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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY SACRAMENTO

CHRYSTAL CRAIGO, an individual; on behalf of herself and all others similarly situated and the general public, Plaintiffs, vs. JANRA ENTERPRISES, INC., a California corporation; and DOES 1 to 100, inclusive, Defendants.	Case No. 23CV007642 [Assigned for All Purposes to: The Hon. Jill H. Talley, Dept. 23] **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** Hearing Date: April 24, 2026 Time: 10:30 AM Dept: 23

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I. <u>INTRODUCTION</u>

Pursuant to California Rules of Court 3.769 (d) and (e), Plaintiff Chrystal Craigo ("Plaintiff") request that the Court grant preliminary approval of a class action settlement of wage and hour claims, including a claim under the California Private Attorneys General Act of 2004, codified at Lab. Code § 2698, et seq. ("PAGA"), against Defendant Janra Enterprises, Inc.("Defendant") (collectively, Plaintiff and Defendant referred to as the "Parties"). The putative class consists of approximately 66 employees, and is defined as all persons currently or formerly employed by Defendant who performed work as non-exempt employees in the State of California (individually, "Class Member"; collectively, "Class Members") at any time from August 29, 2019 through February 28, 2026 (the "Class Period").[1] The basic terms of the Class Action and PAGA Settlement Agreement and Class Notice ("Settlement Agreement" or "Settlement")[2] provide for the following:

(1) A non-reversionary Gross Settlement Amount of $70,000.00 allocated to approximately 66 Class Members on a pro rata basis according to the number of weeks each Class Member worked during the Class Period;

(2) An award of up to one-third of the Gross Settlement Amount (currently $23,333.00) and up to $10,000.00 in reimbursement of costs to Plaintiff's Counsel for services rendered as counsel on this matter;

(3) A Service Payment of up to $5,000.00 for Plaintiff;

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[1] The Settlement defines the end of the class period through preliminary approval, but based on this Court's Checklist for Approval of Class Actions requesting that counsel finalize the end date of the class period, the parties have jointly agreed to an end date of February 28, 2026. Defense counsel does not believe the escalator clause will be triggered, but the parties will have an update for the Court at the hearing of this matter. (Declaration of Aaron A. Bartz ("Bartz Decl."), ¶ 3, n.1).

[2] A true and correct copy of the fully-executed "Class Action and PAGA Settlement Agreement and Class Notice" is attached as Exhibit A to the Bartz Decl., filed concurrently herewith. Unless otherwise defined herein, all capitalized terms in this Motion will be used as such terms are defined and used in the Settlement.

(4) Settlement Administration fees and costs of up to $5,000.00; and

(5) Allocations of $2,500 for resolution of civil penalties under PAGA. Seventy-five percent (75%) of this payment will be paid to the California Labor and Workforce Development Agency ("LWDA Payment"), and twenty-five percent (25%) will be paid to Class Members who worked for Defendant during the PAGA Period.

With each Class Member allocated an average recovery of approximately $366 from the Net Settlement Amount, the Settlement satisfies the criteria for preliminary approval and falls well within the range of reasonableness given the risks and costs of continued litigation. The Settlement was reached through informed, arm's-length bargaining at and after a mediation between experienced attorneys. As such, Plaintiff requests that the Court grant preliminary approval of the Settlement, conditionally certify the Class for settlement purposes only, appoint Plaintiff as the Class Representative, appoint Plaintiff's Counsel as Class Counsel, appoint Xpand Legal Consulting, LLC as the Settlement Administrator, authorize the Settlement Administrator to send notice of the Settlement, and set a final approval hearing date.

II. SUMMARY OF THE LITIGATION

Defendant operates retail stores within California. (Bartz Decl., ¶ 3.) Defendant employed Plaintiff as a sales associate and shift supervisor in 2022. (Declaration of Chrystal Craigo ("Craigo Decl."), ¶ 3.)

On May 5, 2023, Plaintiff provided written notice to the LWDA and Defendant regarding Defendant's alleged Labor Code violations, as required by Lab. Code § 2699.3(a). (Bartz Decl., ¶ 4, **Exhibit B**.) The LWDA did not respond to this notice, indicating it did not intend to investigate, thus allowing Plaintiff to bring a PAGA claim against Defendant. (*Id.*) On August 29, 2023, Plaintiff filed her lawsuit against Defendant in the Sacramento County Superior Court, Case No. 23CV007642. (Declaration of Aaron Bartz, ("Bartz Decl."), ¶ 5.) Plaintiff's operative First Amended Complaint, filed on March 26, 2026, alleges the following causes of action: (1) violation of Business and Professions Code § 17200, et seq.; (2) Violation of Labor Code §§ 204, 510, 1194 and 1198; (3) Violation of Labor Code §§ 200 et seq.; (4) Failure to Pay Meal and Rest Break Premiums at the Proper Regular Rate of Pay; (5) Failure to Provide & Maintain

Accurate Wage Statements Pursuant to Labor Code § 226; (6) Failure to Provide Meal Periods; (7) Failure to Provide Rest Breaks; (8) Failure to Reimburse Business Expenses; and (9) Violation of PAGA. (*See* **Exhibit C** to Bartz Decl.)

The Parties proceeded with formal and informal discovery. (Bartz Decl., ¶¶ 7-8.) Defendant produced its employee handbooks, policies, and a sampling of Class Members' timekeeping and pay records. (*Id*.) Class Counsel also retained an expert to assist with calculating an overall damages exposure analysis. (Bartz Decl., ¶ 9.) On September 5, 2025, the Parties attended a mediation session with Stephen McAvoy, Esq, a respected mediator. (*Id*. at ¶ 10.) After a full day of negotiating, and continued discussions with the mediator weeks after the mediation, the Parties ultimately agreed to a settlement amount and executed a Memorandum of Understanding, with the material terms of the Settlement. (*Id*.) The Parties then negotiated the full terms of the Settlement, which was finalized in March 2026. (*Id*.)

Plaintiff submitted the Settlement and all motion for preliminary approval papers to the LWDA pursuant to Lab. Code § 2699(s)(2). (Bartz Decl., ¶ 37.)

III. <u>SUMMARY OF THE SETTLEMENT</u>

A. Terms of Settlement

Plaintiff and Defendant agreed to settle the class claims in exchange for a Gross Settlement Amount of $70,000.00, and there is no non-cash consideration. (Settlement Agreement, § 3.1.) The Gross Settlement Amount will be used to make payments for the following: (1) Individual Settlement Payments to Participating Class Members; (2) attorneys' fees to Class Counsel of up to one-third of the Gross Settlement Amount ($23,333.00); (3) reimbursement of Class Counsel's litigation costs of up to $10,000; (4) a Service Payment to Plaintiff of up to $5,000; (5) Settlement Administration fees and costs of $5,000; and (6) a payment of $2,500 for PAGA penalties. (*Id*. at §§ 3.2–3.7.) No other deductions are sought from the Gross Settlement Amount. The Net Settlement Amount is currently estimated to be approximately $24,167, and $625.00 (25% of the PAGA Payment) will be allocated to the Aggrieved Employees. (*Id*.)

Class Members' Individual Settlement Payments will be distributed by mail 14 days after Defendant funds the Gross Settlement Amount (10 days after the Effective Date). (*Id*. at §§ 1.18, 4.3–4.4.) Individual Settlement Payments will be calculated by comparing the total Qualifying Workweeks for the Class to each individual Class Member's Qualifying Workweeks. (*Id*. at § 3.6.) Defendant estimates that Class Members worked a total of 1,800 Workweeks during the Class Period. (*Id*. at § 4.1). The Settlement Administrator will calculate the actual estimated recovery to include in the Notice of Class Action Settlement ("Class Notice") and provide the estimated low and high range of possible recovery at final approval. (Settlement Agreement, § 7.4.2 & Ex. A (Class Notice).) Based on the current estimations, Plaintiff estimates that each Workweek is worth approximately $13.42. (See Bartz Decl., ¶ 14.) As such, each Class Member will receive approximately $366. (*Id*.)

The Settlement Administrator will create a website informing Class Members of the Final Approval Hearing, and the website will include copies of the Settlement Agreement and other pleadings filed in this case. (*Id*. at § 7.8.1.) Once the Court grants final approval and enters judgment, the Settlement Administrator will post the Class Notice on its website. (*Id*.)

The Individual Settlement Payments will be allocated 20% to wages; 80% to interest and penalties for tax purposes. (*Id*. at § 3.6.1.) Defendant will pay the employer-side payroll taxes on the portion allocated to wages separately from, and in addition to, the Gross Settlement Amount. (*Id*. at § 3.1.) Funds from uncashed or undeliverable checks will be tendered by the Settlement Administrator to the State Controller Unclaimed Property Fund in the Class Member's name for whom the funds are designated. (*Id*. at § 4.4.3.) The Gross Settlement Amount will not revert to Defendant. (*Id*. at § 3.1.)

B. Proposed Opt-Out and Objection Process

Once the Court grants preliminary approval, Defendant will have twenty-one days to deliver the Class Data to the Settlement Administrator. (Settlement Agreement, § 4.2.) The Settlement Administrator will then have fourteen days to send Class Notice by first-class mail after checking for updated addresses through the National Change of Address database. (*Id*. at § 4.4.) The Class Notice provides information regarding the nature of the lawsuit, a summary of the substance of the settlement terms, the formula for calculating Individual Settlement Payments, the individual's estimated payout, a statement that Class Members who take no action will release their claims and receive settlement checks, instructions regarding how to dispute the calculations, instructions regarding how to request exclusion or object to the Settlement, the date for the final approval hearing, the amounts sought for attorneys' fees and costs, the Settlement Administration Costs, the Class Representative's Service Payment, and the PAGA allocation. (See Settlement Agreement, Ex. A.)

The Class Notice provides instructions for Class Members who choose to exclude themselves from the Settlement. (See Settlement Agreement, Ex. A.) To opt out, Class Members are instructed to submit a Request for Exclusion to the Settlement Administrator by a specified date (45 days after the date of mailing of the Class Notice). (See Settlement Agreement, § 7.5.1 & Ex. A.) Class Members do not need to submit a claim form to participate in the Settlement. (See Settlement Agreement, Ex. A.) The Class Notice informs Class Members of how they can object to the Settlement, and of the date, time, and location of the final fairness and approval hearing so that they can appear at the hearing in person. (*Id*.) The Class Notice also informs Class Members to check the Administrator's website or contact Class Counsel to verify the date and time of the Final Approval Hearing. (*Id*.) Accordingly, the content of the Class Notice complies with the requirements of Cal. R. Ct. 3.766, subd. (d).

If Class Notice packets are returned as undeliverable, the Settlement Administrator will perform a skip-trace or other search, and re-mail the Class Notice with an extended deadline to opt out or object, of 14 days from the date of mailing or the original deadline, whichever is later. (Settlement Agreement, §§ 7.4.3–7.4.4.) The initial 45-day notice period and extension process ensures the notice program provides due process by giving Class Members enough time to determine whether they want to participate in the Settlement. This means of notice is reasonably calculated to apprise Class Members of the pendency of the action. (See Cal. R. Ct. 3.766, subds. (d)–(f).) No other affirmative duties are placed on the Class Members, and no other affirmative duties, aside from drafting and filing the approval motions, are placed on Class Counsel. (Bartz Decl., ¶ 25.)

C. Proposed Release

The release to be given by Class Members is limited to Defendant and each of its former and present directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, and assigns (the "Released Parties"). (Settlement Agreement, § 1.41.) Under the proposed release, Class Members who do not exclude themselves from the Settlement will be deemed to have released the following:

> [A]ll claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Action, including claims under the California Labor Code, California Industrial Welfare Commission Wage Orders, regulations, and/or other provisions of law, failure to pay wages (including minimum wages, regular wages, overtime wages, failure to pay overtime at the regular rate, and double time wages, failure to provide compliant meal periods and associated premium pay, failure to provide compliant rest periods and associated premium pay, failure to provide compliant wage statements, failure to timely pay wages upon termination of employment, failure to timely pay wages during employment, failure to maintain requisite payroll records, and failure to reimburse business expenses, including Labor Code sections section 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1198, and 2802, and unfair or unlawful business practices in violation of California Business and Professions Code § 17200, *et seq.* The Released Class Claims also means any claims, rights, demands, liabilities, damages, wages, benefits, expenses, penalties, debts, obligations, attorneys' fees, costs, any other form of relief or remedy in law, equity, or whatever kind or nature, and causes of action, that could potentially arise from the receipt of any monies as a result of this Settlement by any member of the Class.

(*Id*. at § 5.3.)

PAGA Group Members (regardless of whether they exclude themselves from the Settlement) will be deemed to have released "claims for civil penalties that could have been sought by the Labor Commissioner for the violations of the California Private Attorneys General Act of 2004 identified in the PAGA Notice and the Action during the PAGA Period." (*Id*. at § 5.4.)

The releases are narrowly tailored to the claims that were or could have been alleged in the operative First Amended Complaint. Additionally, Plaintiff will be deemed to have released all potential claims. (*Id*. at § 5.1.) Plaintiff also releases all known or unknown claims under Civil Code § 1542. (*Id*. at § 5.2.) No other Class Members will agree to a general release of any and all claims, or a waiver of Civ Code Proc., § 1542. (*Id*. at § 5.3.1.)

D. The Settlement Administrator

The Parties jointly selected Xpand as the proposed Settlement Administrator, after requesting bids from several proposed administrators, whose bids were comparable or higher than Xpand's. (Bartz Decl., ¶ 16.) Xpand has security procedures in place, and is experienced in handling the settlement administration of like cases. Moreover, Xpand's bid details its anticipated expenses that would be incurred to administer the Settlement. (Bartz Decl., **Exhibit D**.)

IV. LEGAL ARGUMENTS SUPPORTING PRELIMINARY APPROVAL

A. Provisional Certification of the Class is Appropriate

Class certification is appropriate when there exists (1) an ascertainable and sufficiently numerous class, (2) a well-defined community of interest among class members, and (3) when certification would be a fair and efficient means of adjudicating the action, rendering class litigation superior to alternative means. (See *Brinker Restaurant Corp. v. Super. Ct.* (2012) 53 Cal. 4th 1004, 1021 (Brinker).)

1. The Proposed Class is Numerous and Ascertainable

Whether a class is "ascertainable" is "determined by examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying class members." (*Reyes v. Bd. of Supervisors* (1987) 196 Cal. App. 3d 1263, 1271.) Here, the Class consists of all persons currently or formerly employed by Defendant who performed work as non-exempt employees in the State of California, at any time from August 29, 2019 through February 28, 2026. (Settlement

Agreement, §§ 1.5, 1.9 & 1.12.) Defendant's records show the Class consists of approximately 66 individuals, making joinder of all Class Members impracticable. (Bartz Decl., ¶ 11.) Further, the Class is readily ascertainable from Defendant's business records because all Class Members are current or former employees of Defendant. (*Id*.)

2. A Well-Defined Community of Interest Exists Among Class Members

"[T]he '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.'" (*Fireside Bank v. Super. Ct.* (2007) 40 Cal. 4th 1069, 1089 (quoting *Richmond v. Dart Industries, Inc.* (1981) 29 Cal. 3d 462, 470.)

a. Common Questions Predominate

To assess whether common questions predominate, courts focus on whether the theories of recovery advanced are likely to prove amenable to class treatment. (See *Sav-On Drug Stores, Inc. v. Super. Ct.* (2004) 34 Cal. 4th 319, 327 (Sav-On Drug Stores, Inc.).) In other words, courts determine whether the elements necessary to establish liability are susceptible of common proof, even if the class members must individually prove their damages. (*Brinker*, supra, 53 Cal. 4th at 1021-1022, 1024.)

Plaintiff alleged that Defendant maintained employment policies and/or practices that illegally deprived Class Members of lawful wages, meal periods, rest breaks, accurate wage statements, payment of all wages upon separation from employment, and waiting time pay. (Bartz Decl., ¶ 24.) Plaintiff's allegations present common legal and factual questions can be proven by common objective evidence. The evidence to support these claims consists of pay policies, payroll records, time records and pay stubs given to all Class Members. (*Id*. at ¶ 25.) Thus, the Court can and should exercise its discretion to grant conditional class certification for settlement purposes.

b. Plaintiff's Claims are Typical of the Class Claims

The typicality requirement is satisfied when the legal theories and facts supporting Plaintiff's claims are substantially similar to other class members. (See *Classen v. Weller* (1983)

145 Cal. App. 3d 27, 46.) Here, Plaintiff alleged that she and other Class Members were employed by Defendant and injured by Defendant's common wage and hour policies and practices, including Defendant's scheduling, timekeeping, minimum wage pay, overtime pay, meal period, and rest break practices and policies. (Bartz Decl., ¶ 26.) Thus, Plaintiff's claims arise from the same employment practices and are based on the same legal theories as those applicable to other Class Members, as further explained in Plaintiff's exposure analysis below.

c. <u>Plaintiff and Plaintiff's Counsel Will Adequately Represent the Class</u>

Certification requires adequacy of both the proposed class representative(s) and proposed class counsel. With respect to the class representative, a plaintiff must adequately represent and protect the interests of other members of the class and demonstrate that his or her claim is not inconsistent with the claims of other members of the class. (See *Capitol People First v. State Dept. of Developmental Servs.* (2007) 155 Cal. App. 4th 676, 696-697.) Here, Plaintiff's interests are coextensive with the interests of the Class. Plaintiff demonstrated the ability to advocate for the interests of the Class by litigating this action, gathering documents and information, being available on the day of mediation to answer questions, meeting with her attorneys on several occasions to understand the claims and theories of liability at issue, reviewing the proposed settlement agreement to understand its legal effect, and obtaining a fair settlement on behalf of Class Members who stand to recover under the Settlement. (Bartz Decl., ¶ 30.)

Likewise, Bartz Law Group, APC and United Employes Law Group, PC have expended considerable time and effort on this case and will continue to do so through final approval. (See generally, Bartz Decl.; see also generally, Haines Decl.) Accordingly, Plaintiff should be appointed as a Class Representative, and Plaintiff's Counsel should be appointed Class Counsel.

3. A Class Action is Superior to a Multitude of Individual Lawsuits

Class treatment is superior to other methods of adjudication when the probability is small that each class member will come forward to prove his or her claim and when the class approach would deter and redress the alleged wrongdoing. (See *Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 435, 446; *Ghazaryan v. Diva Limousine, Ltd.*, (2008) 169 Cal. App. 4th 1524, 1537-1538.) Here, none of the other 66 Class Members had shown any interest in bearing the expense and burden of litigating their own claims. (Bartz Decl., ¶ 30.) Thus, a class action is the superior method for seeking relief.

B. The Settlement Meets the Standards for Preliminary Approval

Preliminary approval is warranted if the settlement falls within a "reasonable range." (See *North County Contractor's Ass'n., Inc. v. Touchstone Ins. Servs.*, (1994) 27 Cal. App. 4th 1085, 1089-90; Conte & Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002).) In reviewing the fairness of a class action settlement, due regard should be given to what is "'otherwise a private consensual agreement between the parties.'" (*Cellphone Termination Fee Cases*, (2010) 186 Cal. App. 4th 1380, 1389.) The inquiry "must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Id.*)

Reasonableness and fairness are presumed where (1) the settlement is reached through "arm's-length bargaining"; (2) investigation and discovery are "sufficient to allow counsel and the court to act intelligently"; (3) counsel is "experienced in similar litigation"; and (4) the percentage of objectors "is small." (*Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1802.) The Settlement satisfies the first three factors. Plaintiff will analyze the fourth factor at the final approval stage.

1. The Settlement is Entitled to a Presumption of Fairness

a. The Settlement is the Result of Arm's Length Negotiations

Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered. Thus, there is a presumption that settlement negotiations are conducted in good faith. Here, the Settlement was the product of extensive investigation and a full day mediation session with a respected mediator after extensively reviewing discovery, as well as negotiations that followed the mediation. (Bartz Decl., ¶¶ 8-10.) The negotiations were adversarial, conducted at arm's-length, and tempered by the efforts of both sides to serve the interests of their clients. (*Id.* at ¶ 10.) The amount of Plaintiff's requested

Service Award was not agreed upon until after the Parties agreed to the Gross Settlement Amount and many other terms. (*Id*. at ¶ 31.)

b. <u>Plaintiff's Counsel Conducted Sufficient Investigation and Discovery</u>

Plaintiff's Counsel thoroughly investigated the class claims, applicable law, and potential defenses. (See generally, Bartz Decl.) In particular, Plaintiff's Counsel assessed the value of the class claims using Defendant's data and documents produced through formal and informal discovery. (Bartz Decl., ¶ 9.) Plaintiff's counsel extensively reviewed policy documents and Class Members' time and pay records to perform a thorough analysis. (*Id*.) Further, Plaintiff's Counsel engaged an expert to quantify the potential exposure using the time and payroll records, and then assessed the risks associated with each of the claims meriting reductions in the likely recovery at trial. (*Id*.) As such, Plaintiff's Counsel fully understood the strengths and weaknesses of the claims before the Parties reached a settlement. (*Id*.)

c. <u>Plaintiff's Counsel is Experienced in Similar Litigation</u>

Plaintiff is represented by Bartz Law Group, APC and United Employees Law Group, PC ("Class Counsel"). Class Counsel prosecute wage and hour class actions on behalf of employees and others who have had their rights violated. (Bartz Decl., ¶¶ 27-29; Haines Decl., ¶ 3.) The attorneys working on this case have been appointed class counsel in many cases, through both contested motions and settlement approval motions. (*Id*.) Thus, Plaintiff's Counsel have extensive experience in similar litigation and should be appointed as Class Counsel.

2. The Settlement is Reasonable Given the Strengths of Plaintiff's Claims and the Risks and Expense of Further Litigation

Courts have discretion to approve class settlements by assessing several factors, including the "strength of plaintiffs' case, risk, expense, complexity and likely duration of further litigation and risk of maintaining the class action through trial." (*Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186 Cal. App. 4th 399, 407; see also *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 129.)

While Plaintiff and her counsel believed and continue to believe this is a strong case for certification, the significant risks and expenses associated with class certification and liability proceedings were taken into account. (Bartz Decl., ¶ 20.) Plaintiff has also taken into account the uncertain outcomes resulting from further litigation, and the difficulties and delays inherent in such litigation. (*Id.*)

a. Exposure Analysis

A settlement does not have to provide 100% of the damages sought to be considered a fair and reasonable settlement. (See *Rebney v. Wells Fargo Bank* (1991) 220 Cal. App. 3d 1117, 1139.) Rather, compromise is expected:

> Compromise is inherent and necessary in the settlement process . . . even if "the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated," this is no bar to a class settlement because "the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation."

(*Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 250 (citation omitted).) Here, Plaintiff contends that her claims are based on Defendant's common, class-wide policies and procedures, and that liability could be determined on a class-wide basis without dependence on individual assessments of liability. (Bartz Decl., ¶ 24.)

Unpaid Wages/Regular Rate of Pay Claim: Plaintiff's unpaid wages claim was premised on the theory that Defendant failed to pay off-the-clock hours, as well as failing to pay Class Members' regular rates of pay because it did not include bonuses and related incentive payments into the regular rates of pay. (Bartz Decl., ¶ 21.a.) Plaintiff retained an expert who calculated Defendant's maximum exposure by calculating the amount of approximate off-the-clock damages, assuming 15 minutes of off-the-clock time worked per shift, as well as unpaid overtime in each pay period to each employee. (*Id.*) After reviewing the records, Plaintiff's expert calculated approximately $42,000 in underpaid wages due to the failure to the unpaid wage theories set forth above. However, Defendant could defeat this claim by showing that no off-the-clock time was worked, and the bonuses were non-discretionary, and the claim could not be certified because it only paid bonuses to certain employees. (*Id.*) As such, Plaintiff's counsel believed that there was a 20% chance of success on the merits at trial, rendering the claim worth approximately **$8,400**. (*Id.*)

Meal Period Claim: Plaintiff's meal period claim was premised on the theories that Defendant did not timely provide first meal periods, did not provide first and second meal periods, and required Class Members to remain at work during meal periods. (Bartz Decl., ¶ 21.b.)

First, Plaintiff contended that the late meal periods could probably be certified as an illegal policy and practice affecting approximately 33% of all 6,558 meal periods as calculated by Plaintiff's expert. (*Id.*) Plaintiff contends that when time records show short, missed, and late meal periods, there is a presumption that an employer violated California's meal period requirements. *See Donohue v. AMN Services, LLC*, 11 Cal.5th 58, 78 (2021) ("If time records show noncompliant meal periods, then a rebuttable presumption of liability arises.") If proven, the exposure could be as high as $40,000. (*Id.*) Defendant argued that any late or missed meal periods were the choice of Class Members, and therefore Defendant has no liability for such alleged violations. Plaintiff believed this claim had a 50% chance at recovery, resulting in a realistic exposure of **$20,000**. (*Id.*)

Rest Period Claim: Plaintiff's rest break claim was premised on the theory that Defendant failed to provide Class Members with uninterrupted rest breaks because they were required to remain on call because Defendant's retail stores were understaffed, and Class Members were frequently interrupted and/or on-call during their rest periods. (Bartz Decl., ¶ 21.c.) Moreover, on days when Class Members worked at least 6 hours, they were only provided one rest period, which is a violation of *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012). Plaintiff's counsel liberally assumed that there was a 100% violation rate for all 7,965 shifts of 3.5 hours or more in length, which would have entitled Class Members to at least one rest break. (*Id.*) Using the average rate of pay, the expert retained by Plaintiff's Counsel analyzed Defendant's data and estimated that the claim was worth approximately $148,000. (*Id.*) However, given that rest breaks are unrecorded it would require testimony from Class Members to support this claim. (*Id.*) Defendant also likely would have obtained opposing declarations stating rest breaks were adequately taken or voluntarily waived, significantly decreasing the likelihood of class certification. (*Id.*; see also, e.g., *Rai v. CVS Caremark Corp.* (C.D. Cal. Oct.

11, 2013) 2013 U.S. Dist. LEXIS 177730 (denying certification of rest break claims where competing testimony regarding actual practice meant adjudication would involve predominantly individual issues); *Gonzalez v. OfficeMax North Am.* (C.D. Cal. Nov. 5, 2012) 2012 U.S. Dist. LEXIS 163853, at *9–12 (denying certification on predominance grounds where plaintiff offered no evidence that a uniform rest break policy was implemented uniformly).) Plaintiff believed that this claim could be hard to certify, and Plaintiff's Counsel believed this claim had a 20% chance at recovery, resulting in a realistic exposure of **$29,600**. (*Id.*)

Failure to Reimburse Claim: Plaintiff's failure to reimburse claim was premised on the theory that Defendant failed and refused to reimburse Class Members for cell phone expenses despite Defendant's frequent call and text messaging to their personal cell phones during and after work hours. (Bartz Decl., ¶ 21.d.) Plaintiff liberally assumed that employees spent about $50 each month for cell phone usage. (*Id.*) Plaintiff's expert calculated that the failure to reimburse claim was potentially worth approximately $27,000. (*Id.*) However, Defendant argued it only communicated with Class Members through work phones, and Defendant never required any of the Class Members to use their personal cell phones for work purposes. As such, Plaintiff's counsel estimated that there would be a 10% chance of succeeding at trial, resulting in a value of around **$2,700**. (*Id.*)

Waiting Time and Wage Statement Penalties: Plaintiff's Counsel considered the arguable presence of various derivative penalties, and weighed the potential recoveries against probable defenses. (Bartz Decl., ¶ 21.e.) Specifically, Defendant could defeat these claims if Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties under Labor Code § 203; Plaintiff could not show that Class Members suffered an "injury" as a result of wage statement violations, as required by Labor Code § 226; or that the wage statements correctly reflected the wages paid and owed. (*Id.*) Although the Class could have seen a potential payout of approximately $128,000 for waiting time penalties and approximately $81,000 for wage statement penalties, Plaintiff would not recover any of these derivative penalties if she failed to prove the underlying claims. (*Id.*) Based on the heightened standard to prove these claims, Plaintiff discounted these claims assuming a 20% probability of recovery on the merits for both claims, resulting in a realistic value of approximately **$25,600** for the waiting time claim and around **$16,200** for the wage statement claim. (*Id*.)

PAGA Claim: The PAGA is valued at $180,000 (1800 pay periods x $100 penalties). However, to recover that amount, Plaintiff would have to prove a violation in every pay period. (Bartz Decl., ¶ 21.f.) Most importantly, the Court would have discretion to reduce the PAGA award based on whether the amount of the award would be "unjust, arbitrary and oppressive, or confiscatory." Lab. Code § 2699(e)(2). In theory, the Court could reduce the award by 99% if it so wished. Plaintiff was doubtful she could recover all of the PAGA penalties, especially if a class judgment was entered for the same violations. (*Id*.) Accordingly, Plaintiff could not place a high value on the PAGA penalties, believes the realistic settlement exposure is 5% of the total, or **$9,000** and therefore allocated $2,500 of the Gross Settlement Amount to settle these claims, or approximately 27.7% of the realistic exposure. (*Id*.; see also *Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) 2009 U.S. Dist. LEXIS 33900 at *24 (finding amount of PAGA penalties reasonable where the amounts are negotiated in good faith and "there is no indication that [the] amount was the result of self-interest at the expense of other Class Members"); *Nordstrom Comm'n Cases* (2010) 186 Cal.App.4th 576, 579 ("trial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims").)

Total Damages Exposure: Plaintiff believes that the $70,000 settlement achieved in this case is good for the class members. Based upon a reasonable exposure value of $111,500, the settlement represents approximately 63% of that total value. Given the many defenses raised, the uncertainty of the certifiability of any class, and the risks of going to trial, Class Counsel believe this settlement is a good result for all of the class members. (Bartz Decl., ¶ 21.g.)

C. The Requested Service Award for Plaintiff

Plaintiff seeks a Service Award of up to $5,000 for accepting the responsibilities of representing the interests of the Class and assuming risks and potential costs that were not borne by any other Class Members. (Settlement Agreement, § 3.3.) A named plaintiff is eligible for payment that reasonably compensates him or her for undertaking and fulfilling a fiduciary duty to represent absent class members. (See *Cellphone Termination Fee Cases*, supra, 186 Cal. App. 4th at 1393-94 ("The rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit to other members of the class"); *Bell v. Farmers Ins. Exch*. (2004) 115 Cal. App. 4th 715, 726.) In evaluating the propriety of enhancement awards, courts consider the following relevant factors, including: (1) the time and effort put into the litigation and the degree to which the class has benefitted from those actions, (2) the duration of the litigation, (3) a comparison between the service awards range of monetary recovery available to the class, (4) whether the litigation will further the public policy underling the statutory scheme, and (5) risks to the class representatives in participating in the lawsuit, including financial exposure, retaliation, and negative notoriety related to the lawsuit. (*Cellphone Termination Fee Cases*, 186 Cal.App.4th at 1394-1395 (citing *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299).)

First, unlike other Class Members, Plaintiff risked paying for Defendant's litigation costs to provide a benefit to the class. Under Code of Civil Procedure § 1032, a prevailing party is "entitled as a matter of right to recover costs in any action or proceeding." (Code Civ. Proc. § 1032(b).) If this case did not successfully conclude in her favor, Plaintiff could have been responsible for paying Defendant's costs. (Craigo Decl., ¶ 11.) That risk must be taken into account. (*Guerrero v. United States Gypsum Company*, 2022 WL 18026330, at *8 (S.D. Cal. Dec. 30, 2022).) Moreover, unlike other Class Members, Plaintiff signed a broad release affecting other claims she could have brought against Defendant. (Settlement Agreement, §§ 5.1-5.2.)

Second, courts recognize that in acting as a class representative, a plaintiff has assumed a reputation risk that may impact her ability to find employment in the near and distant future. (*Guerrero*, 2022 WL 18026330, at *8; *Shields v. Amerigas Propane, Inc.*, 2017 WL 11682900, at *9 (C.D. Cal. July 31, 2017) (holding there is an inherent reputational risk posed by pursuing wage and hour claims against an employer).) Here, Plaintiff has placed her reputation at stake by asserting an action against her employer, which may impact her ability to find employment in the near and distant future. This is especially true where records of this action and Plaintiff's involvement in this action are freely available online and can be discovered by future potential employers. (Bartz Decl., ¶ 31.)

Third, Plaintiff estimates that she has dedicated at least 30 hours of her time to prosecuting this action during the duration of this case. (Craigo Decl., ¶ 9.) As a Class Representative, Plaintiff assisted counsel in gathering the evidence necessary to prosecute the claims on behalf of the Class, responding to discovery and requests for information from her attorneys, gathering and reviewing documents, and helping Class Counsel evaluate the claims for mediation. (*Id*., at ¶¶ 4-8.) Plaintiff also made herself available by phone on the day of mediation and during subsequent negotiations following the mediation, and reviewed the settlement to ensure that Class Members received fair amounts. (*Id*.)

Fourth, the duration of this action also weighs in favor of the requested enhancement award. Plaintiff filed this action in August 2023. Rather than attempting to resolve her claims quickly, Plaintiff waited more than 24 months for a resolution to this action to confer a benefit on all Class Members for the alleged violations. Given the opt-out period and payment after final approval provided by the Agreement, Plaintiff will wait even longer before receiving anything under the Settlement. (Settlement Agreement, §§ 7.5.)

Fifth, there is a lack of personal benefit when "a class representative will not gain any benefit beyond that he would receive as an ordinary class member." *Shvager v. ViaSat, Inc.*, 2014 WL 12585790 at *24 (C.D. Mar. 10, 2014); *Van Vranken*, 901 F.Supp. at 299. Since Defendant has not entered into any other agreement with Plaintiff aside from the Settlement and her releases, Plaintiff's requested incentive award is the sole means through which she will be compensated for her actions as a class representative. (Bartz Decl., ¶ 31.)

As such, the award is reasonable in light of the substantial benefits Plaintiff conferred upon the settlement class.

D. The Requested Attorneys Fees and Costs

The purpose of an attorneys' fee award in class action litigation is to reward counsel who invested in a case despite the risk of non-payment and achieved a substantial positive result for the class. Attorneys' fees are awarded as a matter of equity. California courts routinely award attorneys' fees equaling one-third or more of the potential value of the common fund. (See *Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66, n.11 ("Empirical studies show that, regardless of whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery").)

Plaintiff seeks appointment of Bartz Law Group, APC and United Employees Law Group, PC as Class Counsel. The attorneys performed significant work and expended litigation costs in prosecuting the matter with no guarantee of any payment. (Bartz Decl., ¶ 32.) Plaintiff's Counsel seeks preliminary approval for $23,333.00 in attorneys' fees, which is up to one-third of the Gross Settlement Amount, and up to $10,000.00 in reimbursement of litigation costs. (Settlement Agreement § 3.4.) Given the work performed in this matter, the extensive information exchange, and substantial recovery obtained on behalf of Plaintiff and the Class, Plaintiff's Counsel achieved a settlement through efficient and diligent work. (See generally, Bartz Decl.) At final approval, Plaintiff's Counsel will fully brief the merits of its request for the award of attorneys' fees and litigation costs. (*Id*. at ¶ 32.)

E. The Settlement's Impact on Pending Litigation

Aside from this case, Plaintiff is unaware of any other pending litigation against Defendant. (Bartz Decl., ¶ 35.) Plaintiff's Counsel researched whether any additional PAGA filings were submitted to the Labor and Workplace Development Agency against Defendant, and found no other PAGA filings aside from those filed in this case. (*Id*.) Thus, the Settlement has no impact on any pending litigation.

V. <u>CONCLUSION</u>

The Parties have negotiated a fair and reasonable Settlement of the class claims in light of the risks present in this case. Plaintiff has appropriately presented the materials and information necessary for preliminary approval, and therefore, respectfully request that the Court preliminarily approve the Settlement and schedule a date to conduct the final approval hearing.

Dated: April 2, 2026 **BARTZ LAW GROUP, APC**

By: */s/ Aaron A. Bartz*
Aaron A. Bartz
Attorney for Plaintiff