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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

SITARA NAYABKHIL, individually, and on behalf of other members of the general public similarly situated,

Plaintiffs,

vs.

SAN FRANCISCO SPCA, dba, SFSPCA, a California 501(c)(3) non-profit organization; DOES 1 through 25, inclusive,

Defendants.

Case No.: CGC-23-609950

Assigned for All Purposes to the Honorable Andrew Y.S. Cheng, Dept. 613

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

Date:	October 2, 2024
Time:	9:30 a.m.
Dept.:	613
Complaint Filed:	October 24, 2023
FAC Filed:	December 22, 2023
Trial Date:	Not Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on **October 2, 2024** at **9:30 a.m**. in **Department 613** of the above-captioned Court located at 400 McAllister Street, San Francisco, California 94102 pursuant to California Code of Civil Procedure section 382 and Rule 3.769 of the California Rules of Court, Plaintiff Sitara Nayabkhil ("Plaintiff") will and hereby does move the Court for an Order granting preliminary approval of the proposed class action and PAGA settlement between Plaintiff and Defendant The San Francisco Society for the Prevention of Cruelty of Animals dba San Francisco SPCA ("Defendant").

Plaintiff requests that the Court enter an Order:

1. Preliminarily approving the Joint Stipulation of Class Action and PAGA Settlement ("Settlement" or "Settlement Agreement") attached as <u>Exhibit 3</u> to the Declaration of Karen I. Gold in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement ("Gold Decl.");

2. Certifying the Class for Settlement purposes;

3. Appointing Plaintiff Sitara Nayabkhil as the Class Representative for Settlement purposes;

4. Appointing Jonathan M. Genish, Karen I. Gold, Ashley H. Cruz, and Marissa A. Mayhood of Blackstone Law, APC as Class Counsel for Settlement purposes;

5. Approving the proposed Notice of Class Action Settlement ("Class Notice"), attached as <u>Exhibit A</u> 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;

7. For each Class Member, directing Defendant to furnish their full name, last known mailing address, Social Security number, dates worked during the Class Period, and such other information as is necessary for the Settlement Administrator to calculate Workweeks and Pay Periods (if applicable) to the Settlement Administrator within twenty-one (21) calendar days after entry of the order granting preliminary approval of the Settlement;

8. Approving the proposed deadlines for the settlement administration process; and

9. Setting a Final Approval Hearing.

Pursuant to California Labor Code section 2699(1)(2), on August 28, 2024, a copy of the Settlement was submitted to the California Labor and Workforce Development Agency ("LWDA") via online submission through the LWDA's website. Gold Decl., ¶ 57, Exh. 4.

This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the Declaration of Karen I. Gold, the Declaration of Plaintiff Sitara Nayabkhil, the Declaration of Lisa Mullins (ILYM Group, Inc.), the pleadings and other records on file with the Court in this matter, and any other further evidence or argument that the Court may properly receive at or before the hearing.

Respectfully submitted,

Dated: September 9, 2024

BLACKSTONE LAW, APC

By: ______________________________
Jonathan M. Genish
Karen I. Gold
Ashley H. Cruz
Marissa A. Mayhood

Attorneys for Plaintiff SITARA NAYABKHIL, individually, and on behalf of other members of the general public similarly situated and aggrieved employees pursuant to the California Private Attorneys General Act

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Sitara Nayabkhil ("Plaintiff") seeks preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement ("Settlement" or "Settlement Agreement") entered into between Plaintiff and Defendant The San Francisco Society for the Prevention of Cruelty to Animals dba San Francisco SPCA ("Defendant") (together, with Plaintiff, the "Parties"). Declaration of Karen I. Gold in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement ("Gold Decl."), Ex. 3. The Settlement terms are outlined as follows:

- Class Size: Approximately 530 individuals.
- Gross Settlement Amount: One Million Nine Hundred Fifty Thousand Dollars and Zero Cents ($1,950,000.00).
- Attorneys' Fees and Costs: Attorneys' fees of thirty-three and one-third percent (33 1/3%) of the Gross Settlement Amount ($650,000.00 if the Gross Settlement Amount is $1,950,000.00) plus actual litigation costs and expenses not to exceed Twenty Thousand Dollars and Zero Cents ($20,000.00), to be paid from the Gross Settlement Amount.
- Enhancement Payment: Seven Thousand Five Hundred Dollars and Zero Cents ($7,500.00) to Plaintiff Sitara Nayabkhil, to be paid from the Gross Settlement Amount.
- Settlement Administration Costs: Not to exceed Eleven Thousand Dollars and Zero Cents ($11,000.00), to be paid from the Gross Settlement Amount.
- PAGA Amount: Ninety-Seven Thousand Five Hundred Dollars and Zero Cents ($97,500.00) from the Gross Settlement Amount, 75% of which will be paid to the Labor and Workforce Development Agency ("LWDA") and the remaining 25% to be paid to the PAGA Employees.
- Estimated Net Settlement Amount: One Million One Hundred Sixty-Four Thousand Dollars and Zero Cents ($1,164,000.00) to be distributed to Settlement Class 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. Plaintiff therefore respectfully requests that the Court grant preliminary approval of the Settlement, conditionally certify the Class, approve the proposed Notice of Class Action Settlement ("Class Notice"), and set a hearing date for final settlement approval, among other requested relief.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant is a non-profit animal welfare organization in San Francisco that offers dogs and cats for adoption as well as veterinary care. Plaintiff was employed by Defendant as an hourly-paid, non-exempt employee from approximately June 2019 to approximately October 2022. Declaration of Plaintiff Sitara Nayabkhil in Support of Motion for Preliminary Approval of Class Action and PAGA Settlement ("Nayabkhil Decl."), ¶ 2. Plaintiff held various positions at Defendant, with her most recent title being Inpatient Services Coordinator. *Id.*

On August 7, 2023, Plaintiff provided written notice to the LWDA and to Defendant, pursuant to California Labor Code Section 2699.3, of the specific provisions of the California Labor Code alleged to have been violated by Defendant ("Original PAGA Letter"). Gold Decl., ¶ 10, Exh. 1.

On September 7, 2023, Defendant sent a letter to the LWDA and to Plaintiff's counsel contending that Defendant cured one of the several violations listed in the Original PAGA Letter. Gold Decl., ¶ 11. Specifically, Defendant contended that it revised all employees' wage statements from August 7, 2019 to present to include Defendant's registered fictitious business name on the wage statements and provided employees access to their revised wage statements. *Id.*

On September 8, 2023, Plaintiff sent a letter to the LWDA contending that Defendant's action in revising its employees' wage statements failed to fully cure the alleged violation of California Labor Code section 226(a), as Defendant still failed to accurately record and pay all hours worked by the aggrieved employees, rendering the wage statements non-compliant. Gold Decl., ¶ 12.

On September 20, 2023, the LWDA sent Plaintiff's counsel and Defendant's counsel a letter entitled "Decision on Cure Dispute." Gold Decl., ¶ 13. The letter advised of the LWDA's decision that Defendant cured the "alleged violations of Labor Code section 226, subdivision (a)(8)" which mandates that a wage statement include the name and address of the legal entity that is the employer. *Id.* The letter further stated: "The LWDA takes no position on the merits of any other alleged violation." *Id.*

On October 18, 2023, Plaintiff provided a supplemental written notice ("Supplemental PAGA Letter") to the LWDA and to Defendant regarding Defendant's alleged failure to pay out vested and unused vacation pay to employees at their final rate of pay upon employees' resignation or termination.

Gold Decl., ¶ 14, Exh. 2. Together, the Original PAGA Letter and Supplemental PAGA Letter are referred to as the "PAGA Letter". Gold Decl., ¶ 14; Settlement Agreement, ¶ 1.

On October 24, 2023, Plaintiff filed a Class & Collective Action Complaint in the action entitled *Sitara Nayabkhil v. San Francisco SPCA, dba, SFSPCA*, San Francisco County Superior Court, Case No. CGC-23-609950 ("Action"), thereby commencing a putative class and PAGA action against Defendant. Gold Decl., ¶ 15.

On December 22, 2023, Plaintiff Filed a First Amended Class & Collective Action Complaint ("Operative Complaint") in the Action against Defendant to add a cause of action for unpaid vacation time. Gold Decl., ¶ 16. The Operative Complaint alleges thirteen (13) causes of action for: (1) Violation of 29 U.S.C. §§ 2101, *et seq*. (Federal WARN Act); (2) Violation of Cal. Labor Code §§ 1400, *et seq*. (California WARN Act); (3) Violation of Cal. Labor Code §§ 510 and 1198 (Unpaid Overtime Wages); (4) Violation of Cal. Labor Code §§ 1194, 1197, and 11971. (Unpaid Minimum Wages); (5) Violation of Cal. Labor Code §§ 226.7 and 512(a) (Meal Break Violations); (6) Violation of Cal. Labor Code § 226.7 (Rest Break Violations); (7) Violation of Cal. Labor Code §§ 204 and 210 (Wages Not Timely Paid); (8) Violation of Cal. Labor Code § 226(a) (Wage Statement Violations); (9) Violation of Cal. Labor Code §§ 201, 202, and 203 (Final Wages Not Timely Paid); (10) Violation of Cal. Labor Code § 227.3 (Unpaid Vacation Time); (11) Violation of Cal. Labor Code §§ 2800 and 2802 (Failure to Reimburse Expenses); (12) Violation of Cal. Business and Professions Code §§ 17200 *et seq*. (Unfair and Unlawful Business Practices); and (13) Violation of Cal. Labor Code §§ 2698 *et seq*. ("Private Attorneys General Act"). *Id.*

On April 9, 2024, the Parties participated in a mediation conducted by Jeffrey A. Ross, Esq. ("Mediator"), a neutral and well-respected mediator with extensive experience in complex wage and hour matters. Gold Decl., ¶ 17. After a full day of mediation, and with the help of the Mediator, the Parties were able to reach an agreement to resolve this dispute on a class and PAGA basis. *Id*.

On June 27, 2024, the Parties executed the Settlement Agreement. Gold Decl., ¶ 18, Exh. 3.

III. THE SETTLEMENT TERMS

A. Class Definition

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 Defendant in the State of

California at any time during the Class Period" ("Class Members" or "Class"). Gold Decl., ¶ 19; Settlement Agreement, ¶ 6(b). The Class Period is defined as the period from October 24, 2019 through June 16, 2024. Gold Decl., ¶ 19; Settlement Agreement, ¶ 6(f). Based on information provided by Defendant, it is estimated that there are a total of five hundred and thirty (530) Class Members. Gold Decl., ¶ 19; Settlement Agreement, ¶ 13.

B. Amount of Settlement

The Parties have agreed to settle the class and PAGA claims at issue in the Operative Complaint, with the exception of the first and second causes of action (WARN Act claims), for a non-reversionary Gross Settlement Amount of One Million Nine Hundred Fifty Thousand Dollars and Zero Cents ($1,950,000.00), exclusive of employer-side payroll taxes. Gold Decl., ¶ 20; Settlement Agreement, ¶ 6(q).

C. Allocation and Funding of the Gross Settlement Amount

The Gross Settlement Amount is a common fund and therefore includes all requested costs, fees, and other allocations. Gold Decl., ¶ 20; Settlement Agreement, ¶ 6(q). The Gross Settlement Amount includes: (1) Class Counsel's fees in the amount of thirty-three and one-third percent (33 1/3%) of the Gross Settlement Amount (i.e., $650,000.00 if the Gross Settlement Amount is $1,950,000.00); (2) Class Counsel's actual litigation costs and expenses, not to exceed Twenty Thousand Dollars and Zero Cents ($20,000.00); (3) Settlement Administration Costs, not to exceed Eleven Dollars and Zero Cents ($11,000.00); (4) Enhancement Payment in the amount of Seven Thousand Five Hundred Dollars and Zero Cents ($7,500.00); and (5) PAGA Amount in the amount of Ninety-Seven Thousand Five Hundred Dollars and Zero Cents ($97,500.00). Gold Decl., ¶ 20; Settlement Agreement, ¶¶ 6(q), 9, 10, 11, and 12. After the above-estimated amounts are deducted from the Gross Settlement Amount, the Net Settlement Amount that will be available for Class Members is currently estimated to be One Million One Hundred Sixty-Four Thousand Dollars and Zero Cents ($1,164,000.00). Gold Decl., ¶ 20; Settlement Agreement, ¶ 6(v). Additionally, 25% of the PAGA Amount ("PAGA Employee Amount"), which is $24,375.00 out of $97,500.00, will be fully distributed to all current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the PAGA Period ("PAGA Employees"). Gold Decl., ¶ 20; Settlement Agreement, ¶¶ 6(x) and 11. The "PAGA

Period" is defined as the period from August 7, 2022 through June 16, 2024. Gold Decl., ¶ 20; Settlement Agreement, ¶ 6(aa).

Based on information from Defendant, it is estimated that the Class Members worked a total of 45,028 Workweeks during the period during the Class Period. Gold Decl., ¶ 21; Settlement Agreement, ¶ 13. If it is determined by the Settlement Administrator that the total number of Workweeks worked by the Class Members during the Class Period actually exceeds 45,028 by more than 20% (i.e., by more than 54,034 Workweeks), then Defendant shall, at its option, either (1) increase the Gross Settlement Amount on a *pro rata* basis equal to the percentage increase in the number of Workweeks worked by the Class Members above 20%; or (b) cut off the Class Period and PAGA Period as of the date that 54,034 Workweeks is reached. For example, if the number of Workweeks increases by 21% to 54,484 Workweeks, then Defendant may choose to either (a) increase the Gross Settlement Amount by 1%; or (b) cut off the Class Period and PAGA Period as of the date that 54,034 Workweeks is reached. Gold Decl., ¶ 21; Settlement Agreement, ¶ 13.

The Net Settlement Amount will be distributed and paid to all Class Members who do not submit a timely and valid Request for Exclusion ("Settlement Class Members") on a *pro rata* basis based on the number of weeks each Class Member worked for Defendant as an hourly-paid and/or non-exempt employee in California during the Class Period ("Workweeks"). Gold Decl., ¶ 22; Settlement Agreement, ¶¶ 6(mm) and 6(nn). The *pro rata* share of the Net Settlement Amount that a Class Member may be eligible to receive under the Class Settlement ("Individual Settlement Share") will be calculated by the Settlement Administrator, in accordance with the Settlement Agreement. Gold Decl., ¶ 22; Settlement Agreement, ¶¶ 6(t) and 14.

The PAGA Employee Amount will be distributed and paid to all PAGA Employees on a *pro rata* basis based on the number of pay periods each PAGA Employee worked for Defendant as an hourly-paid and/or non-exempt employee in California during the PAGA Period ("Pay Periods"). Gold Decl., ¶ 23; Settlement Agreement, ¶¶ 6(z), 6(cc), and 11. The *pro rata* share of the PAGA Employee Amount that a PAGA Employee may be eligible to receive under the PAGA Settlement ("Individual PAGA Payment") will be calculated by the Settlement Administrator, in accordance with the Settlement Agreement. Gold Decl., ¶ 23; Settlement Agreement, ¶¶ 6(r) and 15.

Each Individual Settlement Share will be allocated as twenty percent (20%) wages and eighty percent (80%) penalties, interest, and non-wage damages. Gold Decl., ¶ 24; Settlement Agreement, ¶ 16. The portion allocated to wages will be reported on an IRS Form W-2 and the portions allocated to penalties, interest, and non-wage damages will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator. Gold Decl., ¶ 24; Settlement Agreement, ¶ 16. The Settlement Administrator will withhold the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their net payment of their Individual Settlement Share ("Individual Settlement Payment"). Gold Decl., ¶ 24; Settlement Agreement, ¶¶ 6(s) and 16. The employer's share of taxes and contributions in connection with the wages portion of Individual Settlement Shares will be paid by Defendant separately and in addition to the Gross Settlement Amount. Gold Decl., ¶ 24; Settlement Agreement, ¶¶ 6(l), 6(q), and 16. Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator. Gold Decl., ¶ 24; Settlement Agreement, ¶ 16.

The Settlement Agreement is a non-reversionary and non-claims made settlement. Gold Decl., ¶ 25; Settlement Agreement, ¶¶ 6(q) and 34. The Net Settlement Amount will be fully distributed to Settlement Class Members and the PAGA Amount will be fully distributed to the LWDA and PAGA Employees, in accordance with the Settlement Agreement. Gold Decl., ¶ 25; Settlement Agreement, ¶¶ 14 and 15. No money will revert to Defendant. Gold Decl., ¶ 25; Settlement Agreement, ¶ 6(q).

Each Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall be canceled. Gold Decl., ¶ 26; Settlement Agreement, ¶ 34. Any funds associated with such canceled checks will be distributed by the Settlement Administrator to the State of California's Unclaimed Property Division in the name of the Settlement Class Member and/or PAGA Employee. Gold Decl., ¶ 26 Settlement Agreement, ¶ 34.

D. Released Claims

Upon the Effective Date and the full funding of the Gross Settlement Amount, Plaintiff and all Settlement Class Members will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Class Claims. Settlement Agreement, ¶¶ 6(k) and 35.

Upon the Effective Date and the full funding of the Gross Settlement Amount, Plaintiff, the State of California with respect to all PAGA Employees, and all PAGA Employees will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released PAGA Claims. Settlement Agreement, ¶¶ 6(k) and 36.

"Released Class Claims" means any and all claims and damages which were alleged or which could have been alleged based on the factual allegations in the Operative Complaint, arising during the Class Period, including claims for Defendant's alleged failure to pay overtime and minimum wages, failure to provide meal and rest periods and associated premiums, failure to pay paid sick leave, failure to timely pay wages during employment, failure to provide accurate wage statements, failure to timely pay final wages, failure to pay vacation pay, and failure to reimburse necessary business-related expenses, in violation of California Labor Code Sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare Commission Wage Order(s), and for violations of the California Business and Professions Code sections 17200, *et seq*. based on the aforementioned California Labor Code violations. Settlement Agreement, ¶ 6(ff). The Released Class Claims specifically excludes any and all claims and damages for violations of U.S.C. Sections 2101, *et seq*. (Federal WARN Act) and California Labor Code Sections 1400, *et seq*. (California WARN Act), as Plaintiff has agreed to dismiss these claims without prejudice. *Id.*

"Released PAGA Claims" means any and all claims arising from any of the factual allegations in the PAGA Letter and/or Operative Complaint, arising during the PAGA Period, for civil penalties under the Private Attorneys General Act of 2004, California Labor Code Sections 2698 *et seq*., including for Defendant's alleged failure to pay overtime and minimum wages, failure to provide meal and rest periods and associated premiums, failure to pay paid sick leave, failure to timely pay wages during employment, failure to provide accurate wage statements, failure to timely pay final wages, failure to pay vacation pay, failure to maintain complete and accurate payroll records, and failure to reimburse necessary business-related expenses, in violation of California Labor Code Sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare

Commission Wage Order(s). Settlement Agreement, ¶ 6(gg). The Released PAGA Claims specifically excludes any and all claims for violations of U.S.C. Sections 2101, *et seq*. (Federal WARN Act) and California Labor Code Sections 1400, *et seq*. (California WARN Act), as Plaintiff has agreed to dismiss these claims without prejudice. *Id.*

"Released Parties" means Defendant and its current and former officers, directors, members, insurers, shareholders, subsidiaries, affiliates, predecessors, successors, and assigns. Settlement Agreement, ¶ 6 (hh).

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. *Id.*

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

V. THE SETTLEMENT IS PRESUMED FAIR

A. The Settlement Was Reached as a Result of Arm's-Length Bargaining

California courts recognize that "a presumption of fairness exists where . . . [a] settlement is reached through arm's-length bargaining." *Wershba*, 91 Cal.App.4th at 245; *see also Clark v. Am. Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009). Here, the Parties' settlement negotiations were at all times made at arm's-length and were adversarial. Gold Decl., ¶ 27. The Settlement was reached after completing a full day of mediation with a highly respected mediator with substantial experience mediating wage and hour cases, and Plaintiff engaged in additional negotiations in order to finalize the long-form agreement presently before the Court. *Id*.

B. Sufficient Investigation and Discovery by Experienced Class Counsel

Courts typically assess the status of discovery in determining whether a class action settlement agreement is fair, reasonable, and adequate. *Dunk*, 48 Cal.App.4th at 1801. Prior to mediation, Defendant produced putative class members' time and pay data, as well as Defendant's employee handbook, relevant wage and hour policies, and information on the total number of putative class members, the total number of former employees, the total number of hours worked by the putative class members, the total number of shifts worked by the putative class members, and the average rate of pay for the putative class members. Gold Decl., ¶ 28.

This allowed Plaintiff's counsel to conduct an informed assessment and analysis of the strengths and weaknesses of the claims and the potential class-wide damages. Gold Decl., ¶ 29. Based on information exchanged, the Parties extensively briefed issues regarding class certification and liability and provided their analyses to the Mediator who helped the Parties debate the strengths and weakness of their respective positions. Gold Decl., ¶ 30. Additionally, settlement negotiations were conducted by highly capable and experienced counsel. Gold Decl., ¶¶ 2-9 and 53. Accordingly, Class Counsel had sufficient information and experience to act intelligently in negotiating the Settlement.

C. The Settlement is Fair and Reasonable in Light of the Parties' Respective Legal Positions and Recovery Risks

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

Here, the reasonableness of the Settlement is underscored by the fact that Defendant has legal and factual grounds for defending the Action. Based upon Class Counsel's experience litigating similar complex matters, Plaintiff reasonably expected a vigorous and lengthy defense to both class certification and the merits of the Action absent a settlement. Gold Decl., ¶¶ 32-33.

1. Class Counsel's Analysis of the Maximum Available Liability and Damages

Class Counsel hired an expert consultant, who assisted Class Counsel in analyzing all available data and estimated Defendant's maximum potential exposure to be approximately $10,068,268, assuming the litigation was successful at trial on all claims at issue and every employee had a violation for each claim on every shift worked, and then reduced this exposure analysis based on the challenges facing the likelihood of obtaining class certification, prevailing at trial, and other attendant risks. *Id.*, ¶ 31. This estimate is based off an estimated maximum liability for all claims at issue and the total aggregate workweeks during the relevant time period, less interest, and based on the analysis of the data which was extrapolated out for all putative class members across the entire putative class period, which included: $1,608,850 for meal period violations less meal period premiums paid; $3,303,887 for rest period violations; $1,296,486 for unpaid off-the-clock work; $24,154 for unpaid overtime wages at the required regular rate of pay; $1,419,588 for unpaid overtime wages for invalid alternative workweek schedules; $13,121 for unpaid meal break premiums and sick pay at the required regular rate of pay; $277,320 for unreimbursed business expenses; $1,563,412 for waiting time penalties; and $561,450 in wage statement penalties. Gold Decl., ¶ 31. Plaintiff further estimated that Defendant faced an additional exposure of $661,400 in potential, non-stacked (i.e., one penalty, per employee, per pay period during the PAGA statutory period) PAGA penalties. *Id*. Together with the PAGA penalties, Defendant's maximum potential exposure totaled $10,729,668 in damages. *Id*.

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

While Plaintiff believes that Defendant faced significant exposure, substantial barriers to a recovery existed. Defendant contended that Plaintiff's claims are not suitable for class certification because individual issues and affirmative defenses would predominate should this case go to trial. Gold Decl., ¶ 34; *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 Plaintiff and Class Counsel disagree with Defendant's predictions, they also recognize that there is a significant risk that the Court may deny class certification. Gold Decl., ¶ 34.

i. Meal Periods

Plaintiff's meal period claims assert that Defendant failed to provide lawful meal periods. Plaintiff's theory of liability for meal period violations was based on allegations that Defendant's practices failed to allow Class Members to take meal breaks in the manner required under California law. Gold Decl., ¶ 35; *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."). Plaintiff's analysis of the time data revealed that in 32.7% of all shifts there was at least one unique meal period violation. Gold Decl., ¶ 35.

Defendant contended that its policies and practices at all times during the Class Period were lawful. Gold Decl., ¶ 36. Additionally, Defendant claimed that Plaintiff's estimated meal break violations may be inflated because some Class Members signed a meal period waiver during their on-boarding. *Id*. Defendant 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. *Id*. Additionally, the records showed that Defendant had paid meal premiums for 34% of the recorded meal break violations. *Id*.

ii. *Rest Periods*

Plaintiff argued that Defendant failed to schedule, permit, or authorize compliant rest periods. *Id*., ¶ 37. Plaintiff alleged that Plaintiff and other Class Members were unable to take their rest breaks because of their heavy workloads and the lack of adequate relief staff. *Id*. Plaintiff reported that she was unable to take a rest break on a near-daily basis. *Id.* Further, for the instances in which Class Members were able to take rest breaks, they were frequently interrupted or cut short. *Id*. Plaintiff's damages analysis on this claim was based on an alleged 100% violation rate. *Id*.

As with the meal period allegations, Defendant contended that it had a lawful written rest period policy, provided compliant rest breaks, and relieved Class Members of all duties as required under California law. *Id*., ¶ 38. Defendant also contended that given the lack of records demonstrating rest period violations, there were legitimate concerns in certifying these claims. *Id*.

iii. Off-The-Clock Work

Plaintiff minimum and overtime wages claims were largely based on unrecorded, off-the-clock work performed by the Class Members both between shifts and during purported meal periods. *Id*., ¶ 39. For example, Plaintiff alleged that she was required to respond to work-related calls and messages while clocked out. *Id*. Defendant contended that the individualized nature of why this work was performed and the individualized nature of damages presented substantial concerns regarding the manageability of the case and the risk the Court could find these issues prevented certification. *Id*. The estimated damages for this claim were based on an assumption that all Class Members worked off the clock for at least one hour per week. *Id*.

iv. Unpaid Overtime

Plaintiff's overtime wage claim was also based on unpaid overtime in connection with schedules of four days per week, ten hours per day (a "4/10" schedule) worked by Class Members without a valid alternative workweek schedule in place. Gold Decl., ¶ 40. It appeared from Defendant's company policy that some portion of the Class was covered by an alternative workweek schedule, but details surrounding the adoption and scope of the alternative workweek schedule were unclear to Plaintiff. *Id.* Defendant contended that all Class Members who worked a 4/10 schedule did so under a proper alternative workweek schedule. *Id.*

v. Regular Rate

Plaintiff's unpaid wage claims were also based on Defendant having failed to factor all forms of non-discretionary compensation into the regular rate of pay for the purpose of paying overtime compensation, meal and rest break penalties, sick pay, and vacation time pay. *Id.*, ¶ 41. For instance, swing shift differentials, overnight differentials, dental differentials, bilingual differentials, and referral bonuses were not properly included in the regular rate of pay. *Id.* Defendant contended that the individualized nature of these damages presented substantial concerns regarding the manageability of the case and the risk the Court could find these issues prevented certification. *Id.*

vi. Unreimbursed Business Expenses

Plaintiff alleged that Defendant failed to reimburse necessary business expenses, including for use of personal cell phones and electronic devices, the upkeep and maintenance of uniforms, and the purchase of home computer setups so that they could perform their job functions. *Id.*, ¶ 42. Defendant contended that these expenses were not common to all Class Members and that the cost of uniform upkeep was not a reimbursable expense. *Id.* Defendant further contended that it had policies and practices of reimbursing employees for necessary business expenses. *Id.*

vii. Unpaid Vacation Time

Plaintiff's unpaid vacation time claims were based on Defendant having failed to provide Plaintiff and class members with compensation at their final rate of pay for unused vested paid vacation days pursuant to Labor Code Section 227.3. Defendant provided Plaintiff with a copy of its PTO policy, which provides that Defendant pays out all accrued and unused PTO upon the end of employment, and a sample of records that contained evidence of payment of accrued and unused PTO. Defendant contended that any alleged damages were not common to all class members, and the individualized nature of these alleged damages presented substantial concerns regarding the manageability of the case and the risk the Court could find these issues prevented certification.

viii. WARN Act Claims

Defendant declined to provide data regarding Plaintiff's WARN Act claims, contending that no layoff event triggered the federal or California WARN Acts. *Id.*, ¶ 43. As such, these claims were excluded from the Settlement Agreement. *Id.* Additionally, Plaintiff has agreed to dismiss the federal and California Warn Act claims alleged in the Operative Complaint without prejudice upon final approval of the Settlement. Gold Decl., ¶ 43; Settlement Agreement, ¶ 41.

ix. Derivative Claims

As with all derivative claims, success depends on the success of the underlying claims. Gold Decl., ¶ 44. Here, Plaintiff's claims for inaccurate wage statements and failure to pay all wages due upon termination would only succeed if the underlying claims for failure to pay wages for off-the-clock work, failure to pay overtime, failure to pay vacation time pay, and failure to pay premiums for all meal and rest periods not lawfully provided were successful. *Id.* Therefore, these claims were subject to the same risks of failure as discussed above. *Id.* Also, even if Plaintiff prevailed on her underlying claims, she would still be required to demonstrate that Defendant's violations of California Labor Code section 203 were *willful* violations. Gold Decl., ¶ 44; *See, e.g.*, *Choate v. Celite Corp.*, 215 Cal App. 4th 1460, 1468 (2013) (holding that "an employer's reasonable, good faith belief that wages are not owed may negate a finding of willfulness"). Wage statement claims have also seen varying treatment at the appellate level because such claims have an element of discretion attached to them rather than a pure calculation of damages after liability is proven. Gold Decl. ¶ 44; *Jaimez v. DAIOHS USA, Inc.*, 181 Cal.App.4th 1286 (2010) *with Price v. Starbucks Corp.*, 192 Cal.App.4th 1136 (2011). Accordingly, these derivative claims, which comprised a substantial portion of Defendant's estimated liability, were therefore uncertain. Gold Decl. ¶ 44.

Class Counsel also recognized that, even if Plaintiff prevailed at class certification, proving the amount of wages due to Class Members would be an expensive, time-consuming, and uncertain proposition. *Id.*, ¶ 45. In order to prove liability and damages, Class Counsel will need to request and analyze thousands of pages of documents, obtain the Class Members' contact information, contact them, and obtain their declarations at great expense. *Id.* Obtaining the cooperation of current employees would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a current employer. *Id.* On the other hand, Defendant would likely be able to obtain the cooperation of its employees. *Id.* Moreover, even if Plaintiff prevailed at class certification and trial, possible appeals would substantially delay any recovery by the Class. *Id.*

Therefore, taking into account how each of the above risks potentially affected Plaintiff's ability to obtain class certification, then prove the underlying violations, and the cost and delay in recovering the alleged potential damages, Class Counsel discounted Defendant's estimated liability by 60% to $4,291,867. Gold Decl., ¶ 46. The merits-based risk factors further reduced Defendant's estimated liability by an additional 45%. *Id.* This resulted in an adjusted estimated liability of $2,360,527. *Id*. In light thereof, the settlement amount of $1,950,000.00 is a significant settlement. *Id.*

Class Counsel also contemplated the risks of proceeding with the PAGA claims and potential liability Defendant could face from these claims as part of the global resolution. *Id*., ¶ 47. Existing case law makes PAGA claims subject to the same defenses and risks as Plaintiff's underlying wage claims. Gold Decl., ¶ 47; see, *Elliot v. Spherion Pac. Work, LLC*, 572 F.Supp.2d 1169, 1181-82 (C.D. Cal. 2008) ("Plaintiff's claim under [PAGA] is wholly dependent upon her other claims. Because all of Plaintiff's other claims fail as a matter of law, so does her PAGA claim"). Class Counsel anticipated that even if successful on the merits at trial, the imposition of cumulative civil penalties based on the alleged wage and hour violations could be considered unjust, arbitrary and oppressive, or confiscatory, and that Defendant would argue that it made a good faith attempt to comply with its legal obligations warranting a reduction in penalties. Gold Decl., ¶ 47. Class Counsel also anticipated Defendant would argue that the violations per pay period were low, warranting an additional reduction in civil penalties. *Id*. Finally, Class Counsel was also mindful of the fact that PAGA is fundamentally not intended to be compensatory in nature, but is instead intended to facilitate enforcement of California's labor laws by financing state activities and educating and deterring non-compliance. *Id*.

Therefore, after considering this multitude of factors, Class Counsel concluded that it was in the best interest of the State of California and the PAGA Employees to enter into the Settlement, and to allocate Ninety-Seven Thousand Five Hundred Dollars and Zero Cents ($97,500.00) of the Gross Settlement Amount towards the PAGA claims, which represents approximately 5% of the Gross Settlement Amount. *Id*., ¶ 48. This percentage of the settlement is well within the range of wage and hour settlements regularly approved in both state and federal court for cases that include both a class and PAGA action. *Id*. Typically, such hybrid cases allocate only 1% of the gross settlement value to resolve

PAGA claims, and, indeed, settlements allocations as little as 0.22% of the gross settlement amount have been approved as reasonable by courts. Gold Decl., ¶ 48. Moreover, the overall relief obtained by the Settlement is significant, not only from a monetary perspective, but also because it fulfills the public policy objectives of PAGA—to promote enforcement of California's labor laws, provide funds to the state, and deter future non-compliance by the employer. *Id*.

Therefore, the Settlement is in the best interest of the Class Members, the PAGA Employees, and the State of California and is within the accepted range of recoveries for this type of litigation given the inherent risk of litigation, the risk of obtaining and maintaining class certification, and the costs of further litigation. *Id*., ¶ 49.

VI. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

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

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

Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of the class, and (3) the means of identifying the class members. *See Miller v. Woods*, 148 Cal.App.3d 862, 873 (1983). In this case, all three considerations strongly favor class certification. Here, the Class is defined as "all current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the Class Period." Gold Decl., ¶ 19; Settlement Agreement, ¶ 6(b). This provides a clear and definite scope for the proposed class.

Next, the Class is sufficiently numerous. There is no magic number that satisfies the numerosity requirement. Courts have certified classes with as few as ten or twenty-eight class members. *Rose v.*

City of Hayward, 126 Cal.App.3d 926, 934 (1981); *Bowles v. Superior Court*, 44 Cal. 2d 574 (1995); *Hebbard v. Colgrove*, 28 Cal.App.3d 1017, 1030 (1972). Here, the estimated Class size of five hundred and thirty (530) individuals meets the numerosity requirement. Gold Decl., ¶ 19; Settlement Agreement, ¶ 13.

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

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

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

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

Here, Plaintiff's claims present common issues of law and fact that predominate and warrant class certification. Plaintiff alleges that Defendant denied compliant meal and rest periods to employees, required employees to perform work off-the-clock, failed to fully compensate employees for overtime, failed to properly use the regular rate of pay, and failed to reimburse business expenses. These policies and practices meant that Defendant allegedly failed to pay minimum and overtime wages, and other related claims. Plaintiff alleges that Defendant's policies and practices were uniform as to all Class

Members. Thus, class treatment is appropriate.

To satisfy the typicality requirement, California law does not require that plaintiffs' claims be identical to the other class members. Rather, the test of typicality for a class representative is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiff, and whether other class members have been injured by the same course of conduct. *See Seastrom v. Neways, Inc.*, 149 Cal.App.4th 1496, 1502 (2007). The typicality requirement for a class representative refers to the nature of the claim or defense of the representative, and not to the specific facts from which it arose or the relief sought. *See ibid.*

Here, Plaintiff alleges that her claims are similar to that of the other Class Members and that Plaintiff's claims arise out of the same alleged course of conduct giving rise to the claims of the other Class Members. Because Plaintiff's claims are based upon the same alleged conduct and business practices as those of Class Members, the typicality requirement has been satisfied.

Finally, the question of adequacy of representation "depends on whether the plaintiff's attorney qualifies to conduct the proposed litigation in the plaintiff's interest or not antagonistic to the interests of the class." *McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976). Here, these considerations are satisfied. Class Counsel is well-regarded and is qualified and experienced in employment-related, class-action litigation. Gold Decl., ¶¶ 2-9 and 53. Plaintiff will vigorously, adequately, and fairly represent the interests of the Class. Plaintiff has, at all times, throughout the course of the litigation considered the interests of the Class and understood that she must take steps to adequately represent the Class and their interests. Naybkhil Decl., ¶ 11. Because Plaintiff's claims are typical of other Class Members and are not based on unique circumstances, there is no antagonism between the interests of Plaintiff and the Class.

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

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

VII. THE REQUESTED ENHANCEMENT PAYMENT IS REASONABLE

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

Plaintiff initiated this litigation on behalf of her former co-workers who will now be entitled to receive payment from the Settlement. Plaintiff invested substantial time and effort into litigation, including reviewing documents and extensive discussions with Class Counsel. Nayabkhil Decl., ¶¶ 3-5. Further, the requested amount for Plaintiff is also reasonable given the average award and the benefit gained by other Class Members. For these reasons, Plaintiff requests that an Enhancement Payment of Seven Thousand Five Hundred Dollars and Zero Cents ($7,500.00) to Plaintiff be preliminarily approved by the Court. Gold Decl., ¶ 50; Nayabkhil Decl., ¶ 13.

VIII. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE

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

Here, the requested attorneys' fees of thirty-three and one-third percent (33 1/3%) of the Gross Settlement Amount (i.e., $650,000.00 if the Gross Settlement Amount is $1,950,000.00) is disclosed to

Class Members in the proposed Class Notice. Settlement Agreement, Ex. A. The requested fee was freely negotiated, is common in the legal marketplace, and is not opposed by Defendant. The Motion for Final Approval will elaborate on the nature of the legal services provided and will also support Class Counsel's request for the reimbursement of litigation costs and expenses not to exceed Twenty Thousand Dollars and Zero Cents ($20,000.00). Gold Decl., ¶ 51. The Attorneys' Fees and Costs that are not ultimately approved by the Court shall instead be included in the Net Settlement Amount to be distributed to Settlement Class Members. Settlement Agreement, ¶ 9.

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

The Parties have jointly drafted the Class Notice, which will be mailed to the Class Members. Settlement Agreement, Ex. A. The Class Notice will include information regarding the nature of the Action, a summary of the terms of the Settlement, the Class definition, information on how to object to and/or opt-out of the Class Settlement and to dispute Workweeks and/or Pay Periods, and the date of the Final Approval Hearing. *Id.* The Class Notice will list each Class Member's total Workweeks and their estimated Individual Settlement Share and each PAGA Employee's total Pay Periods and their estimated Individual PAGA Payment. *Id.*

Within twenty-one (21) calendar days after entry of the preliminary approval order, Defendant will provide a list in a formatted readable Microsoft Office Excel spreadsheet to the Settlement Administrator containing the following information for each Class Member: (1) full name; (2) last known mailing address; (3) Social Security number; (4) dates worked for Defendant during the Class Period; and (5) such other information as is necessary for the Settlement Administrator to calculate Workweeks and Pay Periods (if applicable) (collectively referred to as the "Class List"). *Id.*, ¶¶ 6(d) & 23. Within seven (7) calendar days after receiving the Class List from Defendant, the Settlement Administrator will perform a search based on the National Change of Address Database or any other similar services available, such as provided by Experian, for information to update and correct for any known or identifiable address changes, and will mail a Class Notice in English and Spanish to all Class Members via First-Class U.S. Mail, using the most current, known mailing addresses identified by the Settlement Administrator. *Id.*, ¶ 24(a). The Parties have agreed to use ILYM Group, Inc. as the Settlement

Administrator. Gold Decl., ¶ 55; Settlement Agreement, ¶ 6(kk).

In determining whether to approve a settlement of a class action, a trial court has virtually complete discretion as to the manner of giving notice to class members, and review on appeal is governed by the abuse of discretion standard. *See In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380 (2010). Here, Class Counsel is not aware of an alternative method of providing notice to the Class which would result in a higher likelihood of actual notice. Gold Decl., ¶ 56. The original source of the mailing addresses is from Class Members, who provided the information to Defendant. *Id.*

Class Members will have forty-five (45) calendar days after the initial mailing of the Class Notice by the Settlement Administrator to submit a Request for Exclusion, Notice of Objection, and/or Dispute ("Response Deadline"). Settlement Agreement, ¶ 6(jj).

Any Class Notice returned to the Settlement Administrator as undeliverable on or before the Response Deadline will be sent promptly via First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing on the Class Notice. *Id.*, ¶ 24(b). If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine a correct address using a skip-trace or other search, using the name, address, and/or Social Security number of the Class Member, and perform a single re-mailing within five (5) calendar days. *Id.* In the event that a Class Notice is re-mailed to a Class Member, the Response Deadline for that Class Member shall be extended fifteen (15) calendar days from the original Response Deadline. *Id.*, ¶ 6(jj).

Class Members will have an opportunity to dispute the number of Workweeks and/or Pay Periods to which they have been credited, as reflected in their respective Class Notices, by submitting a timely and valid letter ("Dispute") to the Settlement Administrator, by mail, postmarked on or before the Response Deadline. *Id.*, ¶¶ 6(j) and 25. A Dispute must: (a) contain the case name and number of the Action; (b) contain the Class Member's full name, signature, address, and telephone number; (c) clearly state that the Class Member disputes the number of Workweeks and/or Pay Periods credited to the Class Member and what the Class Member contends is the correct number; and (d) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline. *Id.*, ¶ 6(j).

Any Class Member wishing to be excluded from the Class Settlement must submit a timely and valid letter ("Request for Exclusion") to the Settlement Administrator, by mail, postmarked on or before the Response Deadline. *Id.*, ¶¶ 6(ii) & 26. A Request for Exclusion must: (a) contain the case name and number of the Action; (b) contain the Class Member's full name, signature, address, and telephone number; (c) clearly state that the Class Member does not wish to be included in the Class Settlement; and (d) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline. *Id.*, ¶ 6(ii). Notwithstanding the above, all PAGA Employees will be bound to the PAGA Settlement will be issued their Individual PAGA Payment, irrespective of whether they submit a Request for Exclusion. *Id.*, ¶ 26.

To object to the Class Settlement, Settlement Class Members must submit a timely and complete written objection ("Notice of Objection") to the Settlement Administrator, by mail, postmarked on or before the Response Deadline. *Id.*, ¶¶ 6(w) & 27. A Notice of Objection must: (a) contain the case name and number of the Action; (b) contain the objector's full name, signature, address, and telephone number; (c) contain a written statement of all grounds for the objection accompanied by any legal support for such objection; (d) contain copies of any papers, briefs, or other documents upon which the objection is based; and (e) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline. *Id.*, ¶ 6(w). Settlement Class Members, individually or through counsel, may also present their objection orally at the Final Approval Hearing, regardless of whether they have submitted a Notice of Objection and without any prior notice. *Id.*, ¶ 27.

X. CONCLUSION

For all of the foregoing reasons, Plaintiff respectfully requests that this Court grant Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement and the relief requested herein.

Dated: September 9, 2024

Respectfully submitted,
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