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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO-CENTRAL DIVISION

COLLEEN SHARP, BARBARA MIZE, ANGELA PODNIZHNYY, SHONTELLE MOORE, and TRACY LYNN CRENSHAW, individuals in their capacities as the State of California's designated proxies under the Private Attorneys General Act and on behalf of others, Plaintiffs, vs. SHIFTSMART INC., a Delaware corporation; and DOES 1 through 10 inclusive Defendants.	Case No.: 37-2023-00021163-CU-OE-CTL **PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Judge: Hon. Wendy M. Behan Dept.: C-66 Hearing Date: August 22, 2025 Hearing Time: 10:15 a.m. Complaint Filed: May 15, 2023 Trial Date: NA Discovery Cutoff: NA **[Decl. of Thomas D. Rutledge, [Proposed] Order, and Not. Of Mot. filed concurrently herewith]**

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

Plaintiffs Colleen Sharp, Barbara Mize, Angela Podnizhnyy, Shontelle Moore, and Tracy Lynn Crenshaw (the "Named Plaintiffs"), on behalf of themselves, Aggrieved Employees, the state of California as its designated proxies, and the putative Class (collectively, the "Plaintiffs"), very respectfully request preliminary approval of this class action and PAGA settlement. In this employment related case, Plaintiffs and Defendant Shiftsmart, Inc. (collectively, "the Parties") have reached a full and final settlement, the terms of which are contained in the Class Action and PAGA Settlement ("Settlement Agreement") attached as **Exhibit 1**[1] to the concurrently filed Declaration of Thomas D. Rutledge.

The central theme of Plaintiffs' case concerns allegations that Defendant misclassified the Named Plaintiffs and Class Members as independent contractors instead of employees and committed a number of Labor Code violations. The Settlement provides for a **$4,172,900** non-reversionary Gross Settlement Fund to benefit Settlement Class Members and Aggrieved Employees. On average and depending on how long they worked during the Class Period, Settlement Class Members and Aggrieved Employees are expected to receive approximately **$392** and **$6** apiece, respectively. No claim form is required—Class Members will receive payment automatically. The Settlement Agreement allocates $100,00 to resolve Plaintiffs' PAGA claims, with $65,000 payable to the Labor Workforce Development Agency (LWDA) and $35,000 to the Aggrieved Employees. Rutledge Decl., **Ex. 1**, ¶ ¶¶ I.12, I.29, and VIII.

Preliminary approval of this Settlement is warranted for multiple reasons. First, a presumption of fairness exists, as the Settlement was reached through extensive, mediated arm's length negotiations, sufficient investigation allowed Plaintiffs' counsel to act intelligently, and Plaintiffs' counsel are experienced in similar wage-and-hour class litigation. Second, the proposed Class Notice complies with California Rules of Court, Rules 3.766 and 3.769. Third, the proposed class is ascertainable, common questions of law and fact predominate over any individualized

[1] Capitalized terms used in this Motion shall have the same meanings as those set forth in the Settlement Agreement, the definitions of which are incorporated herein by reference.

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questions, Plaintiffs' claims are typical of those of the Class Members, Plaintiffs and their counsel have adequately represented, and will continue to adequately represent, the class, and proceeding as a class action is a superior means of resolving this dispute.

Accordingly, by this Motion, Plaintiffs very respectfully request preliminarily approval of the Settlement Agreement.

II. <u>PARTIES TO THE SETTLEMENT AGREEMENT.</u>

A. <u>The Defendant.</u>

Defendant Shiftsmart, Inc. operates a unique virtual marketplace platform, known as the Shiftsmart Platform, and a downloadable mobile app (the "Partner App"), that matches and connects independent contractors (referred to as "Shiftsmart Partners") – including Plaintiffs – with companies that need a workforce to meet their business needs (referred to as "Shiftsmart Clients"). Specifically, Shiftsmart's Partner App allows independent contractor "gig" workers (such as Plaintiffs) looking for work to sign up for individual one-off shifts consistent with their own schedules and locations, at various companies who make shifts available on the Partner App. All shifts are offered on multiple days and times, in various locations, with various companies, and the offered job types and available shifts vary and change frequently. Shiftsmart Partners are able to select shifts based on the type(s) of projects/tasks/jobs they are interested in performing, based on when they want to work, where they want to work, if they want to work, and for how much they want to work. Shiftsmart classifies Shiftsmart Partners as independent contractors. . Rutledge Decl., **Ex. 2** ¶¶ 19-59.

B. <u>The Named Plaintiffs.</u>

At various times over the past four years, Plaintiffs accessed the Shiftsmart Platform and signed up to perform tasks for various companies, including cleaning, janitorial, and administrative services, throughout California. After the Plaintiffs performed the tasks, Defendant was responsible for compensating the named Plaintiffs. Rutledge Decl., **Ex. 2** ¶¶ 19-59.

C. <u>The Putative Class and Aggrieved Employees.</u>

"Class Members" are "*all persons who provided services and/or performed tasks during at least one partial or complete shift via the Defendant's Application in California during the Settlement Class Period, including but not limited to, providing services and/or performing tasks for*

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Defendant's Customers." The "Settlement Class Period" means "*the period from March 20, 2021 to the date of preliminary approval.*" "Settlement Class" and/or "Settlement Class Members" – means "*all those persons who are Class Members and who have not properly and timely opted out of the Settlement*." Rutledge Decl., **Ex. 1**, ¶¶ II.2, II.17, II.31.

The term "Aggrieved Employee" means "PAGA Member" which is defined as "*all persons who provided services and/or performed tasks during at least one partial or complete shift via the Shiftsmart Application in California during the PAGA Period, including but not limited to, providing services and/or performing tasks for Defendant's Customers. The Parties agree that Defendant expressly denies that any such person was or is an employee of Defendant, Defendant's Customers, and/or the Released Parties during the time they provided services and/or performed tasks via the Shiftsmart Application. Defendant's Customers also expressly deny that any such person was an independent contractor of Defendant's Customers during the time they provided services and/or performed tasks via the Shiftsmart Application*." The "PAGA Period" is from "May 15, 2022 to the date of preliminary approval." Rutledge Decl., **Ex. 1**, ¶¶ II.16 and II.17.

Defendant represents the Class includes approximately 6,943 nonexempt putative Class Members who collectively worked approximately 45,209 workweeks during the Class Period. Rutledge Decl., **Ex. 1**, ¶¶ IV.5.2a. Defendant further represents there are 5,722 Aggrieved Employees who worked during the PAGA Period. Rutledge Decl., ¶ 120.

III. PROCEDURAL HISTORY AND RELEVANT FACTS.

A. Procedural History.

On or about April 26, 2023, Plaintiff Sharp performed gig services via the Shiftsmart app. Thoroughly dissatisfied with her experience, she retained Plaintiffs' Counsel shortly thereafter who promptly obtained Plaintiff Sharp's records from the Defendant. Rutledge Decl., ¶¶ 23-24.

On May 15, 2023, Plaintiff Sharp, via counsel, filed a notice with the LWDA to exhaust Plaintiff Sharp's pre-litigation requirements under the PAGA. Rutledge Decl., ¶ 25. On the same day, Plaintiff Sharp commenced a nonindividual representative PAGA enforcement action on behalf of the State of California and Aggrieved Employees in the Superior Court of California for the County of San Diego alleging the following PAGA claims:

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1) Failure to Pay Minimum/Regular Wages;
2) Failure to Pay State Overtime;
3) Failure to Pay Wages Timely;
4) Failure to Comply with Meal and Rest Break laws;
5) Failure to Provide Accurate Wage Statements;
6) Failure to Maintain Records;
7) Failure to Reimburse Business Expenses;
8) Failure to Pay Sick Pay;
9) Misclassification;
10) Failure to Maintain Workers' Compensation Insurance; and
11) Claim for Civil Penalties under the Private Attorney General Act.

ROA # 1.

On July 24, 2023, Plaintiffs filed a First Amended Complaint, adding Plaintiff Barbara M. Mize as a named Plaintiff (hereinafter, the "*Sharp*/*Mize* Action"). ROA # 13. On October 6, 2023, Plaintiffs in the *Sharp*/*Mize* Action filed a Second Amended Complaint, adding individual claims via the PAGA. ROA # 18.

On October 27, 2023, Defendant filed a Motion to Compel Arbitration (MTCA) in the *Sharp*/*Mize* case. ROA #19. On February 9, 2024, the Court granted Defendant's MTCA, and the case was stayed pending a resolution of the outcome of the *Sharp* and *Mize* individual arbitrations. ROA # 41.

On March 4, 2024, Plaintiff Sharp filed a demand for arbitration with the American Arbitration Association (AAA) against Defendants Shiftsmart Inc. and Circle K Stores Inc. This arbitration case alleges similar claims as the claims asserted in the *Sharp*/*Mize* Complaint, except the claims are asserted as individual claims under the Labor Code. Rutledge Decl., Ex. 1, ¶ I.3.

On March 5, 2024, Plaintiff Mize filed a demand for arbitration with the AAA against Defendants Shiftsmart Inc. and Circle K Stores Inc. This arbitration case alleged similar claims as the claims asserted in the *Sharp*/*Mize* Complaint, except the claims were asserted as individual claims under the Labor Code. Rutledge Decl., Ex. 1, ¶ I.4.

On March 5, 2024, Plaintiff Mize filed another demand for arbitration with the AAA against Defendants *Shiftsmart Inc., Quik Stop Markets, Inc., and EG Retail (America), LLC*. This arbitration demand alleged similar claims as the claims asserted in the *Sharp/Mize* Complaint, except the claims were asserted as individual claims under the Labor Code. Rutledge Decl., Ex. 1, ¶ I.5.

On April 23, 2024, Plaintiffs Tracy Lynn Crenshaw and Caitlyn Crenshaw filed a nonindividual only representative action complaint pursuant to the PAGA in the Superior Court of California for the County of San Diego entitled *Crenshaw, et al. v. Shiftsmart Inc., et al*., Case No. 37-2024-00019026-CU-OE-CTL (the "Crenshaw Complaint"). ROA # 1. In response, Defendants filed a MTCA. ROA #s 60-63.

From the outset of this litigation, Defendant mounted a vigorous defense. In particular, Defendant maintains that the Plaintiffs were classified as proper independent contractors who only worked minimal shifts for Shiftsmart Clients booked via the Shiftsmart application. Defendant alleges Plaintiffs were paid in full by Shiftsmart for the work performed. Defendant further claim Plaintiffs had no manager, and there are no decision-makers because the shifts were posted to the Shiftsmart application. Additionally, Shiftsmart's Clients likewise deny they employed Plaintiffs and putative class members or were a client employer of Plaintiffs and putative class members. Rutledge Decl., ¶ 35-39.

During a short period from about April 25, 2024 to May 20, 2024, however, the Parties—through counsel—explored the possibility of settlement. To facilitate meaningful negotiations, the Parties agreed to put a hold on litigation and participate in private mediation, contingent upon Defendants' production of relevant representative action data, including the total number of alleged employees, number of alleged pay periods worked, a random sampling of alleged payroll records, and copies of applicable documents governing the tasks Aggrieved Employees performed. Rutledge Decl., ¶ 40-41.

On May 20, 2024, the Parties participated in a private mediation with Steven Serratore, Esq.; however, they were unable to reach a settlement. Thereafter, the Parties resumed litigation. Rutledge Decl., **Ex. 1**, ¶ I.7.

On September 26, 2024, Plaintiff Mize filed a third separate demand for arbitration with the AAA against Defendants Shiftsmart Inc. and AU Energy LLC. This arbitration demand alleged similar claims as the claims asserted in the *Sharp*/*Mize* Complaint, except the claims were asserted as individual claims under the Labor Code. Rutledge Decl., **Ex. 1**, ¶ I.9.

On November 29, 2024, Plaintiff Shontelle Moore filed a demand for arbitration with the

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AAA against Defendants Shiftsmart Inc. and United Pacific Industries, Inc. This arbitration demand alleged similar claims as the claims asserted in the *Sharp*/*Mize* Complaint, except the claims were asserted as individual claims under the Labor Code. Rutledge Decl., **Ex. 1**, ¶ I.10.

On December 1, 2024, Plaintiff Shontelle Moore filed a second separate demand for arbitration with the AAA against Defendants Shiftsmart Inc. and Frito Lay, Inc. This arbitration demand alleged similar claims as the claims asserted in the *Sharp/Mize* Complaint, except the claims were asserted as individual claims under the Labor Code. Rutledge Decl., **Ex. 1**, ¶ I.11.

In December 2024, Plaintiffs' Counsel, on behalf of another former Shiftsmart worker, India Price, filed two more demand for arbitrations with the AAA. These arbitration demands alleged similar claims as the claims asserted in the *Sharp*/*Mize* Complaint, except the claims were asserted as individual claims under the Labor Code. Rutledge Decl., ¶ 47.

On December 31, 2024, Plaintiff Angela Podnizhnyy filed a complaint in the Superior Court of California for the County of San Diego entitled *Podnizhnyy v. Shiftsmart Inc*., Case No. 24CL031407N (the "*Podnizhnyy* Complaint"). The *Podnizhnyy* Complaint asserted individual claims under the Labor Code. Rutledge Decl., **Ex. 1**, ¶ I.12.

On January 17, 2025, the Court granted Defendants' MTCA in the *Crenshaw* case and the case was stayed pending resolution of the outcome of the *Crenshaw* individual arbitrations. ROA # 77.

On January 17, 2025, Plaintiff Moore filed a complaint in the Superior Court of California for the County of San Diego entitled *Moore v. Circle K Stores, Inc.*, Case 25CU003569N (the "*Moore* Complaint"). The *Moore* Complaint asserted individual claims under the Labor Code. ROA # 1.

On March 19, 2025, Plaintiffs Angela Podnizhnyy, Vernell Price, and Leanna Neggesmith filed a class action complaint in the Superior Court of California for the County of San Diego entitled *Podnizhnyy, et al. v. Circle K Stores Inc.*, Case No. 25CU015722C (the "*Podnizhnyy* Class Action Complaint"). The *Podnizhnyy* Class Action Complaint asserted similar claims as the *Sharp*/*Mize* Complaint against Defendant Circle K Stores Inc., except the claims were alleged as class not PAGA causes of action. ROA # 4.

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On April 4, 2025, the Court granted Plaintiffs Tracy Crenshaw and Caitlyn Crenshaw's Motion for Reconsideration of the Court's decision to grant Defendants' Motion to Compel Arbitration of the Crenshaw case, reversing its decision and lifting the stay of the Crenshaw case. ROA #10; Rutledge Decl., **Ex. 1**, ¶ I.15.

On April 11, 2025, Plaintiffs Shontelle Moore and Demitrious Market-Conley filed a nonindividual representative action PAGA complaint in the Superior Court of California for the County of San Diego entitled *Moore, et al. v. Shiftsmart Inc., et al*., Case No. 25CU019054C (the "*Moore* Complaint"). The *Moore* Complaint asserted similar claims as the *Sharp*/*Mize* and *Crenshaw* Complaints against Defendants Shiftsmart Inc., Aakashdeep Kumar, Richard Zicchino, Walmart, Inc., United Pacific Industries Inc., and Frito Lay, Inc. ROA # 14.

Following the Parties' unsuccessful mediation on May 20, 2024, the related proceedings continued for over a year. During this time, Plaintiffs' Counsel, on behalf of the Named Plaintiffs and other Shiftsmart workers, filed more than ten individual arbitrations with the AAA, actively engaged in arbitration-related discovery, obtained and reviewed voluminous documents, interviewed over 100 witnesses, filed dozens of motions, took at least four depositions—three of which were Person Most Qualified depositions of various corporate representatives of Defendant—and defended two depositions (Sharp and Mize). Rutledge Decl., ¶¶ 58-59, **Ex. 1**, ¶ I.17.

In late April 2025, the Parties, through counsel, reinitiated settlement negotiations with Mediator Steven Serratore. After several months of discussions, Mediator Serratore issued a settlement proposal, which the Parties accepted on May 7, 2025. Thereafter, the Parties spent an additional two months negotiating the terms of the formal Settlement Agreement. Rutledge Decl. ¶¶ 60-62, **Ex. 1**, ¶¶ I.17-I.18.

As part of the Settlement Agreement, the Parties entered a stipulation to dismiss the aforementioned AAA arbitrations, consolidate the *Sharp*/*Mize*, *Crenshaw*, *Podnizhnyy* Class Action, *Podnizhnyy*, and *Moore* Complaints into one case, and to allow Plaintiffs to file one amended Consolidated Third Amended Complaint (TAC) under the *Sharp*/*Mize* Case No. 37-2023-00021163-CU-OE-CTL (the "Consolidated Action") dismissing all Defendants but Shiftsmart, Inc. Rutledge

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Decl., Ex. 1, ¶ I. 20. On July 21, 2025, Plaintiffs filed the Parties' stipulation[2]. *Id*., **Ex. 2**.

Related to, but not a condition of the Settlement Agreement, the Defendant entered individual release agreements with 19 individuals represented by Plaintiffs' Counsel, some of whom were named Plaintiffs in the foregoing matters (Caitlyn Crenshaw, Demitrious Market-Conley, Leana Neggesmith, and Vernell Price).[3] On July 31, 2025, the Settlement Agreement was signed by all Parties. Rutledge Decl., **Ex. 1**.

On July 31, 2025, Plaintiffs' Counsel filed a copy of the Settlement Agreement with the LWDA in preparation for this Motion. To date, the LWDA has not served the Parties with any objections or notice whatsoever to the proposed Settlement. Rutledge Decl., ¶ 74.

IV. THE SETTLEMENT AGREEMENT.

A. Overview of The Settlement Terms.

The Parties have entered a Settlement Agreement that releases the claims of the Settlement Class and Aggrieved Employees in exchange for Defendant's agreement to pay the gross sum of $4,172,900. No portion of this fund reverts to the Defendant. After Court-approved deductions for attorneys' fees, litigation expenses, settlement administration costs, Class Representatives' Enhancement and Full Release Payments, and payment to the LWDA, the remaining funds will automatically be distributed *pro rata* to all Class Members who do not exclude themselves from the Class. Should any funds remain after the close of the check negotiation period, the residual funds shall be distributed to the California Controller's Unclaimed Property Fund. The Parties have selected Phoenix Settlement Administrators, an experienced and independent third party that provided the lowest bid among a number of bidders, to serve as the Settlement Administrator. Rutledge Decl., **Ex. 1**, ¶¶ I.12, I.29, and VIII.

[2] As of the date of this filing, the Stipulation and Proposed Order has not yet appeared on the Register of Actions. Nonetheless, a true and correct copy of the filing is attached as **Exhibit 2** to the Rutledge Declaration. Upon receipt of the signed order, Plaintiffs will promptly file the TAC. Alternatively, the Parties respectfully request that the Court accommodate the Parties' stipulation at or before the hearing in this matter.

[3] The Individual Agreements resolve these individuals' claims related to their tasks performed with Shiftsmart, including other claims unrelated to Plaintiffs' class claims. These settlement amounts are in addition to their shares of the class-wide settlement and these payments are separate from and are not being paid from the Gross Settlement Fund. As the Individual Agreements resolve these individual claims and do not address the class claims, these Individual Agreements are not discussed in the instant Motion.

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In Plaintiffs Counsel's opinion, the Settlement is fair, adequate, and reasonable and furthers the PAGA's remedial purpose. Rutledge Decl., ¶¶ 75-140.

B. The Class Notice Packet.

Per the Settlement Agreement, the Settlement Administrator shall mail Settlement Class Members and Aggrieved Employees the Notice of Proposed Class Action and PAGA Settlement ("Class Notice Packet"), a copy of which is attached as **Exhibit A** to the Settlement Agreement. Rutledge Decl., **Ex. 1**, **Ex. A**.

The proposed Class Notice provides Class Members and Aggrieved Employees material information about the Settlement, including its monetary terms, the nature of the claims and their release, and Class Members' right to object or exclude themselves from the Settlement, except for the Aggrieved Employees who have no lawful right to opt out of a court-approved PAGA Settlement. The Class Notice further informs Class Members and Aggrieved Employees of where and how to obtain additional information about the Settlement, the date and location of the final approval hearing, and provides the Settlement Administrator and Parties' counsel's contract information should Class Members have questions. Rutledge Decl., **Ex. 1**, **Ex. A**.

In the event a Notice is returned to the Settlement Administrator by the Post Office, the Settlement Agreement requires the Settlement Administrator to conduct a Class Member address search and re-mail the Class Notice to the most current address obtained. Rutledge Decl., **Ex. 1**, ¶ V.3 and VI.1.a. If a Notice is returned for a second time, the Settlement Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose notice was returned by the U.S. Postal Service. *Id.*

Plaintiffs believe the proposed Class Notice meets the requirements of the California Rules of Court, Rule 3.766(d) because it "fairly apprise[s] the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *7-Eleven Owners for Fair Franchising v. Southland Corp*., 85 Cal. App. 4th 1135, 1159 (2000). Plaintiffs very respectfully request that the Court approve the Class Notice.

C. Attorneys' Fees, Litigation Costs, and Enhancement Payments.

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The Settlement Agreement requires Plaintiffs' Counsel to move the Court to request an award of attorneys' fees in an amount not to exceed one third of the Gross Settlement Fund, reasonable litigation costs not to exceed $40,000, and Class Representatives' Enhancement and Full Release Payments. Rutledge Decl., ¶¶ 122-140. These proceeds along with settlement administration costs, if approved, will be deducted from the Gross Settlement Fund before distribution to the Class. *Id.*

D. <u>Estimated Allocation of the Gross Settlement Fund.</u>

The Parties estimate the Gross Settlement Fund will be allocated as follows:

Gross Class Settlement	**$4,172,900**
Est. Litigation Expenses	($40,000)
Attorneys' Fees	($1,390,967)
Payments to Class Reps.	($100,000)
Settlement Administration Expenses	($33,000)
To the LWDA	($65,000)
Total Expenses	($1,628,967)
Net Settlement Amount	**$2,543,933**
To the Aggrieved Employees	**$35,000**
To the Putative Class	**$2,569,763**

Rutledge Decl., **Ex. 1**, ¶¶ I.12, I.29, IV, and VIII.

V. <u>STANDARD OF REVIEW.</u>

"Public policy generally favors the compromise of complex class action litigation." *In re Cell Phone Termination Fee Cases,* 193 Cal. App. 4th 298 (2009). At the preliminary approval stage, the Court need only determine whether the proposed Settlement is within the range of reasonableness, and thus whether notice to the class of the settlement terms and conditions and the scheduling of a formal fairness hearing are worthwhile. *See* Cal. Rules of Court, Rule 3.769(c). In this context, courts generally do not address whether the settlement is ideal or the best outcome, but only whether the settlement is fair, adequate, free from collusion, and consistent with plaintiff's fiduciary obligations to the class. *Kullar v. Foot Locker Retail, Inc.,* 168 Cal. App. 4th 116 (2008); *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996).

A. <u>The Settlement Terms Are Fair, Reasonable, and Adequate.</u>

"In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as the strength of Plaintiff's case, the risk, expense,

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complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." *Wershba v. Apple Computers, Inc.,* 91 Cal. App. 4th 224, 233 (2001). A presumption of fairness exists where the settlement is reached through arm's-length bargaining. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996).

1. The Settlement Was Reached Via Arm's Length Negotiations.

The Settlement was reached after two years of intense litigation followed by extensive arm's-length negotiations with an experienced mediator. Throughout this process, the Parties thoroughly examined all aspects of the litigation, including Defendant's defenses against liability and class certification. Notably, attorneys' fees and service payments for the Plaintiffs were unaddressed until after all other material settlement terms had been finalized, ensuring that no tradeoff occurred between compensation for the Class and payments to Plaintiffs' Counsel or the Named Plaintiffs themselves. Defendant vigorously denies, and continue to deny, all claims and allegations asserted in this action. Rutledge Decl., ¶ 83. This Settlement, therefore, has the right to the presumption of fairness. *See Dunk,* 48 Cal. App. at 1802.

2. The Amount of the Settlement Is Reasonable.

Defendant agrees to pay $4,172,900, a substantial sum of money compared to many other class settlements. Settlement Class Members are expected to receive about $392 apiece from the Net Settlement Amount on average. Class Members and Aggrieved Employees will be paid automatically—no need to submit a claim. This Class recovery is *well* within the range of reasonable. *See* Rutledge Decl., ¶¶ 120-121.

3. The Risk of Continued Litigation Supports Class Settlement.

The significance of this recovery becomes even more apparent when weighed against the risks of continued litigation. In the *Crenshaw* case, for example, Defendant appealed the Court's denial of its MTCA. Plaintiffs have not yet obtained class certification and had the case continued, the Defendant likely would have sought summary judgment on multiple grounds. For instance, Defendant argued that its arbitration agreements are enforceable and that the Plaintiffs were

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properly classified as independent contractors who only worked minimal shifts booked via the Shiftsmart application. In particular, Defendant maintains that Plaintiffs were paid in full by Shiftsmart for the work performed, Plaintiffs had no manager, and there are no decision-makers because the shifts were posted to the Shiftsmart application. Indeed, Plaintiffs picked the shifts using the Shiftsmart application, delivered four hours or less of service, and left. Moreover, even if Plaintiffs were misclassified – which Defendant maintains that they were not – Defendant argued that Plaintiffs' meal and rest break claims and reimbursement claims required highly individualized inquiries, and that the PAGA claims were unmanageable. These and many other defenses Defendant raised played a substantial role in shaping the settlement amount. Rutledge Decl. ¶¶ 75-83.

4. <u>The Discovery Obtained and Stage of Proceedings Supports Settlement.</u>

This action was heavily litigated. Among other things, Plaintiffs filed more than five lawsuits, ten arbitrations, a number of contested motions, and were deep in the arbitration process. The Parties exchanged thousands of documents, and Defendant provided a substantial sampling of the Class Members' payroll information Plaintiffs needed to measure damages and assess liability. The Parties went into mediation with a good understanding of the critical issues and the relevant evidence. Rutledge Decl., ¶¶ 75-83. This factor also supports approval of the Settlement.

5. <u>Views and Experience of Counsel Support Settlement.</u>

The Parties are represented by counsel with substantial experience in class action litigation and settlement negotiations. Plaintiffs' Counsel—whose experience in this field is only two months shy of 30 years—believes the Settlement is fair, adequate, and reasonable. Rutledge Decl., ¶¶ 3-22. Courts typically defer to Plaintiffs' Counsel judgment. *See Kullar*, *supra,* 168 Cal. App. at 129 ("The court . . . should give considerable weight to the competency and integrity of counsel . . . in assuring itself that a settlement agreement represents an arm's-length transaction entered without self-dealing or other potential misconduct.")

Plaintiffs' Counsel truly believes this proposed class settlement is fair and reasonable. The monetary relief obtained from this Settlement Agreement is excellent compared to the possible outcome if this case did not settle. *See* Rutledge Decl., ¶¶ 75-140 (for a detailed explanation of Plaintiffs' *Kullar* analysis).

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B. Provisional Certification of the Settlement Class is Appropriate.

To obtain certification under Code Civ. Pro. § 382, a party must "establish the existence of both an ascertainable class and a well-defined community of interest among the class members." *Lockheed Martin Corp. v. Superior Court*, 29 Cal. 4th 1096, 1103-1104 (2003). "The community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." *Richmond v. Dart Indus., Inc*., 29 Cal. 3d 462, 470 (1981).

1. The Proposed Class Is Numerous and Ascertainable.

"No set number is required as a matter of law for the maintenance of a class action," and courts have certified classes with as few as 28 members. *Rose v. City of Hayward*, 126 Cal. App. 3d 926, 934 (1981). Here, with over 6,000 Class Members, the numerosity requirement is clearly met.

Class members are considered ascertainable when they can be readily identified "without unreasonable expense or time by reference to official records." *Aguiar v. Cintas Corp. No. 2*, 144 Cal. App. 4th 121, 146 (2006). In this case, Class Members can be easily identified through Defendant's records, satisfying the ascertainability requirement.

2. The Community of Interest Requirements Are Met.

a. Common Questions Predominate.

"The ultimate question the element of predominance presents is whether the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants." *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1023 (2012).

Here, Plaintiffs contend there are class-wide issues that predominate, namely, the question of whether Defendant misclassified Plaintiffs and Class Members as independent contractors and whether Defendant violated the Labor Code. Because Defendant is an enterprise that Plaintiffs contend followed the same procedures with respect to all Class Members, Plaintiffs maintain that whether Defendant's misconduct was unlawful can be determined on a class-wide basis.

b. The Named Plaintiffs' Claims are Typical.

A representative plaintiff's claims are typical if they (1) arise from the same event that give rise to the claims of other class members and (2) are based on the same legal theories. *Miller v. Woods*, 148 Cal. App. 4th 867, 872-73 (1983). When the same underlying conduct affects the named plaintiffs and the putative class, the typicality requirement is met irrespective of varying fact patterns that may underlie individual claims. *Daniels v. Centennial Grp., Inc.*, 16 Cal. App. 4th 467, 473 (1993).

In this case, the Named Plaintiffs allege they and all Class Members suffered the same misclassification and Labor Code violations. Claims of this sort are routinely found to be typical. *See Richmond, supra*, 29 Cal. 3d at 470.

c. <u>The Class is Adequately Represented.</u>

"Adequacy of representation depends on whether the Plaintiff's attorney is qualified to conduct the proposed litigation and the Plaintiff's interests are not antagonistic to the interests of the class." *McGhee v. Bank of Am*., 60 Cal. App. 3d 445, 450 (1976).

Here, the Named Plaintiffs have actively participated throughout the litigation, including by actively pursuing their individual claims in court and arbitration, submitting to their depositions (Mize and Sharp), responding to discovery, providing relevant documents, remaining apprised of case developments and settlement negotiations, and ultimately executing the Settlement Agreement. In making litigation and settlement decisions, the Named Plaintiffs consistently prioritized the interests of the Class and hold no conflicts of interest with the putative class members. Rutledge Decl., ¶¶ 122-133.

Further, Plaintiffs' Counsel possesses extensive experience in class action litigation, having collectively represented employees in numerous wage-and-hour class actions and PAGA matters for almost 30 years. Consistent with his role in prior cases, Plaintiffs' Counsel will continue to diligently fulfill his fiduciary obligations to the putative Class. Rutledge Decl., ¶¶ 3-22.

d. <u>Class Action Best Serves Judicial Economy.</u>

A class action is the preferred method when individual claims are too small to justify separate lawsuits and when the class mechanism prevents redundant or repetitive litigation. *Aguiar v. Cintas Corp. No. 2*, 144 Cal. App. 4th 121, 146 (2006). This is especially true in wage-and-hour cases involving uniform employment policies or misclassification schemes, where the damages to

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individual class members may be modest but the legal and factual issues are nearly identical across the class. *Brinker Restaurant Corp. v. Superior Court,* 53 Cal. 4th 1004, 1021 (2012); *Sav-On Drug Stores, Inc. v. Superior Court,* 34 Cal. 4th 319, 340 (2004).

Here, the evidence demonstrates that all Class Members share identical claims arising from a common set of facts but involve relatively modest damages. Plaintiffs maintain that resolving this matter as a class action will conserve time, effort, and resources while ensuring consistent outcomes. Rutledge Decl., ¶¶ 23-72.

C. Reasons to Preliminarily Approve the PAGA Settlement Allocation.

Plaintiffs also request that the Court preliminarily approve the PAGA settlement allocation, as it is fair and reasonable under the circumstances. Notably, this case primarily involves a class settlement aimed at compensating workers directly impacted by Defendant's alleged misconduct, making it appropriate to allocate a greater share of the settlement funds to Class Members rather than the State of California.

Further, there is no indication that the Labor Commissioner has ever cited Defendant for Labor Code violations. This absence of prior citations would likely have supported Defendant's request for leniency, given the Court's broad discretion in awarding PAGA penalties under the Labor Code.

VI. CONCLUSION.

For the foregoing reasons, Plaintiffs very respectfully request that the Court (l) preliminarily approve the proposed Settlement, (2) provisionally certify the Class for settlement purposes only, (3) appoint the Named Plaintiffs as Class Representatives, (4) appoint Plaintiffs' counsel as Class Counsel, (5) direct notice to be distributed to the Class and Aggrieved Employees, and (6) schedule a final approval hearing.

Respectfully submitted,

Dated: July 31, 2025

Law Office of
Thomas D. Rutledge

By: */s/Thomas D. Rutledge*
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PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

I, THOMAS D. RUTLEDGE, the undersigned, am employed in the County of San Diego, State of California; I am over the age of 18 and not a party to the within action; my business address is 16956 Via de Santa Fe, Suite 1847, Rancho Santa Fe, California 92091-4606.

On July 31, 2025, I served the foregoing document(s) described as:

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CLASS ACTION AND PAGA SETTLEMENT

on the interested parties to this action by placing a copy thereof enclosed in a sealed envelope addressed as follows: **See Attached List.**

☐**(BY MAIL)** I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence was deposited with the United States Postal Service this same day in the ordinary course of business at our Firm's office address in San Diego, California. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.

☒**(BY E-MAIL via E-file)** I am readily familiar with the business practice for collection and processing of correspondence for emailing with the Court authorized third-party vendor. This correspondence was sent via email via this third-party vendor pursuant to the vendor's policies and practices.

☐(BY OVERNIGHT DELIVERY SERVICE) I served the foregoing document by Federal Express, an express service carrier which provides overnight delivery, as follows. I placed true copies of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed to each interested party as set forth above, with fees for overnight delivery paid or provided for.

☐(BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the above named addressee(s).

☐(BY FACSIMILE) I caused such documents to be delivered via facsimile to the offices of the addressee(s) at the following facsimile number:

Executed July 31, 2025, at San Diego, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

/s/THOMAS D. RUTLEDGE
THOMAS D. RUTLEDGE

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