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

RITA RAY, individually, and on behalf of others
similarly situated,

Plaintiff,

vs.

FAMILIES TOGETHER OF ORANGE
COUNTY, a California Nonprofit Corporation;
and DOES 1 through 25, inclusive,

Defendants.

Case No. 30-2023-01324555-CU-OE-CXC
[consolidated with Case No. 30-2023-
01336054-CU-OE-CJC]

Honorable William D. Cluster
Department CX101

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

Reservation No.: 74341876
Date: August 9, 2024
Time: 9:00 a.m.
Dept.: CX101

Complaint Filed: May 8, 2023
Trial Date: Not Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on **August 9, 2024** at **9:00 a.m.** in **Department CX101** of the above-captioned Court located at the Civil Complex Center, 751 West Santa Ana Boulevard, Santa Ana, California 92701, pursuant to California Code of Civil Procedure section 382 and Rule 3.769 of the California Rules of Court, Plaintiff Rita Ray (“Plaintiff”) will and hereby does move the Court for an Order granting preliminary approval of the proposed class action and PAGA settlement between Plaintiff and Defendant Families Together of Orange County (“Defendant”).

Plaintiff requests that the Court enter an Order:

1. Preliminarily approving the Joint Stipulation of Class Action and PAGA Settlement (“Settlement” or “Settlement Agreement”) attached as Exhibit 2 to the Declaration of Jonathan M. Genish in Support of Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA Settlement (“Genish Decl.”);

2. Certifying the Class for Settlement purposes;

3. Appointing Plaintiff Rita Ray as the Class Representative;

4. Appointing Jonathan M. Genish, Barbara DuVan-Clarke, Alexander K. Spellman, P.J. Van Ert, and Annabel Blanchard of Blackstone Law, APC as Class Counsel;

5. Appointing Apex Class Action LLC as the Settlement Administrator;

5. Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as Exhibit 1 to the [Proposed] Order Granting Preliminary Approval of Class Action and PAGA Settlement, to be mailed to the Class;

6. Approving the opt-out and objection procedures provided in the Settlement Agreement and set forth in the Class Notice;

7. For each Class Member, directing Defendant to furnish the Class Member’s: full name; last known mailing address; last known telephone number; Social Security number; dates worked for Defendant during the Class Period; dates worked for Defendant during the PAGA Period; the number of Workweeks and PAGA Pay Periods during the Class Period and PAGA Period based on Defendant’s payroll data, where feasible; and such other information as is necessary for the Settlement Administrator

1 to confirm Workweeks and Pay Periods, to the Settlement Administrator within thirty (30) calendar days
2 after entry of the order granting preliminary approval of the Settlement;

3 8. Approving the proposed deadlines for the settlement administration process; and

4 9. Setting a Final Approval Hearing.

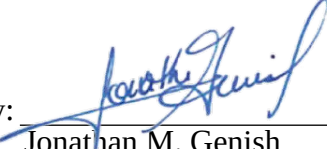
5 Pursuant to California Labor Code section 2699(1)(2) and concurrently with the filing of this
6 Motion, a copy of the Settlement was submitted to the California Labor and Workforce Development
7 Agency (“LWDA”) via online submission through the LWDA’s website. (Genish Decl., ¶46).

8 This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the
9 Declaration of Jonathan M. Genish, the Declaration of Plaintiff Rita Ray, the pleadings and other records
10 on file with the Court in this matter, and any other further evidence or argument that the Court may
11 properly receive at or before the hearing.

12 Respectfully submitted,

13 Dated: July 17, 2024

BLACKSTONE LAW, APC

14
15 By: 

Jonathan M. Genish
Attorneys for Plaintiff Rita Ray

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Rita Ray (“Plaintiff”) seeks preliminary approval of the Joint Stipulation of Class Action
4 and PAGA Settlement (“Settlement” or “Settlement Agreement”) entered into between Plaintiff and
5 Defendant Families Together of Orange County (“Defendant”) (together, with Plaintiff, the “Parties”).
6 (Declaration of Jonathan M. Genish in Support of Plaintiff’s Motion for Preliminary Approval of Class
7 Action and PAGA Settlement [“Genish Decl.”], Exh. 2). The Settlement terms are outlined as follows:

- 8
- Class Size: Approximately 343 individuals.
 - Gross Settlement Amount: Eight Hundred Thousand Dollars and Zero Cents (\$800,000.00).
 - Attorneys’ Fees and Costs: Attorneys’ fees of thirty-five percent (35%) of the Gross Settlement Amount (\$280,000.00 if the Gross Settlement Amount is \$800,000.00) plus actual litigation costs and expenses not to exceed Forty Thousand Dollars and Zero Cents (\$40,000.00), to be paid from the Gross Settlement Amount.
 - Enhancement Payment: Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00), to be paid from the Gross Settlement Amount.
 - PAGA Amount: Seventy-Five Thousand Dollars and Zero Cents (\$75,000.00) from the Gross Settlement Amount, 75% of which will be paid to the Labor and Workforce Development Agency (“LWDA”) and the remaining 25% to be paid to the PAGA Employees.
 - Settlement Administration Costs: Not to exceed Eight Thousand Five-Hundred Dollars and Zero Cents (\$8,500.00), to be paid from the Gross Settlement Amount.
 - Estimated Net Settlement Amount: Three Hundred Eighty-Nine Thousand Dollars and Zero Cents (\$389,000.00) to be distributed to Settlement Class Members.

19 As set forth herein, the Settlement is the product of informed discovery and arms-length
24 negotiations, and provides a fair, adequate, and reasonable recovery for the Class. Plaintiff therefore
25 respectfully requests that the Court grant preliminary approval of the Settlement, conditionally certify the
26 Class, approve the proposed Notice of Class Action Settlement (“Class Notice”), and set a hearing date
27 for final settlement approval, among other requested relief.

28 ///

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant is a non-profit healthcare provider operating four (4) permanent locations as well as a mobile clinic. Plaintiff was employed by Defendant as an hourly-paid, non-exempt registered nurse from approximately March 2021 to approximately June 2024. (Declaration of Rita Ray in Support of Motion for Preliminary Approval of Class Action and PAGA Settlement [“Ray Decl.”], ¶ 3).

On May 8, 2023, Plaintiff provided written notice to the LWDA by online submission and to Defendant by U.S. Certified Mail, pursuant to California Labor Code Section 2699.3, of the specified provisions of the California Labor Code alleged to have been violated by Defendant (“PAGA Letter”). (Genish Decl., ¶ 9, Exh. 1 thereto).

On May 8, 2023, Plaintiff filed a Class Action Complaint for Damages in the action entitled *Rita Ray v. Families Together of Orange County*, Orange County Superior Court Case No. 30-2023-01324555-CU-OE-CXC (the “Class Action Complaint”), thereby commencing a putative class action against Defendant (the “Class Action”) (*Id.*, ¶ 10).

The Class Action Complaint alleges nine (9) causes of action for violations of the California Labor Code for failure to pay overtime wages, failure to pay minimum wages, failure to provide compliant meal periods and premium payments in lieu thereof, failure to provide compliant rest periods and premiums payments in lieu thereof, failure to provide accurate wage statements, failure to timely pay wages upon termination, and failure to reimburse necessary business expenses, for violations of California Business & Professions Code Section 17200, *et seq.* based on the aforementioned California Labor Code violations,. (*Id.*, ¶ 11).

On July 12, 2023, Plaintiff filed a Complaint for Enforcement Action Under the Private Attorneys General Act, California Labor Code §§ 2698, *Et Seq.* entitled *Rita Ray v. Families Together of Orange County*, Orange County Superior Court Case No. 30-2023-01336054 (the “PAGA Complaint”), which, along with the PAGA Letter, commenced a representative PAGA action against Defendant (the “PAGA Action”). (*Id.*, ¶ 10).

The PAGA Complaint alleges a single cause of action for civil penalties under PAGA based on the same California Labor Code violations alleged in the Class Action Complaint. Together, the Class Action and the PAGA Action shall be referred to as the “Action.”

1 On July 19, 2023, Defendant filed its answer to Plaintiff’s Class Action Complaint and asserted
2 fifty-five (55) affirmative defenses.

3 On August 3, 2023, the Court entered an Order Consolidating the Class Action with the PAGA
4 Action and designated the Class Action as the lead case.

5 On August 7, 2023, Defendant filed its Answer to Plaintiff’s PAGA complaint in the Action and
6 asserted forty-seven affirmative defenses.

7 Shortly thereafter, the Parties agreed to participate in a private mediation. In preparation for the
8 agreed-upon mediation, Plaintiff sent informal written discovery requests to Defendant, and Defendant
9 produced information, documents, and data in response. The documents and data provided by Defendant
10 included the personnel file of Plaintiff, a representative sampling of the putative class members’ and
11 aggrieved employees’ time and pay data, and Defendant’s employee handbook, and policies relevant to
12 its wage and hour practices, among other information and documents.

13 On February 9, 2024, the Parties participated in a formal mediation conducted by Tripper Ortman,
14 Esq. (“Mediator”), a neutral and respected mediator with extensive experience in complex wage and hour
15 matters. (*Id.*, ¶ 13). At the mediation, the Parties were able to reach an agreement in principle to resolve
16 this dispute on a class and representative basis and, on February 9, 2024, the Parties accepted a written
17 mediator’s proposal memorializing the key settlement terms. (*Ibid*). Thereafter, the Parties worked
18 diligently to further negotiate and memorialize the settlement terms in a long-form settlement agreement.
19 (*Ibid*).

20 On June 4, 2024, the Parties executed the Settlement Agreement. (*Id.*, ¶ 14; Exh. 2 thereto).

21 Plaintiff and Defendant have also entered into a separate settlement and release agreement,
22 executed on May 1, 2024, to settle Plaintiff’s alleged individual claims against Defendant (“Individual
23 Settlement Agreement”). Although the terms of the Individual Settlement Agreement are confidential,
24 Plaintiff will make the Individual Settlement Agreement available for the Court’s in-camera review upon
25 the Court’s request.

26 **III. THE SETTLEMENT TERMS**

27 **A. Class Definition**

28 For purposes of settlement only, the Parties have agreed that the Class shall be defined as: “all

current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time during the Class Period.” (“Class Members” or “Class”). (Genish Decl., ¶ 15; Settlement Agreement, ¶ 6.b). The Class Period is defined as the period from May 8, 2019 through the date of Preliminary Approval of the Settlement. (Genish Decl., ¶ 15; Settlement Agreement, ¶ 6.f). Based on information provided by Defendant, it is estimated that there are a total of three hundred and forty-three (343) Class Members. (Genish Decl., ¶ 15).

B. Amount of Settlement

The Parties have agreed to settle the class and PAGA claims at issue in the Action for a non-reversionary Gross Settlement Amount of Eight Hundred Thousand Dollars and Zero Cents (\$800,000.00), exclusive of employer-side payroll taxes. (Genish Decl., ¶ 16; Settlement Agreement, ¶ 6.p).

C. Allocation and Funding of the Gross Settlement Amount

The Gross Settlement Amount is a common fund and therefore includes all requested costs, fees, and other allocations. (Genish Decl., ¶ 16; Settlement Agreement, ¶ 6.p). The Gross Settlement Amount includes: (1) Class Counsel’s fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$280,000.00 if the Gross Settlement Amount is \$800,000.00); (2) Class Counsel’s actual litigation costs and expenses, not to exceed Forty Thousand Dollars and Zero Cents (\$40,000.00); (3) Settlement Administration Costs, not to exceed Eight Thousand Five Hundred Dollars and Zero Cents (\$8,500.00); (4) Enhancement Payment in the amount of Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00); and (5) PAGA Amount in the amount of Seventy-Five Thousand Dollars and Zero Cents (\$75,000.00). (Genish Decl., ¶ 16; Settlement Agreement, ¶¶ 6.p, 9, 10, 11, and 12). After the above-estimated amounts are deducted from the Gross Settlement Amount, the Net Settlement Amount that will be available for Class Members is currently estimated to be Three Hundred Eighty-Nine Thousand Dollars and Zero Cents (\$389,000.00). (Genish Decl., ¶ 16). Additionally, 25% of the PAGA Amount (“PAGA Employee Amount”), which is \$18,750.00 out of \$75,000.00 will be fully distributed to: “all current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time during the PAGA Period.” (“PAGA Employees”). (Genish Decl., ¶ 16; Settlement Agreement, ¶¶ 6.p, 6.x, 6.y, and 11). The “PAGA Period” is defined as the period from May

1 8, 2022 through the date of Preliminary Approval of the Settlement. (Genish Decl., ¶ 16; Settlement
2 Agreement, ¶ 6.z).

3 Defendant has represented that the Class Members worked a total of 23,173 Workweeks during
4 the period from May 8, 2019 through February 9, 2024. (Genish Decl., ¶ 17; Settlement Agreement, ¶
5 13). If it is determined by the Settlement Administrator that the total number of Workweeks worked by
6 the Class Members during the Class Period actually exceeds 23,173 by more than 10% (i.e., by more than
7 2,317 Workweeks), then the Gross Settlement Amount will be increased on a *pro rata* basis equal to the
8 percentage increase in the number of Workweeks worked by the Class Members above the 10% buffer.
9 (Genish Decl., ¶ 17; Settlement Agreement, ¶ 13). For example, if the number of Workweeks increases
10 by 11% to 25,722 Workweeks, then the Gross Settlement Amount will increase by 1%. (Genish Decl., ¶
11 17; Settlement Agreement, ¶ 13). As an alternative to increasing the Gross Settlement Amount pursuant
12 to the Escalator Clause, Defendant in its sole discretion has the option to select an earlier end date for the
13 Class Period (and the release of Released Class Claims), by selecting a Class Period end date which is
14 one week prior to the date upon which the Workweeks exceeds 25,490 (equivalent to 110% of 23,173)
15 (Genish Decl., ¶ 17; Settlement Agreement, ¶ 13.a).

16 The Net Settlement Amount will be distributed and paid to all Class Members who do not submit
17 a timely and valid Request for Exclusion (“Settlement Class Members”) on a *pro rata* basis based on the
18 number of weeks each Class Member worked for Defendant as an hourly-paid or non-exempt employee
19 in California during the Class Period (“Workweeks”). (Genish Decl., ¶ 18; Settlement Agreement, ¶¶ 6.ll
20 and 6.mm). The *pro rata* share of the Net Settlement Amount that a Class Member may be eligible to
21 receive under the Class Settlement (“Individual Settlement Share”) will be calculated by the Settlement
22 Administrator, in accordance with the Settlement Agreement. (Genish Decl., ¶ 18; Settlement Agreement,
23 ¶¶ 6.s and 14).

24 The PAGA Employee Amount will be distributed and paid to all PAGA Employees on a *pro rata*
25 basis based on the number of Pay Periods each PAGA Employee worked for Defendant as an hourly-paid
26 or non-exempt employee in California during the PAGA Period (“Pay Periods”). (Genish Decl., ¶ 19;
27 Settlement Agreement, ¶¶ 6.bb and 11). The *pro rata* share of the PAGA Employee Amount that a PAGA
28 Employee may be eligible to receive under the PAGA Settlement (“Individual PAGA Payment”) will be

1 calculated by the Settlement Administrator, in accordance with the Settlement Agreement. (Genish Decl.,
2 ¶ 19; Settlement Agreement, ¶¶ 6.q and 15).

3 Each Individual Settlement Share will be allocated as thirty percent (30%) wages and seventy
4 percent (70%) penalties, interest, and non-wage damages. (Genish Decl., ¶ 20; Settlement Agreement, ¶
5 16). The portion allocated to wages will be reported on an IRS Form W-2 and the portions allocated to
6 penalties, interest, and non-wage damages will be reported on an IRS Form 1099 (if applicable) by the
7 Settlement Administrator. (Genish Decl., ¶ 20; Settlement Agreement, ¶ 16). The Settlement
8 Administrator will withhold the employee's share of taxes and withholdings with respect to the wages
9 portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their net
10 payment of their Individual Settlement Share ("Individual Settlement Payment"). (Genish Decl., ¶ 20;
11 Settlement Agreement, ¶¶ 6.r and 16). The employer's share of taxes and contributions in connection
12 with the wages portion of Individual Settlement Shares shall be paid by Defendant separately and in
13 addition to the Gross Settlement Amount. (Genish Decl., ¶ 20; Settlement Agreement, ¶¶ 6.k, 6.p, and
14 16). Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will
15 be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator. (Genish Decl., ¶ 20;
16 Settlement Agreement, ¶ 16).

17 The Settlement Agreement is a non-reversionary settlement, and does not require class members
18 to make a claim in order to participate. (Genish Decl., ¶ 21; Settlement Agreement, ¶¶ 6.p and 34). The
19 Net Settlement Amount will be fully distributed to Settlement Class Members and the PAGA Amount
20 will be fully distributed to the LWDA and PAGA Employees, in accordance with the Settlement
21 Agreement. (Genish Decl., ¶ 21; Settlement Agreement, ¶¶ 14 and 15). No money will revert to
22 Defendant. (Genish Decl., ¶ 21; Settlement Agreement, ¶ 6.p).

23 Each Individual Settlement Payment and Individual PAGA Payment check will be valid and
24 negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and
25 thereafter, shall be canceled. (Genish Decl., ¶ 22; Settlement Agreement, ¶ 34). Any funds associated
26 with such canceled checks will be distributed by the Settlement Administrator to the State of California's
27 Unclaimed Property Division in the name of the Settlement Class Member and/or PAGA Employee.
28 (Genish Decl., ¶ 22; Settlement Agreement, ¶ 34).

1 **D. Released Claims**

2 Upon the full funding of the Gross Settlement Amount, Plaintiff and all Settlement Class
3 Members will be deemed to have fully, finally, and forever released, settled, compromised, relinquished,
4 and discharged the Released Parties of all Released Class Claims. (Settlement Agreement, ¶ 35).

5 Upon the full funding of the Gross Settlement Amount, Plaintiff, the State of California with
6 respect to all PAGA Employees, and all PAGA Employees will be deemed to have fully, finally, and
7 forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released
8 PAGA Claims. (*Id.*, ¶ 36).

9 “Released Class Claims” means any and all claims, debts, liabilities, demands, obligations,
10 guarantees, costs, expenses, attorneys’ fees, damages, or causes of action which were alleged or which
11 could have been alleged based on the factual allegations in the Class Action Complaint, arising during
12 the Class Period, under any federal, state, or local law, and shall specifically include claims for Released
13 Parties’ alleged failure to pay overtime and minimum wages, provide compliant meal and rest periods
14 and associated premium payments, timely pay wages during employment and upon termination, provide
15 compliant wage statements, and reimburse necessary business-related expenses in violation of California
16 Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, and
17 2802, and Industrial Welfare Commission Wage Orders, and all claims for attorneys’ fees and costs and
18 statutory interest in connection therewith, California Business and Professions Code sections 17200, *et*
19 *seq.*, and any other claims, including claims for statutory penalties, pertaining to the Class Members. (*Id.*,
20 ¶ 6.ee).

21 “Released PAGA Claims” means any and all claims arising from any of the factual allegations in
22 the PAGA Complaint and PAGA Letter, arising during the PAGA Period, for civil penalties under the
23 Private Attorneys General Act of 2004, California Labor Code sections 2698 *et seq.*, including all claims
24 for attorneys’ fees and costs related thereto, for Defendant’s alleged failure to pay overtime and minimum
25 wages, provide compliant meal and rest periods and associated premium payments, timely pay wages
26 during employment and upon termination, provide complaint wage statements, maintain complete and
27 accurate payroll records, and reimburse necessary business-related expenses in violation of California
28 Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, and

2802, and Industrial Welfare Commission Wage Orders, including *inter alia*, Wage Order 4-2001. (*Id.*, ¶ 6.ff).

“Released Parties” means Defendant and all of Defendant’s past and present subsidiaries, affiliates, shareholders, members, agents, predecessors, successors, acquirers, parents, officers, directors, shareholders, employees, agents, principals, representatives, accountants, auditors, consultants, insurers and reinsurers and assigns. (*Id.*, ¶ 6.gg).

IV. STANDARD OF REVIEW FOR PRELIMINARY APPROVAL

The settlement of a class action requires court approval. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996). “In general, questions whether a settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court’s broad discretion.” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 234-35 (2001) (disapproved on other grounds).

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

The initial evaluation of the settlement at the preliminary approval step “is not a fairness hearing.” *Armstrong v. Board of School Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980). Rather, the limited purpose of this initial inquiry is to determine, at a threshold level, only whether the proposed settlement is within the range of possible approval and, as a result, “whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing.” 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. *See In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006).

Preliminary approval does not require a court to make a final determination that the settlement is

1 fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after notice
2 of the settlement has been given to the class members and they have had an opportunity to object or
3 exclude themselves from the settlement. See Cal. Rules of Court, Rule 3.769(g). In considering a
4 potential class settlement, the court need not reach any ultimate conclusions on the issues of fact and law
5 which underlie the merits of the dispute and need not engage in a trial on the merits. See *Officers for
6 Justice v. Civil Service Commission*, 688 F.2d 615, 625 (9th Cir. 1982).

7 **V. THE SETTLEMENT IS PRESUMED FAIR**

8 **A. The Settlement Was Reached as a Result of Arm's-Length Bargaining**

9 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is
10 reached through arm's-length bargaining.” *Wershba*, 91 Cal.App.4th at 245; see also *Clark v. Am.
11 Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009). Here, the Parties' settlement negotiations
12 were at all times made at arm's-length and were adversarial. (Genish Decl., ¶ 23). The Settlement was
13 reached following a full day of mediation with a highly respected mediator with substantial experience
14 mediating wage and hour cases and continued negotiations. (Ibid). At all times, Plaintiff was willing
15 and prepared to litigate this matter through class certification and trial if the Parties had been unable to
16 reach a favorable resolution. (*Id.*, ¶ 23, Ray Decl. ¶ 9).

17 **B. Sufficient Investigation and Discovery by Experienced Class Counsel**

18 Courts typically assess the status of discovery in determining whether a class action settlement
19 agreement is fair, reasonable, and adequate. *Dunk*, 48 Cal.App.4th at 1801. Prior to mediation, Defendant
20 produced a representative sampling of putative class members' time and pay data, as well as Defendant's
21 employee handbooks, relevant wage and hour policies, and information regarding the total number of
22 putative class members, the total number of former putative class members, the average rate of pay of the
23 putative class members, and the number of workweeks and pay periods of the putative class members.
24 (Genish Decl., ¶ 24).

25 This allowed Class Counsel to conduct an informed assessment and analysis of the strengths and
26 weaknesses of the claims and the potential class-wide damages. (*Id.*, ¶ 25). Based on information
27 exchanged, the Parties extensively briefed issues regarding class certification and liability and provided
28 their analyses to the Mediator who helped the Parties debate the strengths and weakness of their respective

positions. (*Id.*, ¶ 26). Additionally, settlement negotiations were conducted by highly capable and experienced counsel. (Genish Decl., ¶¶ 1-8). Accordingly, Class Counsel had sufficient information and experience to act intelligently in negotiating the Settlement.

C. The Settlement is Fair and Reasonable in Light of the Parties' Respective Legal Positions and Recovery Risks

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

Here, the reasonableness of the Settlement is underscored by the fact that Defendant has legal and factual grounds for defending the Action. Based upon Class Counsel’s experience litigating similar complex matters, Plaintiff reasonably expected a vigorous and lengthy defense to both class certification and the merits of the Action absent a settlement.

1. Class Counsel’s Analysis of the Maximum Available Liability and Damages

Class Counsel analyzed all available data and estimated Defendant’s maximum potential exposure to be approximately \$6,861,151.00, assuming the litigation was successful at trial on all claims at issue and every employee had a violation for each claim on every shift worked, and then reduced this exposure analysis based on the challenges facing the likelihood of obtaining class certification, prevailing at trial, and other attendant risks. (Genish Decl., ¶ 27). This estimate is based off an estimated maximum liability for all claims at issue and the total aggregate workweeks during the relevant time period, less interest, and based on the analysis of the data which was extrapolated out for all class members across the entire putative class period, which included: \$473,079 for meal period violations; \$3,146,873 for rest period violations at a 100% violation rate; \$985,369 for unpaid wages due to off-the-clock work (75.3% of these wages would have been overtime wages); \$869,938 for waiting time penalties; \$716,850 in wage

statement penalties; and \$14,442 for unpaid sick pay. (Genish Decl., ¶ 27). Plaintiff further estimated that Defendant faced an additional exposure of \$654,600 in potential, non-stacked (i.e., one penalty, per employee, per pay period during the PAGA statutory period) PAGA penalties. (Ibid). Together with the PAGA penalties, Defendant's maximum potential exposure totaled \$6,861,151 in damages. (Ibid).

2. Class Counsel's Risk-Based Analysis and Risk-Based Adjustments

While Plaintiff believes that Defendant faced significant exposure, substantial barriers to a recovery existed. In addition to maintaining it complied with all relevant wage-and-hour laws throughout the relevant time period, Defendant contended that Plaintiff's claims are not suitable for class certification because individual issues and affirmative defenses would predominate should this case go to trial. (Genish Decl., ¶ 41; *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012); *Duran v. U.S. Bank Nat. Assn.*, 59 Cal.4th 1, 35-36 (2014); *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2551 (2011). While Plaintiff and Class Counsel disagree with Defendant's predictions, they also recognize that there is a significant risk that the Court may deny class certification. (Genish Decl., ¶ 29; *see also, Findings of the Study of California Class Action Litigation*, 2000-2006, available at <http://www.courts.ca.gov/documents/class-action-lit-study.pdf> (finding that only 21.4% of all class actions were certified either as part of a settlement or as part of a contested certification motion)).

For example, Plaintiff's meal period claims, which were based on Defendant's alleged failure to provide lawful meal periods, have been increasingly difficult to certify in recent years. (Genish Decl., ¶ 31; *See Brinker*, 53 Cal. 4th at 1034-35). Plaintiff's theory of liability for meal period violations was based on allegations that Defendant had failed to implement its policies and that its practices failed to allow Class Members to take meal breaks in the manner required under California law. (Genish Decl., ¶ 31; *See Bradley v. Networkers Int'l, LLC*, 211 Cal.App.4th 1129, 1150 (2012) (holding that "the lack of a meal/rest break policy and uniform failure to authorize such breaks are matters of common proof.")). In contrast, Defendant contended that its practices at all times during the Class Period were lawful. (Genish Decl., ¶ 31). Defendant further argued that the rate of purported meal period violations reflected in the data would require individualized inquiry and that such inquiry would prohibit a class from being certified. (Ibid). Class Counsel also had to consider the risk that the Court would find validity in an individualized proof defense to certification of Plaintiff's meal period claim. (Ibid).

1 Additionally, a large portion of Defendant’s overall liability lies in Plaintiff’s rest period
2 allegations. (*Id.*, ¶ 32). As with the meal period allegations, Defendant contended that it had a lawful
3 written rest period policy, provided compliant rest breaks and relieved Class Members of all duties as
4 required under California law. (*Ibid*). Defendant contended that, as with meal breaks, employees took
5 rest breaks consistently and timely. (*Ibid*). Additionally, this claim was even more uncertain given the
6 difficulties associated with proving the alleged rest period violations, as Defendant was not required to
7 record these breaks. (*Ibid*). Given the lack of records demonstrating rest period violations, there were
8 legitimate concerns Plaintiff would not be able to certify these claims or prove substantial damages with
9 requisite certainty, which made the estimated value of this claim subject to much challenge. (*Ibid*).

10 Plaintiff also faced challenges certifying and proving liability for his minimum wage and overtime
11 claims. (*Id.*, ¶ 33). These claims were largely based on unrecorded, off-the-clock work performed by
12 the Class Members both before and after their shifts and during purported meal and rest periods. (*Ibid*).
13 However, the individualized nature of why this work was performed and the individualized nature of
14 damages presented substantial concerns regarding the manageability of the case and the risk the Court
15 could find these issues prevented certification, and the estimated damages for this claim were based on
16 an assumption that all class members worked off the clock for at least one hour per week. (*Ibid*).

17 There are also substantial risks associated with Plaintiff’s waiting time penalties and wage
18 statement claims. (*Id.*, ¶ 34). First, these claims were derivative of Plaintiff’s claims for unpaid meal
19 period premiums, unpaid rest period premiums, unpaid minimum wages, and unpaid overtime wages,
20 and if certification was denied on those underlying claims, these derivative claims for penalties would
21 also likely fail. (*Ibid*). Further, even if Plaintiff prevailed on her underlying claims, she would still be
22 required to demonstrate that Defendant’s violations of California Labor Code section 203 were *willful*
23 violations. (Genish Decl., ¶ 34; *See, e.g., Choate v. Celite Corp.*, 215 Cal App. 4th 1460, 1468 (2013)
24 (holding that “an employer’s reasonable, good faith belief that wages are not owed may negate a finding
25 of willfulness”)). Wage statement claims have also seen varying treatment at the appellate level because
26 such claims have an element of discretion attached to them rather than a pure calculation of damages after
27 liability is proven. (Genish Decl. ¶ 34; *Jaimez v. DAIOHS USA, Inc.*, 181 Cal.App.4th 1286 (2010) *with*
28 *Price v. Starbucks Corp.*, 192 Cal.App.4th 1136 (2011)). Accordingly, these derivative claims, which

1 comprised a substantial portion of Defendant’s estimated liability, were therefore uncertain. (Genish
2 Decl., ¶ 34).

3 Class Counsel also recognized that, even if Plaintiff prevailed at class certification, proving the
4 amount of wages due to Class Members would be an expensive, time-consuming, and uncertain
5 proposition. (*Id.*, ¶ 35). In order to prove liability and damages, Class Counsel would need to request
6 and analyze thousands of additional pages of documents, contact additional Class Members, and obtain
7 their declarations. (*Ibid.*). Obtaining the cooperation of current employees would also be difficult, given
8 the likely reluctance to aid prosecution of a lawsuit against a current employer. (*Ibid.*). On the other hand,
9 Defendant would likely be able to obtain the cooperation of their current employees. (*Ibid.*). Moreover,
10 even if Plaintiff prevailed at class certification and trial, possible appeals would substantially delay any
11 recovery by the Class. (*Ibid.*).

12 Therefore, taking into account how each of the above risks potentially effected Plaintiff’s ability
13 to first obtain class certification, and then prove the underlying violations, as well as the cost and delay
14 in recovering the alleged potential damages, Class Counsel discounted Defendant’s estimated liability by
15 75% to \$1,715,287.75. (*Id.*, ¶ 36). The merits-based risk factors further reduced Defendant’s estimated
16 liability by an additional 50%. (*Ibid.*). This resulted in an adjusted estimated liability of \$857,643.88.
17 (*Ibid.*). In light thereof, the settlement amount of \$800,000.00 is a significant settlement. (*Ibid.*).

18 Class Counsel also contemplated the risks of proceeding with the PAGA action and potential
19 liability Defendant could face from this claim as part of the global resolution. (*Id.*, ¶ 37). Existing case
20 law makes PAGA claims subject to the same defenses and risks as Plaintiff’s underlying wage claims.
21 (Genish Decl., ¶ 37; see, *Elliot v. Spherion Pac. Work, LLC*, 572 F.Supp.2d 1169, 1181-82 (C.D. Cal.
22 2008) (“Plaintiff’s claim under [PAGA] is wholly dependent upon her other claims. Because all of
23 Plaintiff’s other claims fail as a matter of law, so does her PAGA claim”). Moreover, although California
24 case law clearly states that PAGA actions need not satisfy class action requirements, Class Counsel
25 remained mindful of the fact that some courts have nevertheless held that PAGA claims must meet a
26 threshold “manageability” requirement. (Genish Decl., ¶ 37; See, e.g., *Wesson v. Staples the Office*
27 *Superstore, LLC*, 68 Cal.App.5th 746 (2021)). Class Counsel also anticipated that even if successful on
28 the merits at trial, the imposition of cumulative civil penalties based on the alleged wage and hour

violations could be considered unjust, arbitrary and oppressive, or confiscatory, and that Defendant would argue that it made a good faith attempt to comply with its legal obligations warranting a reduction in penalties. (Genish Decl., ¶ 37).¹ Class Counsel also anticipated Defendant would argue that it made a good faith attempt to comply with its legal obligations and that the violations per pay period were low, warranting an additional reduction in civil penalties. (Ibid). Finally, Class Counsel was also mindful of the fact that PAGA is fundamentally not intended to be compensatory in nature but is instead intended to facilitate enforcement of California’s labor laws by financing state activities and educating and deterring non-compliance. (Ibid).

Therefore, after considering this multitude of factors, Plaintiff and Class Counsel concluded that it was in the best interest of the State of California and the PAGA Employees to enter into the Settlement, and to allocate Seventy-Five Thousand Dollars and Zero Cents (\$75,000.00) of the Gross Settlement Amount towards the PAGA claim, which represents approximately 9.38% of the Gross Settlement Amount. (*Id.*, ¶ 38). This percentage of the settlement is well within the range of wage and hour settlements regularly approved in both state and federal court for cases that include both a class and PAGA action. (Ibid). Typically, such hybrid cases allocate only 1% of the gross settlement value to resolve PAGA claims, and, indeed, settlements allocations as little as 0.22% of the gross settlement amount have been approved as reasonable by courts. (Ibid). Moreover, the overall relief obtained by the Settlement is significant, not only from a monetary perspective, but also because it fulfills the public policy objectives of PAGA—to promote enforcement of California’s labor laws, provide funds to the state, and deter future non-compliance by the employer. (Ibid).

The Settlement is in the best interest of the Class Members, the PAGA Employees, and the State of California and is within the accepted range of recoveries for this type of litigation given the inherent

¹ See, e.g., *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1131 (2012) (imposition of both statutory and civil penalties for same conduct is impermissible double recovery) (disapproved on other grounds); *Aguirre v. Genesis Logistics*, 2013 WL 10936035, at *3 (C.D. Cal. 2013) (“duplicative effect” of penalties is a factor in favor of “reducing ...the PAGA penalty”); *Smith v. Lux Retail North America, Inc.*, 2013 WL 2932243, at *3 (N.D. Cal. June 13, 2013) (declining to stack penalties based on the same conduct); *Castillo v. ADT, LLC*, 2017 WL 363108, at *4 (E.D. Cal. Jan. 25, 2017); *Sanchez v. McDonalds Restaurants of California, Inc.*, 2017 WL 4620746 (LA Super. Ct. July 6, 2017) (declining to stack penalties arising out of the same conduct); *Fleming v. Covidien, Inc.*, 2011 WL 756304718, at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by 80%); *Cotter v. Lyft, Inc.*, 193 F.Supp.3d 1030 (N.D. Cal. 2016) (indicating that a substantial reduction is warranted where good faith dispute exists in legal obligations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (approving reduction in penalties from \$50 per pay period to \$5 per pay period based on good faith attempts to comply with obligations and minimal violations).

1 risk of litigation, the risk of obtaining and maintaining class certification, and the costs of further
2 litigation. (*Id.*, ¶ 39).

3 **VI. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED**

4 Code of Civil Procedure Section 382 provides that three basic requirements must be met in order
5 to sustain any class action: (1) there must be an ascertainable class; (2) there must be a well-defined
6 community of interest in the question of law or fact affecting the parties to be represented; and (3)
7 certification will provide substantial benefits to litigants and the courts, i.e., proceeding as a class action
8 is superior to other methods. *See Dunk*, 48 Cal.App.4th at 1806. Plaintiff contends that the Action, which
9 is based upon Defendant’s wage and hour policies and practices, satisfies the class certification
10 requirements under California Code of Civil Procedure section 382. Defendant denies Plaintiff’s
11 allegations, but for purposes of the Settlement only, Defendant has stipulated to certification of the Class.

12 **A. An Ascertainable Class Exists Which is So Numerous That Joinder of All Members is** 13 **Impracticable**

14 Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of
15 the class, and (3) the means of identifying the class members. *See Miller v. Woods*, 148 Cal.App.3d 862,
16 873 (1983). In this case, all three considerations strongly favor class certification. Here, the Class is
17 defined as: “all current and former hourly-paid or non-exempt employees who worked for Defendant in
18 the State of California at any time during the Class Period.” (Genish Decl., ¶ 15; Settlement Agreement,
19 ¶ 6.b). This provides a clear and definite scope for the proposed class.

20 Next, the Class is sufficiently numerous. There is no magic number that satisfies the numerosity
21 requirement. Courts have certified classes with as few as ten or twenty-eight class members. *Rose v.*
22 *City of Hayward*, 126 Cal.App.3d 926, 934 (1981); *Bowles v. Superior Court*, 44 Cal. 2d 574 (1995);
23 *Hebbard v. Colgrove*, 28 Cal.App.3d 1017, 1030 (1972). Here, the estimated Class size of three hundred
24 and forty-three (343) individuals meets the numerosity requirement.

25 Finally, the question of whether class members are easily identifiable turns on whether a plaintiff
26 can establish “the existence of an ascertainable class.” *Daar v. Yellow Cab Co.*, 67 Cal.2d 695 at 706
27 (1967). The existence of an ascertainable class in this case can be established through Defendant’s payroll
28 records, and the Class definition is sufficiently specific to enable the Parties, Class Members, and the

1 Court to determine the parameters of the Class. *See Clothesrigger, Inc. v. GTE Corp.*, 191 Cal.App.3d
2 605, 617 (1987).

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

4 The community of interest requirement embodies three factors: (1) predominant questions of law
5 and fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives
6 who can adequately represent the class. *Dunk*, 48 Cal.App.4th at 1806. Here, all three requirements are
7 easily satisfied.

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

15 Here, Plaintiff’s claims present common issues of law and fact that predominate and warrant class
16 certification. Plaintiff alleges that Defendant denied compliant meal and rest periods to employees,
17 required employees to perform work off-the-clock, and failed to fully compensate employees for all time
18 actually worked. These policies and practices meant that Defendant allegedly failed to pay minimum and
19 overtime wages, and other related claims. Plaintiff alleges that Defendant’s policies and practices were
20 uniform as to all Class Members. Thus, class treatment is appropriate.

21 To satisfy the typicality requirement, California law does not require that plaintiffs’ claims be
22 identical to the other class members. Rather, the test of typicality for a class representative is whether
23 other members have the same or similar injury, whether the action is based on conduct which is not
24 unique to the named plaintiff, and whether other class members have been injured by the same course of
25 conduct. *See Seastrom v. Neways, Inc.*, 149 Cal.App.4th 1496, 1502 (2007). The typicality requirement
26 for a class representative refers to the nature of the claim or defense of the representative, and not to the
27 specific facts from which it arose or the relief sought. *See ibid.*

28 Here, Plaintiff alleges that her claims are similar to those of the other Class Members and that

1 Plaintiff's claims arise out of the same alleged course of conduct giving rise to the claims of the other
2 Class Members. Because Plaintiff's claims are based upon the same alleged conduct and business
3 practices as those of Class Members, the typicality requirement has been satisfied.

4 Finally, the question of adequacy of representation "depends on whether the plaintiff's attorney
5 qualifies to conduct the proposed litigation in the plaintiff's interest or not antagonistic to the interests of
6 the class." *McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976). Here, these considerations are
7 satisfied. Class Counsel is well-regarded and is qualified and experienced in employment-related, class-
8 action litigation. (Genish Decl., ¶¶ 1-8). Plaintiff will vigorously, adequately, and fairly represent the
9 interests of the Class. Plaintiff has, at all times, throughout the course of the litigation considered the
10 interests of the Class and understood that she must take steps to adequately represent the Class and their
11 interests. (Ray Decl., ¶¶ 10, 11). Because Plaintiff's claims are typical of other Class Members and are
12 not based on unique circumstances, there is no antagonism between the interests of Plaintiff and the Class.

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

14 Under the circumstances, proceeding as a class action is a superior means of resolving this dispute,
15 as the Class Members and the Court will derive substantial benefits. Class certification would serve as
16 the only means to deter and redress the alleged violations. *See Linder v. Thrifty Oil Co.*, 23 Cal.4th 429,
17 434 (2000) (relevant considerations include the probability that each class member will come forward to
18 prove his or her separate claim and whether the class approach would actually serve to deter and redress
19 the alleged wrongdoing). Further, individual actions arising out of the same operative facts would unduly
20 burden the courts and could result in inconsistent results. Therefore, class action proceedings are superior
21 to individual litigation.

22 **VII. THE REQUESTED ENHANCEMENT PAYMENT IS REASONABLE**

23 Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as compensation
24 "for the expense or risk they have incurred in conferring a benefit on other members of the class." *Munoz*
25 *v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010). Courts routinely grant approval of
26 class action settlement agreements containing enhancements for the class representative(s), which are
27 necessary to provide incentive to represent the class and are appropriate given the benefit the class
28 representatives help to bring about for the class. *See In re Online DVD Rental*, 779 F.3d 934, 947-948

1 (9th Cir. 2014) (approving incentive award 417 times larger than individual payments where incentive
2 award made up a mere .17% of the settlement); *Gaudin v. Saxon Mortgage Servs., Inc.*, 2015 WL
3 7454183, at *10 (N.D. Cal. Nov. 23, 2015) (finding service award of \$15,000 to be “fair and reasonable”).

4 Plaintiff initiated this litigation on behalf of her former co-workers who will now be entitled to
5 receive payment from the Settlement. Plaintiff invested substantial time and effort into litigation,
6 including her own research, reviewing documents, and extensive discussions with Class Counsel. (Ray
7 Decl., ¶¶ 5-8, 13). Further, the requested amount for Plaintiff is also reasonable given the average award
8 and the benefit gained by other Class Members. For these reasons, Plaintiff requests that an Enhancement
9 Payment of Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to Plaintiff be
10 preliminarily approved by the Court. (Genish Decl., ¶ 40; Ray Decl., ¶ 14).

11 **VIII. THE REQUESTED ATTORNEYS’ FEES AND COSTS ARE REASONABLE**

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

18 Here, the requested attorneys’ fees of thirty-five percent (35%) the Gross Settlement Amount (i.e.,
19 \$280,000.00 if the Gross Settlement Amount is \$800,000.00) is disclosed to Class Members in the
20 proposed Class Notice. (Settlement Agreement, Exh. A). The requested fee was freely negotiated, is
21 common in the legal marketplace, and is not opposed by Defendant. The Motion for Final Approval will
22 elaborate on the nature of the legal services provided and will also support Class Counsel’s request for
23 the reimbursement of litigation costs and expenses not to exceed Forty Thousand Dollars and Zero Cents
24 (\$40,000.00). (Genish Decl., ¶¶ 41 & 43). The Attorneys’ Fees and Costs that are not ultimately
25 approved by the Court shall instead be included in the Net Settlement Amount to be distributed to
26 Settlement Class Members. (Settlement Agreement, ¶ 9).

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1 **IX. THE CLASS NOTICE AND THE OPT-OUT AND OBJECTION PROCESS**
2 **MEETS DUE PROCESS REQUIREMENTS**

3 The Parties have jointly drafted the Class Notice, which will be mailed to the Class Members.
4 (Settlement Agreement, Exh. A). The Class Notice will include information regarding the nature of the
5 Action, a summary of the terms of the Settlement, the Class definition, information on how to object to
6 and/or opt-out of the Class Settlement and to dispute Workweeks and/or Pay Periods, and the date of the
7 Final Approval Hearing. (Ibid). The Class Notice will list each Class Member's total Workweeks and
8 their estimated Individual Settlement Share and each PAGA Employee's total Pay Periods and their
9 estimated Individual PAGA Payment. (Ibid).

10 Within thirty (30) calendar days after entry of the preliminary approval order, Defendant will
11 provide a list in a formatted readable Microsoft Office Excel spreadsheet to the Settlement Administrator
12 containing the following information for each Class Member: (1) full name; (2) last known mailing
13 address; (3) last known telephone number; (4) Social Security number; (5) dates worked for Defendant
14 during the Class Period; (6) dates worked for Defendant during the PAGA Period; (7) the number of
15 Workweeks and Pay Periods during the Class Period and PAGA Period based on Defendant's payroll
16 data, where feasible²; and (8) such other information as is necessary for the Settlement Administrator to
17 confirm Workweeks and Pay Periods (if applicable) (collectively referred to as the "Class List"). (*Id.*, ¶¶
18 6.d & 23). Within seven (7) calendar days after receiving the Class List from Defendant, the Settlement
19 Administrator will perform a search based on the National Change of Address Database or other similar
20 services available, such as provided by Experian, for information to update and correct for any known or
21 identifiable address changes, and will mail a Class Notice in English and Spanish to all Class Members
22 via First-Class U.S. Mail, using the most current, known mailing addresses identified by the Settlement
23 Administrator. (*Id.*, ¶ 24.a). The Parties have agreed to use Apex Class Action LLC as the Settlement
24 Administrator. (Genish Decl., ¶ 44; Settlement Agreement, ¶ 6.jj).

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² If it is not feasible for Defendant to calculate the Workweeks and Pay Periods using Defendant's payroll data, then the Settlement Administrator shall calculate those Workweeks using the start and end dates during which time the Class Members were employed and classified as non-exempt during the Class Period, and the Settlement Administrator shall calculate those Pay Periods using the start and end dates during which time the PAGA Employees were employed and classified as non-exempt during the PAGA Period. (See, Settlement Agreement, page 3, footnote 1)

1 In determining whether to approve a settlement of a class action, a trial court has virtually
2 complete discretion as to the manner of giving notice to class members, and review on appeal is governed
3 by the abuse of discretion standard. *See In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380
4 (2010). Here, Class Counsel is not aware of an alternative method of providing notice to the Class which
5 would result in a higher likelihood of actual notice. (Genish Decl., ¶ 45). The original source of the
6 mailing addresses is from Class Members, who provided the information to Defendant. (Ibid).

7 Class Members will have forty-five (45) calendar days after the initial mailing of the Class Notice
8 by the Settlement Administrator to submit a Request for Exclusion, Notice of Objection, and/or
9 Workweeks Dispute (“Response Deadline”). (Settlement Agreement, ¶ 6.ii).

10 Any Class Notice returned to the Settlement Administrator as undeliverable on or before the
11 Response Deadline will be sent promptly via First-Class U.S. Mail to the forwarding address affixed
12 thereto and the Settlement Administrator will indicate the date of such re-mailing on the Class Notice.
13 (*Id.*, ¶ 24.b). If no forwarding address is provided, the Settlement Administrator will promptly attempt
14 to determine a correct address using a skip-trace or other search, using the name, address, and/or Social
15 Security number of the Class Member, and perform a single re-mailing within five (5) calendar days.
16 (Ibid). In the event that a Class Notice is re-mailed to a Class Member, the Response Deadline for that
17 Class Member shall be extended fifteen (15) calendar days from the original Response Deadline. (*Id.*, ¶
18 6.ii).

19 Class Members will have an opportunity to dispute the number of Workweeks and/or Pay Periods
20 which have been credited to them, as reflected in their respective Class Notices, by submitting a timely
21 and valid letter (“Workweeks Dispute”) to the Settlement Administrator, by mail, postmarked on or
22 before the Response Deadline. (*Id.*, ¶¶ 6.nn and 25). A Workweeks Dispute must: (a) contain the case
23 name and number of the Class Action; (b) contain the Class Member’s full name, signature, address,
24 telephone number, and the last four (4) digits of the Class Member’s Social Security number; (c) clearly
25 state that the Class Member disputes the number of Workweeks and/or Pay Periods credited to the Class
26 Member and what the Class Member contends is the correct number; and (d) be returned by mail to the
27 Settlement Administrator at the specified address, postmarked on or before the Response Deadline. (*Id.*,
28 ¶ 6.nn).

1 Any Class Member wishing to be excluded from the Class Settlement must submit a timely and
2 valid letter (“Request for Exclusion”) to the Settlement Administrator, by mail, postmarked on or before
3 the Response Deadline. (*Id.*, ¶¶ 6.hh & 26). A Request for Exclusion must: (a) contain the case name
4 and number of the Class Action; (b) contain the Class Member’s full name, signature, address, telephone
5 number, and last four (4) digits of the Class Member’s Social Security number; (c) clearly state that the
6 Class Member does not wish to be included in the Class Settlement; and (d) be returned by mail to the
7 Settlement Administrator at the specified address, postmarked on or before the Response Deadline. (*Id.*,
8 ¶ 6.hh). Notwithstanding the above, all PAGA Employees will be bound to the PAGA Settlement and
9 will be issued their Individual PAGA Payment, irrespective of whether they submit a Request for
10 Exclusion. (*Id.*, ¶ 26).

11 To object to the Class Settlement, Settlement Class Members must submit a timely and complete
12 written objection (“Notice of Objection”) to the Settlement Administrator, by mail, postmarked on or
13 before the Response Deadline. (*Id.*, ¶¶ 6.v & 27). A Notice of Objection must: (a) contain the case name
14 and number of the Class Action; (b) contain the objector’s full name, signature, address, telephone
15 number, and the last four (4) digits of the objector’s Social Security number; (c) contain a written
16 statement of all grounds for the objection accompanied by any legal support for such objection; (d)
17 contain copies of any papers, briefs, or other documents upon which the objection is based; and (e) be
18 returned by mail to the Settlement Administrator at the specified address, postmarked on or before the
19 Response Deadline. (*Id.*, 6.v). Settlement Class Members, individually or through counsel, may also
20 present their objection orally at the Final Approval Hearing, regardless of whether they have submitted a
21 Notice of Objection. (*Id.*, ¶ 27).

22 **X. CONCLUSION**

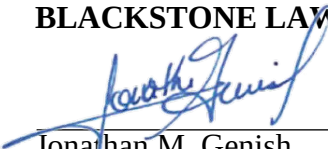
23 For all of the foregoing reasons, Plaintiff respectfully requests that this Court grant Plaintiff’s
24 Motion for Preliminary Approval of Class Action and PAGA Settlement and the relief requested herein.

25 Respectfully submitted,

26 Dated: July 17, 2024

BLACKSTONE LAW, APC

27 By:


Jonathan M. Genish

Attorneys for Plaintiff Rita Ray