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11 and the Putative Class

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **FOR THE COUNTY OF ALAMEDA**

14 JULIE DEAN, on behalf of herself and all others
15 similarly situated

16 Plaintiff,

17 vs.

18 FREEMODEL, INC.; JOHN GERALD
19 GARNER; and DOES 1 through 10, inclusive,

20 Defendants.

Case No.: 23CV038315

**PLAINTIFF JULIE DEAN'S NOTICE OF
MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND REPRESENTATIVE ACTION
SETTLEMENT**

DATE: December 3, 2024
TIME: 10:00 A.M.
DEPT: 23
JUDGE: Hon. Michael Markman

Reservation ID.: 976853001663

Action Filed: July 14, 2023
Trial Date: N/A

1 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on
2 December 3, 2024 at 10:00 A.M. or as soon thereafter as the matter may be heard in Department 23
3 of the above-entitled Court, located at 1221 Oak Street, 4th Floor, Oakland, CA 94612, Plaintiff Julie
4 Dean (“Plaintiff”), the named Plaintiff in this case against Defendants Freemodel, Inc. and John
5 Gerald Garner (collectively “Defendants”), will and hereby does move this Court for:

6 1) Preliminary approval of the proposed Class and PAGA Representative Action
7 Settlement Agreement (the “Settlement”) in this case (the “Action”);

8 2) Provisional certification, pursuant to section 382 of the California Code of Civil
9 Procedure, for settlement purposes only, of (1) the proposed Settlement Class defined as follows: all
10 individuals who entered into Project Director Agreements with Freemodel, Inc. and/or worked as
11 Project Directors for Freemodel, Inc. in California between July 14, 2019, and the date of
12 preliminary approval of the parties’ settlement agreement by the Court;

13 3) Preliminary appointment of Julie Dean as the Class Representative;

14 4) Preliminary appointment of Hunter Pyle and Andrea A. Núñez of Hunter Pyle Law as
15 Class Counsel;

16 5) The scheduling of a final approval hearing date to consider whether the Settlement
17 should be finally approved and to award an amount for a Service Payment to Plaintiff, and attorneys’
18 fees and costs to Plaintiff’s counsel;

19 6) Appointment of Apex Class Action as the third-party Claims Administrator;

20 7) Approval of the proposed Class Notice, and an order that it be disseminated to the
21 proposed Class as provided in the Settlement; and

22 8) A stay of all proceedings in the Action, except such proceedings to effectuate the
23 Settlement, pending the Final Approval Hearing.

24 This motion is based on this notice of motion; the attached memorandum of points and
25 authorities; the declaration of Hunter Pyle in Support of Plaintiff’s Motion for Preliminary Approval
26 of Class and Representative Action (“Pyle Decl.”) and exhibits attached thereto; the declaration of
27 Julie Dean in Support of Plaintiff’s Motion for Preliminary Approval of Class and Representative
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1 Action (“Dean Decl.”); the pleadings and other papers filed in this action; and any further oral or
2 documentary evidence or argument presented at the time of hearing.

3
4 DATED: September 20, 2024

HUNTER PYLE LAW, PC

5
6 By:  _____

7 Hunter Pyle
8 Andrea A. Núñez

9 Attorneys for Plaintiff Julie Dean
10 and the Putative Class
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TABLE OF CONTENTS

I.	Introduction.....	1
II.	Summary of The Action.....	3
	A. Factual and Procedural Background	3
	B. Investigation and Settlement.....	5
	C. Reasons For The Parties' Settlement	6
III.	The Proposed Settlement	6
	A. Essential Terms Of The Settlement	6
	1. Class Definition	6
	2. Settlement Amount	7
	3. The Settlement Is Neither Claims-Made nor Reversionary	8
	4. Settlement Administrator	8
	5. Class Notice, Opting Out, and Objections	8
	6. Calculation And Distribution of Payments	9
	7. Mailing of Checks.....	10
	8. <i>Cy Pres</i> Beneficiary	10
IV.	The Court Should Approve The Proposed Settlement.....	11
	A. The Proposed Settlement Meets The Standards For Preliminary Approval	11
	1. Standard for Preliminary Approval.....	11
	2. The Settlement Is Within the Range of Reasonableness	12
	3. The Settlement Is Reasonable in Light of Significant Litigation Risks.....	12
	i. Misclassification	13
	ii. Failure To Pay Minimum Wages.....	14
	iii. Failure To Pay Overtime Wages.....	15
	iv. Failure To Provide Off-Duty Meal Periods	15
	v. Failure To Authorize And Permit Rest Periods	16
	vi. Failure To Provide Wage Statements	17
	vii. Failure To Reimburse Business Expenses	18
	viii. Waiting Time Penalties.....	18
	ix. Unfair Competition and Unfair Business Practices Claim	20
	x. PAGA Penalties	20
	4. The Settlement Is the Product of Non-Collusive, Arm's-Length and Informed Negotiations	22
	5. The Experience and Views of Plaintiff's Counsel Favor Approval	22

1	6. The Proposed Release Is Narrowly Tailored	23
2	7. The Proposed Class Notice Satisfies the Rules of Court	24
3	V. The Court Should Provisionally Certify The Settlement Class	25
4	A. The Proposed Class is Ascertainable and Numerous.....	25
5	B. Common Issues of Law and Fact Predominate.....	25
6	C. The Proposed Class Representative’s Claims Are Typical.....	26
7	D. The Proposed Class Representative and Counsel Will Adequately Represent The Class...	26
8	VI. The Court Shout Approve The Class Notice and Set A Final Approval Hearing	26
9	VII. Conclusion	27

TABLE OF AUTHORITIES

Cases

<i>Alonzo v. Maximus, Inc.</i> (C.D. Cal. 2011) 275 F.R.D. 513	25
<i>B.W.I. Custom Kitchen v. Owens-Illinois</i> (1987) 191 Cal.App.3d 1341	26
<i>Benton v. Telecom Network Specialists, Inc.</i> (2013) 220 Cal.App.4th 701	26
<i>Capital People First v. State Dept. of Developmental Svcs.</i> (2007) 155 Cal.App.4th 676	26
<i>Clark v. American Residential Services LLC</i> (2009) 175 Cal.App.4th 785	12
<i>Cotter v. Lyft, Inc.</i> (N.D. Cal 2016) 176 F.Supp.3d 930	21
<i>Fleming v. Covidien Inc.</i> (C.D. Cal., Aug. 12, 2011) 2011 WL 7563047	20
<i>Hanlon v. Chrysler Corp.</i> (9th Cir. 1998) 150 F.3d 1011	11
<i>In Re Omnivision Technologies, Inc.</i> (N.D. Cal. 2008) 559 F.Supp.2d 1036	22
<i>In re Syncor ERISA Litig.</i> (9th Cir. 2008) 516 F.3d 1095	11
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116	11, 12, 22
<i>Moniz v. Adecco USA, Inc.</i> (2021) 72 Cal.App.5th 56	20
<i>Naranjo v. Spectrum Security Services, Inc.</i> (2023) 88 Cal.App.5th 937	17, 19
<i>O'Connor v. Uber Technologies, Inc.</i> (N.D. Cal. 2016) 201 F.Supp.3d 1110	20
<i>Reed v. United Teachers Los Angeles</i> (2012) 208 Cal.App.4th 322	11
<i>Robinson v. Southern Counties Oil Company</i> (2020) 53 Cal.App.5th 476	9

1	<i>Sav-On Drug Store, Inc. v. Sup. Ct.</i>	
2	(2004) 34 Cal.4th 319	25
3	<i>Sevidal v. Target Corp.</i>	
4	(2010) 189 Cal.App.4th 905	25
5	<i>Thurman v. Bayshore Transit Management, Inc.</i>	
6	(2012) 203 Cal.App.4th 1112	21
7	<i>Wershba v. Apple Computer, Inc.</i>	
8	(2001) 91 Cal.App.4th 224	12, 24
9	Statutes	
10	Business and Professions Code	
11	Section 17200.....	4, 20, 23
12	California Code of Civil Procedure	
13	Section 382.....	1, 25, 27
14	California Labor Code	
15	Section 201.....	18
16	Section 202.....	18
17	Section 203.....	18, 19
18	Section 226.....	passim
19	Section 226.2.....	3, 23
20	Section 226.7.....	3, 15, 16, 23
21	Section 510.....	3, 23
22	Section 512.....	3, 15, 23
23	Section 1182.11.....	3, 23
24	Section 1182.13.....	3, 23
25	Section 1194.....	3, 23
26	Section 1194.2.....	3, 23
27	Section 1197.....	3, 23
28	Section 1198.....	3, 23
	Section 2698.....	4
	Section 2699.....	20, 21
	Section 2775.....	5
	Section 2776.....	5, 13
	Section 2802.....	3, 18, 23
	Rules	
	California Rules of Court	
	Rule 3.769	1, 11
	Rule 3.766	24
	Federal Rule of Civil Procedure	
	Rule 23	11

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Regulations
California Code of Regulations, Title 8
Section 11010..... 15, 16

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to Rule 3.769 of the California Rules of Court, named Plaintiff Julie Dean
4 (“Plaintiff”) respectfully requests that this Court grant preliminary approval of the Settlement
5 Agreement agreed to by Plaintiff and Defendants Freemodel, Inc. (“Freemodel”) and John Gerald
6 Garner (collectively, “Defendants”). Plaintiff and Defendants are collectively referred to here as the
7 “Parties.”

8 Plaintiff and 88 other Class Members entered into Project Director Agreements with
9 Freemodel, Inc., and/or worked as Project Directors for Freemodel, Inc., in California. (Declaration
10 of Hunter Pyle in Support of Plaintiff’s Motion for Preliminary Approval of Class and
11 Representative Action Settlement (“Pyle Decl.”), ¶ 37.) The Settlement, attached as Exhibit 1 to the
12 Pyle Declaration, is not a claims-made settlement. (*Id.* at ¶ 3, Exh. 1 (“Settlement”).) It includes the
13 following essential terms:

- 14 1) The Class is comprised of all individuals who entered into Project Director Agreements
15 with Freemodel, Inc. and/or worked as Project Directors for Freemodel, Inc. in California
16 between July 14, 2019, and the date of preliminary approval of the parties’ settlement
17 agreement by the Court. (Settlement, ¶ 2.5.)
- 18 2) A Maximum Settlement Amount of \$350,000, which is neither claims-made nor
19 reversionary, that payments for Settlement Class Members, Service Award, the Class
20 Counsel Award, Claims Administrator Expenses, the PAGA Payment, and all other
21 claims for interest, fees, and costs. (Settlement, ¶ 4.1.) These amounts, pending Court
22 approval, are as follows:
- 23 a. A Service Award in an amount up to \$5,000 for Plaintiff Julie Dean for her
24 service to the Class and the risks she faced in bringing this Action on Class Members’
25 behalf. (Settlement, ¶ 4.2.; see also Dean Decl., ¶¶ 1–18.)
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b. A Class Counsel Award from the Court, consisting of attorneys' fees in an amount of up to \$122,500 and all litigation costs and expenses incurred subject to proof in an amount not to exceed \$25,000. (Settlement, ¶ 4.3)

c. Claims Administrator Expenses estimated not to exceed \$4,000. (Settlement, ¶ 4.5.)

d. A PAGA Payment of \$35,000, of which 75% (\$26,250) shall be paid to the LWDA, and the remaining 25% (\$8,750) shall be paid to Aggrieved Employees. (Settlement, ¶ 4.4.)

3) The Net Settlement Amount or Net Settlement Fund is the Gross Settlement less payment of (1) Class Counsel Award; (2) Service Award to Plaintiff; (3) PAGA Payment; and (4) Claims Administration Costs. (Settlement, ¶ 2.2.) All funds allocated to the Service Award, the Class Counsel Award, the Claims Administrator Expenses, and the PAGA Payment but not approved by this Court will become part of the Net Settlement Fund. (Settlement, ¶¶ 4.2-4.5.)

a. Upon approval by the Court, the Net Settlement Fund of approximately \$158,500 will be allocated to approximately 89 Settlement Class Members based on their number of workweeks during the Class Period pursuant to a formula by which each Class Member receives a pro rata portion of the Net Settlement Amount based on the number of semi-monthly periods between July 14, 2019, or the date of execution of their respective Project Director Agreements (whichever is later) and the date of Preliminary Approval or the date their respective relationships ended with Defendants (whichever is earlier) (the "Individual Settlement Share"). (Settlement, ¶¶ 2.18, 4.6; see also Pyle Decl., ¶ 43.)

b. The PAGA settlement allocated to PAGA Employees is projected to be an additional \$8,750. (Settlement, ¶ 4.4.) The PAGA Payment will be distributed to PAGA Employees on a pro rata basis based on the number of semi-monthly periods between July 20, 2022, or the date of execution of their respective Project Director

1 Agreements (whichever is later) and the date of Preliminary Approval or the date their
2 respective relationships ended with Defendants (whichever is earlier). (Settlement, ¶¶
3 2.18, 4.6; see also Pyle Decl., ¶ 43.)

4 As discussed below, the Settlement satisfies all criteria for preliminary approval under
5 California law and falls well within the range of reasonableness. The Settlement was reached
6 through informed, arm’s-length bargaining at and after mediation between experienced attorneys.

7 Accordingly, the Parties respectfully request that the Court enter an Order: (1) preliminarily
8 approving the proposed Settlement; (2) provisionally certifying the Class; (3) provisionally
9 approving the appointment of Julie Dean as Class Representative; (4) provisionally approving the
10 appointment of Hunter Pyle and Andrea A. Núñez of Hunter Pyle Law as Class Counsel; (5) setting
11 a final fairness and approval hearing; (6) appointing Apex Class Action as the third-party Claims
12 Administrator; and (8) approving and directing distribution of a Notice of Settlement of Class Action
13 (“Class Notice”) to the Class (attached as Exhibit A to the Settlement Agreement).

14 **II. SUMMARY OF THE ACTION**

15 **A. FACTUAL AND PROCEDURAL BACKGROUND**

16 Plaintiff was a Project Director for Freemodel, a pre-sale home renovation company. (Pyle
17 Decl., ¶ 21.) John Gerald Garner is the Chief Executive Officer, Chief Financial Officer, and
18 Secretary for Freemodel. (*Id.* at ¶ 20.) Freemodel and Garner hired Project Directors to plan and
19 execute design projects for the homeowners and agents paying for Freemodel’s services. (*Ibid.*)

20 On July 14, 2023, Plaintiff commenced this Action by filing a complaint asserting causes of
21 action for: 1) failure to reimburse business expenses (Lab. Code § 2802); 2) failure to pay minimum
22 wages (Lab. Code §§ 226.2, 1182.11–1182.13, 1194, 1194.2, 1197 & 1198, IWC Wage Order No. 4-
23 2001); 3) failure to pay overtime wages (Lab. Code §§ 510 & 1194, IWC Wage Order No. 4-2001);
24 4) failure to provide off-duty meal periods (Lab. Code §§ 226.7 & 512, IWC Wage Order No. 4-
25 2001); 5) failure to authorize and permit rest periods (Lab. Code §§ 226.2 & 226.7, IWC Wage
26 Order No. 4-2001); 6) failure to provide accurate wage statements (Lab. Code § 226, IWC Wage
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1 Order No. 4-2001); and 7) unlawful business practices under Business and Professions Code section
2 17200 *et seq.* (Pyle Decl., ¶ 22.)

3 On July 20, 2023, Plaintiff notified Defendants and the with the Labor and Workforce
4 Development Agency (“LWDA”) of Defendants’ alleged violations of the Private Attorneys General
5 Act (Lab. Code § 2698 *et seq.*) (“PAGA”). (Pyle Decl., ¶ 23.)

6 On October 25, 2023, Plaintiff filed a First Amended Complaint, adding claims for penalties
7 under PAGA, and individual claims for wrongful termination in violation of public policy and
8 breach of contract. (Pyle Decl., ¶ 24.)

9 On February 14, 2024, the Parties participated in a mediation with the Hon. Ronald M.
10 Sabraw (Ret.) through JAMS. (Pyle Decl., ¶ 31.) The mediation lasted approximately nine hours,
11 during which the parties explained their respective positions to Judge Sabraw at length. (*Ibid.*) At the
12 end of the mediation, the Parties had not come to an agreement and agreed to consider a mediator’s
13 proposal. (*Ibid.*)

14 On February 18, 2024, Judge Sabraw sent the Parties three mediator’s proposals: one for the
15 class claims, one for the PAGA claims, and one for the individual claim. (Pyle Decl., ¶ 31.) Judge
16 Sabraw conditioned Plaintiff’s individual settlement on the PAGA settlement, meaning that there
17 could be no individual settlement agreement without an agreement regarding the PAGA claims in
18 the case. (*Ibid.*) Rejection of the mediator’s proposal regarding the class claims would not preclude
19 the Parties’ acceptance of the mediator’s proposals for the PAGA and individual claims. (*Ibid.*)

20 Plaintiff accepted the mediator’s proposals regarding the class and PAGA claims. However,
21 Plaintiff did not accept the proposed individual settlement. (Pyle Decl., ¶ 31.) After continued
22 negotiations with Judge Sabraw, the Parties came to an agreement regarding Plaintiff’s individual
23 claims on March, 21, 2024.¹ (*Ibid.*)

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27 ¹ Should the Court want more information regarding Plaintiff’s individual settlement, Plaintiff will
28 provide a supplemental declaration and/or lodge the individual settlement agreement with the Court
for in camera review.

1 **B. INVESTIGATION AND SETTLEMENT**

2 Plaintiff's counsel have conducted a thorough investigation into the facts relevant to this
3 Action and have diligently pursued an investigation of Class Members' claims against Defendants.
4 (Pyle Decl., ¶ 25.) Among other things, Plaintiff's counsel spoke to Plaintiff and other class
5 members about their job duties and the claims asserted in the Action, along with Defendants'
6 available defenses. (*Ibid.*)

7 Prior to mediation, the Parties met and conferred and agreed to an informal discovery plan
8 that would allow them to productively move forward with settlement discussions. (Pyle Decl., ¶ 26.)
9 Through informal discovery, Defendants produced and Plaintiff's counsel reviewed a spreadsheet
10 that included each class member's dates of employment, how many projects that had with
11 Freemodel, the total compensation they had received, and whether they had signed an arbitration
12 agreement. (Pyle Decl., ¶ 27.)

13 Defendants also produced Plaintiff's Project Director Agreement, which included
14 information regarding Project Director job duties, expectations, tools, and relationship with
15 Freemodel and Freemodel's clients. (Pyle Decl., ¶ 28.) Additionally, Defendants produced an email
16 thread that evidenced Plaintiff's work on various projects and provided information about Plaintiff's
17 job duties. (Pyle Decl., ¶ 29.)

18 Based on these productions and conversations with class members, Plaintiff's counsel
19 determined in which ways class member job duties were inconsistent with the independent
20 contractor test outlined in Labor Code sections 2775. (Pyle Decl., ¶ 30.) Plaintiff's counsel also used
21 this information to determine that Project Directors were not subject to the business-to-business
22 exception codified in Labor Code section 2776. (*Ibid.*)

23 On February 14, 2024, the Parties attended a private mediation with mediator Hon. Ronald
24 Sabraw (Ret.). (Pyle Decl., ¶ 31.) Plaintiff provided Judge Sabraw with their detailed analysis of
25 Defendants' liability and damages. (*Ibid.*) The Parties engaged in arm's-length negotiations
26 throughout the mediation and in the following weeks and ultimately resolved the matter with the
27 assistance of Judge Sabraw. (*Ibid.*)

28

1 The principal terms of the Parties' agreement were outlined in a Memorandum of
2 Understanding. (Pyle Decl., ¶ 32.) The Parties then negotiated the terms of the Settlement
3 Agreement. (*Ibid.*)

4 **C. REASONS FOR THE PARTIES' SETTLEMENT**

5 In reaching the Settlement, counsel relied on their substantial litigation experience in
6 employment class actions. (Pyle Decl., ¶ 33.) Information gathered from investigation and informal
7 discovery informed Plaintiff's counsel's assessment of the strengths and weaknesses of the case and
8 the benefits of the Settlement. (*Ibid.*) The arm's-length settlement of this matter thus avoids
9 significant litigation and financial risk and provides for a monetary distribution to all Settlement
10 Class Members. (*Ibid.*)

11 Plaintiff recognizes the expense and length of protracted proceedings necessary to continue
12 the Action against Defendants through trial and through any possible appeals. (Pyle Decl., ¶ 34.)
13 Plaintiff has also taken into account the uncertainty and risks of further litigation, including the risk
14 of significant delay, the risk that the Court may not certify the Class or may later decertify it, and
15 potential appellate issues. (*Id.* at ¶ 35.) Plaintiff is also aware of the burdens of proof necessary to
16 establish liability for the claims asserted in the Action, Defendants' defenses to those claims, and the
17 difficulties in establishing damages. (*Id.* at ¶ 36.)

18 **III. THE PROPOSED SETTLEMENT**

19 **A. ESSENTIAL TERMS OF THE SETTLEMENT**

20 The Settlement Agreement provides that Defendants shall pay the Maximum Settlement
21 Amount of \$350,000 to resolve the class and representative claims in the Action. (Settlement, ¶
22 2.34.) The essential terms of the Settlement are as follows:

23 **1. Class Definition**

24 The Class is defined as: all individuals who entered into Project Director Agreements with
25 Freemodel, Inc. and/or worked as Project Directors for Freemodel, Inc. in California between July
26 14, 2019, and the date of preliminary approval of the parties' settlement agreement by the Court (the
27 "Class Period"). (Settlement, ¶ 2.5.)

1 There are approximately 89 Class Members. (Pyle Decl., ¶ 37.)

2 **2. Settlement Amount**

3 The Settlement Agreement provides that Defendants shall pay the Maximum Settlement
4 Amount of \$350,000 for the class and representative claims in the Action, which Defendants agree
5 to pay, on an all-in an non-reversionary basis, for the class and representative claims in the Action,
6 which is inclusive of any Class Counsel Award, PAGA Payment, Service Award to Plaintiff, and
7 Claims Administration Expenses. (Settlement, ¶ 2.34.)

8 The Settlement Agreement provides that any and all claims for PAGA penalties alleged in
9 the Action have been settled for \$35,000. (Settlement, ¶¶ 2.23, 4.4.) Seventy-five percent (\$26,250)
10 shall be paid to the LWDA, and twenty-five percent (\$8,750) shall be distributed to Aggrieved
11 Employees. (*Ibid.*; Pyle Decl., ¶ 39.).

12 The Claims Administrator Expenses shall not exceed \$4,000 and will paid from the
13 Maximum Settlement Amount. (Settlement, ¶ 4.5; Pyle Decl., ¶ 40.)

14 At the final approval stage, Plaintiff's counsel will apply to the Court for a Service Award of
15 \$5,000 for Plaintiff Julie Dean in recognition of her service to the Class. (Settlement, ¶ 2.32; Pyle
16 Decl., ¶ 41; see also Dean Decl., ¶¶ 1-18.)

17 Plaintiff's counsel will apply to the Court for an award of attorneys' fees not to exceed thirty-
18 five percent of the Maximum Settlement Amount, or \$122,500, plus actual litigation costs, which are
19 estimated to be no more than \$25,000. (Settlement, ¶ 4.3; Pyle Decl., ¶ 42.)

20 The Net Settlement Amount or Net Settlement Fund is the Maximum Settlement Amount
21 minus the Class Counsel Award, Service Award to Plaintiff, PAGA Payment, and Claims
22 Administration Costs. (Settlement, ¶¶ 2.22, 2.34; Pyle Decl., ¶ 43.) The Net Settlement Amount is
23 currently estimated to be \$158,500, and the PAGA Settlement allocated to PAGA Employees is
24 projected to be an additional \$8,750, as follows:

25	Maximum Settlement Amount	\$350,000.00
26	Less PAGA Payment	-\$35,000.00
27	Less Claims Administrator Expenses	-\$4,000.00
28	Less Service Award	-\$5,000.00
	Less Attorneys' Fees	-\$122,500.00

Less Litigation costs	-\$25,000.00
NET SETTLEMENT AMOUNT	\$158,500.00
PAGA Payment	\$35,000.00
Less Payment to LWDA	-\$26,250.00
PAYMENT TO AGGRIEVED EMPLOYEES	\$8,750.00

(Pyle Decl., ¶ 43.)

3. The Settlement Is Neither Claims-Made nor Reversionary

This is not a claims-made Settlement. (Pyle Decl., ¶ 44.) Settlement Class Members will receive a portion of the Net Distribution Fund as long as they do not opt out of the Settlement. (Settlement, ¶ 2.33.) All Aggrieved Employees will receive their portion of the PAGA Payment. (Settlement, ¶¶ 2.17, 2.23, 4.4; Pyle Decl., ¶ 44.)

The Settlement is also non-reversionary. (Settlement, ¶¶ 2.34, 4.1; Pyle Decl., ¶ 45.) Under no circumstances will the Maximum Settlement Amount or any portion of it revert back to Defendants. (Pyle Decl., ¶ 45; see Settlement, ¶¶ 4.1-4.5.)

4. Settlement Administrator

The Parties have agreed that Apex Class Action will serve as the Claims Administrator. (Settlement, ¶ 2.3; Pyle Decl., ¶ 47.) Apex Class Action has successfully administered a large number of wage and hour class action settlements in an efficient and effective manner. (Declaration of Sean Hartranft in Support of Plaintiff’s Motion for Preliminary Approval of Class and Representative Action Settlement (“Hartranft Decl.”), ¶ 2, 4; see Pyle Decl. ¶ 47.) Apex Class Action has provided a bid of \$3,995.00 for the proposed administrative work. (Hartranft Decl., ¶ 7, Exh. B; see Pyle Decl. ¶ 47) Plaintiff’s counsel considered four bids before choosing Apex Class Action. (Pyle Decl., ¶ 47.)

5. Class Notice, Opting Out, and Objections

The Claims Administrator will mail a Class Notice, including a computation of the amount of each Class Member’s share of the Net Settlement Fund and PAGA Payment, to all Class Members,

1 whose names and last known addresses Defendants will provide to the Claims Administrator.
2 (Settlement, ¶¶ 2.9, 6.1, 6.5, Exh. A; Pyle Decl. ¶ 48.)

3 The Class Notice is attached as Exhibit A to the Settlement Agreement. (Settlement at Exh.
4 A; Pyle Decl., ¶ 3.) The Class Notice informs Class Members of their right to object or opt out of the
5 Settlement without soliciting extraneous information. (Settlement, ¶¶ 6.7, 7.2–7.3, 8.1–8.6, Exh. A;
6 Pyle Decl., ¶ 49.) The Class Notice provides clear instructions for Class Members to object to the
7 Settlement, opt out of the Settlement, or dispute the computation of the Class Member’s share of the
8 Net Distribution Fund and PAGA Payment. (Settlement, Exh. A; Pyle Decl., ¶ 49.)

9 Class Members will have sixty days to postmark objections, disputes, and requests for
10 exclusion. (Settlement, ¶¶ 2.31, 6.8.) The Claims Administrator will evaluate and resolve disputes
11 from Class Members regarding the number of workweeks attributed to them. (Settlement, ¶ 4.8.)
12 Individuals who do not submit valid and timely requests for exclusion will be deemed Settlement
13 Class Members. (Settlement, ¶¶ 2.33, 6.6.)

14 Class Members who submit valid and timely requests for exclusion will not be Settlement
15 Class Members and will not be bound by the terms of the Settlement. (Settlement, ¶¶ 2.33, 7.2, 7.5;
16 Pyle Decl., ¶ 52.) However, Class Members who are Aggrieved Employees and worked during the
17 PAGA Period from between July 20, 2022, through the date of preliminary approval of the
18 Settlement cannot opt out of the PAGA Payment. (Settlement, ¶¶ 2.2, 4.4, 6.7, 9.2; Pyle Decl., ¶ 52;
19 see *Robinson v. Southern Counties Oil Company* (2020) 53 Cal.App.5th 476.)

20 **6. Calculation And Distribution of Payments**

21 Each Settlement Class Member will receive a pro-rata share of the Net Settlement Fund
22 based on the number of semi-monthly periods the Class Member was employed by Defendants
23 during the Class Period (the “Individual Settlement Share”). (Settlement, ¶¶ 2.19, 4.6.) Each Class
24 Member’s number of semi-monthly periods will be based on the number of semi-monthly periods
25 between July 14, 2019, or the date of execution of their respective Project Director Agreements
26 (whichever is later) and the date of Preliminary Approval or the date their respective relationships
27 ended with Defendants (whichever is earlier), contained in the records kept by Defendants in the
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1 ordinary course of business during the Class Period. (Settlement, ¶ 4.6.) Individual Settlement
2 Shares will be characterized as 20 percent for reimbursement of expenses, 60 percent penalties, and
3 20 percent interest. (Settlement, ¶ 4.6, subd. (b).) Each Class Member’s gross settlement award will
4 be reported on a 1099 Form. (*Ibid.*; Pyle Decl., ¶ 53.)

5 Aggrieved Employees will receive an Individual PAGA Payment that consists of a pro-rata
6 share of twenty-five percent of the PAGA Payment (\$8,750) based on the number of semi-monthly
7 periods between July 20, 2022, or the date of execution of their respective Project Director
8 Agreements (whichever is later) and the date of Preliminary Approval or the date their respective
9 relationships ended with Defendants (whichever is earlier). (Settlement, ¶¶ 4.4, 4.7.) The Individual
10 PAGA Payment to be made to each Aggrieved Employee shall be calculated by multiplying the
11 value of a semi-monthly period by the number of semi-monthly periods worked by the Aggrieved
12 Employee during the PAGA Period. (*Id.* at ¶ 4.7.) Individual PAGA Payments will be allocated as
13 one hundred percent penalties to be reported on IRS Form 1099. (*Id.* at ¶ 4.9.) The remaining
14 seventy-five percent of the PAGA Payment (\$26,250) of the PAGA Payment will be distributed to
15 the LWDA. (Settlement, ¶¶ 2.23, 4.4; Pyle Decl., ¶ 54.)

16 **7. Mailing of Checks**

17 Within thirty calendar days of receipt of the Maximum Settlement Amount, the Claims
18 Administrator will make all disbursements under the Settlement Agreement. (Settlement, ¶ 10.2.)
19 The checks will remain negotiable for 180 days from the date of mailing. (*Id.* at ¶ 2.35.)

20 **8. Cy Pres Beneficiary**

21 Any funds that remain from uncashed or unclaimed Settlement checks will be distributed to
22 Legal Aid at Work, the *cy pres* recipient agreed upon by the Parties. (Settlement, ¶ 4.17; Pyle Decl.,
23 ¶ 55.) Redistributing any uncashed checks to Class Members would result in additional Claims
24 Administration Expenses. (Pyle Decl., ¶ 55.) Under Code of Civil Procedure section 384,
25 subdivision (b), *cy pres* awards may be made to “nonprofit organizations or foundations to support
26 projects that will benefit the class or similarly situated persons, or that promote the law consistent
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1 with the objectives and purposes of the underlying cause of action . . . or to nonprofit organizations
2 providing civil legal services to the indigent.”

3 The Parties propose that the Court designate Legal Aid at Work as the *cy pres* beneficiary.
4 (Settlement, ¶ 4.17.) In support of their motion for final approval, Plaintiff will submit declarations
5 establishing that Legal Aid at Work is a qualified *cy pres* designee under section 384 because it is a
6 “nonprofit organization[] providing civil legal services to the indigent.” (Pyle Decl., ¶ 56.) Plaintiff’s
7 counsel has no involvement in the governance of Legal Aid at Work. (Pyle Decl., ¶ 57.)

8 **IV. THE COURT SHOULD APPROVE THE PROPOSED SETTLEMENT**

9 **A. THE PROPOSED SETTLEMENT MEETS THE STANDARDS FOR** 10 **PRELIMINARY APPROVAL**

11 California Rule of Court 3.769 conditions settlement of a class action on court approval,
12 which is generally evaluated under the federal standards applicable to Rule 23 of the Federal Rules
13 of Civil Procedure. (See *Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 337
14 [Rule 3.769 requires the trial court to determine “that the settlement is fair, reasonable and adequate
15 to all concerned”]; *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026 [Rule 23(e)
16 requires the court to determine “whether a proposed settlement is fundamentally fair, adequate, and
17 reasonable”].)

18 Settlement is the preferred means of resolution, particularly in complex class action
19 litigation. (See *In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101.) The Court’s role in
20 evaluating a proposed settlement is to ensure that the agreement taken as a whole is fair and is within
21 the range of reasonableness. (See, e.g., *Hanlon, supra*, 150 F.3d at 1027.) There is an initial
22 presumption of fairness when the settlement agreement was negotiated at arm’s-length by Plaintiff’s
23 counsel. (See, e.g., *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.)

24 **1. Standard for Preliminary Approval**

25 To make a fairness determination, the Court should consider several factors, including “the
26 strength of plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the
27 risk of maintaining class action status through trial, the amount offered in settlement, the extent of
28 discovery completed and the stage of the proceedings, [and] the experience and views of counsel.”

1 (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.) “The list of factors is not
2 exclusive and the Court is free to engage in a balancing and weighing of the factors depending on the
3 circumstances of each case.” (*Ibid.*)

4 For the following reasons, the Court should find that the Settlement is fair, reasonable, and
5 adequate.

6 **2. The Settlement Is Within the Range of Reasonableness**

7 The Settlement is within the range of reasonableness. Settlement Class Members will receive
8 an award based on the number of semi-monthly periods between July 14, 2019, or the date of
9 execution of their respective Project Director Agreements (whichever is later) and the date of
10 Preliminary Approval or the date their respective relationships ended with Defendants (whichever is
11 earlier). (Settlement, ¶ 4.6; Pyle Decl., ¶ 58.) PAGA Employees will also receive an award based on
12 the number of semi-monthly periods between July 20, 2022, or the date of execution of their
13 respective Project Director Agreements (whichever is later) and the date of Preliminary Approval or
14 the date their respective relationships ended with Defendants (whichever is earlier). (Settlement, ¶
15 4.7; Pyle Decl., ¶ 58.) The Settlement therefore provides meaningful relief for the disputed Labor
16 Code violations and will result in a substantial benefit to all Settlement Class Members. (Pyle Decl.,
17 ¶ 58.)

18 **3. The Settlement Is Reasonable in Light of Significant Litigation Risks**

19 The Court must make an “independent assessment of the reasonableness of the terms of the
20 settlement” prior to granting preliminary and final approval. (*Clark v. American Residential Services*
21 *LLC* (2009) 175 Cal.App.4th 785, 799; *Kullar, supra*, 168 Cal.App.4th at 127–28, 130, 133.) To do
22 so requires that the Parties submit “basic information about the nature and magnitude of the claims
23 in question and the basis for concluding that the consideration being paid for the release of those
24 claims represents a reasonable compromise.” (*Clark, supra*, 175 Cal.App.4th at 800.) However, the
25 Court should not “attempt to decide the merits of the case or to substitute its evaluation of the most
26 appropriate settlement for that of the attorneys.” (*Kullar, supra*, 168 Cal.App.4th at 133.)

1 Here, prior to engaging in settlement discussions, Plaintiff's counsel calculated Defendants'
2 maximum exposure. (Pyle Decl., ¶ 59.) Plaintiff's counsel reviewed the class member spreadsheet
3 that Defendants produced and calculated Defendants' total potential exposure for each claim alleged.
4 (*Ibid.*)

5 Plaintiff's counsel then assigned a reasonable settlement value to each of the claims asserted
6 on behalf of Class Members. (Pyle Decl., ¶ 59.) With respect to the likelihood of class certification,
7 Plaintiff's counsel took into account the various factors, including the fact that Project Directors
8 each had different working relationships with Freemodel and with clients. (Pyle Decl., ¶ 60.)

9 As explained below, the Total Settlement Amount of \$350,000 is consistent with the
10 aggregate reasonable settlement value of the Class Members' claims. (Pyle Decl., ¶ 61.) That
11 aggregate reasonable settlement value is approximately \$211,610, including the PAGA claims.
12 (*Ibid.*)

13 **i. Misclassification**

14 All of Plaintiff's claims hinge on whether Freemodel misclassified its Project Directors under
15 California Law. (Pyle Decl., ¶ 62.) Plaintiff contends that under both the ABC test and the *Borello*
16 test, Freemodel misclassified its Project Directors as independent contractors. (*Ibid.*) Plaintiff argues
17 that Project Directors were not free from the control and direction of Freemodel, and that they
18 performed work that was within the usual course of Freemodel's business. (*Ibid.*)

19 Plaintiff also claims that Project Directors were not customarily engaged in an independently
20 established trade, occupation, or business of the same nature as that involved in the work performed
21 because the non-compete clause in Freemodel's contracts prohibited them from doing design work
22 outside of their work with Freemodel. (Pyle Decl., ¶ 63.) Additionally, Plaintiff contends that
23 Freemodel cannot demonstrate the business-to-business exception codified in Labor Code section
24 2776 applied. (*Ibid.*) Among other reasons, Freemodel set Project Directors' rates, and Freemodel
25 provided the tools that Project Directors had to use to perform their work. (*Ibid.*)

26 In response, Defendants argue that Project Directors, not Freemodel, controlled all aspects of
27 their design and management work. Defendants also argue that Project Directors provided
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1 Freemodel clients services that differed from the services that Freemodel provided. (Pyle Decl., ¶
2 64.) Additionally, Defendants claim that many Project Directors had their own businesses and/or
3 worked as Project Directors outside of their work with Freemodel. (*Ibid.*) Defendants maintain that
4 these fact-specific arguments would have required individual analysis that would have posed a
5 significant challenge for class certification. (*Ibid.*)

6 Plaintiff factored Defendants' arguments into her damages analysis as follows:

7 **ii. Failure To Pay Minimum Wages**

8 Plaintiff alleges that because Class Members were misclassified, they were not paid for all
9 hours worked. (Pyle Decl., ¶ 66.) Specifically, Plaintiff alleges that Defendants required Project
10 Directors to attend a meeting every other week, which lasted for approximately one hour. (*Ibid.*)
11 Defendants did not pay Project Directors for that time. (*Ibid.*) Plaintiff estimates that Class Members
12 collectively worked 1,245 months total during the class period. Assuming two meetings per month
13 for each Class Member at a rate of \$15 per hour, Defendants owe Class Members \$37,350 for unpaid
14 wages for these meetings. (*Ibid.*)

15 In response, Defendants argue that some of these meetings were optional and that all Class
16 Members did not attend all of the meetings. (Pyle Decl., ¶ 67.) Furthermore, because Defendants did
17 not keep attendance records of these meetings, nor was there a written policy demonstrating that
18 these meetings were mandatory, determining whether there was a minimum wage violation would
19 require an individual determination. (*Ibid.*)

20 Additionally, Defendants argue that there is no way to calculate how many additional hours
21 Class Members worked for which they were not paid. (Pyle Decl., ¶ 68.) Class Members set their
22 own hours and did not work according to any established schedule. (*Ibid.*) Class Members typically
23 did not record the hours they worked. (*Ibid.*) Therefore, determining whether there was a minimum
24 wage violation for each Class Member would require an individual determination, rendering class
25 certification difficult if not impossible. (*Ibid.*)

26 Under these circumstances, it is reasonable to discount the value of this claim by 60 percent
27 (multiplying by .4) to account for the risks involved in certifying a class and maintaining
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1 certification through trial and by an additional 50 percent (multiplying by .5) to account for the risk
2 that Defendants would prevail on their defenses. (Pyle Decl., ¶ 69.)

3 Accordingly, the reasonable settlement value of the failure to pay minimum wages claim is
4 \$7,470.00. (Pyle Decl., ¶ 70.)

5 **iii. Failure To Pay Overtime Wages**

6 Plaintiff alleges that Defendants failed to properly pay overtime and double time as required
7 by California law. (Pyle Decl., ¶ 71.)

8 In response, Defendants argue that there is no way to calculate whether or how many
9 overtime hours Class Members worked. (Pyle Decl., ¶ 72.) Class Members set their own hours and
10 did not work according to any established schedule. (*Ibid.*) Class Members typically did not record
11 the hours they worked, so no records of Class Member schedules exist to prove liability. (*Ibid.*)
12 Thus, Defendants contend that this claim would require an individualized inquiry that would
13 preclude class certification. (*Ibid.*)

14 Plaintiff therefore estimates that the reasonable settlement value of this claim is zero. (Pyle
15 Decl., ¶ 73.)

16 **iv. Failure To Provide Off-Duty Meal Periods**

17 Labor Code sections 226.7 and 512 and the IWC Wage Orders, including IWC Wage Order
18 4-2001 (Cal. Code Reg, tit. 8, § 11010, subds. 11(A) and 12(A)), prohibit employers from employing
19 an employee for more than five hours without a meal period of at least thirty minutes unless the
20 employee works less than six hours.

21 As mentioned, Plaintiff estimates that Class Members collectively worked 1,245 months total
22 during the class period. Assuming ten missed meal periods per month for each Class Member at a
23 rate of \$15 per hour, Defendants owe Class Members \$186,750 for missed meal periods. (Pyle Decl.,
24 ¶ 75.)

25 Here, Defendants contend that there is no way to calculate how many meal periods Class
26 Members missed. (Pyle Decl., ¶ 76.) Class Members set their own hours and did not work according
27 to any established schedule. (*Ibid.*) Class Members typically did not record the hours they worked or
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1 when they took meal periods, so no records of Class Member schedules exist to prove liability.
2 (*Ibid.*) Additionally, this claim would require an individualized inquiry that would preclude class
3 certification. (*Ibid.*)

4 Under these circumstances, it is reasonable to discount the value of this claim by 60 percent
5 (multiplying by .4) to account for the risks involved in certifying a class and maintaining
6 certification through trial and by an additional 50 percent (multiplying by .5) to account for the risk
7 that Defendants would prevail on their defenses. (Pyle Decl., ¶ 77.)

8 Plaintiff therefore estimates that the reasonable settlement value of this claim is \$37,350.
9 (Pyle Decl., ¶ 78.)

10 **v. Failure To Authorize And Permit Rest Periods**

11 Labor Code § 226.7 and the IWC Wage Orders, including IWC Wage Order 4-2001 (Cal.
12 Code Reg., tit. 8, § 11010, subd. 12(A)), prohibit employers from employing an employee for more
13 than four hours, or a major fraction thereof, without a rest period of at least ten minutes, unless the
14 employee works less than three and one-half hours.

15 As mentioned, Plaintiff estimates that Class Members collectively worked 1,245 months total
16 during the class period. Assuming ten missed meal periods per month for each Class Member at a
17 rate of \$15 per hour, Defendants owe Class Members \$186,750 for missed meal periods. (Pyle Decl.,
18 ¶ 80.)

19 However, as with meal periods, Defendants contend that there is no way to calculate how
20 many rest periods Class Members missed. (Pyle Decl., ¶ 81.) Class Members set their own hours and
21 did not work according to any established schedule. (*Ibid.*) Class Members typically did not record
22 the hours they worked or whether they took any rest periods, so no records of Class Member
23 schedules exist to prove liability. (*Ibid.*) Additionally, this claim would require an individualized
24 inquiry that would preclude class certification. (*Ibid.*)

25 Under these circumstances, it is reasonable to discount the value of this claim by 60 percent
26 (multiplying by .4) to account for the risks involved in certifying a class and maintaining
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1 certification through trial and by an additional 50 percent (multiplying by .5) to account for the risk
2 that Defendants would prevail on their defenses. (Pyle Decl., ¶ 82.)

3 Plaintiff therefore estimates that the reasonable settlement value of this claim is \$37,350.
4 (Pyle Decl., ¶ 83.)

5 **vi. Failure To Provide Wage Statements**

6 Labor Code section 226, subdivision (a), mandates that employers provide non-exempt
7 employees with itemized wage statements that include the “total hours worked by the employee.”
8 (Lab. Code § 226, subds. (a), (j).) When an employer knowingly and intentionally violates its duty to
9 provide accurate wage statements, an injured employee may recover actual damages or a statutory
10 penalty. (Lab. Code § 226, subd. (e)(1).) An employer's good faith belief that it is in compliance
11 with section 226 precludes a finding of a knowing and intentional violation of that statute. (*Naranjo*
12 *v. Spectrum Security Services, Inc.* (2023) 88 Cal.App.5th 937, 941, *affd.* (2024) 15 Cal.5th 1056.)

13 An employee is deemed to suffer “injury” under section 226 if the employer fails to provide a
14 wage statement. (See §226, subd. (e)(2)(A).) The penalties are fifty dollars for the initial violation
15 and one hundred dollars for each subsequent violation per employee per pay period, up to four
16 thousand dollars per employee. (Lab. Code § 226, subd. (e)(1).)

17 Here, Plaintiff alleges that Defendants failed to provide Class Members with two wage
18 statements per month. (Pyle Decl., ¶ 84.) Plaintiff thus calculates that Defendants owe Project
19 Directors \$220,400 for wage statement penalties (capping penalties at a maximum of \$4,000 per
20 Project Developer).

21 As outlined above, Defendants argue that Project Directors were independent contractors and
22 therefore Defendants did not have to provide them with wage statements. (Pyle Decl., ¶ 85.) Should
23 Defendants prevail on this argument, Class Members would not be able to recover any penalties
24 under section 226, subdivision (e). (*Ibid.*) It is therefore reasonable to discount the wage statement
25 claim by sixty percent (multiplying by .4) to account for the risks involved in certifying a class and
26 maintaining certification through trial, and by an additional 50 percent (multiplying by .5) to account
27 for the risks that Defendants will prevail on their defenses. (*Ibid.*)

1 Accordingly, the reasonable settlement value of the wage statement claim is \$44,080. (Pyle
2 Decl., ¶ 86.)

3 **vii. Failure To Reimburse Business Expenses**

4 Plaintiff alleges that Defendants violated Labor Code section 2802 by not reimbursing Class
5 Members for expenses associated with their jobs. (Pyle Decl., ¶ 87.) These expenses included the
6 cost of cellular phones, internet, and mileage. (*Ibid.*)

7 As outlined above, Defendants argue that Project Directors were independent contractors and
8 thus that Defendants did not have to reimburse them for their expenses. (Pyle Decl., ¶ 88.)

9 Plaintiff calculated unreimbursed expenses at \$50 per month for cell phone and \$50 per
10 month for internet. (Pyle Decl., ¶ 89.) Accordingly, the Project Directors' estimated unreimbursed
11 business expenses total 1,245 x \$100, or \$124,500. (*Ibid.*)

12 Should Defendants prevail on their arguments regarding Project Directors' status as
13 independent contractors, Class Members would not be able to recover any penalties under section
14 2802. (Pyle Decl., ¶ 90.) It is therefore reasonable to discount the wage statement claim by sixty
15 percent (multiplying by .4) to account for the risks involved in certifying a class and maintaining
16 certification through trial, and by an additional 50 percent (multiplying by .5) to account for the risks
17 that Defendants will prevail on their defenses. (*Ibid.*)

18 Accordingly, the reasonable settlement value of the reimbursement claim is \$24,900. (Pyle
19 Decl., ¶ 91.)

20 **viii. Waiting Time Penalties**

21 Labor Code section 203 provides that if an employer willfully fails to pay compensation
22 promptly upon discharge or resignation, as required by Labor Code sections 201 and 202, the
23 employer is liable for waiting time penalties in the form of continued compensation for up to thirty
24 workdays. "Under Labor Code section 203, a 'willful failure to pay wages ... occurs when an
25 employer intentionally fails to pay wages to an employee when those wages are due.' " (*Diaz v. Grill*
26 *Concepts Services, Inc.*, 23 Cal. App. 5th 859, 869 (2018) (quoting Cal. Code Regs. tit.8, § 13520).)
27 An employer's failure to pay is therefore not willful if that failure is due to (1) uncertainty in the law,

1 or (2) the employer's good faith mistaken belief that wages are not owed grounded in a good faith
2 dispute, which exists when the employer presents a defense, based in law or fact which, if
3 successful, would preclude any recovery on the part of the employee. (*Id.*)

4 Here, Plaintiff alleges that because Defendants did not pay Class Members for all of their
5 time worked or for their meal and rest breaks, it also failed to pay all compensation owed upon the
6 Class Members' termination or resignation from employment. (Pyle Decl., ¶ 92.) In order to prevail
7 on this claim, Plaintiff would therefore have to (1) certify a class based upon the underlying conduct
8 (misclassification), (2) prevail on claims for unpaid wages, and (3) prove that Defendants' conduct
9 was willful. (See *Naranjo*, *supra*, 88 Cal.App.5th at 941, *aff'd* (2024) 15 Cal.5th 1056.)

10 At the time of settlement, 33 Project Directors had terminated their employment with
11 Freemodel. (Pyle Decl., ¶ 93.) Freemodel failed to pay those Project Directors all wages owed at the
12 conclusion of their employment. Pursuant to Labor Code section 203, and assuming a \$15 hourly
13 rate, Plaintiff estimates that Freemodel is therefore liable for waiting time penalties in the amount of
14 \$118,800. (*Ibid.*)

15 In response, Defendants argue that the waiting time penalties claim is derivative of Plaintiff's
16 overtime, meal period, and rest break claims, which, for the reasons set forth above, will fail either at
17 the class certification stage or at the liability state, or both. (Pyle Decl., ¶ 94.) Defendants further
18 contend that Plaintiff cannot prove the "willful" prong needed to obtain waiting time penalties
19 because there is a good faith dispute as to whether any unpaid wages are due. (Pyle Decl., ¶ 94; see
20 Lab. Code § 203; 8 C.C.R. § 13520 [definition of "willful"];

21 It is therefore reasonable to discount the wage statement claim by sixty percent (multiplying
22 by .4) to account for the risks involved in certifying a class and maintaining certification through
23 trial, and by an additional 50 percent (multiplying by .5) to account for the risks that Defendants will
24 prevail on their defenses. (Pyle Decl., ¶ 95.)

25 Accordingly, the reasonable settlement value of the waiting time penalties claim is \$23,760.
26 (Pyle Decl., ¶ 96.)
27
28

1 **ix. Unfair Competition and Unfair Business Practices Claim**

2 Plaintiff's claim for violation of the Unfair Competition Law, Business and Professions Code
3 section 17200 (the "UCL"), is based on the same Labor Code violations as their other claims. (Pyle
4 Decl., ¶ 97.) If the Court were to rule against Plaintiff on the predicate claims, the UCL claim would
5 also fall. (*Ibid.*) In addition, the damages for Plaintiff's UCL claim are co-extensive with the
6 damages for her other claims. (*Ibid.*) This claim therefore does not add to the case's settlement
7 value. (*Ibid.*)

8 **x. PAGA Penalties**

9 The Parties have agreed to allocate \$35,000 of the Settlement to PAGA penalties. (Pyle
10 Decl., ¶ 98.) That amount is fair, reasonable, and adequate in light of Defendants' possible defenses
11 and the Court's authority to reduce any award that is "unjust, arbitrary and oppressive, or
12 confusing." (Pyle Decl., ¶ 98; Lab. Code § 2699, subd. (e)(2); see, e.g., *Fleming v. Covidien Inc.*
13 (C.D. Cal., Aug. 12, 2011) 2011 WL 7563047, at *4 [reducing PAGA penalty by more than eighty
14 percent to avoid injustice].)

15 Trial courts evaluating PAGA settlements, including those made in conjunction with a class
16 settlement, must determine whether they are "fair, reasonable, and adequate in view of PAGA's
17 purposes to remediate present labor law violations, deter future ones, and to maximize enforcement
18 of state labor laws." (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77.) In so doing, courts
19 should "evaluate the adequacy of compensation to the class as well as the adequacy of the settlement
20 in view of the purposes and policies of PAGA." (*O'Connor v. Uber Technologies, Inc.* (N.D. Cal.
21 2016) 201 F.Supp.3d 1110, 1134, emphasis in original.)

22 In conducting this evaluation, courts may apply a sliding scale. For example, if the settlement
23 for the class is robust, the purposes of PAGA may be concurrently fulfilled. (*Id.*) "By providing fair
24 compensation to the class members as employees and substantial monetary relief, a settlement not
25 only vindicates the rights of the class members as employees, but may have a deterrent effect upon
26 the defendant employer and other employers, an objective of PAGA." (*Id.*)

1 Here, California Labor Code section 226.8, subdivisions (a) and (c) provide for a civil
2 penalty of between \$10,000 and \$25,000 for each employee who is willfully misclassified. Plaintiff's
3 counsel used the records provided by Defendants to determine that 89 Class Members were possibly
4 misclassified during the PAGA Period, from July 20, 2022, to present. (Pyle Decl., ¶ 99.) Plaintiff
5 multiplied 89 by \$10,000 to come to a total of \$890,000 in PAGA Penalties for misclassification.
6 (*Ibid.*)

7 Defendants' strenuous arguments in opposition to Plaintiff's misclassification claim are set
8 forth above in section IV.A.3.i. In light of those arguments, it is reasonable to discount the PAGA
9 misclassification case by 60 percent (multiplying by .4) to account for the risks involved in the
10 misclassification claim, and by an additional 75 percent (multiplying by .25) to account for the risk
11 of the Court finding that Freemodell's actions were not willful. (Pyle Decl., ¶ 100.)

12 Furthermore, Courts have broad discretion to reduce penalty amounts under PAGA. (See
13 Lab. Code § 2699, subd. (e)(2).) Courts typically reduce PAGA penalties where there is unsettled
14 law during the pendency of the litigation, where the case presents a matter of first impression that the
15 court has to rule upon, or where an employer demonstrates a serious attempt to comply with the law.
16 (See *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112; *Cotter v. Lyft,*
17 *Inc.* (N.D. Cal 2016) 176 F.Supp.3d 930, 941.) It is thus reasonable to discount the PAGA
18 misclassification penalties by an additional 70 percent (multiplying by .3) to account for the
19 discretionary nature of PAGA penalties. (Pyle Decl., ¶ 101.)

20 Accordingly, the reasonable settlement value of the misclassification PAGA claim is
21 \$26,700. (Pyle Decl., ¶ 102.)

22 With respect to the other PAGA claims, Plaintiff calculates the maximum potential amount to
23 be approximately \$1,830,500.² However, to recover that amount, Plaintiff would have to prevail both

24
25 ² This is the sum of the following penalties under PAGA: \$890,000 for misclassification (found by
26 multiplying a \$10,000 penalty by 89, for each aggrieved employee); \$209,000 for failure to
27 reimburse business expenses (found by multiplying a \$100 penalty by the 1,045 collective number of
28 months aggrieved employees worked during the PAGA period by two [to account for bi-monthly
pay periods]); \$209,000 for failure to pay minimum wages (found by multiplying a \$100 penalty by
the 1,045 collective number of months aggrieved employees worked during the PAGA period by
two [to account for bi-monthly pay periods]); and \$522,500 for failure to provide wage statements

1 on the misclassification issue and on the underlying claims. (Pyle Decl., ¶ 103.) Furthermore, there is
2 substantial risk that the Court would reduce any PAGA penalties because of Freemodel’s arguments
3 regarding good faith. (*Ibid.*) For these reasons, the reasonable settlement value of the non-
4 misclassification PAGA claims is approximately \$10,000. (*Ibid.*)

5 Therefore, the allocation of \$35,000 to PAGA penalties is fair, reasonable, and adequate.
6 Plaintiff has notified the LWDA of the PAGA-related provisions of the Settlement. She will notify
7 the Court if she receives any response from the LWDA regarding the Settlement. (Pyle Decl., ¶ 104.)

8 **4. The Settlement Is the Product of Non-Collusive, Arm’s-Length and Informed** 9 **Negotiations**

10 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is
11 reached through arm’s-length bargaining.” (*Wershba*, supra, 91 Cal.App.4th at 245.) In this case, the
12 Settlement was reached after arm’s-length negotiations between the Parties. (Pyle Decl., ¶ 31.)

13 In reaching the Settlement, counsel on both sides relied on their substantial litigation
14 experience in similar employment class actions. (Pyle Decl., ¶ 33.) Information gathered from
15 investigation and informal discovery informed Plaintiff’s counsel’s assessment of the strengths and
16 weaknesses of the case and the benefits of the Settlement. (*Ibid.*) Thus, the Settlement is the product
17 of informed and non-collusive arm’s-length bargaining and is entitled to a presumption of fairness.

18 **5. The Experience and Views of Plaintiff’s Counsel Favor Approval**

19 “The recommendations of plaintiffs’ counsel should be given a presumption of
20 reasonableness.” (*In Re Omnivision Technologies, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036, 1043
21 [quotation marks and citation omitted].) “The court undoubtedly should give considerable weight to
22 the competency and integrity of counsel . . . in assuring itself that a settlement agreement represents
23 an arm’s-length transaction entered without self-dealing or other potential misconduct.” (*Kullar*,
24 supra, 168 Cal.App.4th at 129.)

25 Plaintiff and Plaintiff’s counsel have vigorously prosecuted this case and will continue to do
26 so. (Pyle Decl., ¶ 105.) Information gathered from Plaintiff’s counsel’s investigation and discovery

27 _____
28 (found by multiplying a \$250 penalty by the 1,045 collective number of months aggrieved
employees worked during the class period by two [to account for bimonthly pay periods]).

1 informed counsel's assessment of the merits and risks of the case and the benefits of the Settlement.
2 (*Ibid.*) Plaintiff's counsel conducted a thorough investigation into the facts of the Action. (*Ibid.*)
3 Based on an independent investigation and evaluation, Plaintiff's counsel believe that the Settlement
4 is fair, reasonable, and adequate, and is in the best interest of the Class Members in light of all
5 known facts and circumstances, including the risk of significant delay, the risk that Defendants will
6 prevail on its defenses, and potential appellate issues. (*Ibid.*)

7 In addition to being thoroughly familiar with this case, Plaintiff's counsel has extensive
8 expertise in litigating wage and hour class actions like this and is therefore well-qualified to
9 represent Plaintiff and the Class Members. (Pyle Decl., ¶¶ 4-18.) Class Counsel's experience is
10 detailed in the declaration of counsel filed herewith. (*Ibid.*) The recommendation of Plaintiff's
11 counsel thus also weighs in favor of Settlement approval.

12 **6. The Proposed Release Is Narrowly Tailored**

13 The release of claims and PAGA release of claims in the Settlement are narrowly tailored.

14 The Settlement provides that Class Members will release all claims, charges, complaints,
15 liens, demands, causes of action, obligations, damages, and liabilities, from July 14, 2019, through
16 the date of preliminary approval of the parties' settlement agreement by the Court ("Relevant Time
17 Period"), known or unknown, suspected or unsuspected, that each participating class member had,
18 now has, or may hereafter claim to have during the Relevant Time Period against Defendants, its
19 agents, officers, employees, directors, owners, subsidiaries, DBA's, affiliates and predecessor,
20 successor, and parent companies ("Released Parties"), and that were asserted in the Action, or that
21 arise from or could have been asserted based on any of the facts alleged in Plaintiff's First Amended
22 Complaint ("Complaint") and/or Notice to the California Labor Workforce Development Agency,
23 regardless of whether such claims arise under federal, state and/or local law, statute, ordinance,
24 regulation, common law, or other source of law. The Released Claims specifically include, but are
25 not limited to Labor Code §§ 226, 226.2, 226.7, 510, 512, 1182.11–1182.13, 1194, 1194.2, 1197,
26 1198, and 2802 and the related IWC Wage Order No. 4-2001 and Business & Professions Code §§
27 17200, et seq. claims based on alleged violations of these Labor Code and Wage Order provisions)

1 and all other claims, such as those under the California Labor Code, Wage Orders, regulations,
2 and/or other provisions of law, that could have been pleaded based on the facts asserted in the
3 Action, including: (1) Failure to Reimburse Business Expenses; (2) Failure to Pay Minimum Wages;
4 (3) Failure to Pay Overtime Wages; (4) Failure to Provide Off-Duty Meal Periods; (5) Failure to
5 Authorize and Permit Rest Periods; (6) Failure to Provide Accurate Wage Statements; (7) Unlawful
6 Business Practices; (8) Civil Penalties Pursuant to PAGA as described in Plaintiff’s letter to the
7 LWDA, dated July 20, 2023, as well as interest, fees, and costs. (Settlement, ¶ 2.9.)

8 **7. The Proposed Class Notice Satisfies the Rules of Court**

9 The form and content of class notice and the method used to notify the class are within the
10 trial court’s discretion. (*Wershba, supra*, 91 Cal.App.4th at 251.) The Class Notice informs Class
11 Members about the Action, the terms of the Settlement, the scope of the release, the right to receive
12 a payment, the right to opt out of the Settlement, the right to object to the Settlement, how Individual
13 Settlement Shares and Individual PAGA Payments are calculated, how to challenge the data used to
14 calculate the Individual Settlement Shares and Individual PAGA Payments, and the date, time, and
15 location of the final approval hearing. (Settlement, Exh. A; Pyle Decl., ¶ 50.) It also provides the
16 contact information of Class Counsel to answer questions, contact information of the Claims
17 Administrator to answer questions, the URL for the Court’s electronic filing and service website, and
18 the Court’s address. (Settlement, Exh. A; Pyle Decl., ¶ 50.) The Class Notice is therefore crafted to
19 ensure that Class Members are alerted to the terms of the Settlement. (Pyle Decl., ¶ 50.)

20 The means of giving notice is reasonably calculated to reach a substantial percentage of Class
21 Members and meets the requirements of Rule of Court 3.766, subdivision (e). (See *Wershba, supra*,
22 91 Cal.App.4th at 251 [“[The] standard is whether the notice has a ‘reasonable chance of reaching a
23 substantial percentage of the class members.’”].) The Claims Administrator will send the Notice to
24 Class Members via first-class U.S. Mail. (Settlement, ¶ 6.2.) For each Class Notice returned as
25 undeliverable without a forwarding address, the Settlement Administrator will perform a single
26 computer or “skiptrace” search to obtain an updated address. (*Ibid.*) The proposed Notice is thus
27 reasonable and should be approved by the Court.

1 **V. THE COURT SHOULD PROVISIONALLY CERTIFY THE SETTLEMENT CLASS**

2 The proposed Class satisfies the criteria for certification of a settlement class under
3 California law because: 1) the individuals in the Class are so numerous that joinder would be
4 impractical; 2) common questions of law and fact predominate over individual questions such that
5 class certification is the most efficient and desirable way to maintain this litigation; 3) Plaintiff’s
6 claims are typical of the Class claims; and 4) Plaintiff and her counsel will fairly and adequately
7 represent the interests of absent Class members. (Code Civ. Proc. § 382.)

8 **A. THE PROPOSED CLASS IS ASCERTAINABLE AND NUMEROUS**

9 A class is “ascertainable” where members “may be readily identified without unreasonable
10 expense or time by reference to official [or business] records.” (*Sevidal v. Target Corp.* (2010) 189
11 Cal.App.4th 905, 919 [alterations in original].) Here, the proposed Class is defined as: all individuals
12 who entered into Project Director Agreements with Freemodel, Inc. and/or worked as Project
13 Directors for Freemodel, Inc. in California between July 14, 2019, and the date of preliminary
14 approval of the parties’ settlement agreement by the Court (Settlement, ¶ 2.5.)

15 Here, Class Members can easily be identified from Freemodel’s business records. (Pyle
16 Decl., ¶ 106.) According to those records, there are approximately 89 Class Members that all who
17 performed work for Freemodel at various times within the Class Period. (*Id.* at ¶ 107.)

18 **B. COMMON ISSUES OF LAW AND FACT PREDOMINATE**

19 The focus on certification is on what types of questions, “common or individual,” are likely
20 to arise in the action. (*Sav-On Drug Store, Inc. v. Sup. Ct.* (2004) 34 Cal.4th 319, 327.) Plaintiff’s
21 claims are predicated on allegedly unlawful policies including Defendant’s classification and
22 compensation scheme. (Pyle Decl., ¶ 108.) Courts commonly hold these claims to be proper for class
23 certification. (*E.g., Alonzo v. Maximus, Inc.* (C.D. Cal. 2011) 275 F.R.D. 513, 521 [“Because
24 Plaintiffs allege that all putative class members’ overtime pay rate was governed by a common
25 policy to not incorporate bonus payments and Stanford does not dispute that it had such a common
26 policy, with regard to the Bonus/Overtime Claim, Plaintiffs have posed questions of law and fact
27
28

1 that are common to the class”]; *Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th
2 701 [certifying meal and rest period claims].)

3 **C. THE PROPOSED CLASS REPRESENTATIVE’S CLAIMS ARE TYPICAL**

4 Typicality is satisfied where class representatives have claims that are typical of those of the
5 class. (*B.W.I. Custom Kitchen v. Owens-Illinois* (1987) 191 Cal.App.3d 1341, 1347.) Plaintiff’s
6 claims are typical of those held by Class Members. (Pyle Decl., ¶ 109.) Plaintiff entered into a
7 Project Director Agreement with Freemodel and worked as Project Directors for Freemodel during
8 the Class Period. (*Ibid.*) She was classified as an independent contractor and was subject to
9 Freemodel’s compensation plan and other relevant wage and hour policies and was injured by the
10 same challenged policies that injured the Class. (*Ibid.*)

11 **D. THE PROPOSED CLASS REPRESENTATIVE AND COUNSEL WILL**
12 **ADEQUATELY REPRESENT THE CLASS**

13 The adequacy requirement examines conflicts of interest between the named plaintiff and the
14 class she seeks to represent. (*Capital People First v. State Dept. of Developmental Svcs.* (2007) 155
15 Cal.App.4th 676, 697.) Plaintiff and her counsel will adequately represent the Class, as there are no
16 conflicts between Plaintiff and the Class Members she seeks to represent, and Plaintiff possesses
17 claims that are in line with those of the Class. (Pyle Decl., ¶ 110.) Plaintiff’s counsel also have
18 extensive experience in wage and hour class action litigation. (*Id.* at ¶¶ 4-18, 110.)

19 Plaintiff has provided a declaration that demonstrates her participation in the Action thus far
20 and shows she has diligently represented the Class. (Dean Decl., ¶¶ 1–18.) In this declaration,
21 Plaintiff describes the great personal and professional risks she faced in bringing this lawsuit. (See
22 *ibid.*)

23 **VI. THE COURT SHOULD APPROVE THE CLASS NOTICE AND SET A FINAL**
24 **APPROVAL HEARING**

25 In addition to requesting approval of the Settlement and provisional certification of the Class,
26 the Parties request that the Court approve the form, content, and distribution of the Class Notice and
27 set a date for a final approval hearing. Plaintiff’s Proposed Order Granting Preliminary Approval,
28 filed concurrently here, sets forth a proposed schedule for further proceedings.

1 **VII. CONCLUSION**

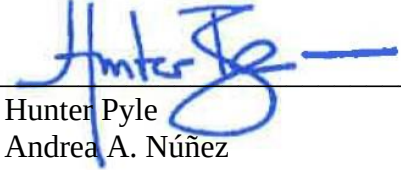
2 The arm's-length Settlement of this matter avoids significant litigation risk and provides for a
3 substantial monetary distribution to Settlement Class Members. For these reasons, the Parties
4 respectfully request that the Court enter an order:

- 5 1. Preliminarily approving the proposed Stipulation of Settlement;
- 6 2. Provisionally certifying, pursuant to section 382 of the Code of Civil Procedure, for
7 settlement purposes only, the proposed Settlement Class defined as: all individuals who
8 entered into Project Director Agreements with Freemodel, Inc. and/or worked as Project
9 Directors for Freemodel, Inc. in California between July 14, 2019, and the date of
10 preliminary approval of the parties' settlement agreement by the Court;
- 11 3. Appointing Julie Dean as Class Representative;
- 12 4. Appointing Hunter Pyle and Andrea A. Núñez of Hunter Pyle Law as Class Counsel;
- 13 5. Scheduling a final approval hearing to consider whether the Settlement should be finally
14 approved and to award Service Awards to the Class Representative and attorneys' fees
15 and costs to Class Counsel;
- 16 6. Appointing Apex Class Action as the third-Party Claims Administrator;
- 17 7. Approving the proposed Class Notice and ordering that it be disseminated to the
18 proposed Class as provided in the Settlement; and
- 19 8. Staying all proceedings in the Action, except those proceedings necessary to implement
20 and complete the Settlement, pending the Final Approval Hearing.

21
22 Respectfully submitted,

23 DATED: September 20, 2024

HUNTER PYLE LAW, PC

24
25 By: 

Hunter Pyle
Andrea A. Núñez

26
27 Attorneys for Plaintiff Julie Dean
28 and the Putative Class



Superior Court of Alameda County Public Portal

Make a Reservation

DEAN vs FREEMODEL, INC., et al.

Case Number: 23CV038315 Case Type: Civil Unlimited Category: Other Employment Complaint Case

Date Filed: 2023-07-14 Location: Rene C. Davidson Courthouse - Department 23

Reservation

Case Name:
DEAN vs FREEMODEL, INC., et al.

Case Number:
23CV038315

Type:
Motion re: (Motion for Preliminary Approval)

Status:
RESERVED

Filing Party:
JULIE DEAN (Plaintiff)

Location:
Rene C. Davidson Courthouse - Department 23

Date/Time:
12/03/2024 10:00 AM

Number of Motions:
1

Reservation ID:
976853001663

Confirmation Code:
CR-MTAE2BVTXX5ATJS9M

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:
XXXX5060

Authorization:
03736G

Payment Date:
n/a

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