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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

MARKEL ROCHE, as an individual and on
behalf of all employees similarly situated,

Plaintiff,

v.

PINK CHICKU LLC, a Limited Liability
Company; and DOES 1 through 50,
inclusive,

Defendant.

Case No.: 23CV413573

[Assigned for all purposes to Hon. Charles F.
Adams, Dept. 7]

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR AN ORDER APPROVING
SETTLEMENT OF CLAIMS BROUGHT
PURSUANT TO THE PRIVATE
ATTORNEY GENERAL'S ACT OF 2004;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: April 11, 2024
Time: 1:30p.m.
Courtroom: Dept. 7
Judge: Hon. Charles F. Adams

Action Filed: April 5, 2023
Trial Date: Not Set

1 **TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that on April 11, 2024, at 1:30 p.m., or as soon thereafter as the matter
3 may be heard, in Department 7 of the above-captioned Court, located at 191 N. First Street, San Jose,
4 California 95113, Plaintiff MARKEL ROCKE ("Plaintiff") will and hereby does move this Court for an
5 order approving of the PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT
6 AND RELEASE ("Agreement" or "Settlement") reached with Defendant PINK CHICKU LLC
7 ("Defendant"), a true and correct copy of which is attached as **Exhibit 1** to the Declaration of Lilit
8 Tunyan submitted herewith.

9 Specifically, the Plaintiff moves for an order to:

- 10 1. grant approval of the terms of the Agreement pursuant to the Labor Code Private
11 Attorney Generals Act of 2004, Labor Code § 2698, *et seq.*, including the amount of the
12 settlement; the amount of distributions to the State and Aggrieved Employees; the amounts
13 allocated to attorney's fees and costs; the amount allocated to general release payment to Plaintiff;
14 the amount allocated to the settlement administrator; and,
15 2. direct disbursement of the Gross Settlement Amount pursuant to the terms of the
16 Agreement.

17 This motion is based on this Notice, the following Memorandum of Points and Authorities, the
18 Declarations of Lilit Tunyan, Plaintiff and ILYM Group, Inc. submitted herewith, all other pleadings and
19 papers on file in this action, and any oral argument or other matter that may be considered by the Court.

20 Respectfully submitted,

21 Dated: January 2, 2024

TUNYAN LAW, APC

22 
23 _____

24 Lilit Tunyan
25 Artur Tunyan

26 Attorneys for Plaintiff MARKEL ROCKE
27
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In this matter, Plaintiff MARKEL ROCKE (“Plaintiff”) asserted wage and hour claims against Defendant PINK CHICKU LLC (“Defendant”) (Plaintiff and Defendant collectively referred to herein as the “Parties”), which provides assisted living services in patients’ residences and in hospitals and nursing facilities in California.

Recognizing that arbitration agreements executed by all non-exempt employees of Defendant except Plaintiff would likely preclude class treatment and Plaintiff would be challenged as a class representative, Plaintiff dismissed her class action and individual wage and hour claims, proceeding with a single claim arising under the Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.* (“PAGA”). Under that claim, Plaintiff asserts penalty claims against Defendant, arising from alleged deficient wage and hour policies and procedures. Defendant disputes these claims.

After exchanging documents and voluminous data prior to mediation, Plaintiff and Defendant reached a proposed settlement that will resolve the PAGA claims pending in this action (the “Lawsuit”).

Under the PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT AND RELEASE (“Agreement” or “Settlement”), Defendant shall pay a maximum sum of One Hundred Five Thousand Dollars (**\$105,000.00**), referred to in the Agreement as the “Gross Settlement Amount”, for aggrieved employees employed in California as non-exempt hourly employees during the designated PAGA period (there were approximately **230** individuals meeting this definition of aggrieved employee who are or were employed by Defendant within the State of California from April 5, 2022 through the date the court enters an order approving this Settlement). This is a good result, based upon the facts and circumstances discovered to exist.

The proposed settlement will dispose of the PAGA claim alleged in this matter – which was predicated upon certain alleged violations of the Labor Code – on behalf of the California Labor and Workforce Development Agency (“LWDA”) and certain current and former California employees of Defendant who were employed at any time from April 5, 2022 through the date the court enters an order approving this Settlement.

This motion is brought pursuant to Labor Code § 2699.3(b)(4). This motion and the Agreement

1 were served on the LWDA prior to the filing of this Motion. Labor Code § 2699(e)(2).

2 For the reasons below, Plaintiff requests that the Court enter an order approving the settlement.

3 **II. SUMMARY OF THE TERMS OF SETTLEMENT**

4 The full terms of the settlement are in the Agreement. The key material terms are as follows:

- 5 (a) The Aggrieved Employees: The Aggrieved Employees (also known as the
6 “PAGA Members”) are: “All non-exempt employees who are or were employed
7 by Defendant within the State of California from April 5, 2022 through the date
8 the court enters an order approving this Settlement.” It is estimated that there are
9 approximately 4,815 pay periods as of October 11, 2023. (Agreement, ¶¶ 2, 10.)
- 10 (b) No Reversion: The Settlement is non-reversionary. (Agreement, ¶ 7.)
- 11 (c) Gross Settlement Amount: Defendant agrees to pay the maximum sum of
12 **\$105,000.00** (hereinafter referred to as the “Gross Settlement Amount” or
13 “GSA”) for settlement of the PAGA Penalties, which shall be inclusive of
14 Plaintiff’s Counsel’s attorney’s fees and costs, Plaintiff’s General Release
15 payment and the settlement administrator’s fees and costs. (Agreement, ¶ 7.)
- 16 (d) Net Settlement Amount: At least **\$42,755.37** will be available for distribution to
17 the Aggrieved Employees and the LWDA. Of this amount, the LWDA will
18 receive at least **\$32,066.53** under the Agreement, and Aggrieved Employees will
19 receive at least **\$10,688.84**. (Agreement, ¶ 7.d.)
- 20 (e) Attorney’s Fees: Plaintiff’s Counsel request an award of attorney’s fees in the
21 amount of **\$35,000.00**, which is one third of the GSA. (Agreement, ¶ 7.a.)
- 22 (f) Litigation Costs: Plaintiff’s Counsel’s litigation costs are capped to a maximum
23 amount of \$17,000. Those actual costs are \$13,294.63 which include the future
24 motion filing fees. Therefore, **\$13,294.63** is requested, by Plaintiff. (Agreement,
25 ¶¶ 7.a, 13.b.iii)
- 26 (g) Settlement Administration: Payment to Aggrieved Employees and administration
27 will be accomplished through third-party settlement administrator ILYM Group,
28 Inc., which has agreed to perform Settlement Administrator duties for a flat fee

not to exceed **\$3,950.00**, which is reasonable, based on all of the services offered.
(Agreement, ¶ 14)

(h) General Release by Plaintiff: Plaintiff shall receive **\$10,000.00** as a consideration for general release of her individual wage and hour and other claims. (Agreement, ¶ 4, 7.c.)

(i) Uncashed Checks: Funds represented by checks returned as undeliverable after a re-mailing, and funds represented by checks remaining un-cashed for more than 180 days after issuance, will be sent to the California State Controller's Unclaimed Property division. (Agreement, ¶ 13.c)

(j) Release: In exchange for the above settlement consideration, Defendant shall be entitled to a release from the LWDA and each and every Aggrieved Employee, including Plaintiff. (Agreement, ¶ 3.)

(k) Tax Allocation: The Settlement Payments to Aggrieved Employees are classified as other miscellaneous income and will be allocated as 100% penalties, which will be reported on IRS Form 1099-MISC, if required. (Agreement, ¶ 11)

(l) No Right to Opt-out: There is no statutory right for any Aggrieved Employee to object, opt out or otherwise exclude themselves from the Settlement. (Agreement, ¶ 6.)

(m) Notice to LWDA: The Declaration of Lilit Tunyan confirms that notice was provided to the LWDA and attaches the confirmatory submission documents. (Declaration of Lilit Tunyan, hereinafter "Tunyan Decl.", ¶ 47 and Exh. 3.)

III. STATEMENT OF FACTS

Plaintiff alleges that Defendant engaged in practices and procedures that violated the California Labor Code. These alleged statutory violations subject Defendant to potential liability for PAGA penalties pursuant to Labor Code § 2698. Through this action, Plaintiff seeks to recover penalties pursuant to Labor Code § 2698, *et. seq.* (Tunyan Decl., ¶ 3.)

Defendant provides assisted living services in patients' residences and in hospitals and nursing

1 facilities in California. (Tunyan Decl., ¶ 4.) For purposes of this settlement, Defendant employed
2 individuals in various positions in California. (Tunyan Decl., ¶ 5.) Plaintiff worked for Defendant in
3 California during the PAGA Period. (Tunyan Decl., ¶ 6.) Defendant contends it had lawful policies,
4 including break and pay policies, in effect throughout the statutory period, and viable legal defenses to a
5 substantial portion of the alleged penalty claims. (Tunyan Decl., ¶ 9.)

6 **IV. PROCEDURAL HISTORY**

7 On April 5, 2023, Plaintiff's Counsel sent a letter to the LWDA on behalf of Plaintiff, in
8 compliance with California Labor Code § 2699.3. More than 65 days passed after the letter was sent to
9 the LWDA, and the LWDA did not indicate that it intended to investigate the alleged violations
10 referenced in the letter. (Tunyan Decl., ¶ 7) On April 5, 2023, Plaintiff filed a class action complaint
11 ("Complaint") in the Superior Court of California, Santa Clara County entitled *Rocke v. Pink Chicku*
12 *LLC*, Case No. 23CV413573. On June 12, 2023, Plaintiff filed her First Amended Complaint adding a
13 case of action for civil penalties under PAGA. (the "Lawsuit"). Due to arbitration agreements signed by
14 class members, Plaintiff subsequently requested dismissal of causes of action one through seven, leaving
15 only the PAGA claim. (Tunyan Decl., ¶ 8.) Defendant denies all liability and admit to no claim by virtue
16 of its agreement to settle. (Tunyan Decl., ¶ 9.) Because Court approval of a PAGA settlement is
17 required, the settlement is presented for approval. (Tunyan Decl., ¶ 10.)

18 **V. SETTLEMENT NEGOTIATIONS**

19 Counsel for Plaintiff has thoroughly investigated the facts relating to the claims alleged in the
20 operative complaint and have made a thorough study of the legal principles applicable to the claims
21 asserted against Defendant. Based on their investigation and evaluation of this case, Plaintiff's Counsel
22 have concluded that the settlement is fair, reasonable, and adequate in light of all known facts and
23 circumstances, including the defenses asserted by Defendant, potential adverse findings regarding
24 liability, and numerous potential appellate issues. (Tunyan Decl., ¶ 11.)

25 The Parties agreed to participate in a mediation in an effort to resolve the PAGA claims asserted
26 in this matter. The Parties selected mediator Hon. Amy D. Hogue (Ret.), Esq., a neutral with extensive
27 experience as a former complex department judge litigating and mediating wage and hour class and
28 representative actions. Prior to the mediation, Plaintiff requested substantial data from Defendant, and

1 Defendant provided the requested data. Prior to and during the mediation and settlement discussions, the
2 Parties exchanged extensive information and engaged in discussions regarding their evaluations of the
3 case and various aspects of the case, including but not limited to, the risks and delays of further litigation,
4 the risks to the Parties of proceeding with representative adjudication, the law relating to off-the-clock
5 theory, meal and rest periods, PAGA representative actions, and wage-and-hour law and enforcement, as
6 well as the evidence produced and analyzed, and the possibility of appeals, among other things.
7 Plaintiff's Counsel conducted significant investigation and informal discovery regarding the facts of the
8 case, including and not limited to, the exchange, review, and analysis of a large volume of documents
9 and data obtained from Defendant, Plaintiff, and other sources. The volume of data and documents that
10 Plaintiff's Counsel reviewed and analyzed included and was not limited to: Plaintiff and Aggrieved
11 Employees' employment records, a detailed sampling of Aggrieved Employees' time and pay data,
12 Defendant's Employee Handbook, arbitration agreements signed by non-exempt employees,
13 employment practices, procedures, and policies including, but not limited to Defendant's expenses
14 policy, meal and rest periods policy, work time policy, overtime policy, pay periods and pay days policy,
15 among other information and documents. Counsel for the Parties also met and conferred on numerous
16 occasions, e.g., to discuss issues relating to the production of documents and data prior to the mediation.
17 Plaintiff's Counsel also drafted the pleading and the mediation brief and prepared for and attended court
18 proceedings, mediation, and settlement negotiations, among other tasks. (Tunyan Decl., ¶ 12.) Counsel
19 for the Parties have also invested time researching and investigating the applicable law, which is
20 constantly evolving as it relates to representative PAGA claims, off-the-clock theory, requirements
21 applicable to "personal attendants" in California, meal and rest periods, wage-and-hour law and
22 enforcement, Plaintiff's claims and damages, and Defendant's defenses thereto, as well as facts
23 discovered. (Tunyan Decl., ¶ 13.) Based on Plaintiff's Counsel's analysis, the result achieved in this
24 litigation is fair, adequate, and reasonable. Based on investigation and information discovered, Plaintiff's
25 Counsel believes that there is sufficient evidence to support the allegations made in the Lawsuit,
26 including the allegations that Defendant, with respect to Plaintiff and the Aggrieved Employees, inter
27 alia, failed to properly pay overtime wages, failed to provide compliant meal and rest periods and to pay
28 associated premium pay, failed to timely pay wages during employment and upon termination of

1 employment, failed to provide compliant wage statements, failed to maintain requisite payroll records,
2 and failed to reimburse necessary business expenses, and thereby engaged in conduct giving rise to civil
3 penalties recoverable under the Private Attorneys General Act of 2004 (California Labor Code sections
4 2698, et seq.). As a result of alleged uniform practices, Plaintiff claims that Aggrieved Employees were
5 not paid all of the compensation that was owed to them by Defendant. Thus, in Plaintiff's Counsel's
6 view, it is clear that the outcome of this litigation would be determined by Defendant's uniform
7 operations and employment practices, policies, and procedures that Plaintiff alleges applied across
8 Defendant's hourly-paid or non-exempt employees in California during the PAGA period. (Tunyan
9 Decl., ¶ 14.)

10 The Parties participated in a full-day mediation on November 9, 2023, reaching a settlement at
11 that time. The Parties then spent many weeks thereafter negotiating the detailed terms of the Settlement
12 memorialized in a long-form agreement to resolve this matter. (Tunyan Decl., ¶ 15.)

13 DISCUSSION

14 VI. THE QUI TAM NATURE OF PAGA CLAIMS

15 This case is solely a PAGA claim, not a class action, and the standard for determining the
16 reasonableness of a settlement has not been the subject of significant judicial discussion. In 2003,
17 California enacted the Private Attorneys General Act of 2004 to remedy systemic underenforcement of
18 many worker protections. *Williams v. Superior Court*, 3 Cal. 5th 531, 545 (2017).

19 The solution enacted by the Legislature deputized private citizens to recover civil penalties for
20 the State, where those penalties were previously only available to State law enforcement agencies:

21 The Legislature declared that ***adequate financing of labor law enforcement was***
22 ***necessary to achieve maximum compliance with state labor laws, that staffing levels***
23 ***for labor law enforcement agencies had declined and were unlikely to keep pace with***
24 ***the future growth of the labor market***, and that it was therefore in the public interest to
allow aggrieved employees, acting as private attorneys general, to recover civil
penalties for Labor Code violations, with the understanding that labor law enforcement
agencies were to retain primacy over private enforcement efforts.

25 *Arias v. Superior Court*, 46 Cal. 4th 969, 980 (2009) (emphasis added).

26 “Because an aggrieved employee’s action under the Labor Code Private Attorneys General Act
27 of 2004 functions as a substitute for an action brought by the government itself, a judgment in that action
28 binds all those, including non-party aggrieved employees, who would be bound by a judgment in an

1 action brought by the government.” *Arias*, 46 Cal. 4th at 986. With limited exceptions, “[o]f the civil
2 penalties recovered, 75 percent goes to the Labor and Workforce Development Agency, leaving the
3 remaining 25 percent for the ‘aggrieved employees.’” *Iskanian v. CLS Transp. Los Angeles, LLC*, 59
4 Cal. 4th 348, 380 (2014) *certiorari denied sub nom. CLS Transportation Los Angeles v. Iskanian*, —
5 U.S. —, 135 S.Ct. 1155, 190 L.Ed.2d 911 (Jan. 20, 2015). Thus, a PAGA claim is, predominantly, a
6 claim belonging to the State.

7 “The civil penalties recovered on behalf of the state under the PAGA are distinct from the
8 statutory damages to which employees may be entitled in their individual capacities.” *Iskanian*, 59 Cal.
9 4th at 381. Because of this distinction, and the fact that the penalties made available through PAGA
10 fell previously within the exclusive domain of State enforcement, the California Supreme Court
11 explained that PAGA suits are best viewed as a species of *qui tam* action. *Iskanian*, 59 Cal. 4th at 382.
12 After recognizing that PAGA actions are a form of *qui tam* action, *Iskanian* concluded that because the
13 State was the real party in interest in a PAGA suit, it would violate public policy to compel an individual
14 employee to waive representative claims under PAGA: “[W]here, as here, an employment agreement
15 compels the waiver of representative claims under the PAGA, it is contrary to public policy and
16 unenforceable as a matter of state law.” *Iskanian*, 59 Cal. 4th at 384.

17 **VII. THE STANDARDS FOR APPROVAL OF A PAGA SETTLEMENT**

18 In deciding whether to grant approval of the proposed Settlement, the primary issue to be decided
19 is whether the Settlement is fair, adequate, and reasonable. Specifically, the issues are whether the PAGA
20 penalties to which the parties have agreed provide “genuine and meaningful” relief, “consistent with the
21 underlying purpose of the statute to benefit the public” and whether the penalties are reasonable in light
22 of the potential verdict value in this case. *Villalobos v. Calandri Sunrise Farm LP*, 2015 WL 12732709,
23 Case No. CV 12-2615 PSG (JEMx) (C.D. Cal., July 22, 2015).

24 In *O'Connor v. Uber Technologies*, No. 13-CV-03826-EMC, 2016 WL 4398271 (N.D. Cal. Aug.
25 18, 2016) the court was faced with a proposed class action settlement which also included a claim under
26 PAGA. The court separately discussed the standard for approval under PAGA. The court recognized that
27 cases discussing class action standards may be helpful and required the parties to demonstrate that either
28 the factors set forth in the class action case of *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir.

1998) “or any other coherent analysis” justified the proposed settlement of the PAGA claim.¹

Therefore, although class settlement jurisprudence has no direct application to this case, it is not inappropriate to consider the *Hanlon* factors: (1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the amount offered in settlement; (4) the extent of discovery completed and the stage of the proceedings; (5) the experience and views of counsel; and (6) the presence of a government participant.

The *Hanlon* court also mentioned, as a factor, the “reaction of the class members to the proposed settlement.” That factor has no analogous component here. The interest served is that of the State of California and the LWDA is the only person or entity who has standing to comment upon any settlement. Labor Code § 2699.3(b)(4). The *Hanlon* court also identified “the risk of maintaining class action status throughout the trial” as a factor, but, again, that factor has no application here. Otherwise, the six remaining factors provide a useful framework for evaluating the settlement. *Hanlon*, 150 F.3d at 1026; *see also Allen v. Bedolla*, 787 F.3d 1218, 1222 (9th Cir. 2015) (same); *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (same).

Dunk v. Ford Motor Co., 48 Cal. App. 4th 1794 (1996), held that “a presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.”² *Id.* at 1801; *In re Microsoft I-V Cases*, 135 Cal. App. 4th 703, 723 (2006); *see also* Newberg & Conte, *Newberg on Class Actions*, (2d.Ed. 1987) § 11.41, p. 11-91.

It would also be appropriate for this court to look to case law concerning settlement of a claim brought under the Fair Labor Standards Act 28 U.S.C. § 201 et seq. (“FLSA”) which, likewise, requires

¹ The *O'Connor v. Uber* court did not approve the settlement, finding the disparity between the amount proposed for the class compared to the PAGA settlement was not fair to the LWDA. That is not a concern here. Seventy-five percent of the net will be paid to the LWDA by statute.

² PAGA provides no notice or claim procedures as exist in class action cases. Therefore, objections (other than potentially by the LWDA) are not contemplated in PAGA actions. Despite the absence of any right to object, the Agreement here contemplates informing Aggrieved Plaintiffs of the resolution so that they are made aware of the result, despite having no standing to object to this settlement.

1 court approval. Because the Ninth Circuit has not established a standard for district courts to follow when
2 evaluating an FLSA settlement, California district courts have applied the standard established by the
3 Eleventh Circuit in *Lynn's Food Stores, Inc. v. U.S. By & Through U.S. Dept of Labor*, 679 F.2d 1350,
4 1352 (11th Cir. 1982). See *Dunn v. Teaches Ins. & Annuity Ass'n of Am.*, 2016 WL 153266, at *3 (N.D.
5 Cal. Jan. 13, 2016) and *Ambrosino v. Home Depot U.S.A., Inc.*, No. 11 CV 1319 L (MDD), 2014 WL
6 3924609, at * 1 (S.D. Cal. Aug. 11, 2014) (“A district court may approve an FLSA settlement if the
7 proposed settlement reflects ‘a reasonable compromise over [disputed] issues.’”) (quoting *Lynn's Food*
8 *Stores, Inc.*, 679 F.2d at 1354). Although the standard for approving FLSA collective actions may be
9 different from the standard for approving class actions under Federal Rule of Civil Procedure 23, courts
10 have applied the *Hanlon* factors to a settlement of an FLSA claim. *Millan v. Cascade Water Sews., Inc.*,
11 No. 1:12 - cv -1821-AWI-EPG, 2016 WL 3077710, at * 3 (E.D. Cal. Jun. 2, 2016); see also *Otey v.*
12 *CrowdFlower, Inc.*, No. 12-CV-05524-JST, 2014 WL 1477630, at * 11 (N.D. Cal. Apr. 15, 2014). In
13 *Selk v. Pioneers Mem'l Healthcare Dist.*, 159 F. Supp. 3d 1164, 1173 (S.D. Cal. 2016) the court
14 evaluated an FLSA settlement using a totality of the circumstances approach “that replicates the factors
15 relevant to Rule 23 class actions where appropriate, but adjusts or departs from those factors when
16 necessary to account for the labor rights at issue.”

17 While a court should not simply “rubber stamp” a proposed settlement with little or no
18 independent evaluation, the court “must stop short of the detailed and thorough investigation that it
19 would undertake if it were actually trying the case.” *Clark v. Am. Residential Sews. LLC*, 175 Cal. App.
20 4th 785, 799 (2009). The court should not expect that the parties offer concrete “proof” in support of
21 settlement, but rather that the parties have made a good faith effort to explain the reasoning behind
22 certain strategic decisions and the valuation of specific claims. “[W]hether a settlement is fundamentally
23 fair within the meaning of Rule 23(e) is different from the question whether the settlement is perfect in
24 the estimation of the reviewing court.” *Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012). “It is,
25 of course, the strong public policy of this state to encourage the voluntary settlement of litigation.”
26 *Osumi v. Sutton*, 151 Cal. App. 4th 1355, 1359 (2007).

27 Finally, the factors identified above are not exclusive and the court is free to balance factors
28 depending on circumstances. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 244-245 (2001).

1 While class settlement factors provide some guidance as to how a Court may approach the
2 evaluation of a PAGA settlement, there are significant differences between PAGA settlements and class
3 action settlements that must be recognized. Unlike a class action settlement, the scope of release
4 permitted in a PAGA settlement is limited. While “judgment in [a PAGA] action is binding not only on
5 the named employee plaintiff but also on government agencies and any aggrieved employee not a party
6 to the proceeding,” *Arias*, 46 Cal. 4th at 986, “the non-party employees, because they were not given
7 notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to
8 remedies other than civil penalties.” *See id.*, at 987. Thus, with the possible exception of a Plaintiff, the
9 scope of a release in a PAGA settlement is confined to PAGA penalties, and not related individual
10 claims.³ Applying the above standards to this settlement, the settlement meets all criteria for approval.

11 **VIII. THE SETTLEMENT MEETS ALL THE CRITERIA FOR APPROVAL**

12 Applying the class settlement fairness factors discussed above – limited to those compatible with
13 the unique features of PAGA claims – the proposed settlement embodies all of the key features of a
14 settlement that is fair, reasonable, adequate, and as such, meets all the criteria necessary for approval.

15 **A. The Relative Strength of the PAGA Claim, and the Realistic Range of Outcomes in** 16 **the Litigation and Estimate of the Value of Each Claim Strongly Favor Approval of** 17 **the Settlement**

18 “In determining whether the proposed settlement falls within the range of reasonableness,
19 perhaps the most important factor to consider is plaintiffs’ expected recovery balanced against the value
20 of the settlement offer.” *Cotter v. Lyft, Inc.*, 176 F. Supp. 3d 930, 935 (N.D. Cal. 2016) (internal
21 quotation omitted). Here, the relative strength of the PAGA claim brought by Plaintiffs weigh in favor of
22 the Court finding that the settlement is fair, adequate, and reasonable, since there are significant risk
23

24 ³ This is contrasted with the much broader release permitted in a class action context, which may be
25 based on “any matter or fact” alleged in the complaint. *See In re Corrugated Container Antitrust*
26 *Litigation*, 643 F.2d 195, 221 (5th Cir. 1981) (“The weight of authority establishes that ... a court may
27 release not only those claims alleged in the complaint and before the court, but also claims which ‘could
28 have been alleged by reason of or in connection with any matter or fact set forth or referred to in’ the
complaint.”); *Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir. 2010) (“we have held that federal district
courts properly released claims not alleged in the underlying complaint where those claims depended on
the same set of facts as the claims that gave rise to the settlement.”). In this matter, the Agreement will
not affect the rights of Aggrieved Employees who may possess individual wage and hour claims.

1 factors that Plaintiffs would face if they did not settle this matter.

2 Most significantly, the ultimate decision as to the amount of penalties is always up to the
3 discretion of the Court. Labor Code § 2699(e)(2) states: “In any action by an aggrieved employee
4 seeking recovery of a civil penalty available under subdivision (a) or (f), a court may award a lesser
5 amount than the maximum civil penalty amount specified by this part if, based on the facts and
6 circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and
7 oppressive, or confiscatory.” Subdivision (a) states, “Notwithstanding any other provision of law, any
8 provision of this code that provides for a civil penalty to be assessed and collected by the Labor and
9 Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or
10 employees, for a violation of this code, may, as an alternative, be recovered through a civil action
11 brought by an aggrieved employee on behalf of himself or herself and other current or former employees
12 pursuant to the procedures specified in Section 2699.3.” Subdivision (f) specifies the penalties in
13 instances where the underlying statute does not specify any civil penalty. In other words, where the facts
14 and circumstances of the case demonstrate that an unreduced award would be “unjust, arbitrary and
15 oppressive, or confiscatory,” the court (or arbitrator) may reduce the award to ameliorate such.

16 In *Cotter*, the court found a significant reduction of the PAGA claim would be appropriate
17 because “[t]his does not appear to be a case where a company has deliberately sought to evade the law.”
18 *Cotter*, 176 F. Supp. 3d at 941. Here, Defendant can state a strong case that, as the Court concluded in
19 *Cotter*, its efforts to devise compliant operational policies do not indicate an organization that has
20 deliberately sought to evade the law. This is a very significant risk factor. Defendant disputes that
21 Plaintiff could find a coherent method for proving liability for roughly **230** employees working in
22 different departments. Establishing violations for purposes of PAGA would be difficult in this matter.

23 After analyzing the claims in this matter, Plaintiff has concluded that the value of this Settlement
24 is fair, adequate, and reasonable. (Tunyan Decl., ¶ 24.)

25 Using the most straightforward formulation of applying the “catch-all” \$100 penalty specified in
26 Labor Code § 2699(f)(2) to each pay period per employee, for all of the estimated 4,815 pay periods
27 through mediation, the maximum single penalty plausible exposure under that direct approach is
28 **\$481,500.00**. The Settlement of **\$105,000** is about 21.8% of that roughly estimated maximum exposure

1 value. When considering the serious risks discussed herein, and the Court’s inherent power to adjust
2 penalties downward to reflect an employer that sought to be in compliance with wage and hour laws,
3 even if mistakes were sometimes made, the compromise figure is reasonable.

4 The Settlement can also be evaluated by looking at each allegation and the penalty that would
5 attach thereto. The Settlement of **\$105,000** is 55.2% of the **\$190,311.00** estimate of *risk-adjusted* penalty
6 recovery (excluding interest) at this stage in the litigation, *based upon a penalty-by-penalty analysis*. On
7 that basis, it would be unwise to pass up this settlement opportunity. This assessment is based on a
8 carefully constructed model of the current fair value of the case, using estimated risks, appellate
9 authority, and estimates of violation frequency by pay period. *Id.*

10 The maximum calculated plausible risk-adjusted exposure is **\$540,435**, *when examining each*
11 *penalty provision separately. Id.* That exposure consists of the following components:

- 12 • The reasonably estimated penalty exposure for unpaid wages for off-the-clock work
13 was estimated to be **\$120,375.00**. Based on the potential difficulty to collect testimony
14 from each Aggrieved Employee working in a different department than Plaintiff
15 regarding off-the-clock work the risk-adjusted estimated exposure is estimated to be
16 **\$36,112.50** based on a risk reduction of 70%, before any Court-imposed reductions for
17 good faith conduct by Defendant.
- 18 • The reasonably estimated penalty exposure for unpaid overtime and sick pay as a result
19 of not including additional remuneration in the regular rate for purposes of calculation
20 of overtime and sick pay was estimated to be **\$2,400.00**. Based on the fact of possibility
21 that some of the additional remuneration was discretionary and was not required to be
22 included in the regular rate the risk-adjusted estimated exposure is estimated to be
23 **\$1,440.00** based on a risk reduction of 40%, before any Court-imposed reductions for
24 good faith conduct by Defendant.
- 25 • The reasonably estimated exposure for meal break violations over PAGA period was
26 calculated at **\$90,550.00**. Based on Defendant’s argument that the Aggrieved
27 Employees likely qualify as “personal attendants” governed by Industrial Wage Order
28 N 15 and are subject to different meal and rest break requirements, records of facial

violations and the serious risk that employee choice would become an issue that impeded proof, the risk-adjusted estimated exposure is estimated to be **\$27,165.00**, based on a risk reduction of 70%, before any Court-imposed reductions for good faith conduct by Defendant.

- The reasonably estimated exposure for rest break violations over PAGA period was calculated at **\$107,175.00**. Based on Defendant's argument that the Aggrieved Employees likely qualify as "personal attendants" governed by Industrial Wage Order N 15 and are subject to different meal and rest break requirements, and the serious risk that employee choice would become an issue that impeded proof, the risk-adjusted estimated exposure is estimated to be **\$32,152.50**, based on a risk reduction of 70%, before any Court-imposed reductions for good faith conduct by Defendant.
- The risk-adjusted penalty recovery for violation of Labor Code § 203 was estimated to be approximately **\$1,956.00** on a maximum exposure of **\$3,260**. A risk reduction of 40% was applied to reflect the contingent nature of this claim and the additional need to demonstrate willful misconduct.
- The risk-adjusted penalty recovery for violation of Labor Code § 226 was estimated to be approximately **\$19,260.00**, on a maximum exposure of **\$96,300.00**. A risk reduction of 80% was applied to reflect the contingent nature of this claim and the additional need to demonstrate willful misconduct.
- The risk-adjusted penalty recovery for violation of Labor Code § 2082 was estimated to be approximately **\$72,225.00**, on a maximum exposure of **\$120,375.00**. A risk reduction of 40% was applied to reflect the risk of manageability and proving liability given Defendant changed their reimbursement policy in May 2023 and started reimbursing certain amount for personal cell phone usage for downloading and using applications on cell phones.
- Performing risk-adjusted valuations for all claims yields a total value in the range of **\$190,311.00**. *Id.*

The concurrently filed Tunyan Declaration sets forth claim valuation. (See, Tunyan Decl., ¶ 24.)

1 **B. The Risk, Expense, and Complexity of Further Litigation Balances Strongly in Favor**
2 **of Approval of the Settlement**

3 To assess the fairness, adequacy, and reasonableness of a class action settlement, the court should
4 consider the expense, complexity and likely duration of further litigation. *Dunk*, 48 Cal. App. 4th at
5 1801. Here, the expense, complexity and likely duration of future litigation was to some extent an
6 unknown. However, what is certain is that to adequately establish the foundational violations that would
7 support a substantial penalty award, tremendous time and expense would be invested. To adequately
8 establish that aggrieved employees experience the alleged violations, and at what frequency, most of the
9 aggrieved employees would need to be interviewed in a systematic fashion and their testimony cataloged
10 in way sufficiently meaningful to permit the submission of summary evidence at trial, such as via survey.
11 *First*, the burdensome nature of such a process would be expensive and time-consuming. *Second*, the
12 review of the provided by Defendant’s data and individuals already interviewed confirmed substantial
13 risk that the Court would either substantially reduce any penalty ultimately awarded *or* conclude that the
14 conduct was insufficient to support a penalty award considering the fact that most of the aggrieved
15 employees were employed as caregivers who might possibly qualify as “personal attendants” governed
16 by Industrial Wage Order N 15 and are subject to different meal and rest break requirements. *Third*, it
17 would be essentially impossible to formulate an objectively reliable means of summarizing testimonial
18 experiences, other than by an extraordinarily detailed survey which would impose the risk of
19 manageability. And formulating such a survey would have been important, since frequency of violations
20 would need to be established before any penalties could be recovered. In sum, the evidence collected to
21 date leads Plaintiff to conclude that, to the extent violations occurred, a fact which Defendant disputes,
22 the violations were **not** systematic and **not** uniform across all of Defendant estimated **230** employees
23 who worked during the PAGA period. Alternatively, direct testimony would have been required from as
24 many of the roughly 230 aggrieved employees as could be obtained, which would be, at best, very
25 difficult. (Tunyan Decl., ¶ 21.)

26 **C. The Amount Offered in Settlement Under the Agreement**

27 The Settlement provides a monetary benefit that falls well within “the range of an acceptable
28 settlement” under the circumstances, which is the standard on which the instant Settlement must be

1 judged. As held by the Ninth Circuit, a settlement may be fair and reasonable even where it only
2 provides a fraction of what could have been obtained at trial. *See Linney v. Cellular Alaska P'ship*, 151
3 F.3d 1234, 1242 (9th Cir. 1998).

4 **1. The Total Amount Offered in Settlement is \$105,000.00**

5 Under the Agreement, Defendant shall pay a maximum sum of \$105,000.00. Plaintiff's Counsel,
6 with the assistance of a data analyst, assessed the maximum plausible penalty exposure to be
7 \$540,435.00. (Tunyan Decl., ¶ 24.) This estimate is overly optimistic. The Settlement is 19.4% of that
8 maximum plausible exposure before factoring in the many risk adjustments and the Court's ability to
9 reduce the penalty at its discretion. (Tunyan Decl., ¶¶ 23-25.)

10 Furthermore, Defendant asserted a number of defenses that potentially could have undermined
11 Plaintiff's claims if they were to be litigated. For example, Defendant contended that Plaintiff's claims
12 would be unmanageable under *Wesson v. Staples the Office Superstore, LLC*, 68 Cal. App. 5th 746, 865
13 (2021). Specifically, Defendant argued that numerous individualized inquiries would be needed to
14 determine liability on Plaintiff's claims, including (1) whether employees worked off-the-clock with
15 knowledge of a supervisor or Defendant, (2) whether each individual took a particular meal period or rest
16 break on a particular occasion, (3) where the individual skipped the meal or rest period, **why** it was
17 skipped for each of the allegedly aggrieved employees, and (4) whether the mileage reimbursement rate
18 Defendant paid was sufficient to reimburse employees for their reasonably incurred vehicle expenses,
19 which entails an assessment of the vehicle model driven, the type of mileage it gets, how often it needs
20 repairs, the cost of insurance and the number of non-business miles driven by the employee per pay
21 period. Defendant argued the case would be unmanageable. (Tunyan Decl., ¶¶ 22-23.)

22 **2. Payment of At Least \$42,755.37 in Penalties**

23 Under the Agreement, the amount available for distribution as penalties under PAGA is at least
24 **\$42,755.37**. The amount is a significant penalty, but it is not confiscatory, nor is it, in the terms of the
25 PAGA statute, "unjust, arbitrary, or oppressive." Labor Code § 2699(e)(2).

26 *a) The LWDA shall receive at least \$32,066.53.*

27 As 75% of the penalties are allocated to the LWDA, the LWDA stands to receive at least
28 **\$32,066.53** under the Agreement. Further, pursuant to Labor Code § 2699.3(b)(4) the "provisions of the

1 settlement relating to health and safety laws shall be submitted to the division at the same time that they
2 are submitted to the court. This requirement shall be construed to authorize and permit the division to
3 comment on the settlement provisions, and the court shall grant the division's commentary appropriate
4 weight.” The LWDA will have an opportunity to comment upon the amount to be paid to the LWDA.
5 This provision protects against collusive settlements for less than a reasonable value of the claim.

6 *b) Aggrieved Employees shall receive at least \$10,688.84*

7 Approximately 230 Aggrieved Employees shall receive at least **\$10,688.84** (25% of the penalty)
8 under the terms of the Agreement and by operation of PAGA. The Court should give weight to the fact
9 that the primary purpose of PAGA is not to provide a windfall to Aggrieved Employees; the penalties
10 recovered under PAGA are not surrogate individual damages. Instead, the amount available to
11 Aggrieved Employees is in addition to any damages that could be recovered via individual claims.
12 (Tunyan Decl., ¶ 27.)

13 **D. The Presence of a Government Participant**

14 As set forth above, 75% of the penalty is paid to the LWDA. In connection therewith, Labor
15 Code § 2699.3(b)(4) permits the LWDA to comment on the penalties. This provides an independent
16 check on collusive settlements. The LWDA was notified of the Settlement. (Tunyan Decl., ¶ 47.)

17 **E. PAGA Counsel Are Experienced and Negotiated Aggressively**

18 The court may also consider that negotiations between the Parties were conducted at arm's
19 length, in an adversarial manner, despite a mutual desire to resolve the case. (Tunyan Decl. ¶¶ 11-15, 26.)
20 The court may consider the opinion of all counsel that the settlement arrived at is fair, reasonable and in
21 the best interests of the aggrieved employees. PAGA Counsel are experienced with employment class
22 actions and representative actions, as set forth more fully in the Declaration of Lilit Tunyan filed
23 herewith.

24 **F. The Substantial Exchange of Data and the Stage of the Proceedings Favor Approval**

25 In evaluating the Parties' basis for valuing a settlement, ““formal discovery is not a necessary
26 ticket to the bargaining table.”” *Linney*, 151 F.3d at 1239.

27 Here, the substantial exchange of data was sufficient to enable Plaintiff's Counsel to evaluate the
28 strength and value of the claim for purposes of settlement. (Tunyan Decl., ¶¶ 12-14, 18-20.) As

discussed above, Plaintiff's Counsel spoke with employees, reviewed policies, performed calculations with data, and inspected related documents, such as handbooks and wage statements, to assess exposure and risk.

Based on Plaintiff's Counsel's experience litigating wage and hour claims, such investigation was sufficient to determine the potential value of the PAGA claim, and to evaluate the strength of this claim for purposes of settlement. (Tunyan Decl., ¶ 21.)

G. Additional Factors Weigh in Favor of Approving the Terms of the Proposed Settlement, Including the Requested Fees and Costs

In addition to the factors presented above, the proposed settlement does not possess any obvious deficiencies with respect to its other terms, including the agreed-upon fees and costs.

1. Fees and Costs

Courts in the Ninth Circuit and California generally use the "percentage method" rather than the lodestar approach when awarding attorneys' fees in a common fund settlement. *See* 7 Witkin, B.E., CALIFORNIA PROCEDURE (2007 Supp.) §§ 255-261 at 236-241 (describing prevalence of percentage method under California law); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("[A] litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole"); *In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1377-78 (N.D. Cal. 1989) (Patel, J.) (endorsing percentage method). *See generally*, *Serrano*, 20 Cal. 3d at 25; *accord Hanlon*, 150 F.3d 1011 (9th Cir. 1998). While this settlement is what is traditionally imagined when using the term "common fund," it does create benefit for others beyond Plaintiff.

According to a leading treatise on class actions, "No general rule can be articulated on what is a reasonable percentage of a common fund. Usually, 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented." *See* Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 14.03. Attorneys' fees that are fifty percent of the fund are typically considered the upper limit, with ***thirty to forty percent commonly awarded in cases where the settlement is relatively small***. *See id*; *see also*, *Van Vranken v. Atlantic Richfield Company*, 901 F. Supp. 294 (N.D. Cal. 1995) (stating that most cases where 30-50 percent was awarded

involved “smaller” settlement funds of under \$10 million).

While this is not a class action, the custom and practice in class actions is to award approximately one-third of a fund as a fee award. *See Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11 (2008) (“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around **one-third** of the recovery.”) (emphasis added). The proposed attorney fee award here is 33,3% of the Gross Settlement Amount minus the General Release Payment, and amount reasonably comparable to “average” fees awarded in California state court class action cases used for comparison purposes here. *Chavez*, 162 Cal. App. 4th at 66 n. 11. Again, this is **not** a class action. It is more akin to contingent representation with an additional requirement of Court review due to the qui tam nature of a PAGA claim.

As a PAGA claim is unique to California, it is also appropriate to consider how California treats common fund recoveries. The California Supreme Court removed all doubt about the use of the percentage of the fund method to award attorney’s fees in California, stating, “We 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.” *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016).⁴

Thus, Ninth Circuit and California state courts regard circumstances in which class counsel’s work is wholly contingent, such as in class actions and other common fund type cases, as a factor weighing in favor of approving a negotiated fee award that approximates market rates. *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132-33 (2001). This matter has been litigated by Plaintiff’s Counsel in a manner that is reasonable, diligent, and efficient. The actual lodestar incurred by Plaintiff’s Counsel to date is no less than **\$60,370.00** not including at least \$2,250 in estimated future work. (Tunyan Decl., ¶¶ 39-42.) Attorneys for Plaintiff invested substantial amounts of time evaluating data before the mediation

⁴ The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing doubt about the use of the percentage method: “The *Dunk* court, while finding the percentage method inapplicable to the settlement before it due to the lack of a readily valued common fund, did not purport to bar its usage generally in common fund cases.” *Laffitte*, at 501.

1 in this matter, revising damage models, and in preparing for the mediation. Those efforts led to this
2 reasonable settlement. (Tunyan Decl., ¶ 39-42.) Plaintiff's Counsel requests \$35,000.00, as specified in
3 the Settlement, which constitutes a negative lodestar multiplier of 1.8, when compared to recorded and
4 estimated future lodestar of \$62,620.00. (Tunyan Decl., ¶ 41.)

5 The Agreement also provides for the award of actual costs, up to \$17,000, based on Plaintiff's
6 Counsel's actual out of pocket expenses in taking on representation in this Lawsuit on a contingency
7 basis. (Tunyan Decl., ¶ 16.) Plaintiff requests an award of \$13,294.63 in actual costs which include the
8 future motion filing fee. (Tunyan Decl., ¶ 42.)

9 **2. Administration Fees Are Very Reasonable**

10 Administration will be completed by ILYM Group, Inc. for \$3,950.00, a very reasonable amount
11 for the services rendered which was selected after requesting bids from four potential settlement
12 administrators. Defendant will provide the Settlement Administrator with a list of Aggrieved Employees
13 within 15 days from entry of the order approving the Settlement that Defendant will compile from its
14 records, which will include each Aggrieved Employee's last known full name, last known address, last
15 known telephone number, Social Security number and employee ID number, start and end dates of
16 employment as a non-exempt and/or hourly-paid employee of Defendant in California during the PAGA
17 Period, and other such mutually agreed upon information by the Parties as may be necessary for the
18 Settlement Administrator to independently calculate and review the Pay Periods attributed to each
19 Aggrieved Employee, and the Settlement Administrator will calculate each Aggrieved Employee's
20 estimated share of the twenty-five percent (25%) portion of the PAGA Payment. The Settlement
21 Administrator will also establish Qualified Settlement Fund Escrow Account, prepare, administer, and
22 distribute settlement checks to the Aggrieved Employees, including necessary tax forms (W2 and/or
23 1099), calculate and withhold all applicable state and federal taxes, should any disbursements be returned
24 to ILYM Group's office as undeliverable, ILYM Group will attempt to locate an update address using
25 the NCOA database and/or other skip trace efforts and will promptly remail the disbursement,
26 redistribute all uncashed checks to the LWDA and to those aggrieved employees' who had previously
27 cashed their settlement checks, perform any other usual and customary duties for administering a PAGA
28 action settlement. (Tunyan Decl., ¶ 43.)

Payment of \$10,000.00 is requested as General Release Payment to Plaintiff in exchange for Plaintiff's general release of her wage-and-hour claims and other claims and liabilities of any kind or nature related to Plaintiff's employment with Defendant or her separation therefrom including but not limited to wrongful termination, discrimination, harassment claims against Defendant and for her efforts in bringing and prosecuting this matter. (Agreement, ¶ 4.) Neither of other Aggrieved Employees other than Plaintiff provides such a broad release. (Agreement, ¶ 3.) Approval of the payment of \$10,000.00 is requested under the terms of this Settlement. (Tunyan Decl., ¶ 44.)

For the above reasons in fact and law, Plaintiff requests this court enter an order approving the settlement memorialized in the Agreement.

TUNYAN LAW, APC

Attorneys for Plaintiff MARKEL ROCKE

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3) ss
4 COUNTY OF LOS ANGELES)

5 I am employed in the county of Los Angeles, State of California. I am over the age of 18 and
6 not a party to the within action; my business address is 535 N Brand Blvd. Suite 285, Glendale,
7 California 91203.

8 On the date indicated below, I served the document described as: **PLAINTIFF'S NOTICE OF**
9 **MOTION AND MOTION FOR AN ORDER APPROVING SETTLEMENT OF CLAIMS**
10 **BROUGHT PURSUANT TO THE PRIVATE ATTORNEY GENERAL'S ACT OF 2004;**
11 **MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties in this action by
12 sending a true copy thereof to interested parties as follows and as stated on the attached service
13 list:

14 Marlene S. Muraco
15 mmuraco@littler.com

16 Alec DiMario
17 adimario@littler.com

18 Yvonne Zapien
19 yzapien@littler.com

20 Kim Alvarez
21 kalvarez@littler.com

22 **LITTLER MENDELSON, P.C.**

23 50 W. San Fernando
24 7th Floor

25 San Jose, California 95113-2434

26 Telephone: 408-998- 4150

27 Facsimile: 408-288-5686

28 **Attorneys for Defendant PINK CHICKU LLC**

[✓] **BY E-MAIL:** I hereby certify that this document was served from Glendale, California, by e-
mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of
record in this action.

[✓] **BY ELECTRONIC SERVICE:** Based on an agreement of the parties to accept electronic
service, I caused the documents to be sent to the persons at the electronic service addresses listed
above via electronic mail. I did not receive an error message.

I declare under penalty of perjury under the laws of the State of California that the above is
true and correct. Executed on January 2, 2024, at Glendale, California.

Lilit Tunyan

Name



Signature