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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

ROGELIO GARCIA and ABSHIR FARAH, individually, and on behalf of other members of the general public similarly situated, and as aggrieved employees pursuant to the Private Attorneys General Act ("PAGA"), Plaintiffs, vs. PROACTIVE BUSINESS SOLUTIONS, INC., a California corporation; and DOES 1 through 10, inclusive, Defendants.	Case No. 23CV421189 Assigned to the Hon. Charles F. Adams **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** Date: July 31, 2025 Time: 1:30 p.m. Place: Department 7 Complaint Filed: August 18, 2023 Trial Date: None Set

TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 31, 2025 at 1:30 p.m., or as soon thereafter as counsel may be heard, in Department 7 of the above-captioned court, located at 191 North First Street San Jose, California 95113, the Honorable Charles F. Adams presiding, Plaintiffs Rogelio Garcia and Abshir Farah will, and hereby do, move this Court to:

1. Preliminarily approve the settlement set forth in the Settlement Agreement, attached as Exhibit 1 to the Declaration of Raul Perez;

2. Conditionally certify the proposed Class: All current and former non-exempt employees who have been employed by Proactive in California during the period from August 18, 2019 to August 16, 2024;

3. Appoint Rogelio Garcia and Abshir Farah as the representatives for the Settlement Class;

4. Appoint Capstone Law APC and Haines Law Group, APC as Class Counsel;

5. Approve distribution of the proposed Notice of Class Action Settlement to the Class;

6. Appoint CPT Group, Inc. as the Settlement Administrator; and

7. Set a hearing date for final approval of the settlement.

This Motion is based upon: (1) this Notice of Motion and Motion; (2) the Memorandum of Points and Authorities in support of Motion for Preliminary Approval of Class Action and PAGA Settlement; (3) the Declaration of Raul Perez; (4) the Declaration of Sean M. Blakely; (5) the Settlement Agreement; (6) the Notice of Class Action Settlement; (7) the records, pleadings, and papers filed in this action; and (8) upon such other documentary and oral evidence or argument as may be presented to the Court at or prior to the hearing of this Motion.

As this Motion is unopposed, the Parties respectfully request relief from the page limit requirement set by California Rules of Court, Rule 3.1113(d).

Dated: July 9, 2025

Respectfully submitted,

By: ______________________________

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Orlando Villalba
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Jaime Castaneda
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Paul K. Haines
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HAINES LAW GROUP, APC

Attorney for Plaintiffs Rogelio Garcia and Abshir Farah

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I. INTRODUCTION

Plaintiffs Rogelio Garcia ("Garcia") and Abshir Farah ("Farah") (collectively, "Plaintiffs") seek preliminary approval of the Settlement Agreement,[1] which if approved, would provide considerable monetary relief for approximately 300 current and former employees of Proactive Business Solutions, Inc. ("Proactive"), and employees alleged to be jointly employed by Applied Materials, Inc. ("Applied") (collectively, "Defendants") (collectively with Plaintiffs, the "Parties"). The principal terms of the Settlement provide for the following:

(1) Conditional certification of a Class defined as: All current and former non-exempt employees who have been employed by Proactive in California at any time during the period from August 18, 2019 to August 16, 2024 ("Class Members").

(2) A **non-reversionary** Total Settlement Amount of $720,000. The Total Settlement Amount includes:

(a) A Net Settlement Amount of $358,000 (the Total Settlement Amount minus the PAGA Civil Penalties, Class Representative Payments, Class Counsel Fees and Expenses Payment, and the Settlement Administrator's fees and expenses), which will be allocated to all Class Members on a pro-rata basis according to the number of weeks each Class Member worked during the Class Period. **The entire Net Settlement Amount will be paid to all Class Members who do not opt out of the Settlement Class, and without the need to submit claims for payment.**[2]

(b) Attorneys' fees in the amount of 35% of the Total Settlement Amount, or $252,000, and litigation costs and expenses not to exceed $30,000, to Capstone Law APC and Haines Law Group, APC ("Plaintiffs' Counsel").

[1] Hereinafter "Settlement Agreement" or "Settlement." Unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Settlement Agreement.

[2] If a Class Member does not timely cash his or her Settlement Share check, the Settlement Administrator will distribute the funds to the California State Controller's Office, Unclaimed Property Fund, in the name of the Class Member, resulting in no "unpaid residue" within the meaning of California Code of Civil Procedure Section 384. (Settlement Agreement § III.H.12.)

(c) Settlement administration costs of approximately $10,000 (subject to Court approval, with any excess to be retained in the Net Settlement Amount), to be paid to the jointly selected Settlement Administrator, CPT Group, Inc.

(d) PAGA Civil Penalties of $50,000, of which 75% (i.e., $37,500) will be paid to the California Labor & Workforce Development Agency ("LWDA"), and the remaining 25% (i.e., $12,500), will be paid to PAGA Settlement Group Members, defined as: All current and former non-exempt employees who have been employed by Proactive in California at any time during the period from August 23, 2022 to August 16, 2024. **The entire PAGA Amount will be paid to all PAGA Settlement Group Members, and without the need to submit claims for payment.**

(e) Class Representative Payments of $10,000, each, to Rogelio Garcia and Abshir Farah for their service on behalf of the Settlement Class, the risks they took in bringing the action on behalf of the class, and for general releases of all claims arising out of their employment (or, in the case of Applied, alleged employment).

An objective evaluation of the Settlement confirms that the relief negotiated on the Settlement Class's behalf is fair, reasonable, and valuable. The Settlement was negotiated by the Parties at arm's length with helpful guidance from Jason C. Marsili, Esq., an experienced and well-respected class action mediator, and the Settlement confers substantial benefits to Class Members. This relief—averaging approximately $1,193 per Class Member from the Net Settlement Amount—is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases. Moreover, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendants prevailing at trial, or of Plaintiffs prevailing at trial but losing on appeal.

As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement approval under California law and falls within the range of reasonableness. Accordingly, Plaintiffs respectfully request that this Court grant preliminary approval of the Settlement Agreement.

II. FACTS AND PROCEDURE

A. Brief Overview of the Litigation

On August 18, 2023, Garcia filed a complaint against Proactive in the Superior Court of the State of California, for the County of Santa Clara, entitled *Rogelio Garcia, individually, and on behalf of other members of the general public similarly situated, Plaintiff, vs. Proactive Business Solutions, Inc., a California Corporation; and DOES 1 through 10, inclusive, Defendants*, Case No. 23CV421189 (the "Garcia Action"). (Declaration of Raul Perez ["Perez Decl."] ¶ 2.) The Garcia Action asserted putative class claims against Proactive for alleged failure to pay all wages due, including minimum wages and overtime wages, provide meal and rest periods, furnish accurate itemized wage statements, pay timely wages, pay all wages due to discharged and quitting employees, and reimburse all business expenses. (*Id.*) The Garcia Action also asserted a claim for unfair competition under California Business and Professions Code section 17200. (*Id.*) On August 23, 2023, Garcia provided notice to the LWDA indicating that he intended to pursue a claim pursuant to the PAGA. (*Id.*) On October 31, 2023, Garcia filed an amended complaint adding a claim for civil penalties under PAGA. (*Id.*)

On September 5, 2023, Farah filed a complaint against Defendants in the Superior Court of the State of California, for the County of Santa Clara, entitled *Abshir Farah, as an individual and on behalf of all others similarly situated, Plaintiff, vs. Proactive Business Solutions, Inc. a California corporation; APPLIED MATERIALS, INC., a Delaware corporation; and DOES 1 through 100, Defendants*, Case No. 23CV421883 (the "Farah Action"). (Declaration of Sean M. Blakely ["Blakely Decl."] ¶ 8.) The Farah Action asserted putative class claims against Defendants for alleged failure to pay all wages due, including minimum wages and overtime wages, provide meal and rest periods, furnish accurate itemized wage statements, and pay all wages due to discharged and quitting employees. (*Id.*) The Farah Action also asserted a claim for unfair competition under California Business and Professions Code section 17200. (*Id.*) Also on September 5, 2023, Farah provided notice to the LWDA of his intent to pursue a claim under PAGA. (*Id.*) On November 13, 2023, Farah filed an amended complaint adding a claim for civil penalties under PAGA. (*Id.*)

On November 20, 2023, Proactive filed Notices of Related Cases in both the Garcia and Farah Actions. On January 17, 2024, Applied filed a Notice of Related Case in the Farah Action. (Perez Decl. ¶

4.)

Following the production of Defendants' respective California labor policies and procedures materials, and a sample of Class Members' time records, the Parties participated in a mediation with Jason C. Marsili, Esq., on June 15, 2024. (Perez Decl. ¶ 5.) At all times, the Parties' negotiations were adversarial and non-collusive. (*Id.*) Mr. Marsili helped to manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. (*Id.*) With Mr. Marsili's guidance, the Parties were eventually able to negotiate a complete settlement of Plaintiffs' claims. (*Id.*) The terms of the settlement are now set forth in complete and final form in the Settlement Agreement. (*Id.*, Ex. 1.)

B. The Proposed Settlement Fully Resolves Plaintiffs' Claims

1. Composition of the Settlement Class

The proposed Settlement Class consists of all current and former non-exempt employees who have been employed by Proactive in California at any time during the period from August 18, 2019 to August 16, 2024. (Settlement Agreement § II.A.) There are approximately 300 Class Members.

2. Settlement Consideration

Plaintiffs and Defendants have agreed to settle the underlying class claims in exchange for the Total Settlement Amount of $720,000. The Total Settlement Amount includes: (1) automatic payments to all Participating Class Members—meaning, all Class Members except those who submit timely and valid Requests for Exclusion[3]—from the Net Settlement Amount; (2) $252,000 in attorneys' fees (i.e., 35% of the common fund) and up to $30,000 in litigation costs to Plaintiffs' Counsel; (3) Settlement Administration Costs of approximately $10,000; (4) a $37,500 payment to the LWDA and a $12,500 payment to PAGA Settlement Group Members; and (5) Class Representative Payments of $10,000, each, for Plaintiffs' service on behalf of the Settlement Class, the risks they took in bringing their representative claims, and for general releases of all claims arising out of their employment with Defendants. (Settlement Agreement § III.C, III.F.)

[3] The Class Notice instructs Class Members who wish to opt out to submit a signed letter that includes certain identifying information. The information requested is to ensure accurate identification of the Class Member; however, the Settlement Administrator will be instructed to accept opt-outs that are lacking all requested information provided the Class Member is identifiable and the request otherwise appears valid.

Payments to Participating Class Members will be made from the Net Settlement Amount. (Settlement Agreement § III.E.1.a.) The individual allocations will be calculated on a pro-rata basis using the number of Covered Workweeks worked by each Class Member during the Class Period. (*Id.*) This is a fair and equitable means of apportioning the Net Settlement Amount to Class Members. Class Members who worked for a longer duration during the Class Period will receive proportionally larger payments than those employees who worked for shorter durations. Given that there are approximately 300 Class Members, the average net recovery will be approximately $1,193. This average net recovery is significantly greater than many other wage and hour class action settlements approved by California state and federal courts.[4]

Payments to PAGA Settlement Group Members will be made from the PAGA Amount. (Settlement Agreement § III.E.1.b.) The individual allocations will be calculated on a pro-rata basis using the number of Covered Pay Periods worked by each PAGA Settlement Group Member during the PAGA Period. (*Id.*) This is a fair and equitable means of apportioning the PAGA Amount to PAGA Settlement Group Members. PAGA Settlement Group Members who worked for a longer duration during the PAGA Period will receive proportionally larger payments than those employees who worked for shorter durations.

3. Releases by Participating Class Members and PAGA Settlement Group Members

In exchange for the Total Settlement Amount, Plaintiffs and Participating Class Members will

[4] *See*, *e.g.*, *Sandoval v. Nissho of Cal., Inc.*, Case No. 37-2009-00091861 (San Diego County Super. Ct. Dec. 7, 2010) (average net recovery of approximately $145); *Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct. Sept. 29, 2006) (average net recovery of approximately $120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct. Sept. 10, 2009) (average net recovery of approximately $120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct. Jan. 27, 2009) (average net recovery of approximately $90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately $65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. Dec. 17, 2008) (average net recovery of approximately $60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct. Jan. 20, 2006) (average net recovery of approximately $35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct. July 23, 2010) (average net recovery of approximately $20); *Jones v. Bath & Body Works, Inc.*, No. 2:13-cv-05206-FMO-AJW (C.D. Cal. July 11, 2016) (average net recovery of approximately $50); and *Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct. Oct. 11, 2012) (average net recovery of approximately $80).

release the Released Class Claims during the Class Period:

> Any and all known and unknown local, state and federal claims against Defendants and the Released Parties that were pled or could have been pled based on the factual allegations contained in the operative complaint in the Actions or any amendments thereto or notices submitted by Plaintiffs to the LWDA pursuant to PAGA that occurred during the Class Period, including claims that Defendants failed to pay all wages due, including minimum wages and overtime wages; provide meal and rest periods; furnish accurate itemized wage statements; pay timely wages; pay all wages due to discharged and quitting employees; and reimburse all business expenses. The released claims include claims brought under California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 256, 510, 512, 516, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2698 *et seq.*, and 2802, California Business and Professions Code sections 17200-17208 based on the preceding claims, and the Industrial Welfare Commission Wage Order based on the preceding claims. Such claims include claims for wages, statutory penalties, civil penalties, or other relief under the California Labor Code, PAGA, relief from unfair competition under California Business and Professions Code section 17200 *et seq.*, similar claims under federal or local laws, including the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*; attorneys' fees and costs; and interest.

(Settlement Agreement § III.I.2.)

And in exchange for the PAGA Settlement Amount, Plaintiffs, the LWDA, and PAGA Settlement Group Members will release the Released PAGA Claims during the PAGA Period:

> Any and all claims under PAGA for civil penalties against Defendants and the Released Parties that were pled or could have been pled based on the factual allegations contained in the operative complaints in the Actions or any amendments thereto or notices submitted by Plaintiffs to the LWDA pursuant to PAGA that occurred during the PAGA Period (the "Released PAGA Claims"). The released claims include claims for PAGA penalties for alleged violations of California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 256, 510, 512, 516, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2698 *et seq.*, and 2802, and the Industrial Welfare Commission Wage Order based on the preceding claims.

(Settlement Agreement § III.I.3.)

III. ARGUMENT

A. The Court Should Preliminarily Approve the Proposed Class Action Settlement

1. Courts Review Class Action Settlements to Ensure that the Terms Are Fair, Adequate, and Reasonable

California Rule of Court ("Rule"), Rule 3.769 requires litigants to obtain court approval of class action settlements. Approval occurs in two steps: (1) an early "preliminary" review by the trial court; and (2) a subsequent "final" review after notice of the settlement has been distributed to class members for their comments and objections. Cal. R. Ct. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the court first "preliminarily approves the settlement" and later "conducts a final approval hearing to inquire into the fairness of the proposed settlement"). The motion for preliminary approval must be accompanied by (1) the settlement agreement, (2) proposed notice to the class, and (3) the proposed order. *Id.* at 3.769(c). The motion must also identify any agreement concerning the payment of attorneys' fees. *Id.* at 3.769(b).

If the trial court grants preliminary approval of a settlement, Rule 3.769(f) requires the court to (1) schedule a final approval hearing and (2) approve the method by which the parties are to provide notice to the class of the hearing and "an explanation of the proposed settlement." The court must also approve a procedure for class members to file objections to the settlement. *Id.* at 3.769(f). At the final approval hearing, the court must conduct an inquiry into the fairness of the proposed settlement. *Id.* at 3.769(g).

Although Rule 3.769 does not provide detail as to the scope of review of the proposed settlement, preliminary approval is warranted if the settlement falls within a "reasonable range." *See North County Contractor's Assn., Inc. v. Touchstone Ins. Services*, 27 Cal. App. 4th 1085, 1089-90 (1994); Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002) ("Newberg").

Reasonableness and fairness are presumed where, as here: (1) the settlement is reached through "arms-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" (collectively, "*Dunk* Factors"). *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996).[5]

[5] The presumption of fairness is consistent with California's public policy goal of favoring settlements. *Stambaugh v. Super. Ct.*, 62 Cal. App. 3d 231, 236 (1976) ("the law wisely favors settlements"); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1118 ("public policy generally favors the compromise of complex class action litigation"); *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) ("voluntary conciliation and settlement are the preferred means of dispute resolution . . . [t]his is especially true in complex class action litigation"); *Skulnick v. Roberts Express, Inc.*, 2 Cal. App. 4th 884, 891 (1992) ("public policy strongly discourages litigation and encourages settlement [because settlements] can produce peace and goodwill in the community while reducing the expense and persistency of litigation"). Additionally, in reviewing the fairness of a class action settlement, due regard should be given to what is "otherwise a private consensual agreement between the parties." *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1117. 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, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Id.* at 1118.

2. The Investigation and Discovery Are "Sufficient To Allow Counsel and The Court To Act Intelligently"

As set forth in greater detail in Plaintiffs' Counsel's declaration in support of the Motion, based on their analysis of documents and class data produced by Defendants, including Defendants' California labor policies and procedures manuals and a sample of Class Members' time records, Plaintiffs' Counsel were able to realistically assess the value of Plaintiffs' claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. (Perez Decl. ¶¶ 6-9; Blakely ¶ 10.)

By engaging in a thorough investigation and evaluation of Plaintiffs' claims, Plaintiffs' Counsel can opine that the Settlement, for the consideration and on the terms set forth in the Settlement Agreement, is fair, reasonable, and adequate, and is in the best interests of Class Members in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, various defenses asserted by Defendants. (Perez Decl. ¶ 10; Blakely ¶ 11.)

3. The Settlement Was Reached Through Arm's-Length Bargaining in which All Parties Were Represented by Experienced Counsel

"[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed settlement's fairness." *State of Cal. v. Levi Strauss & Co.*, 41 Cal. 3d 460, 482 (1986). Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered; thus, there is a presumption that settlement negotiations are conducted in good faith. Newberg, § 11.51.

As explained above, the Parties participated in a mediation with Mr. Marsili, an experienced mediator of wage and hour class actions. Mr. Marsili helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. *See In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) (the presence of a neutral mediator is a factor weighing in favor of finding of no collusion); *In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 WL 4820784, at *3 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against any inference of a collusive settlement); *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a "mediator's involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure."); *Villegas v. J.P. Morgan Chase & Co.*, No. 09–00261, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (participation in mediation "tends to support the conclusion that the settlement process was not collusive"); *Ogbuehi v. Comcast of California/Colorado/Fla./Oregon, Inc.*, 303 F.R.D. 337, 350 (E.D. Cal. 2014) (accord). At all times, the Parties' negotiations were adversarial and non-collusive. (Perez Decl. ¶ 5.)

The Parties were represented by experienced class action counsel throughout the negotiations resulting in this Settlement. Plaintiffs are represented by Capstone Law APC and Haines Law Group, APC. Plaintiffs' Counsel employ seasoned class action attorneys who regularly litigate wage and hour claims through certification and on the merits, and have considerable experience settling wage and hour class actions. (Perez Decl. ¶¶ 11-19, Ex. 3; Blakely Decl. ¶¶ 2-6.) Defendants are represented by Gordon Rees Scully Mansukhanki, LLP and Sheppard Mullin Richter Hampton LLP, two experienced wage and hour defense firms.

4. The Gross Settlement Amount Is Fair and Reasonable in Light of the Amount in Controversy and Discounted by the Risks of Continued Litigation

In seeking approval, a settling party must provide sufficient information to "enable the court to make an independent assessment of the adequacy of the settlement terms." *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 131-32 (2008). However, "[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair." *See Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982).

"The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Id.* at 625. "Estimates of a fair settlement figure are tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often measured in years)." *In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014). In other words, in valuing the claims within a realistic *range* of outcomes, the settling plaintiff should discount the value of the settled claims for risks such as changes in the law, the probability of success, and other factors.[6]

Settling parties are not, however, required to partake in a hypothetical accounting exercise: "**[California law] does not … require any such explicit statement of [maximum] value;** it requires a record which allows 'an understanding of the amount that is in controversy and the **realistic range of outcomes of the litigation.**" *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal. App. 4th 399, 409-10 (2010) (quoting *Kullar*, 168 Cal. App. 4th at 120 (emphasis added)). Overall, "the most important factor" in determining "whether a settlement is fair and reasonable" is the "strength of the case for plaintiffs on the merits, balanced against the amount offered in the settlement." *Id*. at 409 n.6 (quoting *Kullar*, 168 Cal. App. 4th at 130).

Plaintiffs' analysis of Defendants' realistic exposure at trial is summarized in the table below:

Claim	Realistic Estimated Exposure at Trial
Off-the-Clock[7]	$31,107.89
Meal Periods[8]	$777,697.20
Business Expense Reimbursement[9]	$64,250.00
Rest Periods[10]	$777,697.20
Wage Statement Claim[11]	$30,875.00

[6] Federal district courts also recognize that there is an inherent "range of reasonableness" in determining whether to approve a settlement "which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *In re World Trade Ctr. Lower Manhattan Disaster Site Litig.*, 66 F. Supp. 3d 477, 482 (S.D.N.Y. 2015); *see also Nat'l Rural Telecomm. Coop. v. Directv, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) ("well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery"); *In re Global Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436, 461 (S.D.N.Y. 2004) ("settlement amount's ratio to the maximum potential recovery need not be the sole, or even dominant, consideration when assessing settlement's fairness"); *In re IKON Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 184 (E.D. Pa. 2000) ("the fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate does not, in itself, weigh against the settlement; rather the percentage should be considered in light of strength of the claims"); *Officers for Just. v. Civ. Serv. Comm'n of City & Cty. of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982) (it is "the complete package, taken as a whole rather than the individual component parts, that must be examined for overall fairness").

[7] Conservatively estimating 30 minutes of total off-the-clock work per workweek × $30.24 average hourly wage × 20,574 total weeks worked in aggregate during the Class Period × 10% chance of both certifying the claim and recovering full damages at trial.

[8] 102,870 meal period violations × $30.24 premium × 25% of both certifying the claim and recovering full damages at trial.

[9] 5140 months worked in aggregate during the Class Period × $50 average monthly expenses × 25% of both certifying the claim and recovering full damages at trial.

[10] 102,870 rest period violations × $30.24 premium × 25% of both certifying the claim and recovering full damages at trial.

[11] (111 "initial" violations × $50 penalty per pay period with violations) + (3,032 "subsequent" violations × $100 penalty per pay period with violations) × 10% chance of both certifying the claim and recovering full penalties at trial.

Claim	Realistic Estimated Exposure at Trial
Final Pay Claim[12]	$108,864.00
PAGA[13]	$61,750.00
Total	**$1,852,241.29**

Plaintiffs' Counsel determined that it would be reasonable to settle for approximately 40% of Defendants' realistic estimated exposure at trial. Such a discount is inherently reasonable given that Plaintiffs would have had to overcome **multiple, dependent** contingencies to prevail on their claims, Defendant asserted multiple colorable defenses, and Defendant maintains that it has facially lawful written policies (although Plaintiff alleges that the practices are unlawful).

Defendant Applied disputed that it jointly employed Plaintiffs and other Class Members. Further, Applied maintained that, even if it were deemed a joint employer, it could not be held vicariously liable for violations allegedly committed by ProActive. *See, e.g.*, *Serrano v. Aerotek, Inc.*, 21 Cal. App. 5th 773, 784-85 (2018) (rejecting argument that employer is liable for co-employer's failure to provide meal periods; "whether an employer is liable for a co-employer's violations depends on the scope of the employer's own duty under the relevant statutes, not 'principles of agency or joint and several liability'") (citation omitted), *disapproved on other grounds by Donohue v. AMN Servs., LLC*, 11 Cal. 5th 58, 77 (2021); *Grande v. Eisenhower Med. Ctr.*, 44 Cal. App. 5th 1147, 1160 (2020) ("Serrano teaches that joint employers are not vicariously liable for each other's Labor Code violations[.]"), *aff'd*, 13 Cal. 5th 313 (2022). In other words, Applied contended that there was no basis in law to impute to Applied liability for any violations allegedly resulting from Proactive's policies or practices, particularly when Applied's wage-and-hour policies and practices in many ways exceeded the requirements of California law.

If anything, the projected odds for each of the above contingencies is generous to the class's position, since plaintiffs in employment cases rarely prevail on **all of the claims** at any of these dispositive stages. Courts routinely approve settlements that provide for discounted ranges of the

[12] 150 Class Member terminations during the 3-year statute of limitations period × 30 days of waiting-time penalties × 8-hour average shift length × $30.24 average hourly wage × 10% chance of both certifying the claim and recovering full penalties at trial.

[13] (111 "initial" violations × $100 penalty per pay period with violations) + (3,032 "subsequent" violations × $200 penalty per pay period with violations) × 10% chance of recovering full penalties at trial.

maximum potential recovery. *See, e.g., In re Warfarin Sodium Antitrust Litig.,* 212 F.R.D. 231, 256-58 (D. Del. 2002) (recognizing that a reasonable settlement amount can be 1.6% to 14% of the total estimated damages); *In re Armored Car Antitrust Litig.,* 472 F. Supp. 1357, 1373 (N.D. Ga. 1979) (settlements with a value of 1% to 8% of the estimated total damages were approved); *In re Four Seasons Secs. Laws Litig.,* 58 F.R.D. 19, 37 (W.D. Okla.1972) (approving 8% of damages); *Balderas v. Massage Envy Franchising, LLP,* 2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014) (finding that settlement which amounted to 8% of maximum recovery "[fell] within the range of possible initial approval based on the strength of plaintiff's case and the risk and expense of continued litigation."); *In re Omnivision Techs., Inc.,* 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement of 6% to 8% of estimated damages).[14]

Additionally, the PAGA gives the Court wide latitude to reduce the amount of civil penalties "based on the facts and circumstances of a particular case" when "to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Cal. Lab. Code § 2699(h). In reducing PAGA penalties, courts have considered issues including whether the employees suffered actual injury from the violations, whether the defendant was aware of the violations, the arguably duplicative nature of any PAGA penalties compared to a class action recovery, and the employer's willingness to fix the violation. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018) (awarding PAGA penalties of only 0.2% of the maximum); *see also Cotter v. Lyft, Inc*., 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016); *Fleming v. Covidien Inc.*, No. ED CV 10-01487 RGK (OPX), 2011 WL 7563047, at *4 (C.D.

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[14] *See also In re Uber FCRA Litig.*, No. 14-CV-05200-EMC, 2017 WL 2806698, at *7 (N.D. Cal. June 29, 2017) (granting preliminary approval to class action settlement where gross settlement fund, prior to deducting attorneys' fees and services awards, was valued at 7.5% or less of total possible verdict); *Viceral v. Mistras Grp., Inc.*, No. 15-CV-02198-EMC, 2016 WL 5907869, at *7 (N.D. Cal. Oct. 11, 2016) (granting preliminary approval to class action settlement representing "8.1% of the full verdict value" with net settlement amount representing approximately 5.3% of full verdict value); *Stovall-Gusman v. W.W. Granger, Inc.*, No. 13-cv-02540-HSG, 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015) (granting final approval to settlement with net recovery to Plaintiffs valued at 7.3% of potential maximum recovery); *Cruz v. Sky Chefs, Inc*., No. 12-cv-02705-DMR, 2014 WL 7247065, at *5 (N.D. Cal. Dec. 19, 2014) (granting final approval where gross settlement amount represented 8.6% of the maximum potential recovery from the class claims and estimated amount distributable to class after accounting for attorneys' fees and other deductions represented approximately 6.1% of maximum potential recovery); *In re LDK Solar Sec. Litig.*, No. 07-cv-05182-WHA, 2010 WL 3001384, at *2 (N.D. Cal. July 29, 2010) (granting final approving where "[t]he proposed settlement amount is [. . .] only about five percent of the estimated damages before fee and costs—even before any reduction thereof for attorney's fees and costs.").

Cal. Aug. 12, 2011).

For example, during the penalty phase of trial in *Carrington*, the plaintiff requested PAGA penalties in the amount of approximately $70 million. The trial court instead awarded only $150,000—**<u>or 0.21% of the maximum</u>**—and stated that this reduction was warranted because (a) the Court did not believe it was appropriate to impose multiple penalties per pay period in which a violation occurred and (b) imposing the maximum penalty would be "unjust, arbitrary, and oppressive" based on Starbucks's "good faith attempts" to comply with meal period obligations and because the court found the violations were minimal. *Carrington*, 30 Cal. App. 5th at 517-18. The Court of Appeal affirmed the lower court's reduced award of a $150,000 penalty under PAGA. *Id.* at 529.

Likewise, in *Covidien*, the Court reduced the potential penalties by over 82%, awarding $500,000 instead of maximum penalties of $2.8 million. *Covidien*, 2011 WL 7563047 at *4; *see also Thurman v. Bayshore Transit Mgmt.*, 203 Cal. App. 4th 1112, 1135-36 (2012) (affirming 30% reduction under specified PAGA claim where the employer produced evidence that it took its obligations seriously); *Elder v. Schwan Food Co.*, No. B223911, 2011 WL 1797254, at *5-*7 (Cal. Ct. App. May 12, 2011) (reversing trial court decision denying any civil penalties where violations had been proven, remanding for the trial court to exercise discretion to reduce, but not wholly deny, civil penalties); *Li v. A Perfect Day Franchise, Inc.*, No. 5:10-CV-01189-LHK, 2012 WL 2236752, at *17 (N.D. Cal. June 15, 2012) (denying PAGA penalties for violation of California Labor Code section 226 as redundant with recovery on a class basis pursuant to California Labor Code section 226, directly); *Marquez v. NLP Janitorial, Inc.*, 2019 WL 652866, at *10 (N.D. Cal. Feb. 15, 2019) ("Plaintiffs are entitled to recovery of [statutory] penalties under § 203 and § 226 for waiting time violations and Defendants' failure to provide itemized wage statements, respectively. As such, granting PAGA penalties for these two claims would be duplicative recovery. Plaintiffs have provided no authority that would permit double recovery of essentially the same penalties."); *Aguirre v. Genesis Logistics*, No. SACV 12-00687 JVS (ANx), 2013 WL 10936035 at *2-*3 (C.D. Cal. Dec. 30, 2013) (reducing penalty for past PAGA violations from $1.8 million to $500,000, after rejecting numerous other PAGA claims); *de Cabrera v. Swift Beef Co.*, 2020 WL 5356704, at *9 (C.D. Cal. June 25, 2020) (approving a PAGA "settlement amount [that] equals approximately 2.2% of the potential total liability," because "courts have approved PAGA claims within the range of zero to two percent of the settlement amount"); *Williams v. Brinderson Constructors, Inc.*, 2017 WL 490901, at *1, *5 (C.D. Cal. Feb. 6, 2017) (approving a PAGA settlement of 3.3% of the maximum settlement amount, because courts "routinely approve even nominal amounts for PAGA penalties"); *Ghrdilyan v. RJ Financial*, Case No. BC43063 (Los Angeles Super. Ct., Apr. 23, 2012) (court applied a 94% reduction in PAGA penalties (from $5,433,000 to $325,000)); *Connelly v. Starbucks Corp.*, 2023 WL 6387077, at *8 (E.D. Cal. Sept. 29, 2023) ("[T]he Court notes that cases that have approved lower end valuation PAGA settlements often accepted the lower PAGA portion in light of the fact of a larger overall class settlement that would itself result in satisfying the purposes of PAGA.").

5. The Court Should Preliminarily Approve the Negotiated Class Representative Payments

Enhancement payments "are fairly typical in class action cases." *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1393 (2010) (affirming incentive awards of $10,000); *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958 (9th Cir. 2009), citing 4 Newberg on Class Actions (4th ed. 2002) § 11:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53 UCLA L. Rev. 1303 (2006). Enhancement payments "are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." *Rodriguez*, 563 F.3d at 958–59. "[T]he rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class." *Clark v. American Residential Services LLC*, 175 Cal. App. 4th 785, 806 (2009).

Approximately 300 current and former employees of ProActive will share a $720,000 settlement fund due entirely to the effort and commitment of Rogelio Garcia and Abshir Farah. Subject to Court approval, therefore, the Settlement provides for Class Representative Payments of $10,000, each.[15] The

[15] Such amounts are reasonable by reference to the amounts that California courts (both federal and state) have repeatedly found to be reasonable for wage and hour class action settlements: *See Carter v. GMRI Inc.*, No. RIC 1506085 (Riverside County Super. Ct. Jan. 10, 2017) (awarding $10,000

Class Representative Payments are fair and reasonable compensation for Plaintiffs' effort in pursuing the action, serving as private attorneys general under PAGA, assisting counsel with the litigation and settlement, regularly conferring with counsel on the status of their case and the strategies for prosecuting the claims, and reviewing the proposed settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class.

Plaintiffs will file a formal motion for the negotiated Class Representative Payments once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated Class Representative Payments.

6. The Court Should Preliminarily Approve the Negotiated Attorneys' Fees and Costs

At final approval, Plaintiffs will seek Court-approval of attorneys' fees of $252,000 (35% of the Total Settlement Amount) and up to $30,000 in litigation costs. The requested award of attorneys' fees is reasonable and consistent with the prevailing California practice of awarding attorneys' fees as a percentage of the settlement fund. California policy strongly favors use of the percentage method of calculating fees for class action settlements, as it "distributes the cost of hiring an attorney among all the parties benefited," namely, Class Members. *Laffitte v. Robert Half Internat. Inc.*, 1 Cal. 5th 480, 489 (2016) ("*Laffitte II*"). The percentage method also incentivizes competent counsel to achieve the best results as efficiently as possible by giving them a stake in the outcome, rather than incentivizing counsel

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enhancement payments to the named plaintiffs); *Crook v. Barton Healthcare System*, No. SC20150146 (El Dorado County Super. Ct. Dec. 9, 2016) (awarding $10,000 enhancement payment to the named plaintiff); *Singh v. American Building Supply, Inc.*, No. 34-2015-00179889-CU-OE-GDS (Sacramento County Super. Ct. Oct. 3, 2016) (awarding $10,000 enhancement payment to the named plaintiff); *Alvarez v. MAC Cosmetics Inc.*, No. CIVDS1513177 (San Bernardino County Super. Ct. July 29, 2016) (awarding $10,000 enhancement payments to the named plaintiffs); *Coffey v. Beverages & More, Inc.*, No. BC477269 (L.A. County Super. Ct. July 26, 2016) (awarding $10,000 enhancement payment to the named plaintiff); *Restoration Hardware Wage and Hour Cases*, No. JCCP4794 (L.A. County Super. Ct. April 28, 2016) (awarding $10,000 enhancement payments to the named plaintiffs); *Cook v. United Insurance Co. of Amer.*, No. CIVMSC10-00425 (Contra Costs County Super. Ct. April 15, 2016) (awarding $10,000 enhancement payments to the named plaintiffs); *Quintana v. Claire's Boutiques, Inc.*, No. 5:13-cv-00368-PSG (N.D. Cal. Dec. 1, 2015) (awarding $10,000 enhancement payments to the named plaintiffs); *Paredes v. American Family Care, Inc.*, No. 34-2014-00167060-CU-OE-GDS (Sacramento County Super. Ct. Nov. 17, 2015) (awarding $10,000 enhancement payment to the named plaintiff); *Hoagland v. Brooks Brothers Group, Inc.*, No. BC511534 (L.A. County Super. Ct. July 16, 2015) (awarding $10,000 enhancement payment to the named plaintiff); *Baker v. L.A. Fitness Int'l, LLC*, No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012) (awarding $10,000 enhancement payments to three of the named plaintiffs).

to drive up hours through protracted litigation. Furthermore, because none of the Class Members have paid fees to Plaintiffs' Counsel for their effort during the litigation, equity dictates that they pay a fair and reasonable fee for the valuable benefits obtained—not less than if they had hired private counsel to litigate their cases individually.

B. California Law Authorizes Provisional Certification for Settlement Purposes

1. The California Standard for Class Certification

Class actions are statutorily authorized "when the question is one of common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court." Cal. Civ. Proc. Code § 382; *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1332 (2008). Class certification is appropriate when there is an "ascertainable class and a well-defined community of interest among class members." *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 326 (2004). Class treatment is appropriate even if class members at some point may be required to make an individual showing as to eligibility for recovery. *Bufil v. Dollar Financial Group, Inc.*, 162 Cal. App. 4th 1193, 1207 (2008); *Sav-On*, 34 Cal. 4th at 333.

Conditional certification of the proposed Settlement Class is particularly warranted here given the relatively relaxed standard for certification at the preliminary approval stage. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996) (courts can apply a "lesser standard of scrutiny" for class certification in settlement cases).[16] In *Dunk*, the California Court of Appeal specifically rejected the argument that the standard for certifying a class for purposes of settlement is identical to the standard for certifying the same class for purposes of litgiation:

> Geer argues the court must use the same standard under Federal Rules of Civil Procedure, rule 23 (28 U.S.C.) to determine the propriety of both settlement and litigation class certifications . . . That rule is contrary to the Ninth Circuit rule, stated in *Officers for Justice*

[16] *See also* Newberg on Class Actions § 13:18 (5th ed.) (courts "declin[e] to treat formal class certification as a prerequisite for preliminary approval and undertak[e] a more cursory class certification analysis at the preliminary approval stage."); *Dearaujo v. Regis Corp.*, No. 2:14-CV- 01408-KJM-AC, 2016 WL 3549473, at *6 (E.D. Cal. June 30, 2016) ("[D]espite the Supreme Court's cautions in *Amchem* . . . , a cursory approach appears the norm."); *In re Amtrak Train Derailment in Philadelphia, Pennsylvania*, No. 15-MD-2654, 2016 WL 1359725, at *4 (E.D. Pa. Apr. 6, 2016) ("[A] settlement class can be preliminarily certified based on a less rigorous analysis than that necessary for final certification."); *In re Processed Egg Prod. Antitrust Litig.*, No. 08-MD-2002, 2014 WL 828083, at *2 (E.D. Pa. Feb. 28, 2014) (at the preliminary approval stage, "the Court must determine whether the proposed class should be conditionally certified, and leave the final certification decision for the Fairness Hearing.").

> *v. Civil Service Com. supra*, 688 F.2d at p. 633, and the position of the leading commentators (Newberg & Conte, supra, § 11.28 at p. 11–58), which allow a lesser standard of scrutiny for settlement cases . . . We agree with the latter. The two basic purposes for the Rule 23 certification requirements, as they relate to questions of a nationwide class, are: (1) to keep the lawsuit manageable for trial; and (2) to protect the interests of the non-representative class members. The first purpose is inapposite in the settlement context, and the second, as it relates to commonality of issues, only makes a difference if the non-representative class members would do much better by litigating on their own or in their own jurisdiction. The second category concerns are protected by the trial court's fairness review of the settlement.

Id. at n19.

2. The Proposed Settlement Class Is Ascertainable and There Is a Well-Defined Community of Interest Among Class Members

Whether a class is "ascertainable" within the meaning of Code of Civil Procedure section 382 is "determined by examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying class members." *Lee*, 166 Cal. App. 4th at 1334. Class members are ascertainable where they may be readily identified without unreasonable expense or time by reference to official records. *Id.*

The community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) a class representative with claims or defenses typical of the class; and (3) a class representative and counsel who can adequately represent the class. Cal. Civ. Proc. Code § 382.

In April of 2012, the California Supreme Court expounded on the element of predominance:

> The "ultimate question" the element of predominance presents is whether "the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants."

Brinker Rest. Corp. v. Super. Ct., 53 Cal. 4th 1004, 1021 (2012) (citations omitted).

The proposed Settlement Class consists of all current and former non-exempt employees who have been employed by Proactive in California during the period from August 18, 2019 to August 16, 2024. Because all Class Members are either current or former employees of ProActive, the class is readily ascertainable from ProActive's regular business records.

Here, common issues of fact and law predominate because the California statutes relating to each of Plaintiffs' claims, and Defendants' defenses thereto, apply with equal force and effect to all Class Members. Factually, Plaintiffs contend that Defendants' policies and practices apply class-wide and

Defendants' liability can be determined by facts common to all members of the class. The wage and hour issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Settlement Class Members.

Plaintiffs' wage and hour claims are typical of the proposed Settlement Class because they arise from the same factual bases and are based on the same legal theories applicable to the other Class Members. Likewise, Plaintiffs' interests are entirely coextensive with the interests of the Class. Plaintiffs maintain that they were injured by the same company-wide practices to which the proposed Settlement Class was subject and seek the same relief. Plaintiffs have already demonstrated their ability to advocate for the interests of the Class by initiating this litigation, undertaking representative discovery, and evaluating the proposed settlement to assure that it is fair.

Additionally, Plaintiffs are represented by competent counsel who have extensive experience in litigating wage and hour class action cases. (Perez Decl. ¶¶ 11-19, Ex. 3; Blakely Decl. ¶¶ 2-6.) Plaintiffs' Counsel have successfully briefed, argued, certified, and gained state and federal court settlement approval of the same class-wide causes of action that are at issue in this case. (*Id.*) Plaintiffs' Counsel's wage and hour class action expertise establishes that they are well qualified to represent the interests of this Class.

A class action is superior to a multitude of individual lawsuits. Given the size and amount of each individual Class Member's claim, Class Members likely have little incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication.

3. The Proposed Notice Properly Informs Class Members about the Case and the Settlement

Class members are entitled to the best practical notice under the circumstances. *Kass v. Young*, 67 Cal. App. 3d 100, 106 (1977). The purpose of the notice is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. *Trotsky v. Los Angeles Fed. Savings & Loan Assn.*, 48 Cal. App. 3d 143, 151-52 (1975). The notice must advise class members "that they may be excluded from the class if they so request and that they will be bound by the judgment, whether favorable or not, if they do not request exclusion." *Kass*, 67 Cal. App. 3d at 106. In a case such as this involving a significant number of class members, California authorities generally require service of the class notice by mail or similar reliable means. *Chance v. Super. Ct.*, 58 Cal. 2d 275, 290 (1962); *Cartt v. Super. Ct.*, 50 Cal. App. 3d 960, 972 (1975).[17]

The Parties have jointly drafted the Notice of Class Action Settlement ("Class Notice") which fairly and neutrally informs Class Members of their rights and remedies in this action.[18] The proposed Class Notice will be mailed to all Class Members by First Class mail and will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement's terms, the class definition, the procedure and time period within which to submit Requests for Exclusions or objections to the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the Released Claims. (Settlement Agreement, Exhibit A.)

In the event Class Notices are returned as undeliverable, the Settlement Administrator will attempt to locate a current address using, among other resources, a skip-trace search. (Settlement Agreement § III.G.) CPT Group, Inc., the proposed Settlement Administrator, is a leading provider of class action settlement administration services. It has been appointed as the settlement administrator in thousands of cases, including by this Court.

Accordingly, both the method of disseminating the Class Notice and content of the Class Notice satisfy due process and the requirements of California law. *See* Cal. R. Ct. 3.776(e)-(f); *State of Cal. v. Levi Strauss*, 41 Cal. 3d 460, 485 (1986) (the class notice must "fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members.").

IV. CONCLUSION

The Parties have negotiated a fair and reasonable settlement of claims. Having appropriately presented the materials and information necessary for preliminarily approval, the Parties request that the

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[17] Due process does not require that each Class Member actually receive a notice, but rather a procedure reasonably certain to reach Class Members. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986). If appropriate notice is given, Class Members will be bound by the judgment even if they never actually receive the notice. *Fontana v. Elrod*, 826 F.2d 729, 732 (7th Cir. 1987).

[18] A Spanish translation of the Class Notice will be made available by request.

Court preliminarily approve the settlement.

Dated: July 9, 2025

Respectfully submitted,

By: ______________________

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PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **July 9, 2025**, I served the document described as: **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties in this action by sending [ ] the original [or] [✓] a true copy thereof [✓] to interested parties as follows [or] [ ] as stated on the attached service list:

Mollie M. Burks mburks@grsm.com Sat Sang Khalsa skhalsa@grsm.com GORDON REES SCULLY MANSUKHANI, LLP 275 Battery Street, Suite 2000 San Francisco, CA 94111 Telephone: (415) 986-5900 Facsimile: (415) 986-8054	*Attorneys for Defendant:* PROACTIVE BUSINESS SOLUTIONS, INC.
Paul K. Haines phaines@haineslawgroup.com Sean M. Blakely sblakely@haineslawgroup.com HAINES LAW GROUP, APC 2155 Campus Drive, Suite 180 El Segundo, California 90245 Telephone: (424) 292-2350 Facsimile: (424) 292-2355	*Attorneys for Plaintiffs*

[ ] **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

[ ] **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

[**X**] **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **July 9, 2025,** at Los Angeles, California.

Riley McIntire
Type/Print Name

Signature