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Faye Chapman and Aggrieved Employees*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED JURISDICTION**

FAYE CHAPMAN, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

WORLD'S FINEST CHOCOLATE, INC.
AND DOES 1-10,

Defendants.

Case No. 23CV038555

*[Assigned for All Purposes to Hon. Somnath
Raj Chatterjee, Dept. 21]*

**PLAINTIFF'S NOTICE OF UNOPPOSED
MOTION FOR APPROVAL OF PRIVATE
ATTORNEYS GENERAL ACT
SETTLEMENT AND DISMISSAL OF
CLASS CLAIMS PURSUANT TO
CALIFORNIA RULES OF COURT 3.770;
MEMORANDUM OF POINTS AND
AUTHORITIES**

RESERVATION ID: 764348946450

Date: February 4, 2025

Time: 1:30 P.M.

Dept.: 21

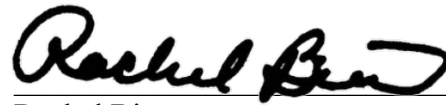
TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on February 4, 2025 at 1:30 P.M., or as soon thereafter as the matter can be heard, in Department 21 of this Court, located at 1221 Oak Street, Oakland, CA 94612, Plaintiff Faye Chapman will move this Court for an order: (1) approving the parties' settlement pursuant to Labor Code section 2699(1)(2), (2) dismissing Plaintiff's individual claims with prejudice; and (3) dismissing Plaintiff's putative class claims without prejudice pursuant to California Rules of Court, Rule 3.770.

This unopposed motion is based on the Notice of Motion; the accompanying Memorandum of Points and Authorities; the Declaration of Rachel Bien and attached exhibits filed herewith; the pleadings, papers, and other records on file in this action; and any oral argument on the motion.

Dated: January 8, 2025

OLIVIER & SCHREIBER PC

A handwritten signature in black ink, appearing to read "Rachel Bien", written over a horizontal line.

Rachel Bien

Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 Plaintiff Faye Chapman (“Plaintiff”) seeks approval of the settlement of her representative
3 claims under the Private Attorneys General Act (“PAGA”), Lab. Code §§ 2698 *et seq.*, against
4 Defendant World’s Finest Chocolate, Inc. (“WFC” or “Defendant”) in the amount of \$495,000 for
5 the State and 30 aggrieved employees. The settlement was achieved after the parties engaged in
6 discovery and motion practice, and arm’s-length negotiations facilitated by a private mediator. The
7 settlement provides a significant amount in civil penalties for the State and aggrieved employees,
8 and is fair, reasonable, and adequate under the relevant legal standards. The benefits of settlement
9 and the potential risks were carefully considered by Plaintiff and Plaintiff’s counsel in reaching the
10 settlement. Accordingly, Plaintiff respectfully requests that the Court enter an order approving the
11 proposed settlement.

12 In addition, Plaintiff respectfully requests that the Court dismiss her putative class action
13 claims without prejudice under California Rules of Court, Rule 3.770, for the reasons set forth
14 below, and dismiss her individual claims with prejudice because the proposed settlement resolves
15 them.

16 **II. PROCEDURAL AND FACTUAL BACKGROUND**

17 On July 17, 2023, Plaintiff filed a putative class action against WFC, alleging that WFC had
18 misclassified its Independent Sales Representatives (“ISRs”) as independent contractors, rather
19 than employees under California law. In addition to her class claims, Plaintiff also raised individual
20 claims against WFC for breach of contract based on the alleged failure to pay her owed
21 commissions. (Decl. of Rachel Bien in Supp. of Mot. for Approval of PAGA Settlement (“Bien
22 Decl.”) ¶ 4.)¹ After exhausting the required notice period under PAGA, Plaintiff filed a First
23 Amended Complaint (“FAC”) on August 28, 2023 adding a PAGA claim. (*Id.* ¶ 5.)

24 After Plaintiff filed the lawsuit, Defendant began soliciting ISRs to release their claims in
25 the case in exchange for settlement payments. (*Id.* ¶ 7.) As a result, Defendant obtained releases
26

27 _____
28 ¹ All exhibits are attached to the Bien Decl.

1 from 31 out of the approximately 46 putative class members. (*Id.*) Plaintiff sought a protective order
2 to stop Defendant from continuing to communicate with ISRs who had not signed releases and to
3 invalidate any releases that Defendant obtained from these ISRs, which the Court denied on April
4 12, 2024. (*Id.* & Ex. A.) Subsequently, Defendant served or attempted to serve subpoenas on certain
5 ISRs who did not sign releases, which Plaintiff moved to quash. (*Id.* ¶ 7.) On July 31, 2024, the
6 Court granted the motion to quash in part. (*See* Ex. B.)

7 Plaintiff served interrogatories, document requests, and requests for admission on
8 Defendant. (Bien Decl. ¶ 8.) Defendant produced documents and responses to Plaintiff's requests,
9 including policies relating to ISRs' compensation terms, job postings and descriptions, and other
10 documents relevant to ISRs' classification as independent contractors such as records from the
11 Employment Development Department's settlement with WFC for unpaid unemployment
12 contributions. (*Id.*) The parties also negotiated and agreed to a "*Belaire-West*" notice that they hired
13 a third-party administrator, ILYM Group, Inc. ("ILYM"), to send to putative class members. (*Id.* ¶
14 9.) After the notice period ended, the administrator provided Plaintiff's counsel with contact
15 information for putative class members, and Defendant provided Plaintiff's counsel with
16 compensation data to enable Plaintiff to evaluate the potential damages and penalties. (*Id.*)

17 In addition to discovery that Defendant produced, Plaintiff also provided her counsel with
18 communications and training materials relating to her work as an ISR and other relevant records.
19 (*Id.* ¶ 10.) Plaintiff's counsel also obtained information regarding the claims and damages through
20 interviews conducted with putative class members. (*Id.* ¶ 11.) In advance of mediation, Defendant
21 produced records reflecting for each putative class member: their compensation for each year of the
22 class period, their dates of work, and whether they signed a release and the amount they were paid.
23 (*Id.* ¶ 12.)

24 Based on this discovery, Plaintiff's counsel was well-prepared to evaluate the strengths and
25 weaknesses of the claims when the parties agreed to explore settlement through private mediation
26 in early fall 2024. (*Id.*)

On October 16, 2024, the parties attended a mediation with Jeffrey Fuchsman, Esq. (Bien Decl. ¶ 13.) No agreement was reached during the mediation, but the parties continued to work with Mr. Fuchsman toward a resolution and ultimately agreed to a mediator’s proposal. (*Id.*) On January 7, 2025, the parties executed a long-form settlement agreement, which is attached to the Bien Decl. as Exhibit C. (*Id.* ¶ 14 & Ex. C.)

III. SETTLEMENT TERMS

A. Monetary Terms

Under the proposed settlement, Defendant has agreed to pay a non-reversionary Gross Settlement Amount of \$495,000 to resolve the PAGA claims of Plaintiff, the State, and 30 aggrieved employees. The Gross Settlement Amount will be used to pay the following amounts associated with the settlement: (1) the LWDA Payment and Individual Settlement Payments due to PAGA Settlement Members (together, the “Net Settlement Amount”); (2) the Service Payment to Plaintiff, subject to Court approval; (3) Attorneys’ Fees and Costs to Plaintiff’s Counsel, subject to Court approval; and (4) the Settlement Administrator’s fees. (Ex. C ¶¶ 1.9, 1.14.)

Pursuant to Labor Code § 2699(j), the Net Settlement Amount will be divided: seventy-five percent to the LWDA and twenty-five percent PAGA Settlement Members.² (*Id.* ¶ 4.5.) The PAGA Distribution Fund will be allocated based on the number of pay periods that each aggrieved employee worked during the relevant period. (*Id.* ¶ 4.6.) Based on Defendant’s records, there are 30 PAGA Settlement Members. (*Id.* ¶ 1.17.)

Defendant also agreed to pay Plaintiff the amount of \$80,000 to resolve her individual claims, in exchange for signing a general release of claims. (Ex. C ¶ 6.1.1.) The payment reflects a compromise of the amounts that Plaintiff alleges she is owed in unreimbursed expenses, unpaid overtime, unpaid commissions, and other damages stemming from her alleged misclassification as an independent contractor. (Bien Decl. ¶ 18.) Plaintiff’s individual settlement is contingent upon the Court’s approval of the PAGA Settlement. (*Id.*)

² This case was filed prior to the amendments to PAGA, which became effective on July 1, 2024.

1 **B. Timing of the Settlement Funding and Payments.**

2 Defendant will deposit the Gross Settlement Amount into a Qualified Settlement Fund
3 (“QSF”) administered by the proposed third-party Settlement Administrator, ILYM, within 71 days
4 of the Court’s approval of the settlement if there are no appeals. (Ex. C ¶¶ 1.7, 4.1.) All payments
5 due under the Settlement Agreement will be issued by the Settlement Administrator within 30 days
6 of Defendant’s payment into the QSF. (*Id.* ¶ 4.7.)

7 **C. Proposed Administrator, Cost of Administration, and Duties.**

8 The parties propose that the Court appoint ILYM as the Settlement Administrator, an
9 experienced class action administrator. (Bien Decl. ¶ 20.) The costs of settlement administration
10 are estimated not to exceed \$3,000. (Ex. C ¶ 4.4.)

11 Prior to mailing PAGA Settlement Members’ settlement checks, the Settlement
12 Administrator will update the mailing addresses contained in the PAGA Member Data against the
13 National Change of Address Database. (*Id.* ¶ 4.6.2.) The Settlement Administrator will attempt to
14 determine the correct address for any settlement check that is returned undeliverable and will
15 perform a re-mailing within five (5) calendar days of locating an updated address. (*Id.*) Any
16 Individual Settlement Payment checks that remain undeliverable or uncashed one hundred eighty
17 (180) calendar days after the postmarked date of the initial mailing will be cancelled and the funds
18 associated with such checks will be sent, subject to the Court’s approval, to Bet Tzedek Legal
19 Services, as a *cy pres* beneficiary pursuant to Code of Civil Procedure § 384. (*Id.*)

20 **D. Scope of the Release.**

21 The release is limited to the PAGA claims asserted in the Action and/or the notice letter to
22 the LWDA, and/or arising from or related to the facts and claims asserted in the Action and/or the
23 notice letter to the LWDA (*Id.* ¶ 5.1.) The release does not cover the putative class claims alleged
24 in the Action, which Plaintiff seeks to dismiss without prejudice. (*Id.* ¶ 5.2.) The release period is
25 from June 28, 2022, to the date on which the Court grants approval of the settlement. (*Id.* ¶ 1.16.)
26
27
28

1 **E. Attorneys' Fees, Costs, and Service Payments.**

2 Plaintiff's counsel requests that the Court approve: (a) attorneys' fees of one-third of the
3 Gross Settlement Amount, or \$165,000; and (b) \$16,626.09 in costs and expenses incurred in the
4 action. (Bien Decl. ¶ 43 & Ex. C ¶ 4.2.) Plaintiff also requests that the Court award her a Service
5 Payment of \$5,000 in recognition of the burdens she assumed and efforts she made on behalf of the
6 State and aggrieved employees. (See Ex. C ¶ 4.3; Ex. D.) These amounts are reasonable in light of
7 the results achieved by the settlement and the work required to bring this matter to resolution.

8 If the Court grants these requests, the amounts that will be allocated to the State and to
9 aggrieved employees will be:

10	Gross Settlement Fund	\$495,000.00
11	Less Attorneys' Fees	\$165,000.00
12	Less Expenses	\$16,626.09
13	Less Settlement Administration	\$3,000.00
14	Less Service Payment	\$5,000.00
15	PAGA Amount Payable to LWDA	\$229,030.43
16	PAGA Amount Payable to Aggrieved Employees	\$76,343.48

17 Bien Decl. ¶ 42

18 **IV. ARGUMENT**

19 **A. Legal Standard for PAGA Settlements.**

20 PAGA settlements are subject to court review, "ensuring that any negotiated resolution is
21 fair to those affected." (*Williams v. Super. Ct of Los Angeles County* (2017) 3 Cal.5th 531, 549
22 [quoting Cal. Lab. Code 2699(1)(2)] [internal quotation marks omitted].) Although PAGA does not
23 set forth the particular standards against which a PAGA settlement should be evaluated, some of
24 the factors for review of a class action settlement under Fed. R. Civ. P. 23, Cal. Code Proc. § 382,
25 and Cal. Rules of Court, Rule 3.769 may be "useful in evaluating the fairness of a PAGA
26 settlement" by the reviewing court. (See *Moniz v. Adecco USA, Inc.* (2021) 72 Cal. App. 5th 56,
27 77.) In particular, "while PAGA does not require the trial court to act as a fiduciary for aggrieved
28

employees, adoption of a standard of review for settlements that prevents ‘fraud, collusion or unfairness,’ and protects the interests of the public and the LWDA in the enforcement of state labor laws is warranted.” (*Id.*) Furthermore, “[b]ecause many of the factors used to evaluate class action settlements bear on a settlement’s fairness—including the strength of the plaintiff’s case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount—these factors can be useful in evaluating the fairness of a PAGA settlement.” (*Id.*)

B. The Terms of the Settlement Are Fair, Reasonable, and Adequate.

1. The Settlement Was Negotiated at Arms’ Length by Plaintiff and Counsel Who Provided Excellent Representation to the State and Aggrieved Employees.

The Settlement represents the culmination of extensive negotiations, after engaging in sufficient discovery and litigation efforts. At all times, the parties negotiated at arms’ length and were represented by counsel with expertise in this area of the law. (Bien Decl. ¶¶ 12-13, 24-33.) All counsel have considerable experience in representative and class actions as well as wage and hour litigation, and are, therefore, well-versed in the legal and factual issues. (*Id.*) The settlement negotiations were contested and conducted in good faith. Moreover, Plaintiff’s counsel have settled or tried and brought to judgment major wage and hour and other class action cases and understand the possibilities of recoveries and risks associated with such extensive proceedings. (*Id.* ¶¶ 24-33.) “Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party’s expected outcome in the litigation.” (*In re Pac. Enters. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 378.) Plaintiff’s counsel consider this settlement, which compares favorably to previous settlements that courts have approved, to be an excellent result. (Bien Decl. ¶¶ 35, 38.)

In addition, Plaintiff actively participated in discovery, has assisted counsel in investigating the claims, and has diligently represented the State and other aggrieved employees. (*See Ex. D.*) Counsel have investigated the action, reviewed and propounded discovery, engaged in motion

1 practice, and negotiated a very favorable settlement with the assistance of a neutral. (Bien Decl. ¶¶
2 6-13.)

3 These factors support settlement approval. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168
4 Cal.App.4th 116, 129.)

5 **2. Plaintiff Faces Risk in the Absence of Settlement.**

6 While Plaintiff and her counsel believe that her claims have merit and that she would
7 ultimately prevail at trial, the litigation to date has informed the parties of the risks of continued
8 litigation. Based on a thorough investigation and careful evaluation of this action, counsel and
9 Plaintiff have concluded that the settlement with Defendant for the consideration and on the terms
10 set forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best interest of
11 the State and aggrieved employees in light of all known facts and circumstances, including the risk
12 of significant delay, defenses asserted by Defendant, and potential appellate issues. (Bien Decl. ¶¶
13 34-38.) The information the parties received through discovery and motion practice, as well as the
14 additional information and data exchanged during settlement negotiations, has been more than
15 sufficient to create “an understanding of the amount that is in controversy and the realistic range of
16 outcomes of the litigation.” (*Kullar*, 168 Cal. App. 4th at 120.)

17 In particular, Defendant argues that ISRs are not employees but were properly classified as
18 independent contractors and are therefore not entitled to any damages or penalties. Defendant also
19 argues that the appropriate test for determining ISRs’ status is not the “ABC” test under *Dynamex*
20 *Operations W. v. Superior Court* (2018) 4 Cal.5th 903, but the multi-factor tests under Lab. Code
21 §§ 2776 (business-to-business) and/or 2783(e) (direct salespeople). In support of their arguments,
22 Defendant contends that ISRs generally work without direct supervision, can make their own
23 schedules, and are required to have their own fundraising businesses to contract with WFC, which
24 are relevant factors under the business-to-business exception. Defendant also has argued that ISRs
25 are engaged in direct sales under Labor Code § 2783(e) because their fundraising activities involve
26 in person demonstrations of consumer products (chocolate) to schools which then resell the
27 products not at a retail or wholesale location. (Bien Decl. ¶ 36.)

1 Although Plaintiff believes that Defendant would not be able to establish all of the factors
2 of either the business-to-business or direct salesperson tests, which it must do to prevail, she
3 recognizes that the question of whether she and other ISRs were properly classified as independent
4 contractors and the legal standard under which this question must be answered raise risk and
5 uncertainty and the strong likelihood that even if Plaintiff prevails, Defendant will appeal. (*Id.* ¶
6 36.) All of these circumstances support approval of the proposed settlement.

7 **3. The Value of the Settlement Is Significant.**

8 The settlement amount is substantial based on the potential penalties and the small size of
9 the settlement group. Based on Plaintiff's counsel's calculations, using data produced by
10 Defendant, the Gross Settlement Amount represents approximately 25% of the \$1,979,100 in
11 potential penalties that Plaintiff could have recovered if Plaintiff prevailed on all of the asserted
12 PAGA violations. (Bien Decl. ¶ 40.) The calculation assumes that the Court would have awarded
13 penalties at the rate of \$100 for each pay period for each violation other than the misclassification
14 violation under Lab. Code § 226.8 which carries a maximum penalty of \$25,000 and a minimum
15 penalty of \$10,000 per aggrieved employee. (*Id.*) By comparison, if the Court were to award each
16 aggrieved employee \$10,000 for the Labor Code § 226.8 violation, the proposed settlement would
17 represent 32% of the potential recovery (*i.e.*, \$495,000/\$1,544,100). (*Id.* ¶ 41.)

18 The State will recover approximately \$229,030.43 in penalties, and aggrieved employees
19 will recover an average of \$2,545 each. (*Id.* ¶¶ 39, 42.) Those who worked for the full duration of
20 the relevant period—approximately 24 ISRs—will receive payments of \$2,923 each. (*Id.*) The
21 minimum payment is \$146 for an ISR who worked approximately 3 pay periods during the relevant
22 period. (*Id.*) Payment will be made within 71 days of the Court's approval if there are no appeals.
23 In addition, there is no claims process and checks will be directly mailed to the LWDA and the
24 aggrieved employees. (*See* Ex. C ¶¶ 4.5-4.7.)

25 Given the litigation risks, as well as the Court's discretion to reduce penalty amounts under
26 PAGA, the settlement amount is fair, adequate and reasonable. (*See* Lab. Code § 2699(e)(2).) It is
27 also well within the range that courts routinely approve. (*See Carrington v. Starbucks Corp.* (2018))

30 Cal.App.5th 504 [affirming trial court’s penalty award of \$5 per pay period after a PAGA trial];
see also Chen v. W. Digital Corp (C.D. Cal. Jan. 5, 2021) 2021 WL 9720778, at *7 [approving
settlement amount that was between 10.8% to 15.9% of total exposure]; *Correa v. Zillow, Inc.* (C.D.
Cal. June 14, 2021) 2021 WL 4925394, at *5 [approving settlement at 13.75% of total exposure];
North v. Superior Hauling & Fast Transit, Inc (C.D. Cal. May 29, 2020) 2020 WL 12967997, at
*7 [approving settlement at 8.8% of total exposure]; *Ruch v. AM Retail Grp., Inc.* (N.D. Cal. Sept.
28, 2016) No. 14 Civ. 05352, 2016 WL 5462451, at *7 [approving PAGA recovery representing
less than 2% of maximum potential recovery].)

The value of the settlement in light of the litigation risks described above favors approval
of the settlement.

4. Plaintiff Provided the LWDA with Notice of the Proposed Settlement.

The LWDA was given notice of the settlement on January 8, 2025. (Bien Decl. ¶ 14.)
Plaintiff will advise the Court prior to the hearing if they learn that the LWDA objects to the
settlement.

C. Plaintiff Is Entitled to a Service Payment for Vigorously Prosecuting This Action on Behalf of the State and Aggrieved Employees.

Plaintiff Faye Chapman requests a Service Payment of \$5,000, to be paid from the Gross
Settlement Amount. (Ex. C ¶ 4.3; Ex. D.) The traditional bases for awarding service payments to
named plaintiffs in class action settlements support the award of service payments in PAGA
settlements. (*See Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-95
[affirming award of service payments to class action plaintiffs and reviewing cases].)

Named plaintiffs are eligible for reasonable service payments to compensate them “for the
expense or risk [they have] incurred in conferring a benefit on other members of the class.” (*Clark
v. Am. Residential Servs. LLC* (2009) 175 Cal.App.4th 785, 806.) Service payments recognize that
an employer’s current employees are unlikely to seek legal redress for “fear of economic retaliation
[that] might often operate to induce aggrieved employees . . . to accept substandard conditions.”

1 (*Mitchell v. Robert DeMario Jewelry, Inc.* (1960) 361 U.S. 288, 292; *see also Kasten v. Saint-*
2 *Gobain Performance Plastics Corp.* (2011) 563 U.S. 1.)

3 Without Plaintiff's efforts, there would be no recovery at all. Plaintiff took on burdens and
4 risks that warrant the particular amount that she requests. (*See, e.g., Syed v. M-I, LLC* (E.D. Cal.
5 July 27, 2017) No. 12-cv-1718, 2017 WL 3190341, at *9 [awarding service awards of \$15,000 and
6 \$20,000 to the class representatives, noting that the amounts were "not outside the realm of what
7 has been approved as reasonable by courts"] [collecting cases].) Specifically, Plaintiff assisted
8 counsel from the inception of the lawsuit to investigate the claims, searched for and produced a
9 substantial amount of work-related communications, training materials, and policies, was regularly
10 available to respond to questions from counsel regarding her job duties and other factual matters
11 relevant to the claims, participated in strategy meetings with counsel, attended the mediation, and
12 provided input on the settlement terms. (Ex. D.) Additionally, Plaintiff took on the risk that her
13 current or prospective employers could retaliate against her for asserting claims against her former
14 employer and agreeing to have her name associated with this case. (*Id.*)

15 Service payments are especially warranted in a case like this, because it helps to ensure that
16 employees, like Plaintiff, will continue to stand up to enforce the rights of their co-workers and
17 further important public policies of the State. Individuals like Plaintiff (and most aggrieved
18 employees) would have little, if any, recourse without the representative action device. Many
19 aggrieved employees, particularly current employees, are fearful of retaliation in response to filing
20 any lawsuit, much less a representative action suit.

21 Accordingly, the Court should award a service payment to Plaintiff "to compensate [her]
22 for work done on behalf of [aggrieved employees], to make up for financial or reputational risk
23 undertaken in bringing the action, and . . . to recognize [her] willingness to act as a private attorney
24 general." (*Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958-59; *Clark*, 175
25 Cal. App. 4th at 806; *Cellphone Termination Fee Cases*, 186 Cal.App.4th at 1393; *see also Austin*
26 *v. Foodliner, Inc.* (N.D. Cal. May 10, 2019) No. 16-CV-07185-HSG, 2019 WL 2077851, at *8
27 [approving an incentive award of \$10,000 to the plaintiff because "she took on personal and
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1 professional risk by searching for an attorney and recruiting co-workers to join the lawsuit while
2 still employed by [the defendant]”]; *Castro v. ABM Industries, Inc.* (N.D. Cal.) 4:17-cv-03026-
3 YGR, Dkt. 122 (awarding \$10,000 service award).

4 **D. The Court Should Approve Counsel’s Requests for Fees and Costs.**

5 The proposed attorneys’ fees and costs award is fair and reasonable. Counsel seek one-third
6 of the Gross Settlement Amount (\$165,000) as their attorneys’ fees plus reimbursement of litigation
7 costs and expenses of \$16,626.09. (Bien Decl. ¶ 43.) The requested fee and cost award is warranted
8 under the relevant legal standards and is reasonable based on the results that counsel achieved.

9 **1. Counsel Merit a Reasonable Fee for Securing Substantial Relief While**
10 **Bearing Contingent Risks.**

11 Counsel are entitled to recover attorneys’ fees under California’s common fund doctrine.
12 “California has long recognized . . . the propriety of awarding an attorney fee to a party who has
13 recovered or preserved a monetary fund for the benefit of himself or herself and others.” (*Laffitte*
14 *v. Robert Half Int’l Inc.* (2016) 1 Cal.5th 480, 488-89; *see also Quinn v. State of Calif.* (1975) 15
15 Cal.3d 162, 167 [“[O]ne who expends attorneys’ fees in winning a suit which creates a fund from
16 which others derive benefits, may require those passive beneficiaries to bear a fair share of the
17 litigation costs”].) Counsel are also entitled to an award of reasonable attorneys’ fees under the fee-
18 shifting provisions of PAGA. (Lab. Code § 2699(g)(1).)

19 A primary purpose of statutory fee-shifting is “encouraging attorneys to act as private
20 attorneys general and to vindicate important rights affecting the public interest.” (*Ketchum v. Moses*
21 (2001) 24 Cal.4th 1122, 1133-34.) To further this aim, “fee awards should be fully compensatory.”
22 (*Id.* at 1133.) As detailed below and in the declarations submitted with this motion, Plaintiff’s
23 request for attorneys’ fees and costs is reasonable and well-supported.

1 **a. The Court Should Award Fees Under the Common Fund**
2 **Method.**

3 Counsel seeks fees pursuant to the percentage of the recovery analysis, cross-checked by a
4 lodestar analysis. This is a permissible approach in California. (*Laffitte*, 1 Cal.5th at 503-06; *Karton*
5 *v. Ari Design & Construction, Inc.* (2021) 61 Cal. App. 5th 734, 745.) Counsel requests one-third
6 of the common fund, which is within the range that California state and federal courts typically
7 award. (*See, e.g., In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558 [“Empirical
8 studies show that, regardless whether the percentage method or the lodestar method is used, fee
9 awards in class actions average around one-third of the recovery”] [internal quotation marks
10 omitted]; *Cicero v. DirecTV, Inc.* (C.D. Cal. July 27, 2010) No. 07 Civ. 1182, 2010 WL 2991486,
11 at *6 [California district courts “usually award attorneys’ fees in the 30-40% range in wage and
12 hour class actions that result in recovery of a common fund under \$10 million”]; *Bennett v.*
13 *SimplexGrinnell LP* (N.D. Cal. Sept. 3, 2015) No. 11 Civ. 01854, 2015 WL 12932332, at *6
14 [38.8%; \$4.9 million fund].)

15 The requested fee is justified under the relevant factors. When assessing the reasonableness
16 of a fee award under the common fund approach, courts consider “all of the circumstances of the
17 case,” including the results achieved, the risk of litigation, the skill required and the quality of work,
18 the contingent nature of the fee and the financial burden carried by the plaintiffs, and the time and
19 labor required. (*See Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048-50; *Laffitte*,
20 1 Cal.5th at 504 [“Before approving the settlement agreement and percentage fee award in this case,
21 the trial court supplemented its own familiarity with the case by obtaining additional information
22 from class counsel on the risks and potential value of the litigation; the court carefully considered
23 that information on contingency, novelty and difficulty together with the skill shown by counsel,
24 the number of hours worked and the asserted hourly rates”].) Counsel’s fee request is within the
25 ordinary range approved by courts and is amply justified by these factors.

1 **b. Counsel Secured a Substantial Result in Light of the Risk.**

2 As discussed above, the result achieved in this case is substantial in light of the litigation
3 risks and the potential recovery if Plaintiff prevailed on all of her claims. Defendant maintained
4 defenses to Plaintiff's PAGA claims that could have resulted in no recovery at all or a much smaller
5 recovery than what the settlement provides.

6 Counsel took on this case, despite the risks, on a purely contingent basis. They extensively
7 litigated this case for over a year. Litigating this matter has involved complex factual and legal
8 issues under California wage and hour law. Plaintiff is fully aware of the risks of litigation and the
9 complex issues involved, making this settlement reasonable and a fair result under the
10 circumstances. Moreover, there remains a substantial likelihood of an appeal from any final
11 judgment in the absence of a negotiated resolution. A certain result now, rather than a possibly
12 larger, but contingent one at some indefinite time years in the future, weighs in favor of approval
13 of the settlement.

14 Counsel also used their experience and expertise gained through litigating many wage and
15 hour and employment class and representative cases to achieve the settlement. The settlement will
16 benefit the State and aggrieved employees who will be paid sooner than they would be if the case
17 were litigated through trial and any appeals.

18 Further, counsel have invested, and will continue to invest, the necessary resources on behalf
19 of the State and aggrieved employees, including time and expenses. Counsel has borne all of the
20 risks and costs of litigation and will not receive any compensation unless and until recovery is
21 obtained. (Bien Decl. ¶¶ 48, 50.) Counsel have not been paid for any of their time spent on this
22 action, nor have they been reimbursed for the substantial out-of-pocket expenses they incurred in
23 the prosecution of this action. Counsel took this case without any assurance of being awarded fees
24 or reimbursed any costs for efforts or expenditures. (*Id.*) At the outset, counsel had no way of
25 anticipating the course taken by this case, including that Defendant would solicit and obtain releases
26 from approximately 75% of the putative class. In spite of this, counsel took the case on with every
27

1 intent of expending all necessary hours and out-of-pocket expenses to ensure vindication of the
2 rights at stake. (*Id.* ¶ 50.)

3 O&S is a small firm of only six attorneys. (Bien Decl. ¶ 53.) Defendant’s counsel, on the
4 other hand, are from a firm with hundreds of attorneys. (*Id.* ¶ 50.) Going head-to-head with an
5 employment management-side firm of this size and against large corporations on behalf of workers
6 presented a tremendous amount of financial risk. (*Id.*) Although counsel have always believed in
7 the strength of the claims in this case, the outcome has been uncertain. Defendant mounted an
8 aggressive defense of this action, obtaining releases, subpoenaing absent class members, and raising
9 several defenses. (Bien Decl. ¶¶ 7, 36.) If counsel had not been successful at achieving a resolution
10 here, the time that they have devoted to litigating the case would have been for naught and would
11 not have produced any fee or any reimbursement of costs or expenses. Counsel was able to leverage
12 their experience and advocacy to obtain robust monetary relief for Plaintiff, the State, and the
13 aggrieved employees. (*Id.* ¶¶ 24-33, 39-41.)

14 The skill and determination that counsel has shown throughout the case, as well as the risks
15 incurred, justifies the requested attorneys’ fees and costs.

16 **c. The Lodestar Cross-Check Supports the Requested Fee Award.**

17 A lodestar cross-check further confirms that the requested fee award is reasonable in this
18 case. Courts may use the lodestar method to “cross-check” the percentage-of-the-fund approach.
19 (See *Laffitte*, 1 Cal. 5th at 505 [“A lodestar cross-check is simply a quantitative method for bringing
20 a measure of the time spent by counsel into the trial court’s reasonableness determination”].) In
21 conducting a lodestar cross-check, the court is not “required to closely scrutinize each claimed
22 attorney-hour.” (*Id.*) An evaluation may be done by reviewing “counsel declarations summarizing
23 overall time spent.” (*Id.*)

24 Typically, a positive multiplier to the lodestar would be warranted and appropriate before
25 any cross-check is performed. Positive multipliers are routine in class action contingency cases and
26 are commonly accepted in the context of a lodestar cross-check of a percentage fee. (See, e.g.,
27 *Vizcaino*, 290 F.3d at 1051 n.6 [multipliers ranging from 1.0 to 4.0 are frequently awarded in
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1 common fund cases; affirming order awarding common fund fees where lodestar cross-check
2 resulted in a multiplier of 3.65].) “California law provides that while ‘the unadorned lodestar reflects
3 the general local hourly rate for a fee-bearing case; it does not include any compensation for
4 contingent risk, extraordinary skill, or any other factors a trial court may consider[.]’” (*Ridgeway v.*
5 *Wal-Mart Stores Inc.* (N.D. Cal. 2017) 269 F.Supp.3d 975, 995 [quoting *Ketchum*, 24 Cal.4th at
6 1138].) The purpose of a multiplier for contingent risk is to bring the financial incentives for
7 attorneys enforcing important rights “into line with incentives ... they are paid on a fee-for-services
8 basis.” (*Ketchum*, 24 Cal.4th at 1132.)

9 Here, however, although a positive multiplier would be warranted, counsel seeks a fee
10 representing a *negative* multiplier of their lodestar. The current lodestar is approximately \$343,835
11 based on approximately 575.5 hours of work, with more work to come to prepare for the approval
12 hearing and oversee the settlement administration. (Bien Decl. ¶ 44.) The percentage of the common
13 fund sought – \$165,000 or one-third – is approximately 48% of the lodestar. The effort that counsel
14 has put into this case and the excellent result they achieved supports the one-third fee request that
15 counsel seeks. (*See Chun-Hoon v. McKee Foods Corp.* (N.D. Cal. 2010) 716 F.Supp.2d 848,
16 854 [“Th[e] resulting multiplier of less than one, (sometimes called a negative multiplier) suggests
17 that the negotiated fee award is a reasonable and fair valuation of the services rendered to the class
18 by class counsel.”].)

19 **d. Counsel’s Hourly Rates Are Reasonable.**

20 Counsel’s current hourly rates are reasonable in light of their significant experience,
21 expertise, and skill, and the prevailing rates in this market. Under California law, attorneys are
22 entitled to their requested rates if those rates are “within the range of reasonable rates charged by
23 and judicially awarded comparable attorneys for comparable work.” (*Children’s Hosp. & Med. Ctr.*
24 *v. Bonta* (2002) 97 Cal. App. 4th 740, 783.) The reasonable hourly rate “must be based on the
25 experience, skill, and reputation of the attorney requesting fees as well as the rate prevailing in the
26 community for similar work performed by [comparable] attorneys.” (*Rodman v. Safeway Inc.* (N.D.
27 Cal. Aug. 23, 2018) No. 11-cv-03003-JST, 2018 WL 4030558, at *6 [internal quotation marks
28

omitted].) The relevant community for purposes of determining the prevailing market rate is generally “that where the court is located.” (*Altavion v. Konica Minolta Sys. Lab. Inc.* (2014) 226 Cal. App. 4th 26, 71.) The complexity of the case also informs the reasonableness of hourly rates. (*Santiago v. CACH LLC* (N.D. Cal. Nov. 4, 2013) No. 13-CV-02234-JST, 2013 WL 5945805, at *5.) “The lodestar should be computed either using an hourly rate that reflects the prevailing rate as of the date of the fee request to compensate Class Counsel for delays in payment inherent in contingency-fee cases, or using historical rates and compensating for delays with a prime-rate enhancement.” (*Stetson v. Grissom* (9th Cir. 2016) 821 F.3d 1157, 1166.)

Here, the billing rates of Plaintiff’s attorneys are commensurate with the prevailing rates in Northern California for attorneys with comparable skill and experience. O&S’s 2024 hourly rates are as follows:

Name	Title	Law School Graduation Year	Hourly Rate as of January 1, 2024
Monique Olivier	Partner	1997	\$1050
Christian Schreiber	Partner	2006	\$950
Rachel Bien	Partner	2005	\$925
Owen Monkemeier	Associate	2019	\$550
Cassidy Clark	Associate	2020	\$500
Estefania Palacio	Associate	2023	\$350
	Paralegal	N/A	\$250
	Law clerk	N/A	\$200

Rachel Bien, who led O&S’s team on this case, and Christian Schreiber, who was also actively involved in the case, each have almost 20 years of experience as litigators. (Bien Decl. ¶¶ 24-28.) Much of their experience has been in complex, representative, and class action litigation. (*Id.*) Their rates are the rates they charge hourly-paying clients and have been routinely approved by courts. (Bien Decl. ¶ 56 (citing cases).)

1 **e. Counsel’s Time Was Reasonably Spent.**

2 The number of hours for which counsel request compensation is also reasonable. Under
3 California law, every hour reasonably spent on this action is compensable: “Absent special
4 circumstances rendering the award unjust, an attorney fee award should ordinarily include
5 compensation for *all* the hours *reasonably spent*, including those relating solely to the fee.”
6 (*Ketchum*, 24 Cal.4th at 1133 [emphasis in original]; *Beaty v. BET Holdings, Inc.* (9th Cir. 2000)
7 222 F.3d 607, 612 [in fee-shifting cases, attorneys “ordinarily . . . can anticipate receiving full
8 compensation for every hour spent litigating a claim”].)

9 Hours are reasonable if “at the time rendered, [they] would have been undertaken by a
10 reasonable and prudent lawyer to advance or protect his client’s interest.” (*Moore v. Jas. H.*
11 *Matthews & Co.* (9th Cir. 1982) 682 F.2d 830, 839.) In making this determination, courts must look
12 at “the entire course of the litigation, including pretrial matters, settlement negotiations, discovery,
13 litigation tactics, and the trial itself.” (*Vo v. Las Virgenes Municipal Water Dist.* (2000) 79
14 Cal.App.4th 440, 447.) Generally, an attorney’s hours are justified if they were “reasonably
15 expended in pursuit of the ultimate result achieved in the same manner that an attorney traditionally
16 is compensated by a fee-paying client.” (*Hensley v. Eckerhart* (1983) 461 U.S. 424, 431; *see also*
17 *Moreno v. City of Sacramento* (9th Cir. 2008) 534 F.3d 1106, 1112.)

18 Counsel spent approximately 575.5 hours on this case. (Bien Decl. ¶ 44.) The work that
19 counsel undertook was necessary to obtaining the settlement. This included, among other things,
20 engaging in motion practice relating to Defendant’s efforts to solicit releases and subpoena putative
21 class members, drafting discovery, engaging in discovery meet and confers with defense counsel,
22 reviewing documents, participating in settlement efforts, including a mediation, conducting legal
23 and factual research, interviewing aggrieved employees, drafting and negotiating the settlement
24 terms, drafting the settlement agreement, and drafting the approval papers. (Bien Decl. ¶¶ 47, 51.)

25 Counsel litigated the case effectively and as efficiently as possible. (*Id.* ¶ 46.) Tasks were
26 reasonably divided to avoid replicating work, and were delegated appropriately among partners,
27 associate attorneys and other staff according to their complexity. (*Id.* ¶ 52.) Counsel’s

1 contemporaneous time records were carefully reviewed, and any purely clerical work was
2 eliminated. (*Id.* ¶ 45.)

3 Contingency arrangements cause counsel to be cognizant of the amount of time incurred on
4 the case. Efficiency and economy are a necessary practice in such cases, as results, and not hours
5 billed, are the focus. (*See Moreno*, 534 F.3d at 1112 [“It must also be kept in mind that lawyers are
6 not likely to spend unnecessary time on contingency fee cases in the hope of inflating their fees . .
7 . . . It would therefore be the highly atypical civil rights case where Plaintiff’s lawyer engages in
8 churning”].) This is particularly the case with small firms like Plaintiff’s counsel’s practice. (Bien
9 Decl. ¶ 53.)

10 **2. Counsel Are Entitled to Reimbursement of Their Costs.**

11 Counsel also seek reimbursement of costs incurred in the litigation. To date, Counsel has
12 incurred costs totaling \$16,626.09. (Bien Decl. ¶ 49.) These costs were reasonable and necessary
13 and should be reimbursed. (*See Rider v. County of San Diego* (1992) 11 Cal. App. 4th 1410, 1424,
14 n.6 (“costs are recoverable from the common fund ‘[o]f necessity, and for precisely the same reasons
15 discussed above with respect to the recovery of attorney fees”). Reimbursable costs typically
16 include “photocopying, printing, postage, court costs, research on online databases, experts and
17 consultants, and reasonable travel expenses.” (*Thomas v. MagnaChip Semiconductor Corp.* (N.D.
18 Cal. May 15, 2018) No. 14-CV-01160-JST, 2018 WL 2234598, at *4; *In re Toys R Us-Delaware,*
19 *Inc. Fair & Accurate Credit Transactions Act (FACTA) Litig.* (C.D. Cal. 2014) 295 F.R.D. 438, 469
20 (“Expenses such as reimbursement for travel, meals, lodging, photocopying, long-distance
21 telephone calls, computer legal research, postage, courier service, mediation, exhibits, documents
22 scanning, and visual equipment are typically recoverable”). The Court has discretion to award
23 reimbursement for other costs if they were reasonably necessary to the conduct of the litigation,
24 rather than merely convenient or beneficial to its preparation. (*Sci. App. Int’l Corp. v. Superior*
25 *Court* (1995) 39 Cal. App. 4th 1095, 1103.)

Counsel's expenses were reasonably necessary to the conduct of the litigation. They include costs for one-half of the mediator's fee, legal research fees, filing fees, mailings, court reporter fees, travel expenses, and other court fees. (Bien Decl. ¶ 49 & Ex. E.)

E. The Court Should Approve the Settlement Administrator's Fees.

The proposed Settlement Administrator, ILYM, has estimated that it will incur fees of approximately \$3,000 to perform the work required of it under the settlement agreement. This work includes calculating each aggrieved employee's settlement payment, mailing the payments, establishing its own employer identification number and filing an Internal Revenue Service Form W-9, establishing a Qualified Settlement Fund ("QSF"), periodically providing reports to the parties updating them on the status of its administration duties, and if requested by the Court, preparing, and submitting to the parties, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under the settlement. (Ex. C ¶¶ 1.25, 3.3, 4.7-4.8.) ILYM's bid was the lowest bid that Plaintiff's counsel received. (Bien Decl. ¶ 20.)

V. DISMISSAL OF CLASS CLAIMS

Pursuant to Section 6.1.1 of the Settlement Agreement, Plaintiff respectfully asks the Court to dismiss the putative class claims without prejudice under California Rule of Court 3.770. Under that Rule, the "dismissal of an entire class action, or of any party or cause of action in a class action, requires court approval." (Rule of Court 3.770(a).) "Requests for dismissal must be accompanied by a declaration setting forth the facts on which the party relies. The declaration must clearly state whether consideration, direct or indirect, is being given for the dismissal and must describe the consideration in detail." (*Id.*)

Here, Defendant has obtained releases of the claims in this case from 31 of the 46 putative class members in exchange for settlement payments. (Bien Decl. ¶ 61 & Ex. C ¶ 2.5.) Thus, there are only 15 putative class members covered by the lawsuit who have not released their claims. (*Id.* ¶ 61.) This number may be insufficient to satisfy the numerosity requirement under the circumstances. (*See* Code of Civ. Proc., § 382.) Plaintiff did not move for class certification and thus no class was certified. (Bien Decl. ¶ 63.) Based on counsel's experience in this case, it is

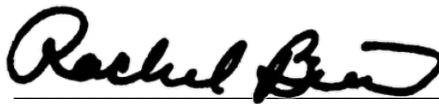
1 reasonable to expect that at least some of the 15 individuals who did not release their claims would
2 not have participated in the lawsuit, either as class members if a class were certified or as individual
3 plaintiffs. (*Id.* ¶ 64.) The proposed PAGA settlement will not release their damages claims, and thus
4 those who wish to pursue them can still do so. (*Id.* ¶ 65.) Their claims were tolled during the
5 pendency of the action and will remain tolled until a date set by the Court at or after the dismissal
6 of the class claims. (*Id.*)

7 **VI. CONCLUSION**

8 For the foregoing reasons, Plaintiff respectfully requests that the Court enter an Order: (1)
9 approving the proposed PAGA settlement; (2) approving the requested service payment to Plaintiff;
10 (3) approving the claims administrator's fees of \$3,000; (4) granting Plaintiff's counsel's request
11 for one-third of the Gross Settlement Amount, or \$165,000, as their attorneys' fees plus their costs
12 of \$16,626.09, and (5) dismissing Plaintiff's class claims without prejudice and Plaintiff's
13 individual claims with prejudice.

14 Dated: January 8, 2025

OLIVIER & SCHREIBER PC

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17 Rachel Bien

18 *Attorneys for Plaintiff*
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Make a Reservation

CHAPMAN vs WORLD'S FINEST CHOCOLATE, INC.

Case Number: 23CV038555 Case Type: Civil Unlimited Category: Other Employment Complaint Case
Date Filed: 2023-07-17 Location: Rene C. Davidson Courthouse - Department 21

Reservation

Case Name: CHAPMAN vs WORLD'S FINEST CHOCOLATE, INC.	Case Number: 23CV038555
Type: Motion re: (Plaintiff's Motion to Approve PAGA Settlement and Dismiss Class Claims Without Prejudice)	Status: RESERVED
Filing Party: Faye Chapman (Plaintiff)	Location: Rene C. Davidson Courthouse - Department 21
Date/Time: 02/04/2025 1:30 PM	Number of Motions: 1
Reservation ID: 764348946450	Confirmation Code: CR-JKYCZKWJRCENQG7RR

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	0.00	1	0.00
Court Technology Fee	1.00	1	1.00
TOTAL			\$1.00

Payment

Amount: \$1.00	Type: Visa
Account Number: XXXX4768	Authorization: 01230G
Payment Date: n/a	

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