the Net Settlement Amount (S.A., ¶ 3.2.3); (3) Plaintiff's proposed Service Enhancement Award of $5,000.00 (S.A., ¶ 3.2.1); (4) attorneys' fees of up to $24,750.00 (up to one third of the Settlement Value) (S.A., ¶ 3.2.2); and (5) litigation expenses and costs of up to $10,000.00; and (6) a payment to the LWDA for their portion of the PAGA penalties in the amount of $3,000.00 as its share of the settlement for civil penalties pursuant to PAGA (the remaining $1,000.00 (25%) of the PAGA Penalties is allocated to the Aggrieved Employees as Individual PAGA Payments and is likewise deducted from the Gross Settlement Amount (S.A., ¶¶ 1.28, 3.2.5)). (*Id.*). The remaining amount, an estimated $24,750 (the "Net Settlement Amount"), will be paid to all Participating Class Members automatically (no claim form is required) and $1,000 will be paid to the Aggrieved Employees, (Id.; S.A., ¶ 3.1).

Not later than 7 days after the Court grants Preliminary Approval of the Settlement, Yerbae will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement.

Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class USPS mail, the Class Notice substantially in the form attached to the Settlement Agreement as Exhibit A. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed).

Within 14 days after Yerbae funds the Gross Settlement Amount, the Administrator will issue checks for the Individual Class Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

Not later than 14 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement.

Plaintiff and Yerbae are asking the Court to approve an allocation of 50% of each Individual

Class Payment to taxable wages ("Wage Portion") and 50% to interest and penalties ("Non-Wage Portion"). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Yerbae will separately pay employer payroll taxes it owes on the Wage Portion. The Administrator will report the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Contemporaneously with the filing of this Motion, Plaintiff submitted the proposed Settlement to the Labor and Workforce Development Agency through the LWDA's online portal, as required by Labor Code section 2699, subdivision (l)(2). (Treglio Decl., ¶ 52).

B. Scope of the Release

1. Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action including, all claims alleged in Plaintiff's Complaint, including, but not limited to misclassification as independent contractors, unpaid productive time, unpaid meal periods, unpaid rest periods, wage statement violations, failure to pay all wages owed in a timely manner, failure to pay all wages owed upon termination, failure to reimburse business expenses, PAGA, and UCL violations.

2. Released by Aggrieved Employees: Plaintiff, in her individual capacity and on behalf of the State of California and the LWDA, and all Class Members who are Aggrieved Employees, including any Non-Participating Class Member who qualifies as an Aggrieved Employee, are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from the PAGA claims seeking civil penalties premised upon: (a) the Labor Code violations alleged in the Operative Complaint and PAGA Notice—e.g., misclassification, unpaid nonproductive time, missed meal and rest periods, non-compliant wage statements, untimely wages, unpaid wages at separation, and unreimbursed business expenses; and (b) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698, et seq., that were alleged in the Operative Complaint or the PAGA Notice. The time period governing the Released PAGA claims shall be the PAGA period. The released

PAGA Claims do not release any Aggrieved Employee's claims for wages or statutory penalties. No Aggrieved Employees may opt out of, or exclude himself, herself, or themselves from, the release of the Released PAGA Claims.

IV. PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS IS APPROPRIATE FOR PURPOSES OF SETTLEMENT

California Rule of Court 3.769(d) provides that the Court may make an order approving certification of a provisional settlement class at the preliminary approval stage. It is well-established that trial courts should use a "lesser standard of scrutiny" for determining the propriety of certifying a settlement class, as opposed to a litigation class. *Dunk*, 48 Cal. App. 4th at 1807, n.19. The reasons include that no trial is anticipated in a settlement class, so the case management issues inherent in determining if the class should be certified need not be confronted; and the trial court's fairness review of the settlement protects the interests of the non-representative class members. *Id.*; *see also Officers for Justice v. Civil Service Com. of San Francisco*, 688 F.2d 615, 633 ("Th[e] relationship between the certification determination and the merits of the case is further attenuated within the context of the settlement evaluation process . . . . [C]ertification issues raised by class action litigation that is resolved short of a decision on the merits must be viewed in a different light."); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1987) ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial."). As discussed below, for settlement purposes only, the Parties ask this Court to provisionally certify the Class, as defined above, under Section 382 of the Code of Civil Procedure.

A. Numerosity and Ascertainability

Numerosity is met if a proposed class is so large that joinder of all members would be impracticable. *See* Cal. Code Civ. Proc. § 382. A proposed settlement class is ascertainable if the class members can be objectively identified and given notice of the litigation without unreasonable time or expense. *See Medrazo v. Honda of N. Hollywood*, 166 Cal. App. 4th 89, 101 (2008). Here, Defendant has informed Plaintiff's counsel that the proposed Class consists of approximately 52 Class Members.

B. Well-Defined Community of Interest

1. Commonality

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

In this case, there are common legal and factual question as to whether (1) Defendants violated Section 226.8 of the Labor Code by willfully misclassifying Plaintiff and Class Members as independent contractors; (2) Defendants violated sections 1194, 1194.2, and 226.2 of the Labor Code by failing to pay Plaintiff and the members of the Class separately and on an hourly basis for their time spent on their statutory rest breaks and other nonproductive tasks; (3) Defendants violated Section 12 of IWC Wage Order No. 4 by failing to provide paid rest periods to Plaintiff and the members of the Class in California during the Class Period; (4) Defendants violated Labor Code section 226.7 by failing to provide a paid rest period; (5) Defendants violated Labor Code sections 512 and 226.7, and section 11 of IWC Wage Order No. 4 by failing to pay one hour of premium pay to each member of the Class for each day that an unpaid meal break was not provided; (6) Defendants violated 2802 of the Labor Code and section 17203 of the California Business and Professions Code during the Class Period by failing to reimburse Plaintiff and the Class Members for their work-related expenses including personal cell phone and data expenses, and other expenses; (7) Defendants violated Labor Code sections 204 and 210 by failing to pay Plaintiff and the Class Members all wages owed with seven days of the close of payroll; (8) Defendants violated Section 203 of the Labor Code by failing to timely pay members of the Waiting Time Penalty Subclass; all wages owed upon separation (9) Defendants failed to provide Plaintiff and the members of the Wage Statement Penalty Subclass (10) Defendants engaged in an unfair practice and violated section 17200 of the California Business and Professions Code by failing to pay Plaintiff and the members of the Class separately and on an hourly basis for their time spent on statutory rest breaks and other Nonproductive times; and (11) The proper formula(s) for calculating damages, interest, and restitution owed to Plaintiff and the Class Members; (12) The nature and extent of class-wide damages.

2. Typicality

Typicality "focuses on whether there exists a relationship between the Plaintiffs' claims and the claims alleged on behalf of the class." *Newberg,* § 3:13. Here, Plaintiff's claims are typical of the claims of the proposed Class. Both Plaintiff and Class Members sustained injuries and damages, and were deprived of property rightly belonging to them, arising out of and caused by Defendant's common course of conduct in violation of law as alleged herein, in similar ways and for the same types of unpaid wages. Plaintiff seeks wage and penalties, for herself and the rest of the Class. (*Id.*).

3. Adequacy of Representation

The proposed class representative must establish that he or she will adequately represent the proposed class. *See Barboza v. West Coast Digital GSM, Inc.*, 179 Cal. App. 4th 540, 546 (2009). Specifically, Plaintiff is adequate as a Class representative since she is committed to representing the interests of the Class, has no interests that is averse to members of the Class, and understands and accepted her duty to represent the best interests of the class. (Olson Decl., ¶ 8). Plaintiff provided counsel with information which was crucial to the drafting of the class complaint and mediation brief, discussed settlement strategy with her counsel, spoke to other Class Members about their experiences working for Defendant, and was available for the duration of the all-day mediation, all of which demonstrated her commitment to the Class. (*Id*.).

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

4. Superiority

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

5. Predominance

The common issues here, concerning uniform deficiencies to Defendant's misclassification, compensation, meal and rest break, final pay, wage statement[3], and reimbursement policies raise predominating factual and legal issues supporting certification of a settlement class.

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

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

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

This is the preliminary approval stage, and final approval will come in a few months, after the Class members have had an opportunity to participate in the settlement, object, or request exclusion from the settlement "opt out." The purpose of the preliminary evaluation of a class action settlement is to determine whether the proposed settlement is within the range of possible approval, and thus whether notice to the class of the settlement terms and the scheduling of a formal fairness hearing is worthwhile. *Wershba v. Apple Computer, Inc.* (2001), 91 Cal.App.4th 224, 234–35; 4 Newberg on Class Actions § 13:13 (5th ed.).

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

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[3] See, e.g. *McKenzie v. Federal Express Corp.,*, 275 F.R.D. 290, 299-300 (C.D. Cal. 2011); see also *Willner v. Manpower, Inc.*, 2012 U.S. Dist. LEXIS 62227 (N.D. Cal. May 3, 2012 (certifying settlement class for purposes of wage statement settlement.

> [T]he strength of Plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel . . . and the reaction of the class members to the proposed settlement.

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

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

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

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

The Settlement is fair and reasonable and was negotiated at arm's length between counsel that included a mediator. (Treglio Decl., ¶ 39). Counsel for both parties were thoroughly familiar with the complex legal and factual questions at issue in this litigation. (*Id.*). The Settlement is a product of intensive negotiations, supported by investigation and direct exchanges of information through informal discovery, and during the course of settlement negotiations, including a full-day mediation. (*Id.*).

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

Notably, the parties spent months prior to the mediation developing the factual record for this case, engaging in informal discovery and exchanges of documents and information, drafting detailed mediation briefs, all of which ensured both sides were fully informed about the strengths and weaknesses of their respective positions at the mediation and during subsequent settlement negotiations. (Treglio Decl., ¶ 39). The Parties and their counsel attended a full-day mediation session before an experienced mediator Anthony F. Pantoni, Esq. With Mr. Pantoni's assistance, the Parties negotiated a complete settlement of Plaintiff's claims. (*Id.*). In addition, the parties are represented by skilled and experienced counsel with extensive backgrounds in complex litigation and experience litigating and settling similar wage and hour class actions. (Treglio Decl., ¶¶ 4-9). Plaintiff's counsel shares the view that this settlement is fair, adequate, and reasonable, in the best interests of Class Members, and should be preliminarily approved. (Treglio Decl. ¶ 42).

D. The Settlement is a Reasonable Compromise of Claims

The Settlement represents a fair compromise given the risks and uncertainties presented by continued litigation. (Treglio Decl. ¶ 39). Defendants asserted and would have continued to assert legal and factual grounds to defend against this action, including the possibility of having to pursue only her individual claims in arbitration, non-certification of certain claims, and factual and legal defenses on the merits. (*Id.*, ¶ 39). Moreover, continued litigation would be costly, time consuming, and uncertain in outcome. By contrast, this Settlement ensures timely relief and substantial recovery of penalties Plaintiff contends are owed to the Class.

1. Plaintiff's Claims and Estimated Damages

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

Rest Breaks

Labor Code § 226.7 provides "an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ("IWC"). Under IWC Wage Order 4-2001 an employer must authorize and permit all employees to take ten (10) minute duty free rest periods for every major fraction of four (4) hours worked. *See Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 (concluding that "during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time."). In *Augustus*, the court expressly rejected the employer's assertion that it could provide an on-duty rest period to employees who worked as security guards and further explained "that employers [must] relinquish any control over how employees spend their break time and relieve their employees of all duties." *Id.* at 273.

California Labor Code Section 226.7 requires an employer to pay an additional hour of compensation for each rest period the employer fails to provide in accordance with the applicable Industrial Welfare Commission Wage Order. Therefore, Plaintiff calculated Defendant's maximum liability for rest breaks as follows: 535 workdays x 1 hour x $30.00 per hour = $16,050.00

Meal Breaks

Labor Code § 512 requires employers to provide employees with thirty (30) minute uninterrupted and duty free meal period within the first five hours of work. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty free meal period. "An on-duty meal period is permitted only when the nature of the work prevents an employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal break." *Lubin v. The Wackenhut Corp.* (2016) 5 Cal. App. 5th 926, 932. The written agreement must include a provision allowing the employee to revoke it at any time. *Id.*

California Labor Code Section 226.7 requires an employer to pay an additional hour of compensation for each meal period the employer fails to provide in accordance with the applicable statute or Industrial Welfare Commission Wage Order.

Therefore, Plaintiffs calculated Defendants' maximum liability for meals breaks as follows 535 workdays x 1 hour x $30.00 per hour = $16,050.00.

Unreimbursed Expenses

Based on Plaintiff's experience and Defendants' compensation practices, Plaintiff conservatively estimates that Brand Ambassadors incurred approximately $25.00 per workweek in unreimbursed, necessary business expenses. Defendant's produced records reflect that Brand Ambassadors worked a total of 535 workdays in 2023. Assuming a five-day workweek, this equates to approximately 107 employee-workweeks (535 workdays divided by 5 workdays/week). Accordingly, Defendants' estimated exposure for unreimbursed business expenses for 2023 is calculated as follows:

107 employee-workweeks x $25.00 per employee-workweek = $2,675.00

In addition, as a direct result of Defendants' misclassification of Plaintiff and the Class as independent contractors, Brand Ambassadors were required to pay the employer's share of payroll taxes that Defendants were legally obligated to pay. Had Brand Ambassadors been properly classified as employees, Defendants would have been responsible for the employer portion of taxes. Instead, Defendants issued Forms 1099, forcing Brand Ambassadors to pay these employer-side taxes.

Based on Defendants' representations that approximately ten Brand Ambassadors worked in 2022 and conservatively estimating that those workers performed approximately 100 workdays (roughly one-fifth of work performed in 2023), Plaintiff estimates a total of 635 workdays during 2022-2023. Assuming an eight-hour workday at $13.00 per hour, total compensation during this period was approximately $66,040.00. Applying a conservative 7% employer payroll tax rate, Defendants' unreimbursed payroll tax exposure is estimated to = $4,622.80.

Waiting Time Penalties

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

Defendants have failed to pay all the Class for rest period premiums, and meal period premiums, whose sums were certain, at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter.

As noted above, there are approximately 52 Class Members. Therefore, the waiting time penalties, calculated at 30 days of pay at the regular rate, are calculated as follows:

52 Class Members x $30.00 per hour regular rate of pay x 8 hours per day x 30 days = $374,400.00.

Inaccurate Itemized Wage Statements

Labor Code Section 226 requires an employer to furnish its employees with an accurate itemized wage statement in writing, showing among other things, (1) gross wages earned, (2) total hours worked by each respective individual, (3) all deductions, (4) net wages earned and/or (5) all applicable hourly rates in effect during each respective pay period and the corresponding number of hours worked at each hourly rate by each respective individual.

Pursuant to Labor Code Section 226(e), Plaintiffs and the other current and former employees of Defendants are entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000), and are entitled to an award of costs and reasonable attorneys' fees.

Defendants paid Brand Ambassadors on a bi-weekly basis, resulting in approximately 26 pay periods in 2023. Labor Code § 226(e) authorizes penalties for $50 for the initial pay period and $100 for each subsequent pay period, subject to an aggregate cap of $4,000 per employee. Based on 26 pay periods, the maximum recoverable wage statement penalty per employee for 2023 is therefore:

$50 (initial violation) + (25 x $100) (subsequent violations) = $2,550 per employee

As noted above, Defendants employed approximately 52 Class Members in 2023. Accordingly, Defendants' estimated wage statement exposure for 2023 is calculated as follows:

52 Class Members x $2,550 per employee = $132,600.00.

PAGA Penalties

Based on Defendants' informal discovery responses and produced payroll information, Brand Ambassadors were paid on a bi-weekly basis, resulting in approximately 26 pay periods in 2023. Defendants employed approximately 52 aggrieved employees during that period.

Under California Labor Code § 2699(f) Defendant is subject to a civil penalty of $100 per pay period penalty for each employee for each initial violation of the aforementioned labor code violations, and $200 for each subsequent pay period where the violation occurred. Pursuant to *Amaral v. Cintas Cor*p. No. 2, 163 Cal. App. 4th 1157, 1209 (2008), "[u]ntil the employer has been notified that it is violating a Labor Code provision (whether or not the Commissioner or court chooses to impose penalties), the employer cannot be presumed to be aware that its continuing underpayment of employees is a "violation" subject to penalties. However, after the employer has learned its conduct violates the

Labor Code, the employer is on notice that any future violations will be punished just the same as violations that are willful or intentional - i.e., they will be punished at twice the rate of penalties that could have been imposed or that were imposed for the initial violation."

Accordingly, Defendants estimated PAGA exposure for 2023 only is calculated as follows:

Initial Pay Period:

52 aggrieved employees x $100.00 = $5,200.00

Subsequent Pay Periods (25):

52 aggrieved employees x 25 pay periods x $200.00 = $260,000.00

Total Estimated PAGA Penalties (2023 only) = $265,200.00

Total Exposure

Meal Period Premiums.	$16,050.00
Rest Period Premiums.	$16,050.00
Waiting Time Penalties.	$374,400.00
Wage Statement Penalties.	$132,600.00
Expense Reimbursements.	$2,675.00
Unreimbursed Employer Payroll Taxes.	$4,622.80
PAGA Penalties.	$265,200.00
Total.	**$811,597.80**

Waiting Time Penalties and PAGA Penalties

The settlement reasonably reflects the significant litigation risks associated with Plaintiff's claims for statutory penalties. Although Plaintiffs' maximum theoretical recovery includes approximately $811,000 in waiting time penalties and PAGA penalties, that figure substantially overstates the realistic value of the case.

First, waiting time penalties under Labor Code section 203 are not automatic. Such penalties require a willful failure to pay wages owed. Cal. Lab. Code § 203(a). Where an employer has a good-faith dispute as to whether any additional wages are due, waiting time penalties are unavailable, even if the employer's legal position is ultimately rejected. *Amaral v. Cintas Corp. No.* 2, (2008) Cal. App. 4th

1157, 1201-1202 (employer's ultimately unsuccessful defenses, which were neither unreasonable nor frivolous, negated willfulness). Here, Defendant has consistently maintained that it paid all wages owed and has asserted legal and factual defenses supporting that position, including its position that Class Members were properly classified as independent contractors. While Plaintiff disputes those defenses, their existence presents a substantial risk that no waiting time penalties would be awarded. Courts have affirmed approval of class settlements that substantially discounted section 203 exposure for precisely this reason. *Nordstrom Com. Cases*, (2010) 186 Cal.App. 4th 576, 583-584 (settlement did not undervalue waiting time penalty claims where a good-faith dispute over whether and when wages were due made full recovery uncertain).

Second, PAGA penalties are inherently discretionary. Under Labor Code section 2699(e)(2), a court may reduce the amount of civil penalties if, based on the facts and circumstances of the particular case, the full statutory penalties would be unjust, arbitrary and oppressive, or confiscatory. Courts routinely exercise this discretion to substantially reduce PAGA penalties where appropriate. See discussion above.

Accordingly, the approximately $811,000 in potential statutory penalties represents only a theoretical maximum, not a realistic measure of the case's settlement value. Given the substantial likelihood that waiting time penalties could be unavailable altogether and that any PAGA penalties could be significantly reduced in the Court's discretion, the settlement represents a fair and reasonable compromise in light of the risks, expense, and uncertainty of continued litigation.

E. The Risks Inherent in Continued Litigation are Great

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

1. Defendant's Defenses

Defendant asserted various significant defenses summarized below.

Wage Statement Defense

Defendants can rely on a recent California Court of Appeal case, *Maldonado, et al. v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1334-37, 2018 Cal.App. LEXIS 413, *46-52 (April 18, 2018) where the Court reversed their award for penalties for inaccurate wage statements because the Court found that inaccurate wage statements alone do not justify penalties; the plaintiff must establish injury from the inaccuracy. The Court also rejected "derivative" wage statement penalties. Therefore, Plaintiff assessed an 80% discount on Plaintiff's claims for inaccurate wage statements. (Treglio Decl., ¶ 33).

Risk of Prevailing on the Merits

Even if Plaintiff successfully obtained certification, it was not a foregone conclusion that Plaintiff would prevail on the merits and decertification also remained a possibility. Therefore, Plaintiff assessed a 25% discount on the risk of losing on the merits. (Treglio Decl. ¶ 34). Further, Defendant contended, and had evidence of, Class Members documenting both their meal periods, and rest periods.

Discounts on the PAGA Penalties

Under Labor Code section 2699(e)(2) a court may award a lesser amount than the maximum civil penalty specified under PAGA, if based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary, and oppressive or confiscatory. Courts often exercise their discretion to reduce the amount of PAGA penalties to as little as $5.00 per pay period or 18% of the available PAGA penalties.[4] Additionally, the Labor Commissioner has specifically stated that the main purpose for assessing PAGA penalties by the Labor and Workforce Development Agency is to enforce California's Labor Code, and obtain compliance. Specifically, with regard to assessing the adequacy of settlements, the penalty amounts are resigned to "promote PAGA's compliance and

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

deterrence goals." Amicus Curiae Brief submitted by the State Labor Commissioner, *Price v. Uber Technologies*, June 16, 2017. Therefore, Plaintiff assessed a 50% discount on the maximum liability for PAGA penalties due to the discretionary nature of PAGA penalties. (Treglio Decl. ¶ 35).

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

F. Plaintiff's Counsel are Experienced in Similar Wage-and-Hour Litigation

Plaintiff's counsel is experienced in wage-and-hour class actions. Numerous state and federal courts have certified them as adequate and competent class counsel in similar wage and hour class actions. (Treglio Decl., ¶¶ 4-9). Plaintiffs' counsel shares the view that this settlement is fair, adequate, and reasonable, in the best interests of Class Members, and should be preliminarily approved. (Treglio Decl. ¶ 42).

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

G. The Class Notice Plan Conforms to All Applicable Statutes and Rules

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

The proposed Class Notice and proposed plan for the Settlement Administrator to mail the Class Notice to the last known address of all class members complies with all the requirements of California Rule of Court 3.769(f) and 3.766(b). The contents of the proposed Class Notice include: (1) the material terms of the settlement; (2) the proposed attorneys' fees, litigation expenses, and the costs of administration; (3) details about the final fairness hearing, how class members may elect to submit a Claim Form will participate in the settlement and receive their settlement share without submitting a claim, exclude themselves, or make an objection; and (4) how class members can obtain additional information. *See* Class Notice (S.A., **Exhibit A**).

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

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

H. The Class Representative Service Enhancement Award is Fair and Appropriate

The Settlement Agreement provides a service enhancement award of $5,000.00 to the Plaintiff. The proposed service enhancement award is intended to recognize the time, effort, and risk that the Plaintiff undertook in bringing this case and helping to secure the relief obtained for the members of the Class. *See Bell v. Farmers Ins. Exchange*, 115 Cal.App.4th 715, 726 (2004) (upholding "service payment" to named plaintiff for his efforts in bringing class case); *Rodriguez v. West Publishing*, 563 F.3d 948, 959 (9th Cir. 2009) (stating that incentive awards are "intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general."). To determine the propriety of a service award, courts consider the actions protecting class interests, the benefit provided to the class based on those actions, and the amount of time and effort expended by the plaintiff. *Staton v. Boeing Co.*, 327 F.3d 938, 976-7 (9th Cir. 2003). The service award must be supported by evidence of the time and effort expended by the named plaintiff and a reasoned explanation of the financial and other risks taken by the named Plaintiff in bringing the case. *See Clark v. American Residential Services LLC,* 175 Cal.App.4th 785, 806-7 (2009).

Plaintiff's requested service enhancement award serves to recognize her time and effort on behalf of the Class, including time spent in meetings with Class Counsel, and her acceptance of the financial risk in pursuing this litigation. (S.A. ¶ 3.2.1; Treglio Decl. ¶¶ 43-46). The service enhancement award also fall within the range of service awards typically awarded to Class Representative in similar class actions. *See e.g. Bond v. Ferguson Enterprises, Inc.*, No. 1:09–cv–1662 OWW MJS, 2011 WL 2986479 (E.D. Cal. June 30, 2011) (approving $11,250 service award to each of the two class representatives in a trucker meal break class action; *Ross v. US Bank National Association*, No. C 07-02951 SI, 2010 WL 3833922, at *2 (N.D. Cal. Sept. 29, 2010) (approving $20,000 enhancement award to Class Representative in California wage-and-hour class action settlement); *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 493 (E.D. Cal. 2010) (approving service awards in the amount of $10,000 each from a $300,000 settlement fund in a wage/hour class action); *West v. Circle K Stores, Inc.*, NO. CIV. S-04-0438 WBS GGH, 2006 U.S. Dist. LEXIS 76558, at *28 (E.D. Cal. Oct. 19, 2006) ("the court finds Plaintiff's enhancement payments of $15,000 each to be reasonable."); *Glass v. UBS Fin. Servs.*, No. C-06-4068 MMC, 2007 U.S. Dist. LEXIS 8476, at *52 (N.D. Cal. Jan. 26, 2007) (finding "requested payment of $ 25,000 to each of the named plaintiffs is appropriate" in wage and hour settlement); *Louie v. Kaiser Found. Health Plan, Inc.*, CASE NO. 08cv0795 IEG RBB, 2008 U.S. Dist. LEXIS 78314, at *18 (S.D. Cal. Oct. 6, 2008) (approving "$25,000 incentive award for each Class Representative" in wage an hour settlement); *Garner v. State Farm Mut. Auto. Ins. Co.*, No. CV 08 1365 CW (EMC), 2010 WL 1687832, at *17 n.8 (N.D. Cal. Apr. 22, 2010) ("Numerous courts in the Ninth Circuit and elsewhere have approved incentive awards of $20,000 or more where, as here, the class representative has demonstrated a strong commitment to the class"). Thus, when examined in the context of the gross funds obtained on behalf of the Class as a result of Plaintiff's undertaking the role of Class Representative, the requested service enhancement award is proportionally modest, fair and reasonable.

I. The Attorneys' Fee Allocation Under the Settlement Agreement is Fair

In addition, concurrent with final approval, Plaintiff's counsel will request a Class Counsel Fees Payment of up to $24,750.00 (*i.e.*, up to one third of the maximum settlement amount) and Class Counsel Litigation Expenses Payment of up to $10,000.00. (S.A. ¶ 3.2.2. (a)). Recently, the California Supreme Court approved Superior Courts' usage of the common fund method of awarding attorneys' fees in wage and hour class actions, like this one, and upheld a fee award at 1/3 of the total settlement amount obtained for the class. *See Laffitte v. Robert Half Int'l Inc.*, 1 Cal. 5th 480, 506 (2016); *see also,* 4 Newberg on Class Actions, § 14:6 at 552 ("fee awards in class actions average around one-third of the recovery"). Specifically, in *Laffitte*, the California Supreme Court wrote: "[w]e join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created"). *Id.* at 506. The California Supreme Court also noted that trial courts have the discretion to award fees as a percentage of the common fund, with or without the necessity to conduct a lodestar cross-check. *Id.* ("…[Courts] … retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee.").

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

Here, the requested fees represent 33% of the Settlement Fund, including payments to the LWDA and cash payment to the Class Members.

VI. CONCLUSION

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

Dated: August 12, 2026

POTTER HANDY LLP

/s/ James M. Treglio

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