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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF VENTURA – HALL OF JUSTICE**

10 MARIE SAVERY, Individually and on
11 Behalf of Other Members of the Public and
12 those Similarly Situated,

13 Plaintiff,

14 v.

15 ATX LEARNING, LLC.,
16 AUSTIN TEXAS LEARNING GROUP,
17 LLC., SYED KHALIL, an individual, and
18 DOES 1-10, Inclusive,

19 Defendants.

CASE NO: 2023CUOE013956

*Assigned for all purposes to Hon. Matthew P.
Guasco*

CLASS ACTION/PAGA ACTION

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

Hearing:

Date: June 21, 2024

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1 **I. INTRODUCTION**

2 Plaintiff Marie Savery (“Plaintiff”) submits this memorandum in support of her Motion for
3 Preliminary Approval of Class Action Settlement and Approval of PAGA Settlement. The proposed
4 Settlement¹ arose after significant investigation into the alleged claims and defenses, and resolves
5 claims in the Action against Defendants (collectively, Defendants and Plaintiff are the “Parties”) and
6 Released Parties on behalf of Class Members (for the Class Settlement) and Aggrieved Employees
7 (for the PAGA Settlement). Through hard fought, arm’s-length negotiations, including at a full-day
8 mediation, and with the assistance of experienced employment mediator Hon. Jonathan Cannon
9 (Ret.), Plaintiff and Settlement Class Counsel achieved an excellent result under the circumstances
10 of action and ATX’s financial circumstances. Richard Decl., ¶¶17-21, 34-40; Irshad Decl.¶4.²

11 The \$380,000 all-cash, non-reversionary Settlement reaps both monetary benefits through a
12 “checks-mailed” settlement, and significant prospective/injunctive relief in the form of changes to
13 ATX’s employment practices. Richard Decl., ¶26; Irshad Decl.¶4. The approximately 303 Class
14 Members substantially benefit from the injunctive relief that the lawsuit, Plaintiff and Settlement
15 Class Counsel were a catalyst for. Richard Decl., ¶40; Irshad Decl.¶4. In exchange for Settlement
16 benefits, there is a narrowly tailored release of claims. Agreement, ¶¶21-23, 30, 52-53. Instructions
17 for requesting exclusion from or objecting to the proposed Class Settlement are clearly identified in
18 the Notice Packet to be mailed by the proposed Settlement Administrator, ILYM Group, Inc.
19 (“ILYM”). Agreement, Ex. A.

20 As detailed below and in the accompanying declarations, the proposed Settlement is fair,
21 adequate, and reasonable, particularly given the benefits to Class Members and the inherent risks
22 involved with further litigation and in light of ATX’s financial hardship. The Settlement meets all of
23 the requirements for preliminary approval of the Class Settlement and approval of the PAGA

24 ¹ All capitalized terms not otherwise defined have the same definitions of the Class and PAGA Action
25 Settlement Agreement and Release (“Settlement” or “Settlement Agreement” or “Agreement”)
26 attached as **Ex. 1** to the filed Declaration of Diane E. Richard in Support of Plaintiff’s Motion for
Preliminary Approval of Class Settlement and Approval of PAGA Settlement (“Richard Decl.” or
“Richard Declaration”).

27 ² As used herein, “Irshad Decl.” refers to the Declaration of Rahil Irshad in Support of Settlement.
28 “Savery Decl.” refers to the Declaration of Marie Savery in Support of Settlement. “Mullins Decl.”
refers to the Declaration of Lisa Mullins of ILYM Group, Inc. re Settlement Administration.

1 Settlement. Accordingly, Plaintiff respectfully submits that the Court should grant this Motion.

2 **II. SUMMARY OF THE LITIGATION**

3 On September 13, 2023, Plaintiff commenced her putative class action lawsuit, and on
4 November 21, 2023, she filed a First Amended Complaint adding in claims under the PAGA. In
5 summary, Plaintiff claims Defendants had unlawful noncompete agreements and damage limitation
6 agreements, did not pay proper and timely wages and business reimbursements, did not provide
7 compliant wage statements, other records, and breaks, and engaged in unfair competition. The lawsuit
8 seeks a variety of remedies including wages, penalties, interest, and declaratory/injunctive relief.
9 Richard Decl., ¶¶14-15. Defendants deny liability and allege a variety of defenses. *Id.*, ¶16.
10 Settlement Class Counsel has conducted discovery and investigation which has included, among
11 other things inspection and analysis of policies and employment contracts, pay and time records, and
12 research of applicable law with respect to claims and defenses. *Id.*, ¶17.

13 The Parties mediated with Hon. Jonathan Cannon (Ret.) (“Mediator”) who has substantial
14 experience with employment class and PAGA actions. Prior to attending the March 6, 2024
15 mediation, the Parties performed significant work, exchanging data, documents and legal positions
16 with each other and participating in mediation discussions both with each other and with the Mediator.
17 With the assistance of Mediator Cannon, the Parties explored settlement in light of the financial
18 hardship that ATX attests to. Following Settlement Class Counsel’s thorough analysis of significant
19 discovery and differing legal positions, the disclosure of ATX’s financial hardship, substantial arm’s-
20 length bargaining by the Parties and the mediator’s proposal, the Parties agreed to settle the Action
21 on behalf of Class Members and Aggrieved Employees. The Parties thereafter, through arm’s-length
22 bargaining, negotiated terms of the Memorandum of Understanding, the Settlement Agreement, and
23 the Notice Packet. *Id.*, ¶¶18-21.

24 **III. SUMMARY OF SETTLEMENT**

25 **A. Terms of Settlement**

26 **1. The Settlement Class**

27 The settled Class is “all current and former employees of Ausin Texas Learning Group, LLC.
28 (also known as ATX Learning, LLC or ATX Learning) (“ATX”) who worked in California for ATX

1 at any time during the Class Settlement Period of September 13, 2019 to April 15, 2024.”³ It is
2 estimated that there are 303 Class Members. Agreement, ¶6.

3 **2. The Settlement Administrator**

4 The Settlement seeks appointment of ILYM as the Settlement Administrator. Agreement, ¶28.
5 ILYM is a third-party administrator experienced in class action and PAGA action settlement
6 administration. Mullins Decl., ¶2, Ex. A.

7 **3. The Prospective/Injunctive Relief Benefits**

8 The Settlement achieves substantial benefit from the prospective/injunctive relief in the form
9 of changes to wage and hour practices, that the lawsuit, Plaintiff and Settlement Class Counsel were
10 a catalyst for. Agreement, ¶31; Richard Decl., ¶¶26, 40. Defendants attest that Plaintiff and Settlement
11 Class Counsel were a catalyst for the changes. Irshad Decl., ¶4.

12 **4. The Settlement Amount**

13 Under the Settlement, Defendants will pay a \$380,000 fixed common-fund amount, to which
14 Defendants hold no further rights (“non-reversionary”) (the “Gross Settlement Amount” or “GSA”).
15 The GSA is inclusive of all payments to be distributed under the Settlement. Agreement, ¶¶ 14, 33-
16 37, 39, 50. In addition to the GSA, Defendants are to separately pay required employer payroll taxes
17 on the wage component of each Class Members’ Individual Class Settlement Payment. *Id.*, ¶14, 33.

18 **5. Distributions from the GSA**

19 Subject to Court approval, the following distributions will be made from the \$380,000 GSA:
20 (i) LWDA PAGA Payment for its 75% share (\$3,750) and Individual Settlement PAGA Payment to
21 Aggrieved Employees for their 25% share (\$1,250); (ii) Settlement Administration Costs (estimated
22 not to exceed \$6,950) (see Mullins Decl., ¶¶9-10); (iii) Service Enhancement Payment (requesting
23 \$10,000.00); and (iv) Attorneys’ Fees and Costs (requesting \$152,000 in fees and actual costs which
24 are currently expected not to exceed \$11,500). Agreement, ¶¶14, 34-37. The fund remaining for Class
25 Members from the GSA after these deductions is the Net Settlement Fund (“NSF”), *Id.*, ¶¶16, 39.

26 ³ Aggrieved Employees are defined as “all current and former employees of Ausin Texas Learning
27 Group, LLC. (also known as ATX Learning, LLC) (“ATX”) who worked in California for ATX at
28 any time during the PAGA Settlement Period of September 12, 2022 to April 15, 2024.” It is
estimated that there are 226 Aggrieved Employees. Agreement, ¶8.

1 Should the Court grant full and final approval to the Settlement, the NSF is estimated to be \$194,550,
2 from which Individual Class Settlement Payments will be disbursed to Class Members.

3 **6. Settlement Payments**

4 This is a “checks-mailed” settlement meaning the Settlement Administrator will disburse the
5 GSA without asking or requiring Participating Class Members or Aggrieved Employees to submit
6 any claim form as a condition of payment (i.e. a no-claim settlement). Agreement, ¶40.

7 Individual Settlement Payments are comprised of two components: (i) Individual PAGA
8 Settlement Payments, for settlement of PAGA Claims, are calculated using PAGA pay periods
9 worked during the PAGA Period and will be issued to Aggrieved Employees pro rata from the PAGA
10 Fund; (ii) Individual Class Settlement Payments, for settlement of Class Claims, are calculated using
11 workweeks worked during the Class Period and will be issued to Participating Class Members pro
12 rata from the Net Settlement Fund. Eligibility and calculations for these awards are set forth in
13 paragraph 40 of the Settlement Agreement. Should the Court approve less than any amounts allocated
14 under the Settlement and/or should any Class Member not participate in the Class Settlement (i.e. by
15 requesting exclusion from the Class Settlement), the remainder will be allocated to the Net Settlement
16 Fund and distributed to Participating Class Members pro rata.

17 Within fourteen (14) calendar days of the Funding Date (funding to occur within seven (7)
18 days of the Effective Date but not earlier than December 15, 2024), the Settlement Administrator
19 shall distribute the GSA including payments to Participating Class Members and Aggrieved
20 Employees. Agreement, ¶¶12, 33, 57. Preliminary calculations of the estimated average gross, pre-
21 tax withholding settlement payments Class Members are eligible for should the Settlement receive
22 full and final approval is \$647 (inclusive of Individual PAGA Settlement Payment for Class Members
23 who are also Aggrieved Employees). Richard Decl., ¶30. One hundred percent (100%) of Individual
24 PAGA Settlement Payments is allocated as penalties, reported via IRS Form 1099 as non-wage
25 income. For the Individual Class Settlement, Payments, twenty percent (20%) is characterized as
26 wages for settlement of wage claims and reported via IRS Form W-2, and eighty percent (80%) is
27 characterized as penalties and interest, reported via IRS Form 1099. Agreement, ¶40.

1 Settlement checks will be negotiable for a period of 180 days from the date of issuance of the
2 check, and after this time period, will be cancelled. The Settlement Administrator will transmit funds
3 from any after-the-void date cancelled checks to the California Controller's Unclaimed Property Fund
4 in the name of the Class Member thereby leaving no unpaid residue subject to the requirements of
5 California Code of Civil Procedure §384. Agreement, ¶58.

6 **B. Proposed Form of Notice to Class and Notice Procedure**

7 The manner of giving notice complies with Rule 3.766(e) of the California Rules of Court
8 ("Rule"). The Notice Packet complies with Rule 3.766(d) and explains the proposed Settlement.
9 Agreement, ¶¶46, Exhibit A. After making an inquiry with Defendants' Counsel, the Parties believe
10 that English is sufficient, and it is not necessary to provide translations of the Notice Packet into any
11 other language. Richard Decl., ¶32.

12 **C. Proposed Release**

13 The release in the Settlement Agreement is narrowly tailored to the claims that were or could
14 be asserted in the Action based upon the facts alleged in the Action (including the Second Amended
15 Complaint and the PAGA letters Plaintiff submitted). The Released Class Claims for Participating
16 Class Members (Agreement, ¶¶21, 23, 52) and Released PAGA Claims for Aggrieved Employees
17 (Agreement, ¶¶22-23, 53) are not overbroad but are specific and narrowly defined. There is a separate
18 narrowly tailored release for Released Class Claims, and a separate narrowly tailored release for
19 Released PAGA Claims (with the Released PAGA Claims releasing PAGA penalties only). These
20 releases do not include a California Civil Code §1542 waiver ("1542") by absent Class Members or
21 Aggrieved Employees. The named Plaintiff, on the other hand, in consideration of the Service
22 Enhancement Payment has entered into a general release of claims ("General Release – Class
23 Representative") that is much broader than the very narrow release that is given by absent Class
24 Members and Aggrieved Employees. Agreement, ¶67. Plaintiff is the only person entering into a
25 1542 waiver. *Id.* The proposed Notice Packet contains information about and describes the Released
26 Class Claims and Released PAGA Claims. Agreement, Exhibit A; Richard Decl., ¶34.

27 ///

28 ///

1 **D. Requested Attorney's Fees and Costs, and Service Payment**

2 After all of the substantive terms of the proposed Settlement were reached, the Parties agreed
3 that Plaintiff may seek Court approval of the following payments from the GSA. Richard Decl., ¶¶41,
4 50. First, Settlement Class Counsel will seek \$152,000 in fees,⁴ and reimbursement of actual costs
5 incurred which are expected to not exceed \$11,500. Agreement, ¶¶2, 34; Richard Decl., ¶¶50-54.
6 Second, the Class Representative will seek a \$10,000 Service Enhancement Payment. Agreement,
7 ¶35. The requested service award is a fair and reasonable sum including in light of: Plaintiff's
8 involvement, the actual and substantial risks Plaintiff took, the fact that Plaintiff is entering into a
9 general release of claims with a 1542 waiver (a much broader release of claims than Class Members);
10 and the substantial cash and prospective/injunctive benefits achieved. Richard Decl., ¶¶41-49; Savery
11 Declaration, ¶¶5-9.

12 **IV. ARGUMENTS IN FAVOR OF PRELIMINARY APPROVAL**

13 A class action may not be dismissed, compromised, or settled without the approval of the
14 court. *See* Rule 3.769(a) ("A settlement or compromise of an entire class action, or of a cause of
15 action in a class action, or as to a party, requires the approval of the court after hearing."). The
16 California Rules of Court set forth the two-part procedure for court approval of a class action
17 settlement: (1) the court preliminarily approves the settlement and the class members are notified as
18 directed by the court; and (2) the court conducts a final approval hearing to inquire into the fairness
19 of the proposed settlement. *See* Rule 3.769(c), (e)-(f), *see also In re Cellphone Termination Fee*
20 *Cases*, 180 Cal. App. 4th 1110, 1117-19 (2009) (setting forth procedure codified in Rule 3.769). In
21 determining appropriateness of preliminary approval, the Court is to "prevent fraud, collusion or
22 unfairness to the class." *Consumer Advocacy Grp., Inc. v. Kintetsu Enters. of Am.*, 141 Cal. App. 4th

23 _____
24 ⁴ In support of the fee and costs request, Settlement Class Counsel will, in conjunction with seeking
25 final approval, provide briefing and evidentiary support, including lodestar. While fees and costs
26 are not decided at the preliminary approval stage, Settlement Class Counsel notes that the fee request
27 (equivalent to 40% of the GSA) will result in a negative multiplier on lodestar (i.e. requested fees
28 will be less than lodestar). Richard Decl., ¶¶51-52. The fee amount recognizes, among things,
Settlement Class Counsel's work and resulting Settlement, the substantial benefits Class Members
receive from Settlement including the cash and prospective/injunctive relief, that the Action
enforces important rights affecting the public interest (including the prohibitions against non-
competition agreements, and damage limitation clauses in the employment context) and that
Settlement Class Counsel was a catalyst for the prospective/injunctive relief.

1 46, 60 (2006) (citing *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1800 (1996)).⁵

2 Plaintiff here submits: (1) the proposed Class Settlement meets the standards for preliminary
3 approval; (2) provisional certification of the Class is appropriate because all the requirements are met;
4 and (3) the proposed Notice Packet is an appropriate form of giving notice to the Class. Therefore,
5 with this motion, Plaintiff requests that this Court take the initial steps to preliminarily approve the
6 Class Settlement and the form, content, and distribution of the Notice Packet, and schedule a final
7 approval hearing to facilitate the Class Settlement process. In addition, although a class has not yet
8 been certified, the Parties have agreed, for purposes of Settlement only, to the certification of the
9 Class. Agreement, ¶79. In that regard, Plaintiff requests that the Court provisionally certify the Class
10 per the terms of the Settlement. Rule 3.769(d) (stating that after the preliminary hearing, the court
11 may make an order approving the provisional settlement class).

12 **A. The Proposed Settlement Meets the Standards for Preliminary Approval**

13 **1. The Settlement Is Entitled to a Presumption of Fairness**

14 Public policy generally favors settlement, particularly in class actions and other complex
15 cases. *See In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 n.14 (2006)⁶ (“Public policy
16 generally favors the compromise of complex class action litigation.”). *See also* William B.
17 Rubenstein, et al., 4 Newberg on Class Actions §13:44 (5th ed. 2013) (“Newberg”) (“[T]he law favors
18 settlement, particularly in class actions”). The ultimate duty of the court is to determine whether
19 the settlement is fair, adequate, and reasonable. *See Dunk*, 48 Cal. App. 4th at 1801 (setting forth the
20 “‘fair, adequate and reasonable’” standard) (citing *Officers for Justice v. Civil Serv. Comm’n of S.F.*,
21 688 F.2d 615, 625 (9th Cir. 1982)); *Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742-
22 43 (2009) (a trial court must approve a class action settlement agreement, but only after determining
23 that it is “‘fair, adequate, and reasonable,’” considering factors such as the “‘risk, expense, [and]
24 complexity’” of continued litigation). The Court enjoys broad discretion in making its fairness

25 _____
26 ⁵ While class action settlements require preliminary and final approval, this is not required or done
27 for PAGA settlements. All that is required for PAGA settlement is that under California Labor Code
28 §2699(1)(2), the superior court “review and approve any settlement of any civil action.”

⁶ Here, as throughout, all internal citations are omitted and emphasis is added unless otherwise
noted.

determination, and should consider factors including, but not limited to:

[T]he 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 ... and the reaction of the class members to the proposed settlement.

Dunk, 48 Cal. App. 4th at 1801 (setting forth a non-exhaustive list of factors for consideration).

Furthermore, the Court must give "[d]ue regard ... to what is otherwise a private consensual agreement between the parties." *Id.* As such, the inquiry "must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties" *Id.* (citing *Officers*, 688 F.2d at 625). "[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." *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 245 (2001) (citing *Dunk*, 48 Cal. App. 4th at 1802); see also Newberg, *supra* §13:45 (stating that "a court will presume that a proposed class action settlement is fair when certain factors are present, particularly evidence that the settlement is the product of arm's-length negotiation, untainted by collusion"). At the preliminary approval stage, the Court need only determine that the Class Settlement falls within the "range of possible [judicial] approval," so that notice to the class and the scheduling of the fairness hearing are worthwhile. See Newberg, *supra* §13:13; see also *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 120 (2008). The Parties each agree that the Settlement is fair, adequate and reasonable, and was arrived at after arm's length negotiations and in the context of adversarial litigation, taking into account all relevant factors, present and potential. Agreement, ¶75. As shown below, the Class Settlement falls well within the range of reasonableness, and there are no grounds to doubt its fairness.

a. The Settlement Is the Result of Arm's-Length Negotiations

Here, subsequent to significant investigation, the Parties engaged in a full-day mediation and other mediation-related discussions with the assistance of highly experienced Mediator Cannon. Only after significant discovery was analyzed and serious, arm's-length negotiations, and only with the extensive assistance of the Mediator, did the Parties agree to settle. The discussions were based on

1 both sides' understanding of the legal battle facing them if litigation were to continue, and in light of
2 all of the facts and circumstances present in this matter. Richard Decl., ¶¶17-21, 36, 38. Because this
3 Settlement comes before the Court only after the Action was thoroughly investigated and evaluated
4 by counsel experienced in similar litigation and was negotiated at arm's-length through a respected
5 mediator, a presumption of fairness should apply.⁷ Plaintiff respectfully asks this Court to grant
6 preliminary approval.

7 **b. Extensive Investigation and Discovery Have Been Conducted**

8 Among the considerations for the Court is the extent of investigation and discovery completed
9 by the Parties. *See Dunk*, 48 Cal. App. 4th at 1801. Here, before arriving at the proposed Settlement
10 Agreement, the Parties engaged in significant investigation, research, and discovery, and thoroughly
11 evaluated the factual strengths and weaknesses of this Action. Richard Decl., ¶¶17-21, 36, 38, 53.
12 The discovery conducted in this Action, and the information exchanged through the Parties'
13 negotiations, are sufficient to assess reliably the merits of the respective Parties' positions and to
14 compromise the issues on a fair and equitable basis. *Id.* Accordingly, the Parties have engaged in
15 sufficient discovery and investigation to assess the relative merits of the claims of the Plaintiff and
16 Defendants' defenses to them. *Id.* Based on experience, Settlement Class Counsel believes that the
17 negotiated Settlement represents a fair recovery for the purported Class and is well within the range
18 of possible recovery. *Id.*

19 **c. The Settlement Consideration Is Within the Range of**
20 **Reasonableness**

21 The average estimated gross settlement payments to Class Members is \$647. Richard Decl.,
22 ¶30. Although the potential exposure in this case exceeds the amount ultimately settled for, there
23 were significant risks associated with the proceeding to trial. These risks include, but are not limited
24 to: (i) an adverse ruling on an anticipated summary judgment motion and/or class certification; (ii)

25 ⁷ The fourth factor, enumerated in *Dunk*, is that the ultimate percentage of objectors to the settlement
26 is small. 48 Cal. App. 4th at 1802. The Parties are unaware of any persons currently objecting to
27 the agreement, and do not anticipate many objectors, if any, at the final fairness hearing. There is
28 also no presence of a governmental entity in the Action. The LWDA has been notified of the
Settlement and will be a recipient of 75% of the PAGA Penalty Amount. Richard Decl., ¶¶9-13; Ex.
5 thereto.

1 an unfavorable verdict from the bench/jury; (iii) the novelty of some of the issues; (iv) a judgment
2 that ultimately could not be paid by Defendants; and (v) an adverse court decision on any of the
3 claims including but not limited to whether an employer has knowingly and intentionally failed to
4 comply with wage statement requirements when the employer had a good faith, yet erroneous, belief
5 that it was in compliant (when the Parties mediated in March 2024, this issue was up on appeal in the
6 case of *Naranjo v. Spectrum Security Services, Inc.*). Moreover, a significant component to the
7 Settlement is the achieved prospective/injunctive relief. Although Plaintiff and Settlement Class
8 Counsel are confident the claims are legally sound, given the risk and delay associated with further
9 prosecution, Settlement Class Counsel believes the Settlement is well within the range of
10 reasonableness. Richard Decl., ¶¶20, 26-29, 34-40.

11 **d. Class Counsel is Experienced in Similar Litigation**

12 Counsel for both Parties are experienced litigators. *See Dunk*, 48 Cal. App. 4th at 1801
13 (explaining among the trial court's considerations should be the “experience and views of counsel”).
14 The lead defense attorneys, Ryan Bykerk and Vivian Shen, are experienced employment litigators.
15 *See*, <https://www.gtlaw.com/en/professionals/b/bykerk-ryan-c> (last visited May 17, 2024);
16 <https://www.gtlaw.com/en/professionals/s/shen-vivian-y> (last visited May 17, 2024). Settlement
17 Class Counsel is likewise experienced. Diane Richard of Richard Law, P.C., has more than 20 years
18 of targeted experience in employment law with substantial complex civil litigation and class/PAGA
19 action experience. Ms. Richard has served as class counsel in dozens of wage hour actions. Richard
20 Decl., ¶¶3-6. Settlement Class Counsel is knowledgeable in the matters in this litigation, and agrees
21 that the Settlement is fair and reasonable to the purported class. Richard Decl., ¶39.

22 **B. Provisional Certification of the Class Is Appropriate Because the Following**
23 **Requirements Are Met**

24 Under California law, class certification is appropriate only if there is: (1) an ascertainable
25 class; and (2) a well-defined community of interest. C.C.P. §382. The Parties have agreed to
26 certification solely for purposes of this Settlement. Agreement, ¶79. In the settlement context, the
27 Court can appropriately use a lesser standard to determine the appropriateness of a settlement class
28 as opposed to a litigated class certification. *Dunk*, 48 Cal. App. 4th at 1806-07 & n.19. Accordingly,

1 Plaintiff requests this Court provisionally certify the Class for purposes of settlement only.

2 **1. Numerosity**

3 The Class is sufficiently numerous with approximately 303 Class Members. Agreement, ¶6.

4 **2. Ascertainability**

5 A proposed class is ascertainable if the class members can be objectively identified and given
6 notice of the litigation without unreasonable time or expense. *See Medrazo v. Honda of N.*
7 *Hollywood*, 166 Cal. App. 4th 89, 101 (2008) (“As long as the potential class members may be
8 identified without unreasonable expense or time ... and the proposed class definition offers an
9 objective means of identifying those persons who will be bound by the results of the litigation, the
10 ascertainability requirement is met.”); *see also Rose v. City of Hayward*, 126 Cal. App. 3d 926, 932
11 (1981) (finding that class members are ascertainable where “they may be readily identified without
12 unreasonable expense or time by reference to official records”). Here, because the Class Members
13 have worked for ATX, they are easily identified through payroll files maintained by ATX. Thus, the
14 Class Members are ascertainable.

15 **3. Commonality/Predominance**

16 To justify certification, the class proponent “must show ... that questions of law or fact
17 common to the class predominate over the questions affecting the individual members” *See*
18 *Arenas v. El Torito Rests., Inc.*, 183 Cal. App. 4th 723, 732 (2010) (citing *Wash. Mut. Bank, FA v.*
19 *Superior Court*, 24 Cal. 4th 906, 913 (2001)). The Parties agree that for the purposes of the
20 Settlement, the claims of the Class Members all stem from the same sources, including allegations
21 that employment agreements contain unlawful language pertaining to damage limitations and non-
22 competition, and that Defendants did not pay proper and timely wages and business reimbursements,
23 did not provide compliant wage statements, records and breaks, and engaged in unfair competition.
24 Under these circumstances, predominance is satisfied.

25 **4. Typicality**

26 The Class Representative must be similarly situated to the rest of the purported class. *See*
27 *Classen v. Weller*, 145 Cal. App. 3d 27, 46 (1983) (stating “it has never been the law in California
28 that the class representative must have *identical* interests with the class members. The only

requirements are ... that the class representative be *similarly* situated”) (emphasis in original); *see also* Newberg *supra*, §3:29 (typicality “determines whether a sufficient relationship exists between the injury to the named plaintiff and the conduct affecting the class so that the court may properly attribute a collective nature to the challenged conduct”). Here, Plaintiff’s claims are typical because, like the Class Members, Plaintiff was an employee and alleges, among other things, that employment agreements contain unlawful language pertaining to non-competition and damage limitations, and that Defendants did not pay proper and timely wages and business reimbursements, did not provide compliant wage statements, records and breaks, and engaged in unfair competition.

5. Adequacy of Representation

The Class Representative must establish that she will adequately represent the purported class. *See Barboza v. W. Coast Digital GSM, Inc.*, 179 Cal. App. 4th 540, 546 (2009) (explaining that both the representative plaintiffs and class counsel have a fiduciary duty to protect the absentee class members’ interests). Here, Plaintiff has the same incentive as the rest of the Class to achieve the maximum possible recovery and they have thus far protected the interests of the Class. Moreover, Plaintiff and Class Member are represented by counsel who have extensive experience in wage and hour litigation, and have thus far protected the interests of the Class. *See generally* Richard Declaration; Savery Declaration.

6. Superiority

Class certification is the superior method here because the claims of the Class Members all stem from the same alleged violations. Thus, certification will permit resolution of similar claims in an efficient manner. The Parties agree that for the purposes of the Settlement only, the purported Class is appropriately certifiable. Agreement, ¶79.

C. The Proposed Class Notice Is An Appropriate Form of Giving Notice to the Class Members

To effectuate the Settlement, the Court must also approve of the proposed notice to the Class. *See* Rule 3.769(c); *see also* Rule 3.766 (setting forth the requirements for the content of the notice and the means of distribution). California law vests its courts with broad discretion in fashioning an appropriate notice program. *See also Wershba*, 91 Cal. App. 4th at 251 (the standard is whether the

1 notice has “a reasonable chance of reaching a substantial percentage of the class members”); *see also*
2 Fed. R. Civ. P. 23(c)(2)(B) (stating “the court must direct to class members the best notice that is
3 practicable under the circumstances”). The notice must inform the class members of their right to opt-
4 out, the preclusive effect of the Settlement, and the right to enter an appearance. *See* Rule 3.766(d);
5 *Cho*, 177 Cal. App. 4th at 746 (notice must “fairly apprise the class members of the terms of the
6 proposed compromise and of the options open to dissenting class members”) (citing *Wershba*, 91
7 Cal. App. 4th at 251); *Cartt v. Superior Court*, 50 Cal. App. 3d 960, 970 (1975) (“The principal
8 purpose of notice to the class is the protection of the integrity of the class action process, one of the
9 functions of which is to prevent burdening the courts with multiple claims where one will do.”).

10 Here, the Settlement provides for the best notice practicable under the circumstances of this
11 Settlement Action, satisfies due process, and complies with the requirements of Rules 3.766 and
12 3.769. The Class Notice (aka Notice Packet) will inform Class Members of: the key Settlement terms,
13 the effect of the released claims, all proposed distributions from the GSA, the timing and process to
14 challenge workweeks and pay period information which serve as a basis for settlement payment, how
15 to and timing for opting out of the Settlement if they elect not to participate, how to and timing for
16 making an objection, details about the date and place of the Court hearing on Settlement approval,
17 and how Class Members can obtain additional information. Agreement, ¶¶18, 46, Ex. A.; Richard
18 Decl. ¶¶32-33.

19 The notice procedures further satisfy due process, and complies with the requirements in that
20 the Settlement requires Defendants to provide the Settlement Administrator with the Class List which
21 will contain Class Members’ addresses and information to calculate Individual Class Settlement
22 Payments and Individual PAGA Settlement Payments within twenty-one (21) calendar days after
23 preliminary approval of the Settlement. Agreement, ¶¶9, 43. No later than fourteen (14) calendar days
24 after receipt of the Class Data, the Settlement Administrator is to mail the Notice Packet to Class
25 Members via First Class U.S. Mail, using the most current, known mailing address identified by
26 Defendants and updated by the Settlement Administrator through a NCOA search prior to mailing.
27 The Settlement Administrator is also required to re-mail Notice Packets returned as undeliverable
28 after the Settlement Administrator’s updated address search via skip trace (or other search) on any

1 returned mail before the Response Deadline. *Id.* at ¶¶44-45; Richard Decl., ¶¶32-33.

2 **V. CONCLUSION**

3 Plaintiff submits that the Settlement is in the best interests of Class, and respectfully requests
4 that this Court: grant Plaintiff leave to file the Second Amended Complaint attached as **Exhibit 3** to
5 the Richard Declaration; certify the Class for Settlement purposes only; preliminarily approve the
6 Class Settlement and approve the PAGA Settlement; appoint the Class Representative, the Settlement
7 Administrator, and Settlement Class Counsel; approve the form, content, and distribution of the
8 Notice Packet; set a date for the final approval hearing; and enter the submitted [Proposed] Order
9 Granting Preliminary Approval of Class Action Settlement and Approval of PAGA Settlement (a
10 copy of which is also attached as Exhibit 2 to the Richard Declaration).

11 Respectfully submitted,

12 Dated: May 29, 2024

RICHARD LAW, P.C.

13 By: Diane Richard
14 DIANE E. RICHARD,
Attorney for Marie Savery

PROOF OF SERVICE

***Marie Savery v ATX Learning, LLC. et al* (Case No.: 2023CUOE013956)**

1. At the time of service, I was a United States citizen, a resident of the County of San Diego, over 18 years of age, and not a party to or interest in this action.

2. My business address is 5060 N. Harbor Drive, Suite 265, San Diego, CA 92106.

3. On **May 29, 2024**, I served the following document(s), including all exhibits thereto:

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

4. I served the document(s) on the following:

GREENBERG TRAURIG, LLP

Ryan C. Bykerk

1840 Century Park East, Suite 1900

Los Angeles, California 90067-2121

Telephone: (310) 586-7700; Facsimile: (310) 586-7800

Electronic Service Addresses: bykerkr@gtlaw.com

5. The document(s) were served by the following means:

- ☒ **BY ELECTRONIC SERVICE** –Based on a court order, court rule, or an agreement of the parties to accept electronic service, I caused such document(s) to be delivered to the person(s) at the electronic service address set forth above. Said document(s) was/were served electronically and the transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **May 29, 2024**, at San Diego, California.

Diane Richard

Name

/s/ Diane Richard

Signature