MAYALL HURLEY P.C.
WILLIAM J. GORHAM, III (SBN: 151773)
wgorham@mayallaw.com
ROBERT J. WASSERMANN (SBN: 258538)
rwasserman@mayallaw.com
VLADIMIR J. KOZINA (SBN: 284645)
vjkozina@mayallaw.com
112 S Church Street
Lodi, CA 95240
Telephone: (209) 477-3833
Facsimile: (209) 473-4818

Attorneys for Plaintiff Maria Gutierrez

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

MARIA GUTIERREZ, **Plaintiff,** **vs.** **THE CHAINARY, INC. DBA VALLIANI JEWELERS; and DOES 1-100, inclusive,** **Defendants.**	**Case No.: 23CV417695** **PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** **Date: March 19, 2025** **Time: 1:30 pm** **Dept: 19**

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I. INTRODUCTION

On June 16, 2023, Plaintiff Maria Gutierrez ("Gutierrez"), a former non-exempt employee for Defendant The Chainary, Inc. dba Valliani Jewelers ("Defendant") filed the instant class action against Defendant alleging wage and hour violations, specifically claims for minimum wage and overtime violations, meal period violations, rest period violations, failure to pay all wages at cessation of employment, failure to furnish accurate itemized wage statements, failure to pay sick pay, failure to reimburse for business expenses, and unlawful business practices. On October 20, 2023, Plaintiff filed a First Amended Complaint to add a cause of action under PAGA based on the same general set of facts as the original Complaint. Plaintiff alleged that Defendant received non-discretionary bonuses, commissions, and other items of compensation that were required to be factored into her regular rate of pay for purposes of overtime, meal/rest premium pay, and sick pay, but were not. As a result, Plaintiff was underpaid overtime, sick pay, and meal premiums. Plaintiff also alleged that she was underpaid overtime and minimum wages because Defendant failed to accurately track her time. Plaintiff also alleged that she was not furnished with legally-compliant meal and rest periods during her employment with Defendant, generally due to having to perform work-related tasks, such as attend to customers, during what should have been meal and rest periods. Plaintiff alleged that as a result of these violations, Plaintiff was not furnished with accurate itemized wage statements and was not paid all wages due and owing after her employment with Defendant ended. Plaintiff also alleged that she was required to utilize her personal cellular phone for work purposes, specifically to utilize an app to track and maintain contact with potential clients.

Through both formal and informal discovery, which included Defendant furnishing Plaintiff with both information pertaining to the number of class members and workweeks within the putative class period (283 class members and 9,893 pay periods), as well as policy documents and a representative sampling of the time and payroll records for putative class members (totaling over 208,000 lines of data). This data and information allowed Plaintiff's counsel, with the assistance of an expert, to develop an accurate damages model with respect to the claims at issue in this action, estimating a potential overall maximum exposure of approximately $4,091,900 on the class claims, and a potential overall maximum exposure of $1,013,000 in PAGA penalties.

In an attempt to reasonably resolve this matter short of extensive, risky, and expensive litigation, Plaintiff and Defendant participated in a full day mediation with experienced mediator Phil Cook, Esq. on August 14, 2024. The parties reached a settlement in principle at the end of this mediation and subsequently drafted and executed a long-form settlement agreement. Pursuant to the settlement, Defendant agreed to pay a total of $1,355,000 (exclusive of employer-side taxes) to resolve the claims in this action asserted on behalf of a class of 238 individuals. As part of the settlement, the parties agreed to pay up to $6,999.90 to Apex Class Action Administration to administer the settlement; $50,000 to resolve the PAGA claims; $10,000 to Plaintiff for her service as Class Representative; and $451,666.67 in attorney's fees as well as up to $16,750.00 in declared costs to Class Counsel. This leaves at least $819,583.43 to be distributed among the class members. <u>That net amount results in approximately **$3,443.62** paid to each class member on average, and a payment of **$82.84 per pay period.**</u>

The $1,355,000 settlement also represents approximately **32.6%** of the <u>maximum</u> estimated non-PAGA damages and statutory penalties and approximately **48.1**% of the <u>realistic</u> non-PAGA exposure. In addition to this valuable monetary relief, Defendant has also reviewed and, where appropriate, revised and amended its policies, practices, and procedures related to calculation of regular rate of pay for overtime, meal/rest break premiums, and sick pay as well as its policies, practices, and procedures related to provision of meal and rest breaks.

Because this settlement provides a meaningful recovery for the class in light of the defenses available to Defendant and the risks inherent in continued litigation, the Court should find it fair, reasonable, and adequate and grant preliminary approval of the settlement.

II. <u>SUMMARY OF THE CASE</u>

A. <u>Plaintiff's Claims</u>

Plaintiff alleges that she and other non-exempt employees of Defendant failed to incorporate non-discretionary bonuses, commissions, and other items of compensation (labeled on wage statements as "Misc Pay" and "Bonus") into the regular rate of pay for purposes of overtime pay, meal/rest period premium pay, and sick time pay. Plaintiff alleges that she and other non-exempt employees at times were also not credited for all hours worked due to problems with Defendant's timekeeping practices.

Plaintiff also alleges that she and other non-exempt employees were required to use their personal cellular phones for work, specifically to utilize an app for communicating with clients. Plaintiff alleges that she and other non-exempt employees did not receive compliant meal and rest breaks. Finally, Plaintiff alleges that she and other non-exempt employees, as a result of the foregoing, did not receive accurate itemized wage statements, nor did former employees receive all wages earned but unpaid following cessation of their employment with Defendant.

B. The Class

Plaintiff seeks to represent a Class consisting of all current and former non-exempt employees of Defendant who worked in California at any time from June 16, 2019, through October 25, 2024 (the "Class"). Joint Stipulation of Class Action Settlement and Release ("Settlement Agreement" or "SA") at ¶ 3. The Class consists of 283 individuals, and the Settlement Agreement covers a total of 9,893 pay periods. SA at ¶ 34.F.

C. Procedural History and Factual Investigation

On June 16, 2023, Plaintiff sent notice to the LWDA and Defendant of Defendant's alleged violations of the Labor Code, specifically Labor Code sections 201-204, 210, 226, 226.7, 510, 512, 1182.12 *et seq.* 1198, and 2802. Declaration of Vladimir J. Kozina ("VJK Dec."), Ex. 1. The LWDA did not provide notice that it intended to investigate the alleged violations. VJK Decl., ¶ 4.

Plaintiff filed the instant action on June 16, 2023, asserting class claims against Defendant for: 1) failure to pay minimum wage; 2) failure to pay overtime; 3) failure to furnish meal breaks; 4) failure to furnish rest breaks; 5) failure to pay all wages at cessation of employment; 6) failure to furnish accurate itemized wage statements; 7) failure to pay sick pay; 8) failure to reimburse business expenses; and 9) violation of Business and Professions Code sections 17200 *et seq*. On October 20, 2023, Plaintiff filed a First Amended Complaint adding a cause of action under PAGA. VJK Decl., ¶ 5.

Through formal and informal discovery, Defendant produced hundreds of documents and hundreds of thousands of lines of data, consisting of time and payroll data for the putative class and copies of Defendant's relevant written policies. Through review of this information and the assistance of a qualified expert, Plaintiff was able to assess the merits of her claims and ultimate suitability for class treatment. VJK Decl, ¶ 6.

Plaintiff and Defendant engaged in private mediation with Phil Cook, Esq. on August 14, 2024. Prior to mediation, Plaintiff had the payroll and time data analyzed by a qualified expert who created a damages model. VJK Dec, ¶ 7. The matter did not settle at the end of the full day mediation session, but a mediator's proposal made at its conclusion was ultimately accepted by both sides. The parties agreed to settle for a total of $1,355,000 subject to Court approval. VJK Decl., ¶ 8, Exhibit 2. At all times, the parties' negotiations were adversarial, non-collusive, and at arms' length. These negotiations were supervised and facilitated by a mediator with substantial experience in wage and hour class actions. VJK Decl. ¶ 9. The parties subsequently drafted a long-form settlement agreement. The agreement was finalized and fully executed on October 15, 2024. VJK Decl., ¶ 10, Ex. 2.

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

A. <u>Monetary Relief Under the Settlement</u>

Pursuant to the Settlement, Defendant will pay $1,355,000– the Gross Settlement Amount ("GSA") – on an all-in, non-reversionary basis to resolve the claims to be released by Participating Class Members. SA ¶ 34.B. After deducting the Administrator's costs (up to $6,999.90), Plaintiff's Class Representative Service Award ($10,000 total), the fees ($451,666.67, or one-third of the GSA) and declared costs (up to $16,750.00) of Class Counsel, and the amount allocated to the PAGA Claims ($50,000), a $819,583.43 net settlement amount is expected to ultimately be distributed to Participating Class Members. SA ¶¶ 34.C, 34.H, 34.I, 34.J, 34.K, 34.L. Participating Class Members are expected to receive an average payout of approximately $3,443.62 each. VJK Decl. ¶ 14. In addition, any Class Members who worked during the PAGA Period (June 16, 2022, through October 25, 2024) will receive a pro rata share of the $50,000 portion of the PAGA payment to be distributed among aggrieved employees, irrespective of whether they entered into a settlement agreement with Defendant. SA ¶ 34.K.

The Settlement Agreement also includes an escalator clause requiring Defendant to either shorten the applicable class period or pay a pro-rata increase in the Gross Settlement Amount should either the number of pay periods, number of employees, or number of former employees covered by the Settlement Agreement exceed a 10% threshold. SA, ¶ 34.F.

B. Non-Monetary Relief

In addition to the monetary relief afforded by the settlement, Defendant has additionally reviewed and, where appropriate, revised and amended its policies, practices and procedures related to calculation of regular rate for purposes of overtime, meal/rest break premium pay and sick pay as well as its policies, practices, and procedures related to provision of meal and rest breaks.

C. Notice to the Class

The Class Notice will be mailed to Class Members within 28 calendar days following entry of an order granting preliminary approval of the Settlement. SA ¶ 39.

D. Participation in the Settlement

All Class Members who do not opt-out will be Participating Class Members; no claim form is required. SA ¶ 17. Class Members who worked during the PAGA Period will also receive a pro rata share of the aggrieved employee share of the PAGA Settlement Amount, regardless of whether they opt out. SA ¶ 34.K.

E. Settlement Shares

Individual Class Payments will be calculated by dividing the Net Settlement Amount by the total number of workweeks worked by all Participating Class Members during the Class Period, resulting in a payment ratio. A workweek will be any week during which a Class Member worked at least one day/shift, and each individual Class Member will be credited with at least one workweek. The payment ratio will then be multiplied by the number of workweeks each individual participating Class Member was employed to determine his or her individual Settlement Share. Class Members whose employment has ended will receive credit for an additional ten workweeks. SA ¶ 34.D. The average payment to each Participating Class Member is expected to be approximately $3,443.62 ($819,583.43 / 283). VJK Decl. ¶ 12. For taxes and withholdings, the Individual Class Payments will be allocated 15% to wages and 85% to non-wage income, interest, and penalties. SA ¶ 47.

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F. Scope Of Release

Upon Defendant's fulfillment of its payment obligations under the Settlement Agreement and final Court approval of same, participating Class Members on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Defendant and the Released Parties from all claims that were alleged, or reasonably could have been alleged within the Class Period based on the facts set forth in the First Amended Complaint, including claims for violations of Labor Code sections 201, 202, 203, 204, 218, 226(a), 226.7, 233, 246, et seq., 510, 512 1182.12, 1194, 1197, 1198 and 2802 and Business and Professions Code sections 17200, et seq.. SA ¶ 50.A. Participating Class Members and non-participating Class Members who are aggrieved employees (worked during the PAGA Period) will release Defendant and the Released Parties from all claims for from all claims for PAGA penalties that were alleged, or reasonably could have been alleged during the PAGA Period, based on the facts stated in the First Amended Complaint, and Plaintiff's PAGA Notice, including civil penalties for violations of Labor Code sections 201, 202, 203, 204, 218, 226(a), 226.7, 233, 246, et seq., 510, 512, 1182.12, 1194, 1197, 1198 and 2802. SA ¶ 50.B. Additionally, Plaintiff will release Defendant and the Released Parties from all claims, known and unknown as of the Effective Date of the Settlement Agreement. SA ¶¶ 51, 52.

G. Settlement Administration

The Parties have agreed on Apex Class Action Administration ("Apex"), a cost-effective and experienced settlement administration provider, to administer the settlement. Declaration of Kimberly Sutherland ("Apex Decl."). Plaintiff seeks approval of up to $6,999.90 for the Administrator's fees and costs. SA ¶ 34.L.

H. Payment To The LWDA

The Settlement Agreement allocates $50,000 to resolve PAGA claims. 75% ($37,500) will be paid to the LWDA, and the remaining 25% ($12,500) will be distributed to aggrieved employees. SA, ¶ 34/K. The Parties negotiated this amount in good faith, intending to serve the punitive and deterrent purposes of the PAGA. VJK Decl. ¶ 35. The LWDA has been notified of the Settlement. VJK Decl. ¶

37, Ex. 3.

I. Service Award to Plaintiff.

Plaintiff will apply for a Representative Service Award of $10,000) for her service to the class. SA, ¶ 34.J; *see* Declaration of Maria Gutierrez ("Gutierrez Dec."), ¶¶ 6-11. Class Members will be apprised of Plaintiff's request, their ability to review the moving papers on the Court's website, and to object to the request if they so desire. SA, Class Notice.

J. Class Counsel's Attorneys' Fees and Costs

Class Counsel will request attorneys' fees of $451,666.67 (one third of the GSA), as well as declared litigation costs of up to $16,750.00. SA ¶ 34.H. Class Members will be apprised of Class Counsel's request, their ability to review the moving papers on the Court's website, and to object to the request if they so desire. SA, Class Notice.

K. *Cy Pres*

The parties have agreed that, in compliance with Code of Civil Procedure Section 384, any Residual remaining following the expiration of the 180-day period within which Class Members may cash their settlement checks will be distributed to the nonprofit organization, CASA of Santa Clara County (aka Child Advocates of Silicon Valley).

L. Final Approval Hearing

At a date set by the Court, the SA contemplates the Court will hold a Final Approval Hearing and, if the Settlement is approved, enter an Order of Final Approval approving the SA in a manner substantially consistent with its terms and intent, and enter Judgment accordingly. SA, ¶¶ 54, 55.

M. Proposed Implementation Schedule

Defendant to provide Class List to Administrator.	Within 14 calendar days of the Court's execution of the Order Granting Preliminary Approval.
Administrator to mail Class Notice.	Within 28 calendar days of the Order Granting Preliminary Approval
Deadline for Class Members to object or opt out.	Within 45 calendar days after Notice mailed.
Plaintiff to file Motion for Attorneys' Fees, Cost and Service Payment.	Not less than 16 court days before the Final Approval hearing.
Deadline for Plaintiff to file Motion for Final Approval.	Not less than 16 court days before the Final Approval hearing.
Final Approval Hearing.	Not less than 95 days after the Order Granting Preliminary Approval.

IV. PRELIMINARY APPROVAL OF THE SETTLEMENT IS WARRANTED

A. Legal Standards for Preliminary Approval of Class Action Settlements

The purpose of the preliminary evaluation of a proposed class action settlement is to determine whether it is within the range of possible approval, and thus whether notice to the class of the terms and conditions are warranted. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1145; *Spann v. J.C. Penney Corp.* (C.D. Cal. 2016) 314 F.R.D. 312, 319; William B. Rubenstein, 4 NEWBERG ON CLASS ACTION (4th Ed. 2002) § 11.25. In passing on its propriety, this Court has broad discretion to determine whether a settlement is fair under the unique circumstances. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. The Court need only find the settlement falls within a "reasonable range", as courts recognize that approving class action settlements is "'an amalgam of delicate balancing, gross approximations and rough justice." *Ibid*.; *Cordy v. USS-Posco Indus.* (N.D. Cal. 2013) 2013 WL 4028627 *4; 4 NEWBERG § 11:25.

To make this fairness determination, courts consider several relevant factors, including "the strength of the plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; [and] the experience and views of counsel . . ." *Hanlon*, 150 F.3d at 1026 (citations omitted). There is a presumption of fairness when the settlement is the result of arm's-length negotiation, investigation and discovery are sufficient to permit counsel and the court to act intelligently, and counsel are experienced in similar litigation, as is the case here. *Dunk*, 148 Cal.App.4th 1801; *Wren v. RGIS Inventory Specialties* (N.D. Cal. 2011) 2011 WL 1230826 *6. California courts put a great deal of stock into what is otherwise a private, negotiated, consensual agreement. Accordingly, a court's inquiry is 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." *Dunk*, 148 Cal.App.4th 1801. The Settlement Agreement satisfies all the legal standards for preliminary approval and provides a substantial monetary recovery to each Class Member, particularly in light of the challenges and risks to securing relief on a class-wide basis.

B. The Settlement Terms are Fair, Reasonable, and Adequate

The Class Action and Settlement will result in substantial benefits to the Class. The Gross Settlement Amount represents 33.1% of the maximum potential non-PAGA damages and penalties recoverable by the Class and 48.1% of the realistic non-PAGA damages recoverable to the Class, and accounts for the substantial risks inherent in surviving summary judgment, maintaining class certification and ultimately prevailing at trial. VJK Decl. ¶¶ 31-32. In contrast to the risks of continued litigation, the proposed Settlement ensures timely relief, cognizable benefits, and is fair, reasonable, and adequate.

Under Class Counsel's damages model, Defendant faced a maximum of $4,091,900 in non-PAGA exposure to the overall Class. VJK Decl., ¶ 17.

With respect to the regular rate claims, Plaintiff's theory of liability is premised on the contention that the Class received non-discretionary bonuses that were not factored into their rate of pay for overtime, meal and rest period premium payments, or sick pay. Based on this information, Defendant faced an estimated maximum of just under $522,000 in unpaid wages. VJK Decl., ¶ 18.

Plaintiff's minimum wage claims are premised on the allegation that Defendant's timekeeping practices were poor, often resulting in Plaintiff and other employees being credited for less time than they actually worked. Analysis of Defendant's time records revealed that they were poorly-maintained and unreliable, offering little assistance in cross-checking Defendant's own payroll records for purposes of this off-the-clock claim (in other words, there were a substantial number of mismatches between the time records and pay records, as well as gaps in the time records). With the assistance of their expert and Plaintiff, Plaintiff's counsel made a reasoned estimate of an average of 15 minutes per shift of off the clock time. This resulted in an estimated underpayment across the class of 24,591 hours, and a liability of approximately $542,000. VJK Decl., ¶ 19.

Plaintiff's meal and rest claims – to the extent not already encompassed by the regular rate claim theory – are premised on the allegations that Plaintiff and others did not receive compliant meal and rest periods because of work demands and the need to attend to customers. Based on the records provided to Plaintiff's counsel, it was determined that there was a total of 20,541 non-compliant meal periods (missing, late, or short), resulting in a total of approximately $749,000 in unpaid meal premiums. Assuming a 25% rest period violation rate, Plaintiff's counsel calculated an additional approximately $793,000 in unpaid rest premiums (from an estimated total of 24,190 violations). VJK Decl., ¶ 20.

Based on the foregoing alleged violations, it was determined that $353,900 in wage statement penalties under Labor Code section 226(e) would be owed for the alleged violations occurring during the wage statement limitations period of June 16, 2022, forward. VJK Decl., ¶ 21.

As for the waiting time penalty claim, there were 134 former employees who would be owed waiting time penalties if Plaintiff was successful in her wage claims, with a calculated exposure of approximately $730,000 in waiting time penalties under Labor Code section 203. VJK Decl., ¶ 22.

Plaintiff's reimbursement claim was premised on allegations that she and others were required to utilize their personal cellular phones for work purposes, specifically to utilize an app called "Podium" to track and maintain contact with potential clients but were not reimbursed for any of their personal cell phone usage. Plaintiff estimated that a reasonable reimbursement rate would be approximately $5 per pay period, resulting in approximately $50,000 in exposure on the reimbursement claim. VJK Decl., ¶ 23.

Interest on these claims was calculated to be approximately $352,000. VJK Decl. ¶ 24.

Finally, based on the same facts, Plaintiff's counsel's expert calculated that Defendant faced a maximum PAGA exposure of $1,013,000. VJK Decl., ¶ 25. Overall, then, Defendant's maximum potential exposure was estimated to be $5,104,900, the non-PAGA exposure being approximately $4,091,900. Even without any reduction for risk, the $1,355,000 Gross Settlement Amount represents 32.6% of the potential maximum non-PAGA exposure, and 26.5% of the maximum overall exposure. VJK Decl., ¶ 26.

C. Defendant's Defenses

Defendant asserted several legal and factual grounds to defend against Plaintiff's claims, including that several of the claims would be difficult to certify given the difficulty in developing common proof for issues such as the rest break claims and off the clock claims.

Because of anticipated challenges to certification, success on the merits at trial, and on appeal, Class Counsel adjusted the exposure for reasonableness, particularly with respect to rest break claims, which by their very nature are not discernable from records, and Plaintiff's off-the-clock claims. *Id*. ¶¶ 27-28. Based on the above, Class Counsel believes that a 50% reduction in the potential exposure on the rest break and off-the-clock claims was appropriate, resulting in reasonable exposure of $271,000 on the off-the-clock claim and $396,500 on the rest break claim. Class counsel also applied a 20% reduction in exposure on the remaining claims, resulting in an estimated reasonable potential liability of $417,600 on the regular rate claims, $599,200 on the meal period claims, $283,120 on the wage statement claims, $584,000 on the waiting time penalty claims, and $40,000 on the reimbursement claims. VJK Decl., ¶ 29.

Accordingly, Plaintiff's counsel determined that the realistic potential classwide exposure to Defendant was approximately $2,591,420, with approximately $222,800 in interest, totaling $2,814,220. A similar reduction in the PAGA exposure would be appropriate for the same reasons, leaving a realistic PAGA exposure of approximately $641,200. VJK Decl., ¶ 30.

The $1,355,000 Gross Settlement Amount represents approximately **48.1%** of the realistic non-PAGA exposure in this case and **39.2%** of the realistic overall exposure. The $50,000 allocated to the PAGA settlement represents approximately 7.8% of the realistic PAGA exposure, is fairly and equally allocated pro-rata amongst all aggrieved employees without preference to any subgroup of employees[1], and is fair, reasonable, and adequate.

"'Great weight' is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation. This is because '[p]arties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in the litigation.' Thus, 'the trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel.'" *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 528. Class Counsel, having demonstrated a high degree of competence in the litigation of this case, as well as numerous other wage and hour class actions, strongly believe that the proposed Settlement is a fair, adequate, and reasonable partial

[1] *See Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77.

resolution of the Class Action and is preferable to continued litigation against Defendant. VJK Dec. ¶¶ 31-34, 49-52[2]. The Settlement should be preliminarily approved.

D. <u>The Court Should Order Dissemination of the Proposed Notice</u>

California law vests the court with broad discretion to fashion an appropriate notice program. Cal. Civ. Code §1781; Fed. R. Civ. Proc. Rule 23(e)(1); Rule 23(c)(2)(B); *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 973-74. Because all Class Members are current or former employees of Defendant for whom Defendant has current or last known addresses as well as SSNs, notice is simpler and more reliable than in other types of class actions. The Class Notice is consistent with notices approved by state and federal courts and, under the circumstances, affords the best notice practicable.

The Class Notice will be sent to all Class Members, informs them of the terms of the Settlement, and is neutrally worded to avoid prejudice. The Class Notice meets all of the requirements of procedural due process and California Rules of Court, Rules 3.766(d)-(f) and 3.769(f). SA, Exhibit A. In short, the Class Notice provides Class Members with all the necessary information to make an informed decision.

E. <u>The Administrator's Fees Are Reasonable</u>

The Parties have selected Apex to serve as Administrator. Apex has substantial experience in administration, having handled thousands of class action settlements. The Administrator's fees and costs will be paid out of the GSA/QSF. The Administrator will, among other things, distribute the Court-approved Class Notice, calculate Participating Class Members' shares, prepare and mail settlement checks, respond to inquiries/disputes as appropriate, prepare requisite tax forms, and generally perform all normal and customary duties associated with the administration of such settlements. Plaintiff seeks preliminary approval of $6,999.90 for the Administrator's fees and costs. Apex Decl. ¶ 7, Exhibit B.

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[2] See also, *In re Wachovia Corp. "Pick-A-Payment" Mortgage Mktg. & Sales Practices Litig.* (N.D. Cal. 2011) 2011 WL 1877630, at *3 (approving settlement based upon, among other factors, the belief of "Plaintiffs' counsel, who are experienced attorneys . . . that the settlement is extremely favorable to the class").

F. <u>The Service Award to Plaintiff Is Reasonable</u>

"Courts routinely approve incentive awards to compensate plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation." *Ingram v. Coca-Cola Co.* (N.D. Ga. 2001) 200 F.R.D. 685, 694 (approving $300,000 payment to each class representative in employment action settling before certification).[3] Factors used by courts in determining the amount of the service payments include (1) a comparison between service awards and the range of monetary recovery available to the class (*see Ingram*, 200 F.R.D. at 694; (2) time and effort put into the litigation (see *Van Vranken*, 901 F. Supp. at 299); (3) whether the litigation will further the public policy underlying the statutory scheme (see *Roberts*, 979 F. Supp. at 201 n.23); and (4) risks of retaliation (see *Roberts*, 979 F. Supp. at 202). All factors support the $10,000 service award requested here. The sought payment is fair, reasonable and appropriate under the circumstances of this case, including Plaintiff's provision of a general release and Civil Code section 1542 waiver. Plaintiff worked diligently with Class Counsel, including participating in multiple interviews and calls with Plaintiff's counsel, obtaining and providing documentation and vital information, and participating in mediation, should be rewarded for taking the initiative to pursue these claims on behalf of the Class, and for their role in reaching a settlement providing tangible relief to the Class, despite the substantial risks involved. VJK Decl. ¶¶ 44-47; Gutierrez Decl., ¶¶ 3-12.

G. <u>Class Counsel's Attorneys' Fees and Costs are Reasonable, Fair, and Appropriate</u>

Plaintiff is entitled to seek payment of attorneys' fees and costs. Cal. Lab. Code §§ 218.5, 226(e) (1), 1194, and 2699(g); *Early v. Superior Court* (2000) 79 Cal.App.4th 1420, 1427. In conjunction with final approval, Plaintiff will seek a fee award under the common fund doctrine, customarily used in awarding fees and costs in settlement of Labor Code class actions.[4] Courts

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[3] *Roberts v. Texaco, Inc.* (S/D.N.Y. 1997) 979 F. Supp. 185 (approving incentive payments up to $85,000 for named plaintiffs in employment action settling before certification); *Van Vranken v. Atl. Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294, 300 ($50,000 service payment for named plaintiff in class action).

[4] *Wershba*, 91 Cal.App.4th at 254; *Lealao v. Beneficial Cal.* (2000) 82 Cal.App.4th 19, 26-30; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 ("[w]hen a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the fund."); see also *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478 ("[A] lawyer who recovers for a common fund . . . is entitled to a reasonable attorney's fee from the fund as a whole."); *Hanlon,* 150 F.3d. at 1029.

ordinarily approve attorney's fees payments between one-third and forty percent in comparable wage and hour class actions.[5] Here, Plaintiff will seek attorney's fees of one third of the GSA, or $451,666.67 and declared costs of up to $16,750. Class Counsel will provide the Court with detailed records and lodestar calculations in conjunction with counsel's motion for fees and costs that will accompany the motion for final approval. The Court should approve providing notice to the Class of Class Counsel's fee and cost request.

V. <u>THE CLASS SHOULD BE CERTIFIED FOR SETTLEMENT.</u>

A. <u>The Legal Standard</u>.

A settlement class must meet the following criteria for certification: (1) the individuals in the class are so numerous that joinder would be impractical; (2) there is a commonality of interest between the plaintiff and the members of the class; (3) plaintiff's claims are typical of the claims of the class members; and (4) plaintiff and his counsel will fully and adequately represent the interests of the class members. Code. Civ. Proc. § 382; *Sav-on Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326-27; Fed. R. Civ. P. 23.[6] All prerequisites to certification have been met for the proposed settlement class.

B. <u>The Certified Class Is Ascertainable.</u>

The identity of each Class Member is ascertainable because all Class Members worked for Defendant within California during the Class Period and can be identified through employee and payroll records. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932. With 68 individuals, joinder is impractical.

C. <u>The Commonality Requirement Remains Met.</u>

Commonality is met if questions of law and fact that are common to the class predominate and the theory of recovery is "amenable to class treatment." *Sav-On Drug Stores*, 34 Cal.4th at p. 327; *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1033. The claims of Plaintiff and each of

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[5] 4 NEWBERG § 14:6 (Studies show that "Fee awards in class actions average around one-third of the recovery"); *Williams v. MGM-Pathe Commc'ns Co*. (9th Cir. 1997) 129 F.3d 1026, 1027 (33% fee award); *Wren*, 2011 WL 1230826, at *29 (42% fee award in common fund wage and hour class action).

[6] The California Supreme Court has authorized California's trial courts to use Federal Rule of Civil Procedure 23 and cases applying it for guidance in considering class issues. See *Vasquez v. Sup. Ct.* (1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146. Where appropriate, federal case law will be cited in addition to California law.

the Class Members flow from the same facts and legal claims. VJK Decl. ¶ 44. Common questions predominate, including whether the payments of "Misc. Pay" and "Bonuses" were of the kind that had to be included in the regular rate of pay, whether Defendant had a policy or practice of requiring employees to work through or delay meal and rest breaks to perform work tasks, whether Defendant required employees to use their personal cell phones for work purposes, and whether Defendant's timekeeping general timekeeping practices were compliant with California law. All of the Class Members were non-exempt employees subject to uniform policies of Defendant's and whose alleged underpayments flow from the same factual and legal theories.

D. <u>The Typicality Requirement is Met</u>

Typicality is met if the claims of named representatives are typical of those of the class, though "they need not be substantially identical." *Hanlon v. Chrysler Corp*. (9th Cir. 1998) 150 F.3d 1011, 1020; *Sav-On Drug Stores, Inc.*, 34 Cal.4th at p. 326. Plaintiff's claims are typical of the claims of every Class Member because they arise from the same factual bases, policies and procedures, and legal theories. *Wehner v. Syntex Corp*. (N.D. Cal. 1987) 117 F.R.D. 641, 644. Were Plaintiff not serving as Class Representative, she would be a member of the Class. VJK Decl. ¶ 44.

E. <u>The Adequacy Requirement is Met.</u>

Adequacy exists if the named representative and counsel have no interests adverse to those of the Class Members and are committed to vigorously prosecuting the case on behalf of the class. *Hanlon*, 150 F. 3d at 1020; *McGhee v. Bank of Am.* (1976) 60 Cal.App.3d 442, 450-51. Plaintiff's interests in prosecuting this matter and obtaining the most beneficial recovery practicable fully comports with the collective interests of each respective Class Member. There are no conflicts between Plaintiffs and the other Class Members, and Plaintiffs are members of the Class. *Hanlon*, 150. F 3d at 1021. Moreover, any Class Member who wishes to opt-out and/or object to the Settlement will have the opportunity to protect his/her individual interest by doing so. *Hanlon*, *supra*, 150. F.3d 1021.

Plaintiffs and Class Counsel have demonstrated their commitment to vigorously prosecuting this lawsuit on behalf of the Class, as demonstrated by Class Counsel's experience in wage and hour cases and the tangible benefits they have and will continue to confer upon Class Members, including securing the very substantial Class Settlement Amount of $1,355,000, and causing Defendant to review and revise policies to ensure compliance with California law, which benefits Class Members. VJK Decl. ¶¶ 11, 44-52.

VI. A FINAL APPROVAL HEARING SHOULD BE SET

Plaintiff requests the Court set a date for hearing on a motion for final approval as well as a motion for fees, costs, and enhancement payments, deadlines for Class Members to opt-out, object, and for the submission of associated moving papers. For sufficient time to mail the Class Notice and for Class Members to decide how they wish to proceed, Plaintiffs request that the date for the final approval hearing be set not less than 95 days after preliminary approval.

VII. CONCLUSION

For all the reasons stated above, Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement should be granted.

DATED: February 19, 2025 **MAYALL HURLEY P.C.**

By______________________________

WILLIAM J. GORHAM, III
ROBERT J. WASSERMAN
VLADIMIR J. KOZINA
Attorneys for Plaintiff and the Putative Class