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on behalf of herself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

ANA L. LEMUS, an individual, on behalf of
herself and others similarly situated,

Plaintiff,

v.

NATIONWIDE MUTUAL INSURANCE
COMPANY, an Ohio corporation; and
DOES 1-50, inclusive,

Defendants.

Case No.: 23-CV-012222

CLASS ACTION

Assigned for All Purposes To:
Hon. Lauri Damrell

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

*[Filed concurrently with Plaintiff's Notice of
Motion and Motion; Declaration of Enoch J.
Kim; Declaration of Ana L. Lemus; Declaration
of Michael Sutherland; and [Proposed] Order]*

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Trial Date: None Set

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff ANA L. LEMUS (hereinafter “Plaintiff” or “Class Representative”) filed a First
4 Amended Class and PAGA Representative Action Complaint in this Court (“Action”) against
5 Defendant NATIONWIDE MUTUAL INSURANCE COMPANY (“Nationwide” or
6 “Defendant”). Plaintiff alleged the following causes of action: (1) Failure to Pay Minimum
7 Wages; (2) Failure to Pay Wages and Overtime Under Labor Code §§ 510 and 1198; (3) Meal
8 Period Liability Under Labor Code §§ 226.7 and 512; (4) Rest Break Liability Under Labor Code
9 § 226.7; (5) Violation of Labor Code § 226; (6) Violation of Labor Code § 221; (7) Violation of
10 Labor Code §204; (8) Violation of Labor Code §§ 201, 202, 203; (9) Failure to Maintain Records
11 Required Under Labor Code §§ 1174 and 1174.5; (10) Failure to Produce Requested Employment
12 Records Under Labor Code §§ 226, 1198.5; (11) Failure to Reimburse Necessary Business
13 Expenses § 2802; (12) Failure to Pay Vacation Wages in Violation of Labor Code § 227.3; (13)
14 Violation of 15 U.S.C. §§ 1681 (b)(2)(A); (14) Violation of California Civil Code § 1786 *et seq.*
15 (ICRAA); (15) Violation of Business & Professions Code § 17200 *et seq*; and (16) Representative
16 Action for Civil Penalties Under Labor Code § 2698 *et seq.* (“PAGA”).

17 After engaging in substantial investigation and extensive negotiations with the assistance
18 of a respected mediator, the parties agreed to settle all claims alleged in the Action on a class-
19 wide basis. A copy of the fully executed Parties’ Class Action and Private Attorneys General Act
20 Settlement and Release Agreement (“Settlement” or “Settlement Agreement”) is attached to the
21 Declaration of Enoch J. Kim (“Kim Decl.”) as Exhibit 1, filed concurrently herewith. Under the
22 Settlement, Defendant shall pay a sum equal to Eight Hundred Eighty Thousand Dollars and Zero
23 Cents (\$880,000.00) (the “Gross Settlement Amount”), inclusive of all fees and costs, and subject
24 to an escalator clause which resulted in Defendant’s obligation to pay Eight Hundred Eighty-
25 Eight Thousand Five Hundred Sixty-Eight Dollars and Zero Cents (\$888,568.00), to fund the
26 non-reversionary, no claims made settlement of this class action. (Kim Decl., ¶ 19, Exh. 1, §§3.1,
27 XIII(A).) The parties’ Class Action and PAGA Settlement Agreement defines the class as “all
28 non-exempt employees based in California and employed by Nationwide at any time from July

1 17, 2019 through [...] April 14, 2025” (“Class” or “Settlement Class”). (Kim Decl., ¶ 20; Exh. 1,
2 §I(A).) All 838 Class Members will receive a settlement payment unless they opt out of the class
3 portion of the Settlement. (Kim Decl., ¶ 28; Exh. 1, §VIII(C)-(D).)

4 The proposed settlement reflected in the Settlement Agreement is fair, reasonable, and
5 adequate, and in the best interests of the Class. Consequently, Plaintiff, with the consent of
6 Defendant, hereby moves this Court for an order: (1) granting preliminary approval of the
7 proposed class action and PAGA settlement, as embodied in the Settlement Agreement filed
8 concurrently herewith; (2) approving the Notice of Class Action Settlement and Hearing Date for
9 Final Court Approval (“Class Notice”) to be sent to Class Members; (3) preliminarily appointing
10 Plaintiff as the Class Representative for settlement purposes only; (4) preliminarily appointing
11 D.Law Inc. as Class Counsel for settlement purposes only; (5) appointing Apex Class Action as
12 the Settlement Administrator; and (6) setting a hearing for final approval of the class action and
13 PAGA settlement.¹

14 **II. STATUS OF THE LITIGATION**

15 **A. Procedural History**

16 The named Plaintiff worked as an hourly-paid, non-exempt employee for Defendant and
17 seeks to represent approximately 838 current and former non-exempt employees employed by
18 Defendant in California at any time during the Class Period. (Kim Decl., ¶¶ 10, 15, 20, Exh. 1,
19 §I(A).) Defendant is a large insurance and financial services company. (*Id.* at ¶ 10.)

20 On July 17, 2023, Plaintiff commenced a class action lawsuit by filing a complaint in
21 Sacramento County Superior Court, Case No. 23CV004939, alleging causes of action against
22 Defendant for (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under
23 Labor Code § 510; (3) Meal Period Liability Under Labor Code § 226.7; (4) Rest Break Liability
24 Under Labor Code § 226.7; (5) Violation of Labor Code § 226; (6) Violation of Labor Code §
25 221; (7) Violation of Labor Code §204; (8) Violation of Labor Code § 203; (9) Failure to
26 Maintain Records Required Under Labor Code §§ 1174 and 1174.5; (10) Failure to Produce

27 ¹ Plaintiff’s counsel has reviewed the Court’s “Checklist for Approval of Class Action and/or
28 PAGA Settlements” and Local Rule 2.99.05 and certifies that this briefing complies with the
checklist. (Kim Decl., ¶ 2.)

1 Requested Employment Records Under Labor Code §§ 226, 1198.5; (11) Failure to Reimburse
2 Necessary Business Expenses § 2802; (12) Failure to Pay Vacation Wages in Violation of Labor
3 Code § 227.3; (13) Violation of 15 U.S.C. §§ 1681 (b)(2)(A); (14) Violation of California Civil
4 Code § 1786 *et seq.* (ICRAA); (15) Violation of Business & Professions Code § 17200 *et seq.*
5 (“Class Action”). (Kim Decl., ¶ 11.) Defendant subsequently removed the Class Action to the
6 United States District Court for the Eastern District of California, where it remains pending at
7 Case No. 2:23-cv-01871-DAD-SCR. (*Id.*)

8 Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to
9 Defendant and California’s Labor and Workforce Development Agency (“LWDA”) by sending her
10 PAGA Notice on July 17, 2023 (LWDA-CM-968842-23) (Kim Decl., ¶ 12, Exhibit 2.) The LWDA
11 did not express an interest in investigating Plaintiff’s claims within the 65 day period. (*Id.*)

12 On November 27, 2023, Plaintiff filed a PAGA Action Complaint in this Court, Case No.
13 23-CV-012222, alleging claims for civil penalties under the Labor Code Private Attorneys General
14 Act (“PAGA Action”) based on the same predicate Labor Code violations as asserted in the Class
15 Action. (*Id.*)

16 After reaching a global settlement at mediation that encompasses both actions, because of
17 the overlap between the Class Action and PAGA Action, the Parties agreed to consolidate all of the
18 claims and theories asserted in the Class Action and PAGA Action, and to seek approval of the
19 Settlement in this Court. To that end, pursuant to the Settlement, on April 11, 2025, Plaintiff filed
20 a First Amended Complaint in the PAGA Action adding the claims asserted in the Class Action,
21 which is now the operative complaint in the PAGA Action (“Operative Complaint”). (*Id.* at ¶ 13.)

22 In addition to the Class Action and PAGA Settlement Agreement, the parties executed a
23 separate individual settlement agreement with Plaintiff Ana Lemus for separate consideration in
24 exchange for a release of any and all other individual claims that Plaintiff may have against
25 Defendant, including claims arising out of Plaintiff’s involuntary termination from employment.
26 (*Id.* at ¶ 14.)

27 **B. Investigation**

28 Before filing the lawsuit, Class Counsel investigated and researched the facts and

1 circumstances underlying the pertinent issues and the law applicable thereto. (Kim Decl., ¶ 15.)
2 This required thorough discussions and interviews between Class Counsel and Plaintiff, as well as
3 preliminary research into the various legal issues involved in the case. (*Id.*) After conducting their
4 initial investigation, Class Counsel determined that Plaintiff's claims were well-suited for class
5 and representative action adjudication owing to what appeared to be a common course of conduct
6 affecting a similarly situated group of employees. (*Id.*)

7 After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and
8 claims giving rise to the action, including: (1) conducting informal discovery and meeting and
9 conferring with defense counsel about same; (2) reviewing and analyzing a 98.6% sampling of
10 time and pay records as well as employment handbooks, Plaintiff's personnel file, relevant
11 policies and other documentation applicable to the putative class members; (3) researching the
12 applicable law and the defenses asserted by Defendant; (4) constructing damage models based on
13 interpretations of California law; and (5) reviewing information provided by Defendant at the
14 mediation. (Kim Decl., ¶ 16.) The Class enumerated in this action is ascertainable because Class
15 Members may be readily identified by reference to Defendant's records. (*Id.*) Defendant has
16 agreed to share the information from these records with the Settlement Administrator in order to
17 identify and contact Class Members. (*Id.*) There are approximately 838 total Class Members. (*Id.*)

18 Defendant, for its part, vigorously contested and continues to contest liability, the amount
19 of claimed damages, the propriety of class certification, and the manageability of the PAGA
20 claims. (Kim Decl., ¶ 17.) After Class Counsel analyzed the relevant documents and other
21 gathered data, Class Counsel believed that this case was appropriate for resolution via mediation.
22 (*Id.*)

23 C. Settlement Efforts

24 On January 15, 2025, the parties attended a full-day mediation with Tripper Ortman,
25 Esq., a respected and highly experienced mediator in wage and hour class actions. (Kim Decl., ¶
26 18.) During mediation, Plaintiff's and Defendant's counsel discussed important aspects of the
27 case, including the risks of litigation and the risks to both parties of proceeding with a motion for
28 class certification, as well as the law relating to unpaid wages, meal periods, rest periods, wage

1 statements, final pay, unreimbursed business expenses, and background checks. (*Id.*) As a result
2 of the mediation, the parties agreed to settle the lawsuit according to the terms set forth in the
3 Settlement Agreement. (Kim Decl., Exhibit 1.)

4 From Class Counsel’s review of the facts, strengths, and weaknesses of the case, the risks
5 and delays posed by further litigation, and Class Counsel’s own prior litigation experience, Class
6 Counsel believes that the recovery for each Class Member is fair and reasonable taking into
7 consideration the amounts received in other wage and hour class actions, the risks inherent in
8 litigation of this genre, and the reasonable tailoring of each Class Member’s claim to the
9 settlement award he or she will receive. (Kim Decl., ¶ 19.) Further, and based on the settlement
10 negotiations, which were extensive, and conducted in good faith and at arm’s length between
11 attorneys with substantial experience litigating class actions and wage and hour cases, the
12 Settlement Agreement was the product of a non-collusive settlement process in which the parties
13 were forced to make significant compromises in the interest of reaching a full and complete
14 settlement of the lawsuit. (*Id.*)

15 **III. MATERIAL TERMS OF THE SETTLEMENT**

16 **The Class/Class Period and PAGA Group/PAGA Period:** The Settlement Agreement
17 defines the “Class” as all non-exempt employees based in California and employed by
18 Nationwide at any time from July 17, 2019 through April 14, 2025 (“Class Period”). (Kim Decl.,
19 ¶ 21; Exh. 1, §I(A).) The Settlement Agreement also defines “PAGA Group” or “PAGA Group
20 Members” as all persons who were classified as non-exempt and employed in California at any
21 time between September 23, 2022 and April 14, 2025 (“PAGA Period”). (Kim Decl., ¶ 21; Exh.
22 1, §I(F).)

23 **Gross Settlement Amount and Escalator Clause:** Under the terms of the proposed
24 Settlement Agreement, Defendant has agreed to pay Eight Hundred Eighty Thousand Dollars and
25 Zero Cents (\$880,000.00) on a non-reversionary basis, subject to an escalator clause. (Kim Decl.,
26 ¶ 20, Exh. 1, §§ III(B), XIII(A).) Defendant has represented that, based on its records, as of April
27 14, 2025, Class Members worked a total of 122,071 Class Workweeks. (*Id.* at ¶ 20.) Pursuant to
28 the escalator clause of the Settlement, Defendant has elected to increase the Gross Settlement

1 Amount based on the 122,071 Class Workweeks worked through April 14, 2025, thereby
2 resulting in a 0.9736 percent increase, such that the actual, increased Gross Settlement Amount
3 Defendant will pay is \$888,568.00 on a non-reversionary basis (“Gross Settlement Amount”) (*Id.*
4 at ¶ 20, Exh. 1, § XIII(A).).

5 **Net Settlement Amount:** The “Net Settlement Amount,” available for distribution to
6 Class Members, shall be the Gross Settlement Amount, less Class Counsel Attorneys’ Fees
7 Payment, Class Counsel Litigation Costs Payment, Class Representative Enhancement Payment,
8 Settlement Administration Costs Payment, and the PAGA Settlement Amount. (Kim Decl., ¶ 22;
9 Exh. 1, §III(G).) These amounts are detailed as follows:

- 10 • Attorneys’ Fees of not more than 35% of the Gross Settlement Amount; i.e., Three
11 Hundred Eight Thousand Dollars and Zero Cents (\$310,998.80) and Litigation
12 Costs of not more than Twenty Five Thousand Dollars and Zero Cents
13 (\$25,000.00); (Kim Decl., ¶ 22; Exh. 1, §III(E).);
- 14 • Settlement Administration Costs of not more than Eleven Thousand Eight
15 Hundred Eighty Dollars and Zero Cents (\$11,880.00); (Kim Decl., ¶ 22; Exh. 1,
16 §§III(F), XIII(A).);
- 17 • Class Representative Enhancement Payment of not more than Five Thousand
18 Dollars and Zero Cents (\$5,000.00) to Plaintiff; and (Kim Decl., ¶ 22; Exh. 1,
19 §III(D));
- 20 • PAGA Settlement Amount of Fifty Thousand Dollars and Zero Cents (\$50,000.00)
21 for civil penalties under PAGA, with 75% (\$37,500.00) paid to the LWDA for the
22 LWDA Payment and 25% (\$12,500.00) paid to PAGA Group Members as their
23 PAGA Group Payment. (Kim Decl., ¶ 22; Exh. 1, §III(C).)

24 **Individual Settlement Payments:** The Individual Settlement Payment is each Class
25 Member’s share of the Net Settlement Amount and will be calculated and apportioned from the
26 Net Settlement Amount based on the number of workweeks each Class Member worked during
27 the Class Period (“Individual Workweeks”). (Kim Decl., ¶ 23; Exh. 1, §VIII(D).) Further, to
28 account for an overlapping prior class action settlement, any Class Members who participated in

1 the prior class action settlement entitled *Mostajo v. Nationwide* (“Mostajo”) (United States
2 District Court, Eastern District of California, Case No. 2:17-cv-00350-JAM-AC will have their
3 workweeks that overlapped with the *Mostajo* release period valued at 50% of the value of their
4 non-overlapping workweeks. (Kim Decl., ¶ 23; Exh. 1, § VIII(D)(1).).

5 Using a straight average and assuming they worked throughout the Class Period, Plaintiff
6 estimates that each Class Member will receive an average of \$579.58 for their Individual
7 Settlement Payment. The estimated average amount each Class Member will receive per
8 workweek based on the Net Settlement Amount and 122,071 workweeks is \$3.98. (Kim Decl., ¶
9 66.) For tax purposes, the Individual Settlement Payments to Class Members shall be allocated as
10 25% wages and 75% interest and penalties. (Kim Decl., ¶ 24.) Defendant will separately pay its
11 employer-side payroll tax obligations on the Wage Portion of the Individual Settlement Payments
12 in addition to the Gross Settlement Amount. (Kim Decl., ¶ 24; Exh. 1, §III(B).)

13 **Individual PAGA Payments:** Each PAGA Group Member’s individual share of the
14 PAGA Group Payment will be calculated based on the number of pay periods each PAGA Group
15 Member worked during the PAGA Period (“Individual PAGA Pay Periods”). (Kim Decl., ¶ 23;
16 Exh. 1, §VIII(E).) Specifically, “each PAGA Group Member, regardless of whether they timely
17 submit a Request for Exclusion, shall receive a portion of the PAGA Settlement Amount
18 proportionate to the number of pay periods with working hours that he or she worked during the
19 PAGA Period, subject to Court approval.” (*Id.*) “All PAGA Group Members will receive at least
20 a minimum Individual PAGA Payment equivalent to the figure paid to those PAGA Group
21 Members who worked one pay period during the PAGA Period.” (*Id.*) PAGA Group Members
22 will receive a separate check for their share of the PAGA Group Payment in addition to a check
23 for their Individual Settlement Payment as a participating Class Member. (*See id.* at §§VIII(D)
24 and (E).)

25 **Class Data:** Defendant will provide the Settlement Administrator with the following
26 information for each Class Member and/or PAGA Group Member within 30 days after entry of
27 the Court’s preliminary approval order, in a password protected Microsoft Excel format: name,
28 last known address, Social Security number, and the number of Individual Workweeks and/or

1 Individual PAGA Pay Periods attributable to each Class Member/PAGA Group Member (the
2 “Class Data”). (Kim Decl., ¶ 71; Exh. 1, § V(A).) To protect Class Member’s privacy rights, the
3 Settlement Administrator must maintain the Class Data in confidence, use the Class Data only for
4 purposes of this Settlement and for no other purpose, restrict access to the Class Data to
5 Settlement Administrator employees who need access to the Class Data to effect and perform
6 under the Settlement Agreement. (*Id.*).

7 **Class Notice Procedures:** Within 14 days of receiving the Class Data from Defendant,
8 the Settlement Administrator will mail the Class Notice to the Class Members via First Class U.S.
9 Mail. (*Id.*; *id.* at Exhibit A.) Class Members will receive the Class Notice via First Class U.S.
10 Mail from the Settlement Administrator after the Settlement Administrator conducts a national
11 change of address search. (Kim Decl., ¶¶ 26, 71; Exh. 1, § V(C).) Class Members will have an
12 opportunity to dispute the Individual Workweeks and Individual PAGA Pay Periods information
13 provided in their Class Notice and produce evidence to support their contentions. (Kim Decl., ¶
14 27; Exh. 1, § VIII(F).) The Settlement Administrator will make the final determination as to any
15 disputes involving Class Members’ allocation of Workweeks and Pay Periods. (*Id.*)

16 Any mailing returned to the Settlement Administrator as undeliverable will be sent within
17 three business days via First Class U.S. Mail to the forwarding address affixed thereto, if
18 applicable. (Kim Decl., ¶ 71; Exh. 1, § V(D).) If no forwarding address is provided, the Settlement
19 Administrator will attempt to determine the correct address again using a robust skip trace
20 database to update and correct any known or identifiable address changes. (*Id.*) Following this
21 procedure, the Settlement Administrator will perform a re-mailing via First Class U.S. Mail
22 within three business days. (*Id.*) Class Members whose Class Notices are re-mailed to them will
23 receive an additional 14 days to opt-out of the Class Action settlement. (*Id.*; *id.* at Exh. 1,
24 § VI(A).)

25 **Opt Out and Objection Procedures:** Class Members wishing to opt out from the
26 Settlement Agreement must send a signed written request for exclusion to the Settlement
27 Administrator within 60 days from the initial mailing of the Class Notice. (Kim Decl., ¶ 28; Exh.
28 1, § VI(A), (C).) Participating Class Members will also have the opportunity to object to the

1 Settlement Agreement by serving a copy of the objection to the Settlement Administrator within
2 60 days after the mailing of the Class Notice or by appearing at the Final Approval Hearing and
3 presenting their objection orally. (Kim Decl., ¶ 28; Exh. 1, §VII(A), (B).) Participating Class
4 Members are not required to follow any particular procedure for their objections to be heard. (*Id.*)

5 The Settlement Agreement and Class Notice both state that a Class Member's right to opt
6 out applies only to the class action portion of the Settlement and that no opt out right applies to
7 the settlement of PAGA claims. (Kim Decl., ¶ 28.); Exh. 1, §VI(B); §VIII(E).) ("There are no
8 opt-out rights with respect to the PAGA portion of this Settlement"); Ex. 1, Ex. A (Notice of
9 Class Action Settlement) ("You cannot opt-out of the PAGA portion of the proposed
10 Settlement.").

11 **No affirmative duties imposed on Class:** The settlement agreement does not impose any
12 affirmative duties on Participating Class Members. (Kim Decl., ¶ 72.) No claim form is required
13 to participate in the Settlement. (*Id.*) Individuals who wish to opt out or object may do so. (*Id.*)

14 **Settlement Administrator:** After soliciting and reviewing three bids from class action
15 administrators, the parties selected Apex Class Action LLC ("Apex") to handle the notice and
16 administration of the Settlement based on the competitiveness of their bid, their competency in
17 administering settlements, and their responsiveness to the parties' counsel and settlement class
18 members. (Kim Decl., ¶ 26, Exh. 1, §I(G).) Apex has experience administering class action and
19 PAGA settlements, has procedures in place to protect the security of class data, adequate
20 insurance in the event of a data breach or defalcation of funds, and is qualified to administer the
21 Settlement. (*See* Declaration of Michael Sutherland, which also includes a breakdown of the
22 anticipated costs of class notice.) The procedures for mailing notice and processing exclusions
23 and objections as well as distribution of the Net Settlement Amount are detailed in the Settlement
24 Agreement. (Kim Decl., Exh. 1, §§ IV-VIII.) In addition, Apex will have a website for Class
25 Members to review and reference for details regarding the Final Approval Hearing and any Final
26 Approval Order and Judgement. If the Court grants final approval of the Settlement, a copy of the
27 Final Approval Order and Judgment will be posted on this website for Class Members to review.
28 The website will be provided to Class Members in the Class Notice that is mailed to them. (Kim

1 Decl., ¶ 72.)

2 **Funding and Payment of Settlement:** Within 14 days of the “Effective Date” as defined
3 in the Settlement Agreement, Defendant will ensure a wire transfer to a bank account designated
4 by the Settlement Administrator that includes the Gross Settlement Amount plus Defendant’s
5 separate portion of the employer-side payroll taxes. (Kim Decl., Exh. 1, § XI(A).) Within 30 days
6 of the Effective Date, the Settlement Administrator will issue payments to Class Members and/or
7 PAGA Group Members pursuant to the terms of the Settlement Agreement. (*Id.*) Checks will be
8 mailed by First Class U.S. Mail to each Class Member’s and/or PAGA Group Member’s last
9 known address, postage prepaid, and will be valid for 180 calendar days from the date of mailing.
10 (Kim Decl., Exh. 1, § XI(B).) Any uncashed amounts after 180 days will not be distributed to a
11 *cy pres* recipient; rather, unclaimed funds will be transferred to the California State Controller’s
12 Office to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 et seq.,
13 in the name of and for the benefit of the individual who did not cash his or her check, until such
14 time that he or she claims his or her property or as otherwise required by law. Accordingly, the
15 entire Net Settlement Amount will be paid out to Class Members, whether or not they all cash
16 their Individual Settlement Payments and/or Individual PAGA Payments. (Kim Decl., Exh. 1,
17 § XI(C)(1).)

18 **Class Member Release:** The Class Member release of claims will not become effective
19 until after the Effective Date has passed and Defendant has fully funded the Gross Settlement
20 Amount. (Kim Decl., Exh. 1, § XV(A)(1).) The release date ends on April 14, 2025, prior to the
21 date of the preliminary approval hearing. Further, the release of claims is tailored in scope to
22 claims that were or could have been pled in the Actions, based on the facts alleged and theories
23 asserted in the Actions. Specifically, Plaintiff and Class Members who did not opt out of the
24 class portion of the settlement shall release the Released Parties (defined in the Settlement) from:

25 any and all claims, rights, demands, liabilities, and causes of action
26 of any kind arising from the alleged violation of any provision of
27 common law, California law and/or federal law that occurred
28 during the Class Period that were pled in either Action, or
 Plaintiff’s LWDA letter, or which could have been pled based on
 the facts alleged and theories asserted in either Action, including
 claims for: failure to timely pay all wages (California Labor Code

1 §§ 201, 202, 203, 204, 210, 558); failure to pay all minimum,
2 overtime and reporting time wages, including with respect to the
3 rate at which such wages are paid (California Labor Code §§ 204,
4 222, 218, 218.5, 510, 558, 1182.12, 1194, 1194.1, 1194.2, 1197,
5 1197.1, and applicable sections of the relevant Order of the
6 Industrial Welfare Commission); meal and rest period violations,
7 including with respect to the rate at which premiums are paid
8 (California Labor Code §§ 226.7, 512, 516, 558, and applicable
9 sections of the relevant Order of the Industrial Welfare
10 Commission); failure to provide sick pay or properly pay sick time,
11 including with respect to the rate at which it was paid (California
12 Labor Code §§ 233, 246, 248, 248.5); failure to produce requested
13 records (Cal. Lab. Code §§ 226, 1198.5); failure to provide
14 information upon hiring (Cal. Lab. Code § 2810.5); failure to pay
15 vested vacation time at termination, including with respect to the
16 rate at which it was paid (California Labor Code §§ 227.3, 558);
17 failure to reimburse all necessary business expenses, including but
18 not limited to expenses related to cell phones, internet, home office
19 expenses/supplies, job-related training courses, transportation,
20 mileage, lodging, uniforms, and more (California Labor Code §§
21 2802, 2804); unlawful deductions (California Labor Code § 221);
22 violation of the IWC California Wage Orders; failure to provide
23 accurate wage statements (Cal. Lab. Code §§ 226, 226.3, 558);
24 failure to maintain records (California Labor Code § 226, 1174,
25 1174.5); unfair competition in violation of California Business and
26 Professions Code section 17200 et seq.; violation of the federal Fair
27 Credit Reporting Act (15 U.S.C. § 1681 et seq.); violation of the
28 California Investigative Consumer Reporting Agencies Act
(California Civil Code § 1786 et seq.); and any damages, penalties,
restitution, disgorgement, interest, costs, or attorneys' fees as a
result thereof, and that arose during the Class Period ("Released
Claims"). The Released Claims do not include claims to enforce
this Agreement or the Settlement Agreement, or claims that may
not be released as a matter of law, including, for example, claims
for vested benefits under an ERISA, 401(k), or similar plan,
wrongful termination, violation of the Fair Employment and
Housing Act, unemployment insurance, disability, social security,
workers' compensation, or claims based on facts occurring outside
of the Class Period.

(Kim Decl., Exh. 1, § XV(A)(1)).

IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE

Express judicial policy favors maintaining wage and hour actions as class actions. (*Prince v. CLS Transp., Inc.* (2004) 118 Cal. App. 4th 1320, 1328; *Richmond v. Dart Industries, Inc.* (1981) 29 Cal. 3d 462.) Any doubt as to the appropriateness of class treatment should be resolved in favor of class certification, subject to later modification if necessary. (*Richmond*, 29 Cal. 3d at 473-75.) The decision to certify a class is a procedural one, and should be based on the allegations in the operative complaint, and not in the perceived factual or legal merit of the class claims.

1 (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 439-41.)

2 To certify a settlement class, the Court must find the two primary requirements for
3 maintaining a class action: (1) there must be an ascertainable class, and (2) there must be a well-
4 defined community of interest in the questions of law and fact involving the parties to be
5 represented. (*See Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 805-09; *Daar v. Yellow Cab*
6 *Company* (1967) 67 Cal. 2d 695, 704.) These criteria are met here for the reasons set forth below.

7 **A. There Is A Numerous and Ascertainable Class**

8 Whether a class is ascertainable is determined by examining the class definition, the size
9 of the class and the means available for identifying class members. (*See Vasquez, supra*, 4 Cal. 3d
10 at 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263,
11 1271.) Class members are “ascertainable” where they may be readily identified without
12 unreasonable expense or time. *See Rose v. City of Hayward*, 126 Cal. App. 3d 926, 932 (1981)
13 (finding that “class members are ‘ascertainable’ where they may be readily identified without
14 unreasonable expense or time by reference to official records).

15 This requirement and the requirement of numerosity is met. Class Members are “all non-
16 exempt employees based in California and employed by Nationwide at any time from July 17,
17 2019, through [...] April 14, 2025.” (Kim Decl., ¶ 83(a).) Documents and information exchanged
18 between the parties reflect a class of approximately 838 Class Members. (Kim Decl., ¶ 83(a).)
19 The Class Members have already been identified by reference to Defendant’s payroll and
20 personnel records. (Kim Decl., ¶ 83(b).)

21 Therefore, and notwithstanding the foregoing, there is a numerous and ascertainable class.

22 **B. There Is A Well-Defined Community of Interest**

23 A community of interest is established by the predominance of common issues of law and
24 fact. *See Vasquez*, 4 Cal. 3d at 811. The requirement of a community of interest:

25 [D]oes not depend upon an identical recovery, and the fact that each
26 member of the class must prove his separate claim to a portion of any
27 recovery by the class is only one factor to be considered ... The mere
28 fact that separate transactions are involved does not of itself preclude
a finding of the requisite community of interest so long as every
member of the alleged class would not be required to litigate
numerous and substantial questions to determine his individual right

1 to recover subsequent to the rendering of any class judgment which
2 determined in plaintiff favor whatever questions were common to
the class.

3 *Id.* at 809.

4 Here, common issues of fact and law predominate as to each of the claims alleged by
5 Plaintiff, and the Class is united in its proof. (Kim Decl., ¶ 83(e).) Because Plaintiff has alleged a
6 single scheme, “the relevant proof [does] not vary among class members” and “clearly presents a
7 common question fundamental to all class members.” (*See In Re NASDAQ Market-Makers*
8 *Antitrust Litigation* (SDNY 1997) 172 F.R.D. 119, 123 (citing *In Re NASDAQ Market-Makers*
9 *Antitrust Litigation*, (SDNY 1997) 169 F.R.D. 493, 518).) California courts show “no hesitancy”
10 in inferring class-wide causation, class-wide injury, and class-wide damages when a common
11 course of action has been shown. (*B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1350.) This
12 inference “eliminates the need for each class member to prove individually the consequences of
13 the defendants’ actions to him or her.” (*Id.* at 1351 (quoting *Rosack v. Volvo of America Corp*
14 (1982) 131 Cal. App. 3d 741, 753).)

15 This action involves, *inter alia*, a determination about Defendant’s alleged failure to
16 provide meal period and rest periods, failure to pay wages and overtime due to allegedly common
17 and unlawful policies, failure to timely pay and pay final wages when required, failure to
18 maintain and provide accurate paystubs, largely derivative claims under the Business &
19 Professions Code and PAGA, and violation of the FCRA. Plaintiff contends these practices
20 affected Class Members in the same way. The outcome of litigation on this matter depends upon
21 questions that are common to Class Members. (Kim Decl., ¶ 83(e).)

22 **C. The Named Plaintiff’s Claims Are Typical**

23 A class representative’s claims are typical when they arise from the same event, practice,
24 or course of conduct that gives rise to the claims of other putative class members, and if their
25 claims rest on the same legal theories. The class representative’s claims must be “typical” but not
26 necessarily identical to the claims of other class members. It is sufficient that the representative is
27 similarly situated so that he or she will have the motive to litigate on behalf of all class members.
28 (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.*

1 (1987) 191 Cal.App.3d 1341, 1347 (“[I]t has never been the law in California that the class
2 representative must have identical interests with the class members.”). Thus it is not necessary
3 that the class representative should have personally incurred all of the damages suffered by each
4 of the other class members. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.)

5 Plaintiff’s claims are typical of Class Members’ claims because they arose from the same
6 factual basis and are based on the same legal theories. (Kim Decl., ¶ 83(c).) Plaintiff was
7 employed by Defendant during the Class Period, and was subject to the allegedly unlawful meal
8 and rest policies and pay practices at issue in this litigation. (*Id.*) Accordingly, Plaintiff is a
9 member of the Class. (*Id.*) The central issues of this litigation (whether Defendant failed to pay all
10 wages, whether Defendant failed to provide meal and rest periods, etc.) apply to the other Class
11 Members as well. The answer to these questions would determine Defendant’s liability to the
12 Class. (*Id.*) Thus, the claims of Plaintiff are typical of the claims of the Class and the typicality
13 requirement is satisfied.

14 **D. Adequacy of Class Counsel and Class Representative**

15 Class Counsel are experienced in class actions, have represented their clients zealously
16 and have no conflicts of interest. (Kim Decl., ¶¶ 3-9, 83(d).) The Class Representative’s interests
17 are aligned with those of Class Members, she has suffered the same injuries as Class Members,
18 and has no conflicts of interest. (*Id.*) Therefore, Class Counsel and the Class Representative are
19 adequate.

20 **E. Predominance and Superiority**

21 Individual issues do not predominate over those common to the class. (Kim Decl., ¶83(f).)
22 The class action mechanism is superior to individualized actions because Class Members have
23 little incentive to bring claims that are small. (*Id.*)

24 **V. THE TWO-STEP APPROVAL PROCESS**

25 Any settlement of class action litigation must be reviewed and approved by the Court.
26 This is accomplished in two steps: (1) an early (preliminary) review by the trial court, and (2) a
27 detailed review after the notice has been distributed to the class members for their comments or
28 objections. In this regard, the Manual for Complex Litigation (Second) explains:

1 A two-step process is followed when considering class settlements...
2 If the proposed settlement appears to be the product of serious,
3 informed, non-collusive negotiations, has no obvious deficiencies,
4 does not improperly grant preferential treatment to class
5 representative or segments of the class, and falls within the range of
6 possible approval, then the court should direct that notice be given to
7 the class members of a formal fairness hearing, at which evidence
8 may be presented in support of and in opposition to the settlement.

9 (*Manual for Complex Litigation (Second)* (1985) at § 30.44.) The preliminary approval of the
10 class action settlement by the trial court is simply a conditional finding that the settlement appears
11 to be within the range of acceptable settlements. (*See, e.g., Newberg*, § 11.25; *North County*
12 *Contractor's Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal. App. 4th 1085, 1094-95.)
13 Thus, the preliminary approval of the class action settlement by the trial court is simply a
14 conditional finding that the settlement appears to be within the range of acceptable settlements.

15 Settlements to resolve PAGA claims also require court approval. (Labor Code §
16 2699(1)(2).) Further, in accordance with the statutory requirement, Plaintiff provided a copy of
17 the Settlement to the LWDA on the same day she filed the instant motion with this Court. (Kim
18 Decl., ¶ 85; Kim Decl., Exhibit 3.) PAGA civil penalties recovered on the State's behalf are
19 intended to "remediate present violations and deter future ones, not to redress employees'
20 injuries." (*Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 542.) The
21 standard for evaluating a PAGA settlement is not whether the employees are fully compensated
22 for their injuries, but "whether it is fair, reasonable, and adequate in view of PAGA's purposes to
23 remediate present labor law violations, deter future ones, and to maximize enforcement of state
24 labor laws." (*Moniz v. Adecco USA, Inc.*, (2021) 72 Cal.App.5th 56, 77, *disapproved of on other*
25 *grounds by Turrieta v. Lyft, Inc.*, 16 Cal. 5th 664 (2024)). Here, as a result of the Settlement,
26 Defendant must pay \$888,568.00 including \$50,000 in PAGA civil penalties to the State and
27 PAGA Group. This PAGA penalties payment under the Settlement remediates labor law
28 violations that otherwise may have gone unremedied due to Defendant's substantial defenses to
liability and the merits of the claims.

In addition, the amount allocated to the PAGA claims is fair to those affected because it
accounts for a realistic assessment of the PAGA exposure on the claims as well as the significant

possibility of the Court not awarding the PAGA penalties even if Plaintiff prevailed on the merits due to the Court's discretion to substantially reduce PAGA penalties under Labor Code § 2699(e)(2). Indeed, PAGA settlements for as little as \$0 have been approved. (*See Nordstrom Com'n Cases* (2010) 186 Cal.App.4th 576, 589 (approving PAGA settlement and release that allocated \$0 to PAGA claim).) Courts have also approved settlements for \$20,000 or less. (*See, e.g., Hicks v. Toys 'R' Us—Delaware, Inc.*, (C.D. Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving \$5,000 PAGA payment in \$4 million settlement); *Chu v. Wells Fargo Invest. LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, at *1 (approving PAGA payment of \$7,500 in \$6.9 million settlement); *Williams v. Brinderson Constructors* (C.D. Cal. Feb. 6, 2017) 2017 WL 490901, at *5 (\$10,000 PAGA settlement in \$300,000 settlement).)

A review of the preliminary approval criteria demonstrates a substantial basis for granting the instant Motion and proceeding to a final settlement approval hearing.

VI. THE SETTLEMENT IS FAIR AND ADEQUATE

As a matter of public policy, courts both encourage the use of the class action device and favor settlement over continued litigation. (*See, e.g., Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 434 (“Courts have long acknowledged the importance of class actions as a means to prevent a failure of justice in our judicial system.”); *Class Plaintiff v. City of Seattle* (1992) 955 F.2d 1268, 1276 (“[S]trong judicial policy . . . favors settlements, particularly where complex class action litigation is concerned.”).)

Moreover, courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence to the contrary is offered. In short, there is a presumption that the negotiations were conducted in good faith. (*Newberg*, §11.51; *Rodriguez v. West Publ. Corp.* (C.D. Cal. August 10, 2007) 2007 U.S. Dist. LEXIS 74767, 24-25; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447.) Courts do not substitute their judgment for that of the proponents, particularly when settlement has been reached by experienced counsel familiar with the litigation. (*Rodriguez*, 2007 U.S. Dist. LEXIS 74767 at 24; *Hammon v. Barry* (D.D.C. 1990) 752 F. Supp. 1087.)

1 In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008), the court laid out
2 several factors that should be analyzed in determining if a class action settlement should be
3 approved. These factors include: (1) the strength of plaintiff's case; (2) the risk, expense,
4 complexity and likely duration of further litigation; (3) the risk of maintaining class action status
5 through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and
6 stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a
7 governmental participant; and (8) the reaction of the Class Members to the proposed settlement.

8 The Settlement here satisfies each of these factors. Class Counsel conducted extensive
9 informal discovery before entering into meaningful settlement negotiations in this matter,
10 including a detailed analysis of Defendant's policies and a significant sample of Defendant's time
11 and pay records. (Kim Decl., ¶¶ 11-14.) This discovery permitted Class Counsel to fairly evaluate
12 the strengths of the case and the risks associated with ongoing litigation. Class Counsel is very
13 experienced in the handling of wage and hour class actions and supports this Settlement. (Kim
14 Decl., ¶¶ 3-9.)

15 **A. The Strength of Plaintiff's Case.**

16 Plaintiff alleges that Defendant failed to pay minimum wages and overtime, failed to
17 provide proper meal breaks or provide premium pay in lieu thereof, failed to provide proper rest
18 breaks or provide premium pay in lieu thereof, failed to maintain and provide accurate wage
19 statements, unlawfully deducted wages earned, failed to timely pay wages and pay all wages upon
20 termination, failed to reimburse necessary business expenses, failed to pay vacation and sick
21 wages, and performed unlawful background checks in violation of California and Federal law.
22 (Kim Decl., ¶ 29.)

23 Class Counsel felt confident that the claims in this case would be certified given that
24 Defendant's policies and practices were applicable to all Class Members and unlawful. (Kim
25 Decl., ¶¶ 28-63.) Defendant contended, however, that its policies and practices complied with
26 California and Federal law and denied Plaintiff's allegations.

27 **B. The Risks Associated with the Merits.**

28 As with all litigation, there are risks that a party will not prevail on the merits. In this case,

1 Plaintiff contended that Defendant failed to provide compliant, duty-free meal periods to Class
2 Members and that Plaintiff and Class Members were required to continue working during their
3 meal periods to avoid scrutiny from managers and warnings in Defendant's timekeeping system
4 and due to chronic understaffing and exacting work production expectations placed upon them by
5 Defendant's management. (Kim Decl., ¶ 37.) Defendant maintained that its written meal policies
6 are facially lawful, and that its policy and practice at all relevant times was to provide fully
7 compliant and duty-free meal breaks to Class Members. (Kim Decl., ¶ 38.) Defendant contended
8 that Plaintiff and Class Members had significant discretion to self-manage their breaks without
9 impediments, were given a reasonable opportunity to take their meal periods, and in fact received
10 their meal periods most of the time. (*Id.*) Defendant argued they have a high meal period
11 compliance rate. (*Id.*)

12 Plaintiff also contended that Defendant did not provide Class Members with paid 10-
13 minute rest breaks for every four hours or major fraction thereof. (Kim Decl., ¶ 40.) Plaintiff
14 contended that Class Members consistently worked in excess of consecutive four-hour shifts and
15 were entitled to paid rest breaks of not less than ten minutes for each consecutive four-hour shift
16 but were required to work through their rest breaks during their shifts. (*Id.*) Defendant maintained
17 that they did provide a reasonable opportunity for Class Members to take duty-free rest breaks
18 during their shifts and disputed all allegations that rest breaks were not provided. (Kim Decl., ¶
19 41.) Defendant also pointed out that, unlike meal periods, rest breaks need not be recorded, so any
20 rest break violations would likely be difficult to prove at trial. (*Id.*) As these considerations would
21 likely depress the damages *vel non* ultimately awarded, Class Counsel applied appropriate
22 discounts to the rest break claim. (*Id.*)

23 Plaintiff alleged that Defendant failed to pay Plaintiff and Class Members at least
24 minimum wages for all hours worked and proper overtime wages for hours worked in excess of
25 eight hours in a day and 40 hours in a week. (Kim Decl., ¶ 33.) Specifically, Plaintiff alleged that
26 Class Members were required to perform pre-shift and post-shift off the clock work, including
27 waiting for their computers to boot up and for Defendant's timekeeping program to open prior to
28 clocking in and working both before and after their shifts to meet Defendant's job requirements

1 and confer with managers as necessary. (*Id.*) Plaintiff also alleged that Defendant failed to
2 incorporate additional non-discretionary and performance-based bonuses due to Class Members
3 into the calculation of their regular rate of pay for overtime, meal and rest break premiums, and
4 vacation and sick pay. (*Id.*)

5 Defendant contended that they paid for all reported hours worked, that Class Members
6 were instructed and required to record all hours worked, that any alleged off the clock work was
7 performed without Defendant's knowledge and was de minimis, that any bonuses or incentives
8 provided were discretionary or otherwise not includable in the regular rate of pay calculation, and
9 that Defendant paid wages at the proper rates. (Kim Decl., ¶ 34.) Defendant argued that given
10 their written policies and practices, any unrecorded hours are likely subject to individualized
11 inquiry and unlikely to be certified. (*Id.*) Given the difficulty in certifying this claim, Class
12 Counsel applied a significant discount to damages based on this theory. (*Id.*)

13 **C. The Risks Associated with Paystub Violations and Waiting Time Penalties.**

14 In order to establish liability for these penalties, Plaintiff would first have to establish
15 liability for the underlying claims. Plaintiff would then have to establish that Defendant's conduct
16 was willful and knowing. (Labor Code §§ 203, 226(e).)

17 With waiting time penalties, there is always the risk that the trier of fact would not have
18 held that Defendant's actions were done "willfully." A good faith belief in a legal defense can
19 preclude a finding of willfulness. (*Gonzalez v. Downtown LA Motors* (2013) 215 Cal.App.4th 36,
20 54; 8 C.C.R. § 13520.) As discussed above, Plaintiff alleged that Defendant failed to pay for all
21 hours worked and premiums for non-compliant meal and rest breaks. Plaintiff contends that Class
22 Members are entitled to these wages and premiums, which she alleges were not paid at the time
23 of termination or resignation. If Plaintiff is successful on her claims, the penalties pursuant to
24 Labor Code § 203 shall attach. Defendant, however, contends it provided employees with the
25 reasonable opportunity to take meal and rest breaks and required Class Members to record all of
26 their hours worked, and therefore had good-faith defenses under *Brinker* and its progeny.
27 Defendant likewise contends that it properly paid all hours worked by its employees. Based upon
28 Defendant's potential success in establishing both that a good faith dispute existed with regard to

1 unpaid wages, and Defendant endeavored in good faith to supply accurate wage statements,
2 Defendant argues the claims for paystub violations and waiting time penalties have little or no
3 value. *See Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308, 1336-1337 (2018) (wage
4 statements that accurately report wages paid to employees do not violate Labor Code § 226, even
5 if it is later determined that employer did not properly pay all wages due). As such, there was risk
6 associated with wage statement and waiting time penalties that Class Counsel had to consider.
7 (Kim Decl., ¶¶ 45-48.)

8 **D. The Risks Associated with the PAGA Penalties.**

9 Labor Code § 2699.3 gives aggrieved employees the right to recover civil penalties for
10 specific Labor Code violations by way of a civil action. The PAGA provides a penalty amount of
11 one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation
12 and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
13 violation. Labor Code § 2699(e)(2). However, if a civil penalty is provided in a specified amount
14 by the Labor Code section relating to the underlying alleged Labor Code violation, that amount
15 shall apply. (*Id.*) The PAGA also gives the Court discretion to award any lesser amount than the
16 maximum civil penalty. (*Id.* [“...a court may award a lesser amount than the maximum civil
17 penalty amount specified by this part if, based on the facts and circumstances of the particular
18 case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
19 confiscatory.”]); *See, e.g., Lopez v. Friant & Assocs., LLC*, 15 Cal. App. 5th 773, 788 (2017), *rev.*
20 *denied* (2018), (recognizing court’s ability to reduce PAGA penalties). Courts have held that
21 situations similar to the current one (e.g. injuryless violations, technical errors, and substantial
22 compliance) should lead to reductions in penalties. *See Thurman v. Bayshore Transit*
23 *Management, Inc.*, 203 Cal. App. 4th 1112, 1134-1135 (2012) (holding that reduction was
24 justified when employer “attempted to comply with the law”); *Fleming v. Covdien, Inc.*, No. ED
25 CV10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590 at *8-9 (C.D. Cal. August 12, 2011)
26 (reducing PAGA penalties more than 80% – from \$2.8 million to \$500,000 – when “employees
27 suffered no injury” employers were “not aware” of the violation and “took prompt steps to correct
28 all violations once notified”).

1 Plaintiff discounted potential penalties under PAGA given this authority, and for reasons
2 already discussed. The PAGA claims are premised on the same underlying unpaid wages, meal
3 and rest break, wage statement, and waiting time claims, and thus subject to the same disputes
4 and defenses. There is also a dispute as to whether violations in later pay periods trigger the \$200
5 penalty under PAGA as a “subsequent violation.” (*Amaral v. Cintas Corp. No. 2*, 163 Cal. App.
6 4th 1157, 1203 (2008).) As such, there is a fair amount of risk associated with PAGA claims
7 which makes the settlement’s proposed PAGA payment of \$50,000.00 appropriate. (Kim Decl.,
8 ¶¶ 53-56.)

9 **E. The Risks Associated with FCRA and ICRAA Penalties**

10 Under the FCRA, it is unlawful to procure or caused to be procured, a consumer report or
11 investigative consumer report for employment purposes unless the disclosure is made in a
12 document that consists solely of the disclosure and the consumer has authorized, in writing, the
13 procurement of the report. 15 U.S.C. § 1681b(b)(2)(A)(i)-(ii). Plaintiff alleged that the inclusion of
14 a release and other extraneous information in any documents Defendant may rely upon, therefore,
15 violated § 1681b(b)(2)(A) of the FCRA.

16 The FCRA’s damages provision limits recovery when it is shown that a defendant’s
17 actions are willful to between \$100 and \$1,000 or actual damages, whichever is greater. With
18 approximately 838 class members, the FCRA statutory damages, if liability were proven, ranges
19 between \$83,800.00 to \$838,000.00. Given the nature of the claims at issue here, it is
20 reasonable to assume that, if Plaintiff prevailed at trial, a jury in this case would enter an award
21 at the lower end of the potential statutory damages range. (Kim Decl., ¶ 57.)

22 A jury verdict from the Northern District of California in an FCRA case illustrates the type
23 of case where a jury would be more likely to award closer to the \$1,000 per violation penalty.
24 *Ramirez v. Trans Union LLC* (N.D. Cal. 2017) 2017 WL 5153280 (Order denying Motion for New
25 Trial). *Ramirez, supra*, at *1, involved an award of over \$60 million in punitive and statutory
26 damages in a case alleging violation of 15 U.S.C. § 1681e(b), which requires consumer reporting
27 agencies to use “reasonable procedures to assure maximum possible accuracy” of the information
28

1 they report. The defendant mistakenly identified the class members as being Specially Designated
2 Nationals on the federal government’s list of “terrorists, drug traffickers and others with whom
3 Americans are prohibited from doing business.” *Id.* In addition to punitive damages, the jury
4 awarded statutory damages of \$984.22 per class member. *Id.* at *5. (Kim Decl., ¶ 58.)

5 Here, Plaintiff alleges that Defendant violated Section 1681b(b)(2) of the FCRA by
6 providing disclosure documents that allegedly contained extraneous information beyond the
7 disclosure itself. Plaintiff does not contend that this alleged violation resulted in monetary damages,
8 job loss, emotional distress, or reputational harm. Thus, while Plaintiff strongly believes that
9 Defendant did not comply with the law, and that it was willful under *Syed v. M-I, LLC*, No. 1:14-
10 cv-00742 (E.D. Cal. Aug. 6, 2019), the alleged conduct at issue here is not comparable to the
11 egregious conduct at issue in *Ramirez*. (Kim Decl., ¶ 59.)

12 In determining the amount of statutory damages to award under the FCRA, courts have
13 looked at “the importance, and hence the value of the rights and protections” involved in the case.
14 *Ashby v. Farmers Ins. Co. of Or.* (D. Or. 2008) 592 F.Supp.2d 1307, 1308. For example, among
15 the conduct prohibited by the FCRA is the inclusion of inaccurate information in consumer reports
16 after the consumer has disputed the information. 15 U.S.C. § 1681i. It is reasonable to assume that
17 a statutory damages award would be significantly higher where the underlying grievance was that
18 inaccurate, seriously derogatory information is included in a consumer report, even though the
19 consumer demonstrated that it was inaccurate. Another prohibited act is including arrest records
20 that are more than seven years old in a consumer report. 15 U.S.C. § 1681c(a)(2). It would be
21 reasonable to assume that a violation of this section would result in a higher statutory damages
22 award than the conduct at issue here. (Kim Decl., ¶ 60.)

23 An estimate of the likely award is admittedly somewhat speculative. However, district court
24 decisions have indicated that the minimum of \$100 is the proper comparator in standalone
25 disclosure cases. *See, e.g., Lagos v. Leland Stanford Junior University* (N.D. Cal. 2017) 2017 WL
26 1113302 *4. As a district court explained:

27 A review of Plaintiffs’ claim indicates that, assuming success, the award
28 at trial would be around \$100. While the inclusion of the waiver and
disclaimer might have been inconsistent with the language of the stand-

1 alone disclosure requirement, it was arguably consistent with the purpose
2 of that provision. *See* Letter from Cynthia Lamb, Investigator, Div. of
3 Credit Practices, Fed. Trade Comm’n, to Richard Steer, Jones Hirsch
4 Connors & Bull, P.C. (Oct. 21, 1997), 1997 WL 33791227 (F.T.C.), 1
5 (“The reason for specifying a stand-alone disclosure was so that
6 consumers will not be distracted by additional information at the time the
7 disclosure is given.”). As for the possibility that applicants did not
8 understand the waiver (because it was included on the disclosure form),
9 there is no indication that Kelly has ever attempted to enforce that waiver.
10 As such, the violation of the FCRA asserted in this case is only technical
11 in nature, and so the Court would expect class members to receive around
12 \$100—or less—should they prevail at trial. *See Singleton v. Domino’s*
13 *Pizza, LLC*, 976 F. Supp. 2d 665, 680 (D. Md. 2013) (“[T]his case
14 involves allegations of technical FCRA violations, which creates the risk
15 that even if a jury awarded the minimum requisite statutory damages, i.e.,
16 \$100 to each of the individual class members, the court may find
17 remitter/reduction appropriate.”). *Hillson v. Kelly Servs.*, 2017 WL
18 279814 (E.D. Mich. 2017) (approving settlement where statutory
19 damages award ranged from \$14 to \$41 per class member).

20 In this case, Plaintiffs sought statutory damages under the FCRA, which
21 provides for damages between \$100 and \$1,000 if the Plaintiffs can prove
22 that violation of the statute was willful. 15 U.S.C. § 1681n(a)(1). To
23 obtain statutory damages for an FCRA violation, plaintiffs must meet a
24 very high standard of proof, and may even lose after a successful trial
25 verdict. *See Smith v. LexisNexis Screening Solutions, Inc.*, 837 F.3d 604,
26 611 (6th Cir. 2016) (reversing jury verdict, finding that the consumer
27 reporting agency’s conduct did not constitute a willful violation of the
28 FCRA); *Domonoske v. Bank of America, N.A.*, 790 F.Supp.2d 466, 476
W.D. Va. 2011) (“given the difficulties of proving willfulness or even
negligence with actual damages, there was a substantial risk of on
payment [for FCRA violations]”). The FCRA does not provide specific
guidance to courts as to the appropriate relief for a statutory violation.
However, to recover actual damages Plaintiffs would need to prove that
they suffered an actual injury; for example, that they lost job opportunities
or their employment was terminated as a result of Aerotek’s actions. The
settlement at issue provides for a common fund of \$15,000,000, and per
class member payments of between \$13-\$80. (Doc. 33, p. 12). In the
unopposed brief, Plaintiffs assert that given the breadth of violations, as
well as the size of the Class, it is “unlikely that Plaintiffs would achieve
an award of statutory damages which, on a per person basis, would
substantially exceed \$100.” *Moore v. Aerotek, Inc.* (S.D. Ohio 2017) 2017
WL 2838148.

Multiple district courts have approved FCRA standalone disclosure settlements where the
gross and net settlement amounts were comparable and even lower than here. *See, e.g., Rhom v.*
Thumbtack, nc. (N.D. Cal. 2017) 2017 WL 4642409 (granting final approval in a case involving a
claims-made, albeit non-reversionary, settlement where 66,676 class members shared in a \$225,000
settlement or a gross recovery of \$3.30 per class member); *Aceves v. Autozone Inc.* (C.D. Cal. Mar.

25, 2016) No. 5:14-cv-2032, ECF No. 41 (preliminary approval motion pending in settlement with gross recovery of \$20 per class member in the disclosure class); *In re Uber FCRA Litigation* (N.D. Cal. 2017) 2017 WL 2806698 (approved a settlement of \$7.5 million with 1,025,954 class members, or \$7.31 per class member); *Landrum v. Acadian Ambulance Serv., Inc.* (S.D. Tex. Nov. 5, 2015) No. 14-cv-1467, ECF No. 37 (approving disclosure settlement of \$10 per person); *Walker v. McClane/Midwest, Inc.*, No. 2:14-CV- 04315, ECF No. 26 (W.D. Mo. July 20, 2015) (granting preliminary approval of settlement in which disclosure class members will recover \$24); *Hillson v. Kelly Servs. Inc.*, No. 2:15-cv-10803, 2017 WL 3446596, at *3 (E.D. Mich. Aug. 11, 2017) (noting that gross recovery in other FCRA 1681b(b)(2) cases average about \$30 per class member). *Grice v. Pepsi Bevs., Co.*, No. 17-cv-08853-JPO (S.D.N.Y. Jan. 28, 2019) (final approval of settlement providing for a gross recovery of \$51.54 per class member); *Perez v. Performance Food Grp., Inc.*, No. 2:17-cv-07128-MWF-JPR (C.D. Cal. June 7, 2019) (final approval of settlement that paid each class member \$47); *Syed v. M-I, LLC*, No. 1:14- cv-00742 (E.D. Cal. Aug. 6, 2019) (final approval of class settlement that paid each class member \$46.84); *Ortiz v. Genco, Inc.*, No. 4:16-cv-04601-YGR (N.D. Cal. April 23, 2019) (final approval of class settlement where the FCRA portion paid each class member the net amount of \$39.70); *Dukes v. Air Canada*, No. 8:18-cv-2176-T-17JSS (M.D. Fla. Jan. 30, 2020) (final approval of settlement that paid each class member \$41.61); *Felix v. WM. Bolthouse Farms, Inc.*, No. 1:19-cv-00312-AWI-HLT (E.D. Cal. May 4, 2020) (final approval of settlement that estimated that each class member would receive \$37.38 per consumer report that was obtained); *Harake v. Trace Staffing Solutions, LLC*, No. 8:19-cv-00243-CEH-CPT (M.D. Fla. August 10, 2020) (final approval of settlement providing a net amount of \$33 to each class member); *Rossini v. PNC Fin. Servs. Grp., Inc.*, No. 18-cv-1370, 2020 U.S. Dist. LEXIS 113242 (W.D. Pa. June 26, 2020) (final approval of settlement that included a class of individuals that claimed a violation of § 1681b(b)(2) and that provided for a net payment of \$7.25 to each class member if all class members submitted claim forms, and \$72.49 assuming that around 10% of the class made claims). As noted above, if Plaintiff prevailed at trial, what a jury would award is speculative, particularly given that there is no history of jury verdicts in standalone disclosure cases to provide an empirical comparison. However, it would not be at all surprising if a jury decided to

1 award closer to the \$100 minimum than the maximum. In summary, Plaintiff believe that using
2 \$100 as the comparator is appropriate but, in any event, as shown above, this case is well within
3 the range of FCRA standalone disclosure claims approved by courts. (Kim Decl., ¶¶ 61-62.)

4 With regards to damages for the ICRAA, the plain language of the ICRAA makes clear that
5 statutory damages are not available in a class action. Cal. Civ. Code § 1786.50(a). (Kim Decl., ¶
6 63.)

7 Finally, based on the text of the ICRAA statute, Defendant would assert that class members
8 can elect to recover under the FCRA *or* ICRAA, but not under both. Cal. Civ. Code §1786.52(b).
9 For all these reasons, courts have noted in the context of reviewing proposed class action
10 settlements in similar cases that the potential recovery on state law background check claims is
11 “quite limited” action cases. *See, e.g., In re Uber FCRA Litigation* (N.D. Cal. June 29, 2017) 2017
12 WL 2806698, at *5 (granting preliminary approval). It should be noted that Class Members who
13 would prefer to seek individual statutory or actual damages on these claims rather than the payout
14 in the class settlement have the opportunity to opt out of the Settlement. (Kim Decl., ¶ 64.)

15 **F. The Risk, Expense, Complexity and Likely Duration of Any Litigation.**

16 Given the risks outlined above, the issues in this case were complex and the risk for
17 Plaintiff and Class Members associated with this litigation was significant. (Kim Decl., ¶¶ 57-60.)
18 A class trial would have required the retention of expensive expert witnesses, the accrual of
19 extensive litigation costs, and the parties would have had to spend a substantial amount of time
20 litigating this matter. (*Id.*)

21 Finally, given the complexity and unsettled nature of the issues, it is likely that any
22 outcome at trial would have resulted in a lengthy and costly appeal. An appeal would result in
23 further delay for Class Members who will have already waited considerable time for resolution in
24 this matter.

25 **G. The Risk of Maintaining Class Action Status Through Trial.**

26 In class actions, decertification is always a possibility. There is always a risk that a trial of
27 this magnitude can become unmanageable. (Kim Decl., ¶ 70.) Given cases like *Duran v. U.S.*
28 *Bank Nat. Assn.*, 59 Cal. 4th 1, 34 (2014) that deal with the complexity of using statistical

1 samples in class actions, decertification is a real risk that Class Counsel must take into account.

2 **H. The Amount Offered in Settlement.**

3 There can be no doubt that this Settlement is the result of vigorous, adversarial, non-
4 collusive, and arms-length negotiations between the parties with an experienced mediator. In
5 order to determine the approximate potential damages which would be owed to each of the Class
6 Members, Class Counsel analyzed the time records for Plaintiff and Defendant provided Class
7 Counsel with records for all Class Members for a period close to the date of the mediation. By
8 analyzing this information, Class Counsel was able to estimate the full value of the case if
9 Plaintiff were to prevail at trial. (Kim Decl., ¶¶ 15-19.)

10 There are approximately 838 total Class Members. Based on the data provided, Class
11 Counsel estimated Defendant's realistic maximum exposure on the primary claims in this case as
12 follows: unpaid wage claim **\$397,463.20**, meal period claim at **\$474,169.73**, rest period claim at
13 **\$392,458.27**, wage statement claim at **\$218,365.00**, waiting time penalties at **\$233,216.10**,
14 reimbursement of business expenses claim at **\$20,950.00**, and on PAGA at **\$155,725.00**, and on
15 FCRA at **\$83,800.00**, for a total maximum realistic exposure of **\$1,976,147.30**. (Kim Decl., ¶ 31.)

16 Courts regularly approve settlements where the recovery is less than one quarter of the
17 maximum potential realistic recovery. *E.g., Bravo v. Gale Triangle* (C.D. Cal. 2017) 2017 WL
18 708766 *9 (approving settlement where recovery was 7.5% of projected maximum recovery
19 amount); *Officers for Justice v. Civil Service Com'n of City & County of S.F.* (9th Cir. 1982) 688
20 F.2d 615, 628. Here, the Gross Settlement Amount of \$888,568.00 represents a recovery of
21 44.96% of the estimated maximum realistic exposure in this case, which Class Counsel submits is
22 an excellent result and easily meets or exceeds percentages routinely approved by courts. (Kim
23 Decl., ¶ 66.)

24 Once Class Counsel was able to determine the maximum potential damages, it was able to
25 determine a fair and reasonable settlement for the Class. (Kim Decl., at ¶¶ 32-66.) Class Counsel
26 analyzed the likelihood of success on the merits and believed that the Class had a reasonable
27 likelihood of success on the core claims. (*Id.*) However, Defendant disputes this contention,
28 denies all wrongdoing in this matter and are confident they have strong legal and factual defenses

1 to Plaintiff's claims. After taking into account the likelihood of success on each claim and the
2 challenges faced with certifying these claims, Class Counsel determined that the initial gross
3 settlement amount of \$880,000.00 was fair and reasonable. Class Counsel also included an
4 escalator clause which ultimately served to increase the gross settlement amount above this
5 figure. (Kim Decl., ¶ 20.)

6 Class Counsel has devoted a considerable amount of time to the prosecution of this case,
7 including but not limited to, interviewing Plaintiff on repeated occasions, drafting pleadings,
8 conducting discovery, and meeting and conferring with defense counsel about same; reviewing
9 and analyzing time records and various policies, Plaintiff's personnel file, and other
10 documentation; researching the law; preparing for and attending mediation; and negotiating and
11 finalizing the Settlement Agreement and related documents. (Kim Decl., ¶¶ 15-19.)

12 Class Counsel believes that the settlement is fair and reasonable and serves the best
13 interests of Class Members. (Kim Decl., ¶ 25.) Although the recommendations of counsel
14 proposing the class settlement are not conclusive, the Court can properly take the
15 recommendations into account, particularly if counsel has been involved in litigation for some
16 period of time, appear to be competent, and have experience with this type of litigation, and
17 significant discovery has been completed. *See Newberg*, §11.47.

18 **VII. THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE** 19 **CLASS MEMBERS.**

20 Constitutional due process requires that class members be provided with notice sufficient
21 to give them an opportunity to be heard in the proceedings. *Mullane v. Central Hanover Bank &*
22 *Trust Co.* (1950) 339 U.S. 306. Proper notice must provide the class members with sufficient
23 information to make an informed decision as to whether to accept or object to the settlement. (*Id.*
24 at 314.) The notice must apprise the class members of the pendency of the action; reasonably
25 convey information regarding the settlement and the class members' rights, entitlements, and
26 obligations; and afford class members the opportunity to present their objections. (*Id.*)

27 The Class Notice meets constitutional standards because it provides all the information a
28

1 reasonable person would need to make a fully informed decision about the Settlement. It will
2 notify all Class Members of the claims, the terms of the Settlement, of its effect on their rights, of
3 their options as Class Members (i.e., participate, object, opt out, do nothing), the consequences of
4 exercising those options, their anticipated distribution, the amount of fees and expenses being
5 requested by counsel, the amount of the incentive award to Plaintiff Ana Lemus, and the date and
6 place of the final approval hearing. (Kim Decl., ¶ 72.) Moreover, the Class Notice will
7 specifically direct any Class Members who have questions or concerns to contact the Settlement
8 Administrator or Class Counsel. (*Id.*) Counsel for both parties have agreed to the language in the
9 Class Notice, which is attached as Exhibit A to the Settlement Agreement. (*Id.*) There is no need
10 to provide the Class Notice in a language other than English because neither Plaintiff nor
11 Defendant have reason to believe that Class Members are not proficient in English. (*Id.*)

12 The standard for determining the adequacy of notice is whether the notice has “a
13 reasonable chance of reaching a substantial percentage of the class members.” (*Cartt v. Superior*
14 *Court* (1975) 50 Cal.App.3d 960, 974.) The Judicial Council of California’s Deskbook on the
15 Management of Complex Civil Litigation (Matthew Bender 2003), § 3.74 notes that individual
16 notice by mail is preferred when possible and dissemination of combined certification/settlement
17 notice is a common and accepted practice. (*In re Vitamin Cases* (2003) 107 Cal.App.4th 820,
18 828.)

19 Here, the Class Notice will be sent via first-class mail to each Class Member. (Kim Decl.,
20 ¶¶ 26, 71.) First-class mail is the best method to reach Class Members based on the nature of the
21 workforce and the fact that Class Members worked primarily from their homes. If any Class
22 Notices are returned undeliverable without a forwarding address, the Settlement Administrator
23 will use the national change of address database and perform a skip trace to locate the Class
24 Member and mail a new Class Notice to him or her at the correct address. (*Id.*) Thus, most, if not
25 all, Class Members will likely receive the Class Notice.

26 Pursuant to controlling authority, the proposed Class Notice and method of distribution
27 fully comport with due process requirements. Therefore, the Court should approve the Class
28 Notice and direct that it be distributed as proposed herein.

1
2 **VIII. THE STANDING TO OBJECT TO PROPOSED SETTLEMENT**

3 Non-settling parties and third parties periodically may attempt to object to proposed class
4 action settlements, but the right of non-settling parties to object at the final settlement approval
5 hearing, let alone the preliminary approval hearing, is quite limited. As a general rule, only class
6 members have standing to object to a proposed settlement. “Beginning from the unassailable
7 premise that settlements are to be encouraged, it follows that to routinely allow non-class
8 members to inject their concerns via objection at the settlement stage would tend to frustrate this
9 goal.” (*Gould v. Alleco, Inc.* (4th Cir. 1998) 883 F.2d 281, 284.) Since an application is being
10 filed to obtain a good faith determination, no persons other than class members have standing to
11 object to the proposed settlement. (*In re School Asbestos Litigation* (3rd Cir. 1990) 921 F.2d
12 1330.)

13 **IX. THE STIPULATED AWARD OF ATTORNEYS’ FEES AND COSTS IS**
14 **REASONABLE AND SHOULD BE APPROVED.**

15 Under the Settlement Agreement, subject to approval by this Court, Class Counsel will
16 seek an award of fees of no more than (\$310,998.80), 35% of the Gross Settlement Amount, and
17 actual reasonable litigation costs in an amount not to exceed Twenty-Five Thousand Dollars and
18 Zero Cents (\$25,000.00). (Kim Decl. ¶ 75.) The requested fees are fair compensation for a law
19 firm involved in undertaking complex, risky, expensive, and time-consuming litigation solely on
20 a contingent basis. (Kim Decl. ¶¶ 75-76.) Defendant will not oppose Class Counsel’s above fees
21 and cost request. (Kim Decl. ¶ 75.)

22 California courts routinely look to the federal courts on class action approvals. The Ninth
23 Circuit has recognized that an appropriate method for awarding attorneys’ fees in class actions is
24 to award a percentage of the “common fund” created as a result of the settlement. (*Vincent v.*
25 *Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) The purpose of the common
26 fund/percentage approach is to “spread litigation costs proportionally among all the beneficiaries
27 so that the active beneficiary does not bear the entire burden alone.” (*Id.*) Accordingly, courts
28 have discretion to choose either the percentage-of-the-fund method or the lodestar method. (*In re*

1 *Wash. Pub.Power Supply Sys. Sec. Litigation* (9th Cir. 1994) 19 F.3d 1291, 1295-96.)

2 Several courts have, however, expressed frustration with the “lodestar” approach for
3 deciding fee awards, which usually involves wading through voluminous time records. Thus, the
4 percentage approach can be preferable to the lodestar in certain situations because: (1) it aligns
5 the interests of class counsel and absent class members; (2) it encourages efficient resolution of
6 the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the
7 demands on judicial resources. (*In re Activision Securities Litigation*, (N.D. Cal. 1989) 723
8 F.Supp. 1373, 1378-79.) The Ninth Circuit has used the percentage of the common fund approach
9 to determine the award of attorneys’ fees. (*In re Pacific Enterprises Securities Litigation* (9th Cir.
10 1994) 47 F.3d 373, 378-79 (approving attorneys’ fee of 33 1/3% of settlement fund).)

11 Class Counsel’s application for attorneys’ fees in light of the facts and circumstances
12 surrounding this case is well within the range of reasonableness. Historically, courts have
13 awarded percentage fees in the range of 20% to 50% of the common fund, depending on the
14 circumstances of the case. (*Newberg*, at §14.03; *see also In re Activision Securities Litigation*,
15 723 F. Supp. at 1378.) *Newberg* further notes: “[A]chievement of a substantial recovery with
16 modest hours expended should not be penalized but should be rewarded for considerations of
17 time saved by superior services performed.” (*Id.* at §§ 14-10:14-11.)

18 The attorneys’ fees request provided for in the Settlement Agreement is commensurate
19 with judicial precedent. Both state and federal courts regularly approve fee awards equal to or
20 greater than the percentage requested in this case. (*See, e.g., In re Pacific Enterprises Securities*
21 *Litigation* (9th Cir. 1995) 47 F.3d 373, 379 (affirming an award equal to 33% of the common
22 fund); *In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375 (awarding
23 plaintiff’s counsel 32.8% of the common fund created to settle the litigation); *In re Ampicillin*
24 *Antitrust Litigation* (D. D.C. 1981) 526 F.Supp. 494 (awarding 45% of \$7.3 million settlement
25 fund); *Parker v. City of Los Angeles* (1974) 44 Cal.App.3d 556, 557-568 (affirming fee award to
26 counsel of one-third (1/3) of recovery achieved).)

27 In wage and hour class actions in particular, California trial courts have customarily
28 approved attorney’s fees consistent with or greater than the percentage of the common fund

1 requested in this case. (*See Evans v. Coca-Cola*, Los Angeles County Super. Ct. Case No. BC
2 220525 (Hon. Richard C. Hubbell) (Dec. 2001) (approving an award of attorneys' fees of at least
3 33-1/3% of the settlement); *see also Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Super.
4 Ct. Case No. BC 262247 (May 2005) (Hon. Anthony J. Mohr); *Moreno v. Miller Brewing*, Los
5 Angeles County Super.Ct. Case No.BC 278170 (April 2004) (Hon. David M. Minning); *Josiah*
6 *Eaton v. Adolph Coors Company* (2003) Orange County Super. Ct. Case No. 01CC00140 (Hon.
7 Stephen J. Sundvold); *Kimbell v. Abercrombie & Fitch Stores, Inc.*, Los Angeles County
8 Super.Ct. Case No.BC 277359 (Sept. 2006) (Hon. Kenneth R. Freeman); *Daum v. Claim Jumper*
9 *Restaurants*, Orange County Super.Ct. Case No.02CC10201 (2006) (Hon. Ronald L. Bauer).)

10 Here, Class Counsel has borne the entire risk and costs of litigation and will not receive
11 any compensation until recovery is obtained. (Kim Decl., ¶¶ 75-76.) The Court should also
12 consider the benefit obtained by Class Counsel on behalf of Class Members. Thus, the requested
13 award for Class Counsel is reasonable.

14 **X. THE CLASS REPRESENTATIVE ENHANCEMENT PAYMENT IS FAIR AND**
15 **REASONABLE**

16 It is appropriate to provide a relatively modest additional incentive payment to the class
17 representative. *See Newberg*, § 12.1; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901
18 F.Supp. 294.

19 Plaintiff is entitled to a reasonable service payment for their efforts and initiative in
20 bringing and helping to prosecute this class action. Plaintiff spent significant time better apprising
21 herself of her rights, deciding whether remedial action should be taken, how it should be taken,
22 searching for attorneys, and contacting Class Counsel, who spent many hours with Plaintiff
23 discussing the case and the law. (Kim Decl., ¶ 78.) In the end, Plaintiff decided to vindicate not
24 only her own rights but also those of her co-workers by filing a class action lawsuit. (*Id.*)

25 By suing Defendant and serving as the class representative in this case, Plaintiff contends
26 she increased her risk of retaliation by prospective employers and put her own future employment
27 prospects at risk. (Kim Decl., ¶ 78.) But Plaintiff did not allow her fear of the potential
28 repercussions of being a class representative deter her from acting for the benefit of Class

1 Members. (Kim Decl., ¶ 80.) To the contrary, Plaintiff has been intimately involved in this case
2 since its inception. (*Id.*) She has devoted a substantial amount of time to helping Class Counsel
3 effectively develop and prosecute this action at every stage of the litigation. (*Id.*) Both before and
4 after the filing of this lawsuit, Plaintiff conferred with Class Counsel to discuss every aspect of
5 this case; Plaintiff has provided Class Counsel with information about Defendant and about the
6 industry generally, reviewed documents, identified witnesses, consulted Class Counsel
7 throughout the litigation, participated in the mediation process, monitored the progress of the
8 litigation with Class Counsel, and reviewed and signed the Settlement Agreement. (*Id.*)

9 In sum, Plaintiff has diligently, adequately, and fairly represented the Class. (Kim Decl., ¶
10 81.) This sort of payment to a class representative has been a common feature of settlements
11 negotiated by Class Counsel and has been routinely approved by trial courts. (*Id.*) Although Class
12 Counsel appreciate that the Court has a duty to ensure that class representatives are not
13 overcompensated at the expense of the class, modest incentive awards in employment class
14 actions, such as the one here, are necessary not only to compensate class representatives for the
15 time they spend in the case, but also to encourage aggrieved employees to challenge questionable
16 employment practices notwithstanding the very real consequences they may face.

17 In light of the foregoing, Class Counsel believes that the incentive award in the amount of
18 \$5,000.00 to the Class Representative is fair and reasonable. (Kim Decl., ¶ 82.)

19 **XI. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY**
20 **APPROVAL**

21 Plaintiff respectfully requests that this Court, as part of the preliminary approval process,
22 grant the following relief and make the following orders:

23 1. Enter an order conditionally certifying the action as a class action for settlement
24 purposes only and preliminarily approving the proposed class action settlement and the
25 Settlement Agreement as fair, reasonable and adequate;

26 2. Approve the form and content of the Class Notice, attached to the Settlement
27 Agreement as Exhibit A;

28 3. Preliminarily approve and appoint Plaintiff as Class Representative for settlement

1 purposes only;

2 4. Preliminarily approve and appoint Emil Davtyan, David Yeremian, Alvin Lindsay,
3 Enoch Kim, and Antonia McKee of D.Law, Inc., to serve as Class Counsel for settlement
4 purposes only;

5 5. Approve and appoint Apex Class Action Administration as the Settlement
6 Administrator to handle the notice and claims procedures as set forth in the Settlement
7 Agreement;

8 6. Approve the proposed settlement's allocation of funds to claims made under PAGA;

9 7. Order that Apex Class Action Administration mail the Class Notices to Class Members
10 in accordance with the terms of the Settlement Agreement; and

11 8. Set a date for the Final Approval Hearing.

12
13 Dated: May 1, 2025

Respectfully submitted,

14 D.LAW, INC.

15
16 By /s/ Enoch J. Kim

17 Enoch Kim
18 Antonia McKee
19 Attorneys for Plaintiff on behalf of
20 herself and others similarly situated
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