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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN**

DJUANA SHANELLA HALE and SHANNON
GILBERT, individually, and on behalf of other
similarly situated employees and aggrieved
employees pursuant to the California Private
Attorneys General Act, and GEORGE
HERNANDEZ, individually, and on behalf of
other similarly situated employees,

Plaintiffs,

vs.

WELBE HEALTH, LLC, a Delaware Limited
Liability Company; WELBE HEALTH PACE,
LLC, a Delaware Limited Liability Company;
WELBE HEALTH BAY AREA PACE, LLC, a
Delaware Limited Liability Company;
WELBEHEALTH INLAND EMPIRE PACE,
LLC, a Delaware Limited Liability Company;
WELBE HEALTH SAN BERNARDINO PACE,
LLC, a Delaware Limited Liability Company; LA
COAST PACE, LLC, a Delaware Limited
Liability Company; WELBE HOUSECALLS,
LLC, a Delaware Limited Liability Company;
SEQUOIA PACE, LLC, a Delaware Limited
Liability Company; WELBE HEALTH HC,
NOCAL, LLC, a Delaware Limited Liability
Company; WELBE HEALTH HC SOCAL, LLC,

Case No. STK-CV-UOE-2023-0006866

Honorable Robert T. Waters
Department 11B

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

Date:	January 16, 2025
	January 23, 2025
	January 29, 2025
	January 31, 2025
	February 5, 2025
Time:	9:00 a.m.
Dept.:	11B

Complaint Filed:	July 5, 2023
FAC Filed:	September 23, 2024
Trial Date:	Not Set

1 a Delaware Limited Liability Company;
2 STOCKTON PACE, LLC, a Delaware Limited
3 Liability Company; and DOES 1 through 25,
4 inclusive,

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Defendants.

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on _____ at **9:00 a.m.** in Department 11B of the above-captioned Court located at 180 East Weber Avenue, Stockton, California 95202, pursuant to California Code of Civil Procedure section 382 and Rule 3.769 of the California Rules of Court, Plaintiffs Djuana Shanella Hale, Shannon Gilbert, and George Hernandez (collectively, “Plaintiffs”) will and hereby do move the Court for an Order granting preliminary approval of the proposed class action and PAGA settlement between Plaintiffs and Defendants Welbe Health, LLC; Welbe Health PACE, LLC; Welbe Health Bay Area PACE, LLC; WelbeHealth Inland Empire PACE, LLC; Welbe Health San Bernardino PACE, LLC; LA Coast PACE, LLC; Welbe Housecalls, LLC; Sequoia PACE, LLC; Welbe Health HC, NoCal, LLC; Welbe Health HC SoCal, LLC; and Stockton PACE, LLC (collectively, “Defendants”).

Plaintiffs request that the Court enter an Order:

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

2. Certifying the Class for Settlement purposes;

3. Appointing Plaintiffs Djuana Shanella Hale, Shannon Gilbert, and George Hernandez as the Class Representative for Settlement purposes;

4. Appointing Jonathan M. Genish, Miriam L. Schimmel, Joana Fang, and Alexandra Rose of Blackstone Law, APC as Class Counsel for Settlement purposes;

5. Approving the proposed Notice of Proposed Class Action and PAGA Settlement, and Hearing Date for Final Court Approval if Settlement (“Class Notice”), attached as Exhibit 1 to the Settlement Agreement, to be mailed to the Class;

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

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Djuana Shanella Hale (“Plaintiff Hale”), Shannon Gilbert (“Plaintiff Gilbert”), and
4 George Hernandez (“Plaintiff Hernandez”) (collectively, “Plaintiffs”) seek preliminary approval of the
5 Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement” or “Settlement
6 Agreement”) entered into between Plaintiffs and Defendants Welbe Health, LLC; Welbe Health PACE,
7 LLC; Welbe Health Bay Area PACE, LLC; WelbeHealth Inland Empire PACE, LLC; Welbe Health San
8 Bernardino PACE, LLC; LA Coast PACE, LLC; Welbe Housecalls, LLC; Sequoia PACE, LLC; Welbe
9 Health HC, NoCal, LLC; Welbe Health HC SoCal, LLC; and Stockton PACE, LLC (collectively,
10 “Defendants”) (collectively, with Plaintiffs, the “Parties”). (Declaration of Jonathan M. Genish in
11 Support of Plaintiffs’ Motion for Preliminary Approval of Class Action and PAGA Settlement [“Genish
12 Decl.”], Exh. D). The Settlement terms are outlined as follows:

- 13
- Class Size: Approximately 1,771 individuals.
 - Maximum Settlement Amount: Six Million Six Hundred Seventy-Five Thousand Dollars and
14 Zero Cents (\$6,675,000.00).
 - Attorneys’ Fees and Costs: Attorneys’ fees of thirty-five percent (35%) of the Maximum
15 Settlement Amount (i.e., \$2,336,250.00 if the Maximum Settlement Amount is
16 \$6,675,000.00) plus actual litigation costs and expenses not to exceed Twenty-Two
17 Thousand Dollars and Zero Cents (\$22,000.00), to be paid from the Maximum Settlement
18 Amount.
 - Enhancement Awards: Aggregate amount of Thirty Thousand Dollars and Zero Cents
19 (\$30,000.00), to be paid from the Maximum Settlement Amount.
 - Settlement Administration Costs: Not to exceed Twenty Thousand Dollars and Zero Cents
20 (\$20,000.00), to be paid from the Maximum Settlement Amount.
 - PAGA Amount: Four Hundred Thousand Dollars and Zero Cents (\$400,000.00) from the
21 Maximum Settlement Amount, 75% of which will be paid to the Labor and Workforce
22 Development Agency (“LWDA”) and the remaining 25% to be paid to the PAGA Members.
 - Estimated Net Settlement Amount: Three Million Eight Hundred Sixty-Six Thousand Seven
23 Hundred Fifty Dollars and Zero Cents (\$3,866,750.00) to be distributed to Settlement Class
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Members.

As set forth herein, the Settlement is the product of informed discovery and arms-length negotiations, and provides a fair, adequate, and reasonable recovery for the Class. Plaintiffs therefore respectfully request that the Court grant preliminary approval of the Settlement, conditionally certify the Class, approve the proposed Notice of Proposed Class Action and PAGA Settlement, and Hearing Date for Final Court Approval of Settlement (“Class Notice”), and set a hearing date for final settlement approval, among other requested relief.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendants are a full-service organization that provides 24/7 medical, mental health, and social care to seniors.

Plaintiff Hale was employed by one or more of the Defendants from approximately January 2020 to February 2023 as a non-exempt, hourly-paid Nightly Navigator Licensed Vocational Nurse, based out of 582 East Harding Way, Stockton, California 95304. (Declaration of Plaintiff Djuana Shanella Hale in Support of Motion for Preliminary Approval of Class Action and PAGA Settlement [“Hale Decl.”], ¶ 2).

Plaintiff Gilbert was employed by one or more of the Defendants from approximately May 2022 to September 2023 as a non-exempt, hourly-paid Quality Improvement Coordinator, based out of 1220 East 4th Street, Long Beach, California 90802. (Declaration of Plaintiff Shannon Gilbert in Support of Motion for Preliminary Approval of Class Action and PAGA Settlement [“Gilbert Decl.”], ¶ 2).

Plaintiff Hernandez was employed by one or more of the Defendants from approximately March 2022 to July 2023 as a non-exempt, hourly-paid Driver, based out of 1224 Scenic Drive, Modesto, California 95350. (Declaration of Plaintiff George Hernandez in Support of Motion for Preliminary Approval of Class Action and PAGA Settlement [“Hernandez Decl.”], ¶ 2).

On July 3, 2023, Plaintiff Hale provided written notice to the LWDA of the specific provisions of the California Labor Code alleged to have been violated by Defendants, and provided a supplemental letter to the LWDA and to Defendants on September 11, 2024 (together, “Hale LWDA Letter”). (Genish Decl., ¶ 8 and Exh. B).

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On July 5, 2023, Plaintiff Hale filed a Class Action Complaint in the action entitled *Djuana Shanella Hale v. Welbe Health, LLC, et al.*, San Joaquin County Superior Court Case No. STK-CV-UOE-2023-0006866 (“Action”) against Welbe Health, LLC and Stockton, PACE, LLC, asserting the following causes of action: (1) Violation of California Labor Code Sections 510 and 1198 (Unpaid Overtime); (2) Violation of California Labor Code Sections 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (3) Violation of California Labor Code Sections 226.7 and 512 (Unpaid Meal Period Premiums); (4) Violation of California Labor Code Section 226.7 (Unpaid Rest Period Premiums); (5) Violation of California Labor Code Section 226(a) (Failure to Provide Accurate Wage Statements); (6) Violation of California Labor Code Sections 201, 202, and 203 (Final Wages Not Timely Paid); (7) Violation of California Labor Code Sections 2800 and 2802 (Failure to Reimburse Necessary Business Expenses); and (8) Violation of California Business and Professions Code Sections 17200 et seq. (Unfair and Unlawful Business Practices). (Genish Decl., ¶ 9).

On September 8, 2023, Plaintiff Hale filed a Complaint for Enforcement Action Under the Private Attorneys General Act, Labor Code §§ 2698 et seq. in the action entitled *Djuana Shanella Hale v. Welbe Health, LLC, et al.*, San Joaquin County Superior Court Case No. STK-CV-UOE-2023-0009670 (“Hale PAGA Action”) asserting one cause of action under PAGA. (*Id.*, ¶ 10).

On October 30, 2023, Plaintiff Gilbert filed a Class Action Complaint in the action entitled *Shannon Gilbert v. LA Coast Pace, LLC, et al.*, Los Angeles County Superior Court Case No. 23STCV26547 (“Gilbert Action”) against LA Coast PACE, LLC, Welbe Health Bay Area PACE, LLC, WelbeHealth Inland Empire PACE, LLC, and Welbe Health San Bernardino PACE, LLC asserting the following causes of action: (1) Failure to Pay Minimum and Straight Time Wages (Cal. Lab. Code §§ 204, 1194, 1994.2, and 1197); (2) Failure to Pay Overtime Wages (Cal. Lab. Code §§ 1194 and 1198); (3) Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7, 512); (4) Failure to Authorize and Permit Rest Periods (Cal. Lab. Code § 226.7); (5) Failure to Timely Pay Final Wages at Termination (Cal. Lab. Code §§ 201-203); (6) Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code § 226); (7) Failure to Indemnify Employees for Expenditures (Cal. Lab. Code § 2802); (8) Failure to Produce Requested Employment Records (Cal. Lab. Code §§ 226 and 1198.5); and (9) Unfair Business Practices (Cal. Bus. & Prof. Code §§ 17200 et seq.). (*Id.*, ¶ 11).

1 On November 29, 2023, Plaintiff Hernandez filed a Class Action Complaint in the action entitled
2 *George Hernandez v. Welbe Health HC Nocal, LLC, et al.*, Stanislaus County Superior Court Case No.
3 CV-23-007017 (“*Hernandez Action*”) against Welbe Health HC Nocal, LLC and Stockton PACE, LLC
4 asserting the following causes of action: (1) Failure to Pay Minimum and Straight Time Wages (Cal. Lab.
5 Code §§ 204, 1194, 1994.2, and 1197); (2) Failure to Pay Overtime Wages (Cal. Lab. Code §§ 1194 and
6 1198); (3) Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7, 512); (4) Failure to Authorize and
7 Permit Rest Periods (Cal. Lab. Code § 226.7); (5) Failure to Timely Pay Final Wages at Termination
8 (Cal. Lab. Code §§ 201-203); (6) Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code
9 § 226); (7) Failure to Indemnify Employees for Expenditures (Cal. Lab. Code § 2802); and (8) Unfair
10 Business Practices (Cal. Bus. & Prof. Code §§ 17200 *et seq.*). (Genish Decl., ¶ 12).

11 On December 12, 2023, Plaintiff Gilbert provided written notice to the LWDA of the specific
12 provisions of the California Labor Code alleged to have been violated by Defendants, and provided a
13 supplemental letter to the LWDA and to Defendants on September 11, 2024 (together, “Gilbert LWDA
14 Letter”). (*Id.*, ¶ 13 and Exh. C). Together, the Hale LWDA Letter and the Gilbert LWDA Letter are
15 referred to as the “LWDA Letters.” (*Ibid.*).

16 On July 31, 2024, the Parties participated in a formal mediation conducted by Brandon McKelvey,
17 Esq. (“Mediator”), a neutral and respected mediator with extensive experience in complex wage and hour
18 matters, and with the assistance of the Mediator’s evaluations, the Parties were able to reach an agreement
19 to resolve the Action, *Hale* PAGA Action, *Gilbert* Action, and *Hernandez* Action. (*Id.*, ¶ 14). The Parties
20 then worked diligently to negotiate and memorialize the terms in a long form settlement agreement.
21 (*Ibid.*).

22 On September 18, 2024, pursuant to the settlement, Plaintiffs filed a First Amended Class and
23 Representative Action Complaint (“Operative Complaint”) in the Action, which added all Plaintiffs,
24 Defendants (which includes additional defendants that were settled on in order to effectuate the terms of
25 the settlement), and claims alleged in the *Hale* PAGA Action, the *Gilbert* Action, and the *Hernandez*
26 Action. (*Id.*, ¶ 15). The Operative Complaint asserts the following causes of action: (1) Violation of
27 California Labor Code Sections 510 and 1198 (Unpaid Overtime); (2) Violation of California Labor Code
28 Sections 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (3) Violation of California Labor Code

Sections 226.7 and 512 (Unpaid Meal Period Premiums); (4) Violation of California Labor Code Section 226.7 (Unpaid Rest Period Premiums); (5) Violation of California Labor Code Section 226(a) (Failure to Provide Accurate Wage Statements); (6) Violation of California Labor Code Sections 201, 202, and 203 (Final Wages Not Timely Paid); (7) Violation of California Labor Code Sections 2800 and 2802 (Failure to Reimburse Necessary Business Expenses); (8) Violation of California Labor Code Sections 226 and 1198.5 (Failure to Produce Requested Employment Records); (9) Violation of California Business and Professions Code Sections 17200 *et seq.* (Unfair and Unlawful Business Practices); and (10) Violation of California Labor Code Sections 2698 *et seq.* (California Labor Code Private Attorneys General Act of 2004). (Genish Decl., ¶ 15).

On October 18, 2024, the *Hale* PAGA Action was dismissed without prejudice. (*Id.*, ¶ 16).

On October 28, 2024, the *Hernandez* Action was dismissed without prejudice. (*Id.*, ¶ 17).

On October 30, 2024, the *Gilbert* Action was dismissed without prejudice. (*Id.*, ¶ 18).

On November 22, 2024, the Parties executed the Settlement Agreement. (*Id.*, ¶ 19 and Exh. D).

III. THE SETTLEMENT TERMS

A. Class Definition

1. For purposes of settlement only, the Parties have agreed that the Class shall be defined as “all current and former hourly-paid and/or non-exempt employees who worked for Defendants in the State of California at any time during the Class Period (“Class Members” or “Class”). (Genish Decl., ¶ 20; Settlement Agreement, ¶ 11.a). The Class will not include any person who previously settled or released any of the claims covered by the Settlement, or any person who previously was paid or received awards through civil or administrative actions for the claims covered by the Settlement. (Genish Decl., ¶ 20; Settlement Agreement, ¶ 11.a). The Class Period is defined as the period from April 30, 2019 through September 29, 2024, subject to Paragraph 17(c)(ix) of the Settlement Agreement. (Genish Decl., ¶ 20; Settlement Agreement, ¶ 11.c). Based on information provided by Defendants, it is estimated that there are a total of one thousand seven hundred and seventy-one (1,771) Class Members. (Genish Decl., ¶ 20).

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1 **B. Amount of Settlement**

2 The Parties have agreed to settle the class and PAGA claims at issue in the Operative Complaint
3 for a non-reversionary Maximum Settlement Amount of Six Million Six Hundred Seventy-Five Thousand
4 Dollars and Zero Cents (\$6,675,000.00), exclusive of employer-side payroll taxes. (Genish Decl., ¶ 21;
5 Settlement Agreement, ¶ 17.c).

6 **C. Escalator Clause**

7 Defendants represented that the Class Members worked 116,144 workweeks from April 30, 2019
8 to July 31, 2024. (Genish Decl., ¶ 22; Settlement Agreement, ¶ 17.c.ix). The Parties agree that if the
9 total number of workweeks from April 30, 2019 to September 29, 2024 increases by more than ten percent
10 (10%) above 116,144 workweeks (i.e., to greater than 127,758 workweeks), then the Maximum
11 Settlement Amount will increase by the proportional amount for the percentage of workweeks above ten
12 percent (10%) (i.e., by the percentage of workweeks above 127,758 workweeks). (Genish Decl., ¶ 22;
13 Settlement Agreement, ¶ 17.c.ix). Additionally, Defendants have the option to end the Class Period and
14 PAGA Period on the date the Court grants preliminary approval of the Settlement, however, should
15 Defendants choose this option, Defendants agree that the Maximum Settlement Amount will increase by
16 the proportional amount for the percentage of workweeks above the number of workweeks that existed
17 as of September 29, 2024. (Genish Decl., ¶ 22; Settlement Agreement, ¶ 17.c.ix). Defendants must make
18 such election within five (5) business days after the Settlement Administrator first provides the Parties
19 with the number of total workweeks that existed on the date the Court grants preliminary approval of the
20 Settlement. (Genish Decl., ¶ 22; Settlement Agreement, ¶ 17.c.ix).

21 **D. Allocation and Funding of the Maximum Settlement Amount**

22 The Maximum Settlement Amount is a common fund and therefore includes all requested costs,
23 fees, and other allocations. (Genish Decl., ¶ 21; Settlement Agreement, ¶ 17.c). The Maximum
24 Settlement Amount includes: (1) Class Counsel's fees in the amount of thirty-five percent (35%) of the
25 Maximum Settlement Amount (i.e., \$2,336,250.00 if the Maximum Settlement Amount is
26 \$6,675,000.00); (2) Class Counsel's actual litigation costs and expenses, not to exceed Twenty-Two
27 Thousand Dollars and Zero Cents (\$22,000.00); (3) Settlement Administration Costs, not to exceed
28 Twenty Thousand Dollars and Zero Cents (\$20,000.00); (4) Enhancement Awards in the aggregate

1 amount of Thirty Thousand Dollars and Zero Cents (\$30,000.00); and (5) PAGA Amount in the amount
2 of Four Hundred Thousand Dollars and Zero Cents (\$400,000.00). (Genish Decl., ¶ 21; Settlement
3 Agreement, ¶¶ 17.c, 17.c.v, 17.c.vi, 17.c.vii, and 17.viii). After the above-estimated amounts are
4 deducted from the Maximum Settlement Amount, the Net Settlement Amount that will be available for
5 Class Members is currently estimated to be Three Million Eight Hundred Sixty-Six Thousand Seven
6 Hundred Fifty Dollars and Zero Cents (\$3,866,750.00). (Genish Decl., ¶ 21). Additionally, 25% of the
7 PAGA Amount (“PAGA Member Amount”), which is \$100,000.00 out of \$400,000.00 will be fully
8 distributed to all current and former hourly-paid and/or non-exempt employees who worked for
9 Defendants in the State of California at any time during the PAGA Period (“PAGA Members”). (Genish
10 Decl., ¶ 21; Settlement Agreement, ¶¶ 11.e, 17.c, and 17.c.v). The “PAGA Period” is defined as the
11 period from July 3, 2023 through September 29, 2024, subject to Paragraph 17(c)(ix) of the Settlement
12 Agreement. (Genish Decl., ¶ 21; Settlement Agreement, ¶ 11.f).

13 The Net Settlement Amount will be distributed and paid to all Class Members who do not submit
14 a timely and valid Request for Exclusion (“Settlement Class Members”) on a *pro rata* basis based on the
15 number of weeks each Class Member worked for Defendants as an hourly-paid and/or non-exempt
16 employee in California during the Class Period (“Workweeks”). (Genish Decl., ¶ 23; Settlement
17 Agreement, ¶¶ 11.i, 11.j, and 17.c.i). In order to be counted as a Workweek, the Class Member must
18 have worked at least one day in that week. (Genish Decl., ¶ 23; Settlement Agreement, ¶ 17.c.i.b). Each
19 Class Member’s *pro rata* share of the Net Settlement Amount (“Individual Settlement Share”) will be
20 calculated by the Settlement Administrator, in accordance with the Settlement Agreement. (Genish Decl.,
21 ¶ 23; Settlement Agreement, ¶ 17.c.i.b).

22 The PAGA Member Amount will be distributed and paid to all PAGA Members on a *pro rata*
23 basis based on the number of weeks each PAGA Member worked for Defendants as an hourly-paid and/or
24 non-exempt employee in California during the PAGA Period (“PAGA Workweeks”). (Genish Decl., ¶
25 24; Settlement Agreement, ¶¶ 11.h and 17.c.ii). In order to be counted as a PAGA Workweek, the PAGA
26 Member must have worked at least one day in that week. (Genish Decl., ¶ 24; Settlement Agreement, ¶
27 17.c.ii). Each PAGA Member’s *pro rata* share of the PAGA Member Amount (“Individual PAGA
28 Payment”) will be calculated by the Settlement Administrator, in accordance with the Settlement

1 Agreement. (Genish Decl., ¶ 24; Settlement Agreement, ¶ 17.c.ii).

2 Each Individual Settlement Share will be allocated as one-third (1/3) wages and two-thirds (2/3)
3 penalties, interest, and non-wage damages. (Genish Decl., ¶ 25; Settlement Agreement, ¶ 17.c.iii). The
4 portion allocated to wages will be reported on an IRS Form W-2 and the portions allocated to penalties,
5 interest, and non-wage damages will be reported on an IRS Form 1099 (if applicable) by the Settlement
6 Administrator. (Genish Decl., ¶ 25; Settlement Agreement, ¶ 17.c.iii). The Settlement Administrator
7 will withhold the employee's share of taxes and withholdings with respect to the wages portion of the
8 Individual Settlement Shares, and issue checks to Settlement Class Members for their net payment of
9 their Individual Settlement Share ("Individual Settlement Payment"). (Genish Decl., ¶ 25; Settlement
10 Agreement, ¶¶ 17.c.i.b and 17.c.iii). The employers' share of taxes and withholdings on the wages
11 portion of the Individual Settlement Shares will be paid by Defendants separately and in addition to the
12 Maximum Settlement Amount. (Genish Decl., ¶ 25; Settlement Agreement, ¶¶ 17.c and 17.c.iii). Each
13 Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported
14 on an IRS Form 1099 (if applicable) by the Settlement Administrator. (Genish Decl., ¶ 25; Settlement
15 Agreement, ¶ 17.c.iii).

16 The Settlement Agreement is a non-reversionary and non-claims made settlement. (Genish Decl.,
17 ¶ 26; Settlement Agreement, ¶¶ 17.c.i.b and 17.c.ii). The Net Settlement Amount will be fully distributed
18 to Settlement Class Members and the PAGA Amount will be fully distributed to the LWDA and PAGA
19 Members, in accordance with the Settlement Agreement. (Genish Decl., ¶ 26; Settlement Agreement, ¶¶
20 17.c and 17.c.v). No money will revert to Defendants. (Genish Decl., ¶ 26; Settlement Agreement, ¶
21 17.c).

22 Each Individual Settlement Payment and Individual PAGA Payment check will be valid and
23 negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and
24 thereafter, shall be canceled. (Genish Decl., ¶ 27; Settlement Agreement, ¶ 23). The Settlement
25 Administrator will send one (1) reminder postcard to all Settlement Class Members and PAGA Members
26 who have not cashed their Individual Settlement Payment or Individual PAGA Payment check within
27 thirty (30) calendar days prior to the 180-day deadline. (Genish Decl., ¶ 27; Settlement Agreement, ¶
28 23). Any funds associated with canceled checks will be distributed by the Settlement Administrator after

the 180-day deadline to California Rural Legal Assistance, Inc. (the proposed *cy pres*) pursuant to California Code of Civil Procedure section 384(b). (Genish Decl., ¶ 27; Settlement Agreement, ¶ 23). The Parties and their counsel each represent that they do not have any financial interest in, or otherwise have a relationship with, the proposed *cy pres* recipient that could create a conflict of interest. (Genish Decl., ¶ 27; Settlement Agreement, ¶ 23).

E. Released Claims

Upon the Effective Date and full funding of the Maximum Settlement Amount, Plaintiffs and all Settlement Class Members fully release and discharge the Released Parties from all claims under state, federal, and local law that were or could have been reasonably asserted based on the facts and allegations made in the Operative Complaint, arising during the Class Period, including, claims arising under California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174(d), 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2800, and 2802, California Industrial Welfare Commission Wage Orders, California Code of Regulations, Civil Code section 1021.5, and all claims for or related to Defendants' alleged failure to pay minimum, overtime, or double time wages, properly calculate the regular rate of pay, timely pay wages at separation, reimburse necessary business expenses, provide accurate wage statements, pay for all hours worked due to rounding of employee timekeeping records, keep adequate time records, provide meal periods and meal period premiums, and provide rest periods and rest period premiums, claims for unfair competition, unfair business practices, unlawful business practices, and fraudulent business practices in violation of California Business and Professions Code sections 17200 *et seq.*, and claims for declaratory relief, statutory penalties, interest, attorneys' fees and costs, as well as all other claims and allegations alleged in the Operative Complaint (collectively, "Released Class Claims"). (Settlement Agreement, ¶ 27). Expressly excluded from the Released Class Claims are claims for retaliation, discrimination, unemployment insurance, disability, workers compensation, and claims outside the Class Period. (Ibid).

Upon the Effective Date and full funding of the Maximum Settlement Amount, Plaintiffs, the State of California with respect to all PAGA Members, and all PAGA Members fully release and discharge the Released Parties from all claims for civil penalties under PAGA that were or could have been reasonably asserted based on the facts and allegations made in the Operative Complaint and/or

1 LWDA Letters, arising during the PAGA Period, including claims arising under California Labor Code
2 sections 98.6, 201, 201.3, 202, 203, 204, 210, 216, 223, 225.5, 226, 226.7, 227.3, 232, 233, 234, 245-
3 248.5, 246, 247.5, 248.2, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1174.5, 1194,
4 1197, 1197.1, 1197.5, 1198, 1198.5, 1199, 1527, 2698 *et seq.*, 2800, 2802, 2810.5, 3366, 3457, 6401, and
5 8397.4, as alleged in the Operative Complaint and/or the LDWA Letters, and the California Industrial
6 Welfare Commission Wage Orders based on the facts alleged in the Operative Complaint and/or the
7 LWDA Letters (collectively, “Released PAGA Claims”). (Settlement Agreement, ¶ 28).

8 Upon the Effective Date and full funding of the Maximum Settlement Amount, Plaintiffs agree
9 to generally release the Released Parties from any and all claims, whether known or unknown, under all
10 federal, state, and local statutes, and federal and state common law (including but not limited to those for
11 contract, tort, and equity), except for workers’ compensation claims and claims that cannot be released
12 hereunder by law. (*Id.*, ¶ 29). Plaintiffs acknowledge the language of Section 1542 of the California
13 Civil Code, which provides:

14 A general release does not extend to claims that the creditor or releasing
15 party does not know or suspect to exist in his or her favor at the time of
16 executing the release and that, if known by him or her, would have
 materially affected his or her settlement with the debtor or released party.

17 Plaintiffs expressly waive the protection of Section 1542. (*Ibid.*). Plaintiffs understand and agree
18 that claims or facts in addition to or different from those which are now known or believed by them to
19 exist may hereafter be discovered. (*Ibid.*). It is Plaintiffs’ intention to settle fully and release all of the
20 claims, except for workers’ compensation claims and claims that cannot be released hereunder by law,
21 Plaintiffs now have against the Released Parties, whether known or unknown, suspected or unsuspected.
22 (*Ibid.*). This release covers claims up to the date of execution of the Settlement. (*Ibid.*).

23 “Released Parties” means (i) Defendants; (ii) each of Defendants’ respective past, present and
24 future parents, subsidiaries, partners, affiliates, brands, and any affiliated and/or related corporation,
25 limited liability company, partnership, or other business entity; (iii) their past, present and future board
26 members, directors, officers, agents, exempt employees, attorneys, insurers, members, partners,
27 managers, contractors, agents, consultants, representatives, administrators, fiduciaries, benefit plans,
28

transferees, predecessors, successors, and assigns of any of the foregoing; and (iv) any individual or entity which could be jointly liable with any of the foregoing. (Settlement Agreement, pg. 1).

IV. STANDARD OF REVIEW FOR PRELIMINARY APPROVAL

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

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

The initial evaluation of the settlement at the preliminary approval step “is not a fairness hearing.” (*Armstrong v. Board of School Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980)). Rather, the limited purpose of this initial inquiry is to determine, at a threshold level, only whether the proposed settlement is within the range of possible approval and, as a result, “whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing.” A presumption of fairness exists where: (1) the settlement is reached through arm’s length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*See In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006)).

Preliminary approval does not require a court to make a final determination that the settlement is fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after notice of the settlement has been given to the class members and they have had an opportunity to object or exclude themselves from the settlement. (*See* Cal. Rules of Court, Rule 3.769(g)). In considering a potential class settlement, the court need not reach any ultimate conclusions on the issues of fact and law

1 which underlie the merits of the dispute and need not engage in a trial on the merits. (*See Officers for*
2 *Justice v. Civil Service Commission*, 688 F.2d 615, 625 (9th Cir. 1982)).

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

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

5 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is
6 reached through arm’s-length bargaining.” (*Wershba*, 91 Cal.App.4th at 245; *see also Clark v. Am.*
7 *Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009)). Here, the Parties’ settlement negotiations
8 were at all times made at arm’s-length and were adversarial. (Genish Decl., ¶ 28). The Settlement was
9 reached following a full day of mediation with a highly respected mediator with substantial experience
10 mediating wage and hour cases. (*Ibid*). At all times, Plaintiffs were willing and prepared to litigate this
11 matter through class certification and trial if the Parties had been unable to reach a favorable resolution.
12 (*Id.*, ¶ 48).

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

14 Courts typically assess the status of discovery in determining whether a class action settlement
15 agreement is fair, reasonable, and adequate. (*Dunk*, 48 Cal.App.4th at 1801). Prior to mediation,
16 Defendants produced a random sampling of putative class members’ time and pay data as well as
17 Defendants’ relevant wage and hour policies, and information regarding the total number of putative class
18 members, the number of current versus former employees, the total workweeks worked by the putative
19 class members, and the average rate of pay for the putative class members. (Genish Decl., ¶ 29).

20 This allowed Class Counsel to conduct an informed assessment and analysis of the strengths and
21 weaknesses of the claims and the potential class-wide damages. (*Id.*, ¶ 30). Based on information
22 exchanged, the Parties extensively briefed issues regarding class certification and liability and provided
23 their analyses to the Mediator who helped the Parties debate the strengths and weakness of their respective
24 positions. (*Id.*, ¶ 31). Additionally, settlement negotiations were conducted by highly capable and
25 experienced counsel. (Genish Decl., ¶¶ 1-7). Accordingly, Class Counsel had sufficient information and
26 experience to act intelligently in negotiating the Settlement.

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1 **C. The Settlement is Fair and Reasonable in Light of the Parties’ Respective Legal Positions**
2 **and Recovery Risks**

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

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

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

16 Class Counsel analyzed all available data and estimated Defendants’ maximum potential exposure
17 to be approximately \$30,686,567, assuming the litigation was successful at trial on all claims at issue and
18 every employee had a violation for each claim on every shift worked. (*Genish Decl.*, ¶ 32). This
19 maximum potential analysis was then reduced based on the challenges facing the likelihood of obtaining
20 class certification, prevailing at trial, and other attendant risks. (*Ibid*). This estimate is based off an
21 estimated maximum liability for all claims at issue and the total aggregate workweeks during the relevant
22 time period, less interest, and based on the analysis of the data which was extrapolated out for all class
23 members across the entire putative class period, which included: which included: \$2,491,207 for meal
24 period violations (less meal period premiums paid); \$15,154,298 for rest period violations at a 100%
25 violation rate; \$376,023 for unpaid on-call wages; \$3,301,585 for unpaid off-the-clock work for 1 hour
26 per workweek of off-the-clock work; \$476,617 for unpaid overtime wages at the required regular rate of
27 pay; \$208,898 for unpaid meal break premiums and sick pay at the required regular rate of pay;
28 \$3,764,309 for waiting time penalties; \$4,045,850 for wage statement penalties; and \$867,780 for

unreimbursed business expenses. (Ibid). Plaintiffs further estimated that Defendants faced an additional exposure of \$4,118,300 in potential, non-stacked (i.e., one penalty, per employee, per pay period during the PAGA statutory period) PAGA penalties. (Ibid). Together with the PAGA penalties, Defendants' maximum potential exposure totaled \$34,804,867 in damages. (Ibid).

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

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

For example, Plaintiffs' meal period claims, which were based on Defendants' alleged failure to provide lawful meal periods, have been increasingly difficult to certify in recent years. (Genish Decl., ¶ 36; *See Brinker*, 53 Cal. 4th at 1034-35). Plaintiffs' theory of liability for meal period violations was based on allegations that Defendants had failed to implement its policies and that their practices failed to allow Class Members to take meal breaks in the manner required under California law. (Genish Decl., ¶ 36; *See Bradley v. Networkers Int'l, LLC*, 211 Cal.App.4th 1129, 1150 (2012) (holding that "the lack of a meal/rest break policy and uniform failure to authorize such breaks are matters of common proof.")). Plaintiffs' analysis of the time data revealed that only 16.5% (net of meal period premiums paid) of all shifts showed at least one unique meal period violation. (Genish Decl., ¶ 36). Defendants contended that their policies and practices at all times during the Class Period were lawful. (Ibid). Defendants further argued that the rate of purported meal period violations reflected in the data would require individualized inquiry and that such inquiry would prohibit a class from being certified. (Ibid). Class Counsel also had to consider the risk that the Court would find validity in an individualized proof defense to certification

1 of Plaintiffs' meal period claim. (Ibid).

2 Additionally, a large portion of Defendants' overall liability lies in Plaintiffs' rest period
3 allegations. (*Id.*, ¶ 37). As with the meal period allegations, Defendants contended that they had a lawful
4 written rest period policy, provided compliant rest breaks, and relieved Class Members of all duties as
5 required under California law. (Ibid). Additionally, this claim was even more uncertain given the
6 difficulties associated with proving the alleged rest period violations, as Defendants were not required to
7 record these breaks. (Ibid). Given the lack of records demonstrating rest period violations, there were
8 legitimate concerns Plaintiffs would not be able to certify these claims or prove substantial damages with
9 requisite certainty, which made the estimated value of this claim subject to much challenge. (Genish
10 Decl., ¶ 27).

11 Plaintiffs also faced challenges certifying and proving liability for their minimum wage and
12 overtime claims. (*Id.*, ¶ 38). These claims were largely based on Defendants' unrecorded, off-the-clock
13 work performed by the Class Members both before and after their shifts and during purported meal and
14 rest periods. (Ibid). However, the individualized nature of why this work was performed and the
15 individualized nature of damages presented substantial concerns regarding the manageability of the case
16 and the risk the Court could find these issues prevented certification, and the estimated damages for this
17 claim were based on an assumption that all Class Members worked off the clock for at least one hour per
18 week. (Ibid).

19 There are also substantial risks associated with Plaintiffs' waiting time penalties and wage
20 statement claims. (*Id.*, ¶ 39). First, these claims were derivative of Plaintiffs' claims for unpaid meal
21 period premiums, unpaid rest period premiums, unpaid minimum wages, and unpaid overtime wages,
22 and if certification was denied on those underlying claims, these derivative claims for penalties would
23 also likely fail. (Ibid). Further, even if Plaintiffs prevailed on their underlying claims, they would still
24 be required to demonstrate that Defendants' violations of California Labor Code section 203 were *willful*
25 violations. (Genish Decl., ¶ 39; *See, e.g., Choate v. Celite Corp.*, 215 Cal App. 4th 1460, 1468 (2013)
26 (holding that "an employer's reasonable, good faith belief that wages are not owed may negate a finding
27 of willfulness")). Wage statement claims have also seen varying treatment at the appellate level because
28 such claims have an element of discretion attached to them rather than a pure calculation of damages after

1 liability is proven. (Genish Decl. ¶ 39; *Jaimez v. DAIOHS USA, Inc.*, 181 Cal.App.4th 1286 (2010) *with*
2 *Price v. Starbucks Corp.*, 192 Cal.App.4th 1136 (2011)). Accordingly, these derivative claims, which
3 comprised a substantial portion of Defendants’ estimated liability, were therefore uncertain. (Genish
4 Decl., ¶ 39).

5 Class Counsel also recognized that, even if Plaintiffs prevailed at class certification, proving the
6 amount of wages due to each Class Member would be an expensive, time-consuming, and uncertain
7 proposition. (*Id.*, ¶ 40). In order to prove liability and damages, Class Counsel will need to request and
8 analyze thousands of pages of documents, obtain the Class Members’ contact information, contact them,
9 and obtain their declarations at great expense. (Genish Decl., ¶ 40). Obtaining the cooperation of current
10 employees would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a
11 current employer. (*Ibid.*). On the other hand, Defendants would likely be able to obtain the cooperation
12 of their employees. (*Ibid.*). Moreover, even if Plaintiffs prevailed at class certification and trial, possible
13 appeals would substantially delay any recovery by the Class. (*Ibid.*).

14 Therefore, taking into account how each of the above risks potentially effected Plaintiffs’ ability
15 to first obtain class certification, and then prove the underlying violations, plus the cost and delay in
16 recovering the alleged potential damages, Class Counsel discounted Defendants’ estimated liability based
17 on the challenges facing their ability to succeed on class certification by 60% to \$13,921,947. (*Id.*, ¶ 41).
18 The merits-based risk factors further reduced Defendants’ estimated liability by an additional 50%.
19 (*Ibid.*). This resulted in an adjusted estimated liability of \$6,960,973. (*Ibid.*). In light thereof, the
20 settlement amount of \$6,675,000 is a significant settlement. (*Ibid.*).

21 Class Counsel also contemplated the risks of proceeding with the PAGA claim and potential
22 liability Defendants could face from this claim as part of the global resolution. (*Id.*, ¶ 42). Existing case
23 law makes PAGA claims subject to the same defenses and risks as Plaintiffs’ underlying wage claims.
24 (Genish Decl., ¶ 42; see, *Elliot v. Spherion Pac. Work, LLC*, 572 F.Supp.2d 1169, 1181-82 (C.D. Cal.
25 2008) (“Plaintiff’s claim under [PAGA] is wholly dependent upon her other claims. Because all of
26 Plaintiffs’ other claims fail as a matter of law, so does her PAGA claim”)). Class Counsel also anticipated
27 that even if successful on the merits at trial, the imposition of cumulative civil penalties based on the
28 alleged wage and hour violations could be considered unjust, arbitrary and oppressive, or confiscatory,

1 and that Defendants would argue that they made a good faith attempt to comply with their legal
2 obligations warranting a reduction in penalties. (Genish Decl., ¶ 42).¹ Finally, Class Counsel was also
3 mindful of the fact that PAGA is fundamentally not intended to be compensatory in nature but is instead
4 intended to facilitate enforcement of California’s labor laws by financing state activities and educating
5 and deterring non-compliance. (Genish Decl., ¶ 42).

6 Therefore, after considering this multitude of factors, Plaintiffs and Class Counsel concluded that
7 it was in the best interest of the State of California and the PAGA Members to enter into the Settlement,
8 and to allocate Four Hundred Thousand Dollars and Zero Cents (\$400,000.00) of the Maximum
9 Settlement Amount towards the PAGA claim, which represents approximately 6% of the Maximum
10 Settlement Amount. (*Id.*, ¶ 43). This percentage of the settlement is well within the range of wage and
11 hour settlements regularly approved in both state and federal court for cases that include both a class and
12 PAGA action. (*Ibid.*). Typically, such hybrid cases allocate only 1% of the gross settlement value to
13 resolve PAGA claims, and, indeed, settlements allocations as little as 0.22% of the Maximum Settlement
14 Amount have been approved as reasonable by courts. (*Ibid.*). Moreover, the overall relief obtained by
15 the Settlement is significant, not only from a monetary perspective, but also because it fulfills the public
16 policy objectives of PAGA—to promote enforcement of California’s labor laws, provide funds to the
17 state, and deter future non-compliance by the employer. (*Ibid.*).

18 Therefore, the Settlement is in the best interest of the Class Members, the PAGA Members, and
19 the State of California and is within the accepted range of recoveries for this type of litigation given the
20 inherent risk of litigation, the risk of obtaining and maintaining class certification, and the costs of further
21 litigation. (*Id.*, ¶ 44).

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

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

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

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

13 Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of
14 the class, and (3) the means of identifying the class members. (*See Miller v. Woods*, 148 Cal.App.3d 862,
15 873 (1983)). In this case, all three considerations strongly favor class certification. Here, the Class is
16 defined as "all current and former hourly-paid and/or non-exempt employees who worked for Defendants
17 in the State of California at any time during the Class Period." (Genish Decl., ¶ 20; Settlement
18 Agreement, ¶ 11.a). The Class will not include any person who previously settled or released any of the
19 claims covered by the Settlement, or any person who previously was paid or received awards through
20 civil or administrative actions for the claims covered by the Settlement. (Genish Decl., ¶ 20; Settlement
21 Agreement, ¶ 11.a). This provides a clear and definite scope for the proposed class.

22 Next, the Class is sufficiently numerous. There is no magic number that satisfies the numerosity
23 requirement. Courts have certified classes with as few as ten or twenty-eight class members. (*Rose v.*
24 *City of Hayward*, 126 Cal.App.3d 926, 934 (1981); *Bowles v. Superior Court*, 44 Cal. 2d 574 (1995);
25 *Hebbard v. Colgrove*, 28 Cal.App.3d 1017, 1030 (1972)). Here, the estimated Class size of one thousand
26 seven hundred and seventy-one (1,771) meets the numerosity requirement.

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1 Finally, the question of whether class members are easily identifiable turns on whether a plaintiff
2 can establish “the existence of an ascertainable class.” (*Daar v. Yellow Cab Co.*, 67 Cal.2d 695 at 706
3 (1967)). The existence of an ascertainable class in this case can be established through Defendants’
4 payroll records, and the Class definition is sufficiently specific to enable the Parties, Class Members, and
5 the Court to determine the parameters of the Class. (*See Clothesrigger, Inc. v. GTE Corp.*, 191
6 Cal.App.3d 605, 617 (1987)).

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

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

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

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

25 To satisfy the typicality requirement, California law does not require that plaintiffs’ claims be
26 identical to the other class members. Rather, the test of typicality for a class representative is whether
27 other members have the same or similar injury, whether the action is based on conduct which is not
28 unique to the named plaintiff, and whether other class members have been injured by the same course of

1 conduct. (*See Seastrom v. Neways, Inc.*, 149 Cal.App.4th 1496, 1502 (2007)). The typicality requirement
2 for a class representative refers to the nature of the claim or defense of the representative, and not to the
3 specific facts from which it arose or the relief sought. (*See Ibid*).

4 Here, Plaintiffs allege that their claims are similar to that of the other Class Members and that
5 Plaintiffs' claims arise out of the same alleged course of conduct giving rise to the claims of the other
6 Class Members. Because Plaintiffs' claims are based upon the same alleged conduct and business
7 practices as those of Class Members, the typicality requirement has been satisfied.

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

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

19 Under the circumstances, proceeding as a class action is a superior means of resolving this dispute,
20 as the Class Members and the Court will derive substantial benefits. Class certification would serve as
21 the only means to deter and redress the alleged violations. (*See Linder v. Thrifty Oil Co.*, 23 Cal.4th 429,
22 434 (2000) (relevant considerations include the probability that each class member will come forward to
23 prove his or her separate claim and whether the class approach would actually serve to deter and redress
24 the alleged wrongdoing)). Further, individual actions arising out of the same operative facts would
25 unduly burden the courts and could result in inconsistent results. Therefore, class action proceedings are
26 superior to individual litigation.

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1 **VII. THE REQUESTED ENHANCEMENT AWARDS ARE REASONABLE**

2 Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as compensation
3 “for the expense or risk they have incurred in conferring a benefit on other members of the class.” (*Munoz*
4 *v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010)). Courts routinely grant approval of
5 class action settlement agreements containing enhancements for the class representative, which are
6 necessary to provide incentive to represent the class and are appropriate given the benefit the class
7 representatives help to bring about for the class. (*See In re Online DVD Rental*, 779 F.3d 934, 947-948
8 (9th Cir. 2014) (approving incentive award 417 times larger than individual payments where incentive
9 award made up a mere .17% of the settlement); *Gaudin v. Saxon Mortgage Servs., Inc.*, 2015 WL
10 7454183, at *10 (N.D. Cal. Nov. 23, 2015) (finding service award of \$15,000 to be “fair and
11 reasonable”)).

12 Plaintiffs initiated this litigation on behalf of their former co-workers who will now be entitled to
13 receive payment from the Settlement. Plaintiffs invested substantial time and effort into litigation,
14 including their own research, reviewing documents, and extensive discussions with Class Counsel. (Hale
15 Decl., ¶¶ 3-5; Gilbert Decl., ¶¶ 3-5; Hernandez Decl., ¶¶ 3-5). Further, the requested amounts for
16 Plaintiffs are also reasonable given the average award and the benefit gained by other Class Members.
17 For these reasons, Plaintiffs request that an Enhancement Award of Ten Thousand Dollars and Zero Cents
18 (\$10,000.00) each (total, \$30,000.00) to Plaintiffs be preliminarily approved by the Court. (Genish Decl.,
19 ¶ 45; Hale Decl., ¶ 12; Gilbert Decl., ¶ 12; Hernandez Decl., ¶ 12).

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

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

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1 Here, the requested attorneys' fees of (35%) of the Maximum Settlement Amount (i.e.,
2 \$2,336,250.00 if the Maximum Settlement Amount is \$6,675,000.00) is disclosed to Class Members in
3 the proposed Class Notice. (Settlement Agreement, Exh. 1). The requested fee was freely negotiated, is
4 common in the legal marketplace, and is not opposed by Defendants. The Motion for Final Approval
5 will elaborate on the nature of the legal services provided and will also support Class Counsel's request
6 for the reimbursement of litigation costs and expenses not to exceed Twenty-Two Thousand Dollars and
7 Zero Cents (\$22,000.00). (Genish Decl., ¶¶ 46 and 48). The Attorneys' Fees and Costs that are not
8 ultimately approved by the Court shall instead be included in the Net Settlement Amount to be distributed
9 to Settlement Class Members. (Settlement Agreement, ¶ 17.c.vi).

10 **IX. THE CLASS NOTICE AND THE OPT-OUT AND OBJECTION PROCESS**
11 **MEETS DUE PROCESS REQUIREMENTS**

12 The Parties have jointly drafted the Class Notice, which will be mailed to the Class Members.
13 (*Id.*, Exh. 1). The Class Notice will include information regarding the nature of the Action, a summary
14 of the terms of the Settlement, the Class definition, information on how to object to and/or opt-out of the
15 Class Settlement and to dispute Workweeks and/or PAGA Workweeks, and the date of the Final Approval
16 Hearing. (Settlement Agreement, Exh. 1). The Class Notice will list each Class Member's total
17 Workweeks and their estimated Individual Settlement Share and each PAGA Member's total PAGA
18 Workweeks and their estimated Individual PAGA Payment. (*Ibid.*).

19 Within fourteen (14) calendar days after the Court grants preliminary approval, Defendants will
20 provide the Settlement Administrator with relevant data and information, including timekeeping records,
21 of Class Members and PAGA Members, including a complete list containing the following information
22 for each Class Member and PAGA Member: full name, last-known address, last known telephone
23 number, Social Security number, dates worked from April 30, 2019 through September 29, 2024, dates
24 worked from July 3, 2023 through September 29, 2024 (if applicable), and dates worked from April 30,
25 2019 through the date on which the Court grants preliminary approval of the Settlement ("Class
26 Member Information"). (*Id.*, ¶ 20). Within seven (7) calendar days after the Settlement Administrator
27 receives the Class Member Information, the Settlement Administrator will mail the Class Notice to Class
28 Members and PAGA Members by First Class U.S. Mail. (*Id.*, ¶¶ 19 and 21). The Parties have agreed

1 to use ILYM Group, Inc. as the Settlement Administrator. (Genish Decl., ¶ 49; Settlement Agreement, ¶
2 17.c.viii).

3 In determining whether to approve a settlement of a class action, a trial court has virtually
4 complete discretion as to the manner of giving notice to class members, and review on appeal is governed
5 by the abuse of discretion standard. (*See In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380
6 (2010)). Here, Class Counsel is not aware of an alternative method of providing notice to the Class which
7 would result in a higher likelihood of actual notice. (Genish Decl., ¶ 50). The original source of the
8 mailing addresses is from Class Members, who provided the information to Defendants. (Ibid).

9 ILYM provided Class Counsel with its quote stating its cost to administer the Settlement is
10 estimated to be Fourteen Thousand Six Hundred Fifty Dollars and Zero Cents (\$14,650.00), which is
11 based on an estimate of one thousand and eight hundred (1,800) putative class members. (Genish Dec.,
12 ¶ 51; Declaration of Lisa Mullins of ILYM Group, Inc., the Proposed Settlement Administrator [“Mullins
13 Decl.”], ¶¶ 9, 10, and Exh. C). However, due to the potential increase in Class Members pursuant to
14 Defendants’ option to end the Class Period and PAGA Period on the date the Court grants preliminary
15 approval of the Settlement (i.e., the Escalator Clause), the Parties have agreed to allocate up to Twenty
16 Thousand Dollars and Zero Cents (\$20,000.00) for the Settlement Administration Costs in the Settlement
17 Agreement in case the Settlement Administrator’s costs increase. (Genish Decl., ¶ 51; Settlement
18 Agreement, ¶¶ 17.c.vii and 17.c.ix; Mullins Decl., ¶ 10).

19 Class Members will have forty-five (45) calendar days from the initial mailing of the Class Notice
20 to submit Requests for Exclusion, Notices of Objection, and/or Workweeks Disputes (“Response
21 Deadline”). (Settlement Agreement, ¶ 22).

22 Class Notices returned to the Settlement Administrator as non-delivered shall be resent promptly
23 to the forwarding address, if any, on the returned envelope. (Settlement Agreement, ¶ 21.b). If there is
24 no forwarding address, the Settlement Administrator will do a National Change of Address Database
25 check or skip-trace and re-mail the Class Notices within three (3) business days of receipt using the Class
26 Member’s name, address, and/or Social Security Number; this search will be performed only once per
27 Class Member by the Settlement Administrator. (Ibid). In the event that a Class Notice is re-mailed to a
28 Class Member, the Response Deadline for that Class Member shall be extended fifteen (15) calendar days

1 from the original Response Deadline. (*Id.*, ¶ 22).

2 Class Members and PAGA Members will have an opportunity to dispute the number of
3 Workweeks and/or PAGA Workweeks to which they have been credited, as reflected in their respective
4 Class Notices, by submitting a timely and valid letter (“Workweeks Dispute”) to the Settlement
5 Administrator. (Settlement Agreement, ¶ 24). A Workweeks Dispute must: (a) contain the case name
6 and number of the Action; (b) contain the Class Member or PAGA Member’s full name, signature,
7 address, telephone number, and the last four (4) digits of the Class Member or PAGA Member’s Social
8 Security number; (c) clearly state that the Class Member or PAGA Member disputes the number of
9 Workweeks and/or PAGA Workweeks credited to the Class Member or PAGA Member and what the
10 Class Member or PAGA Member contends is the correct number; and (d) be returned by mail to the
11 Settlement Administrator at the specified address, postmarked on or before the Response Deadline.
12 (*Ibid.*).

13 For those Class Members who do not wish to participate in the Class Settlement, such Class
14 Members may exclude themselves by submitting a timely and valid written letter (“Request for
15 Exclusion”) to the Settlement Administrator. (Settlement Agreement, ¶ 25). A Request for Exclusion
16 must: (a) contain the case name and number of the Action; (b) contain the Class Member’s full name,
17 signature, address, telephone number, and last four (4) digits of the Class Member’s Social Security
18 number; (c) clearly state that the Class Member does not wish to be included in the Class Settlement; and
19 (d) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before
20 the Response Deadline. (*Ibid.*). Notwithstanding the above, all PAGA Members will be bound to the
21 PAGA Settlement and will be issued their Individual PAGA Payment, irrespective of whether they submit
22 a Request for Exclusion. (*Id.*, ¶ 25).

23 Settlement Class Members can object to the terms of the Class Settlement by submitting a timely
24 and complete written objection (“Notice of Objection”) to the Settlement Administrator. (*Id.*, ¶ 26). A
25 Notice of Objection must: (a) contain the case name and number of the Action; (b) contain the objector’s
26 full name, signature, address, telephone number, and the last four (4) digits of the objector’s Social
27 Security number; (c) contain a written statement of all grounds for the objection accompanied by any
28 legal support for such objection; (d) contain copies of any papers, briefs, or other documents upon which

1 the objection is based; and (e) be returned by mail to the Settlement Administrator at the specified address,
2 postmarked on or before the Response Deadline. (Ibid). Notwithstanding the above, Settlement Class
3 Members may appear at the Final Approval Hearing, either in person or through his/her/their own
4 counsel, and object to the Class Settlement and any of its terms orally without submitting a prior written
5 Notice of Objection in the manner and by the deadline specified above. (Ibid).

6 **X. CONCLUSION**

7 For all of the foregoing reasons, Plaintiffs respectfully request that this Court grant Plaintiffs'
8 Motion for Preliminary Approval of Class Action and PAGA Settlement and the relief requested herein.

9 Respectfully submitted,

10 Dated: December 18, 2024

BLACKSTONE LAW, APC

11 By:



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