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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

BIANCA MURO, individually and on behalf of herself and all other similarly situated, Plaintiffs, v. MICHAEL KORS, INC., a Delaware corporation; BARRETT BUSINESS SERVICES, INC., a Maryland corporation, and DOES 1 – 50, inclusive, Defendants.	Case No. 23STCV21214 (Lead Case) Consolidated with 23STCV27448 Assigned to Hon. Lawrence P. Riff **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: April 1, 2025 Time: 10:00 a.m. Place: Dept. 7 Complaint Filed: September 1, 2023 Trial Date: None Yet Set

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

I. INTRODUCTION

Plaintiff Bianca Muro ("Plaintiff") seeks preliminary approval of the Joint Stipulation of Settlement and Release ("Settlement Agreement" or "Settlement") on behalf of a proposed class defined as all current and former non-exempt employees of Defendant Michael Kors USA, Inc. ("Michael Kors")[1] in the state of California between January 24, 2022 through December 4, 2024, and all current and former non-exempt employees of Defendant Barrett Business Services, Inc. ("BBSI") placed to work at a Michael Kors facility in the state of California at any time between September 1, 2019 through December 4, 2024 (the "Class" or "Class Members"). Defendants' records indicate that there are approximately 1,734 Class Members. [2]

After engaging in an independent investigation, a full-day mediation before well-respected and highly experienced class action mediator Louis Marlin, and hard-fought negotiations, the parties agreed to a non-reversionary gross settlement amount of $600,000, exclusive of employer-side payroll taxes. The settlement is strongly supported by experienced counsel, who carefully considered the strength of the claims and Defendants' potential defenses, as well as the expense, complexity, risks, and likely duration of continued litigation.

Subject to Court-approval, and after deductions for a PAGA payment to the Labor Workforce and Development Agency ("LWDA") and Aggrieved Employees pursuant to the Private Attorneys General Act of 2004 ("PAGA"), Administration Costs, a Class Representative Service Award to Plaintiff, and attorneys' fees and litigation expenses to Class Counsel, the remaining amount will be distributed to Class Members who did not opt-out of the Settlement as follows:

Gross Settlement Amount	$600,000
PAGA Payment	$30,000
Administration Costs	$17,750
Class Representative Service Award	Up to $7,500
Attorneys' Fees	Up to $200,000

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[1] Erroneously sued as Michael Kors, Inc

[2] The Class is comprised of two groups with separate class periods: (1) the approximately 1,312 employees assigned to work at Defendant Michael Kors through Defendant BBSI from September 1, 2019 through December 4, 2024; and (2) the approximately 422 employees hired directly by Michael Kors from January 24, 2022 through December 4, 2024. (Hawkins Decl. ¶ 25; Settlement Agreement, ¶ 1.4.)

Litigation Expenses	Up to $25,000
Net Settlement Amount	At least $319,750

Through this motion, Plaintiff respectfully requests that the Court enter an order: (1) provisionally certifying the Class under Code of Civil Procedure section 382 and California Rule of Court 3.769(c) for settlement purposes; (2) preliminarily approving the Settlement; (3) approving as to form the Notice of Settlement of Class and Final Approval Hearing ("Class Notice") be distributed to all Class Members; (4) appointing Plaintiff Bianca Muro as the Class Representative; (5) appointing Apex Class Action Administrators ("Apex") as the Settlement Administrator; (6) appointing James R. Hawkins, Christina M. Lucio, and Mitchell J. Murray of James Hawkins APLC as Class Counsel; and (7) setting this matter for a hearing on the issues of final approval of the proposed Settlement, approval of the Class Representative Service Award, approval of Class Counsel's attorneys' fees and litigation expenses, and approval of the administration costs.

II. PROCEDURAL AND FACTUAL BACKGROUND

A. Plaintiff's Claims And Relevant Background

Plaintiff was employed as an Inventory Laborer, and was assigned to work at Michael Kors's distribution center located in Whittier, California from approximately March 14, 2022, through September 7, 2022. (Declaration of Bianca Muro ["Muro Decl."], ¶ 2.) At all times, she was classified as a non-exempt employee and was paid on an hourly basis. (*Ibid*.) Plaintiff contends that over the course of her employment, Defendants failed to pay wages, including minimum wages, overtime wages, sick time wages, and including but not limited to wages due based on alleged time rounding and/or off-the-clock work, and failed to properly calculate the regular rate of pay for wages owed, failed to authorize and permit timely, lawful, uninterrupted meal/rest periods, failed to pay for time worked off the clock during meal periods, failed to pay meal or rest premiums for violations, or properly compensate meal or rest break premiums at the regular rate of pay, failed to furnish accurate wage statements, failed to keep accurate records, failed to timely pay wages during employment and at separation, failed to reimburse for necessary expenses, violated of temperature control guidelines, failed to provide suitable seating, and conducted unlawful background and credit checks. (*Ibid*.)

On September 1, 2023, Plaintiff notified the LWDA and Defendants of Defendants' alleged violations of the California Labor Code. (Hawkins Decl., ¶ 7). On the same day, Plaintiff filed a proposed class action in this Court asserting claims for: (1) failure to timely pay minimum, regular, and overtime wages; (2) failure to provide compliant meal periods; (3) failure to provide lawful meal periods; (4) failure to timely pay wages during employment; (5) failure to timely pay all wages due upon separation of employment; (6) failure to comply with itemized wage statement provisions; and (7) violation of the Business and Professions Code section 17200 et seq. (*Ibid.*) On or about November 29, 2023, Plaintiff filed a First Amended Complaint, which added Defendant BBSI. (Hawkins Decl., ¶ 7.)

On November 7, 2023, after providing notice to the LWDA, Plaintiff filed a separate PAGA-only complaint asserting violations of the California Labor Code and applicable Industrial Welfare Commission ("IWC") Wage Order for: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Owed; (3) Failure to Provide Lawful Meal Periods; (4) Failure to Timely Pay Wages During Employment; (5) Failure to Timely Pay Wages Owed Upon Separation from Employment; (6) Knowing and Intentional Failure to Comply with Itemized Wage Statement Provisions; (7) Failure to Keep Accurate Records; (8) Violation of Temperature Control Guidelines; (9) Failure to Provide Suitable Seating; and (10) Unlawful Background and Credit Checks. (Hawkins Decl., ¶ 8.)

On or about February 26, 2024, the Parties stipulated to consolidate the class and PAGA action, and subsequently, on or about February 27, 2024, the Court consolidated the actions and designated the class action as the lead case (Hawkins Decl., ¶ 9.)

On or about February 29, 2024, BBSI moved for an order compelling Plaintiff to arbitrate her individual claims and dismissing her class and non-individual claims, which Michael Kors joined. Plaintiff opposed the motion, arguing that the agreement was except from the FAA under the transportation worker exception. On April 10, 2024, the Court issued an order requesting supplemental briefing from the parties. (Hawkins Decl., ¶ 10).

B. Investigation And Evaluation Of The Claims

Prior to filing the lawsuits, Class Counsel thoroughly investigated the facts and circumstances underlying the potential claims. (Hawkins Decl., ¶ 11.) This required, among other things, numerous telephonic conferences with Plaintiff, analysis of documents and other information provided by Plaintiff, investigation into the viability of class and/or representative treatment of the potential claims, and research of the applicable law. (*Ibid*.) After conducting their initial investigation, Class Counsel determined that Plaintiff's claims were well suited for class adjudication based on what appeared to be a common course of conduct affecting a similarly-situated group of employees. (*Ibid*.)

Given the high degree of risk for both sides, the parties elected early on in the action to mediate Plaintiff's claims and explore the possibility of settlement. (Hawkins Decl., ¶ 12). Prior to mediation, Class Counsel conducted a thorough investigation of the facts and claims giving rise to the action, including: (1) conducting informal discovery regarding the scope of the proposed class; (2) reviewing and analyzing thousands of timekeeping and payroll records, Defendants' employee handbook, Plaintiff's personnel files, and relevant policies and procedures; (3) researching the applicable law and potential defenses; (4) interviewing Plaintiff regarding her experiences and the claims asserted; and (5) analyzing and calculating Defendants' potential liability based on interpretations of California law. (Hawkins Decl., ¶¶ 13-17.)

C. Mediation And Settlement Efforts

On September 5, 2024, the parties participated in a full-day mediation with Louis Marlin, a well-respected and highly experienced wage and hour class action mediator. (Hawkins Decl., ¶ 18.) During mediation, the parties discussed all aspects of the case, including the relative strengths and weaknesses of Plaintiff's claims, Defendants' arbitration agreement, the risks and delays further litigation would present, the current state of the law as it related to Plaintiff's claims, and the difficulty Plaintiff would likely have in obtaining and maintaining class certification of each claim. (*Ibid.*) Mr. Marlin's role in mediating this case was extremely helpful in managing the parties' expectations and providing a useful and neutral analysis of the issues and risks to both parties. (Hawkins Decl., ¶ 20.) While the parties were unable to reach an agreement at mediation, with the continued assistance of the mediator, on September 11, 2024, the parties accepted a mediator's proposal to settle the claims asserted for the Gross Settlement Amount of $600,000. (Hawkins Decl., ¶ 19.)

Class Counsel believes the Settlement is fair and reasonable, taking into consideration the strengths and weaknesses of the claims asserted, the amounts received in other wage and hour class actions, the risks inherent in complex litigation, and the defenses asserted. (Hawkins Decl., ¶ 22). Most notably, Defendants argued that Plaintiff's claims were subject to an arbitration agreement which required her to bring her claims in arbitration on an individual basis and to dismiss her class claims. At all times, the parties' negotiations were hard-fought and conducted at arm's-length between attorneys who are highly experienced in wage and hour litigation, and the Settlement is evidence of the parties' substantial efforts to reach a mutually agreeable compromise. (Hawkins Decl., ¶ 20.) Defendant contends that Plaintiff could not identify any unlawful policies.

III. THE TERMS OF THE PROPOSED SETTLEMENT

Subject to Court approval, and pursuant to Code of Civil Procedure section 382 and California Rules of Court, rule 3.769 et seq., the parties have agreed to settle the claims in the consolidated action upon the terms and conditions and for the consideration set forth in the Settlement Agreement, a copy of which is attached as Exhibit 1[3] to the Declaration of James R. Hawkins and is incorporated herein by reference in its entirety. The following is a summary of the principal terms of the Settlement Agreement:

A. Class Definition

The Class is defined as all current and former non-exempt employees of Michael Kors in the State of California at any time between January 24, 2022, through December 4, 2024, and all current and former non-exempt employees of BBSI placed to work at a Michael Kors facility in the State of California at any time between September 1, 2019 through December 4, 2024. (Settlement Agreement, ¶ 1.4.) The term "Class Member" refers to both Participating and Non-Participating Class Members, including Non-Participating Class Members who qualify as Aggrieved Employees. (*Ibid.*) Defendants' records indicate that there are approximately 1,734 Class Members and 57,880 total workweeks during the Class Period.

In addition, the Settlement Agreement defines Aggrieved Employees all as current and former non-exempt employees of Michael Kors in the State of California and all current and former non-exempt employees of BBSI placed to work at a Michael Kors facility in the State of California between September 1, 2022, through December 4, 2024 ("PAGA Period"). (Settlement Agreement at ¶ 1.2.) As set forth below, any Class Member who opts out of the Settlement ("Non-Participating Class Member") will nonetheless remain eligible for an Individual PAGA Payment and will be bound by the Release of PAGA

[3] All Parties have approved the settlement agreement and notice as attached, but it is still being circulated for signatures. To comply with the Court's filing deadline, we attach the unsigned agreement here, and will amend once we receive fully executed document.

Claims. (*Id.* at ¶ 14.5)

B. The Gross Settlement Amount And Allocation Of Settlement Funds

Defendants have agreed to pay a maximum settlement payment of $600,000, plus all employer-wide payroll taxes (the "Gross Settlement Amount"). (Settlement Agreement, ¶ 1.15.) The Gross Settlement Amount includes: (1) all Individual Class Payments; (2) Class Counsel's Attorneys' Fees of up to $200,000; (3) Class Counsel's Litigation expenses of up to $25,000; (4) Settlement Administration Costs of up to $17,750; (5) Service Award to Plaintiff of up to $7,500; and (6) the PAGA Payment of $30,000 which includes the LWDA Payment (75%) and the PAGA Penalties (25%). (*Id.*, ¶¶ 5.1–8.) In addition, Defendants will separately pay the applicable employer-side payroll taxes owed on the wage portions of the Individual Class Payments. (*Id.*, ¶ 1.15.)

C. Net Funds Available To Class Members

After all Court-approved deductions from the Gross Settlement Amount, Class Counsel estimates that at least $319,750 will be distributed to Class Members (the "Net Settlement Amount"). The Net Settlement Amount will be distributed on a pro rata based on the number of workweeks a Class Member worked during the Class Period. (Settlement Agreement, ¶ 5.1.1.) Class Members will be provided with notice of the Settlement and its terms, their estimated Individual Class Payment and Individual PAGA Payment, if any, their right to opt-out or object to the settlement, and their right to appear at the fairness hearing. (*Id.*, ¶¶ 12.3.–12.4, Ex. A.)

D. Release

Upon full payment by Defendants of the GSA, each Participating Class Member and each of their respective executors, administrators, representatives, agents, heirs, successors, assigns, trustees, spouses, or guardians will release the Released Parties from any and all claims, rights, demands, charges, complaints, causes of action, obligations, or liability of any and every kind or nature, contingent or accrued, and irrespective of theory of recovery, that arose during the Class Period and which were or could have been brought based on the facts or claims alleged in any version of the complaints filed in the Actions or enumerated in Plaintiff's letter to the LWDA requesting authorization to be deputized as private attorney generals for the purposes of pursuing a PAGA claim (the "LWDA Letter"). This includes, but is not limited to, any claims for failure to pay wages, including minimum wages and overtime and including but not limited to wages due based on alleged time rounding and/or off-the-clock work, failure to pay wages (including overtime wages) at the regular rate of pay, failure to provide meal or rest periods, failure to authorize and permit rest periods, short/late meal and rest periods, failure to relieve employees of all duties during meal and/or rest periods, failure to pay for time worked off the clock during meal periods, failure to pay meal or rest premiums or properly compensate meal or rest break premiums at the regular rate of pay, failure to furnish accurate wage statements, failure to keep accurate records, failure to timely pay wages during employment, failure to pay sick time wages, failure to reimburse for necessary expenses, failure to timely pay wages at separation, violation of temperature control guidelines, failure to provide suitable seating, unlawful background and credit checks as well as claims derivative and/or related to these claims, liquidated damages, conversion of wages, claims under California Labor Code §§ 201, 202, 203, 204, 210, 216, 218.5, 218.6, 221, 222, 223, 224, 226, 226.3, 226.7, 245, 246, 247, 248, 249, 510, 512, 516, 558, 1024.5, 1174, 1182.12, 1194, 1194.2, 1195, 1197, 1198, 2802, claims under the applicable IWC Wage Order, and claims arising under Business and Professions Code section 17200 arising from the Labor Code violations released herein. Participating Class Members shall further waive their right to pursue individual lawsuits as to any of the claims released herein against the Released Parties to the extent such claims accrued during the Class Period. (Settlement Agreement, ¶ 11.1.)

As to claims for civil or statutory penalties for violation of PAGA, the State of California, all Aggrieved Employees including Plaintiff shall release the Released Parties for all claims for penalties under PAGA during the PAGA Period that were or could have been alleged in the Actions based on the facts or claims alleged in any version of the complaints filed in the Actions and/or the LWDA Letter irrespective of the underlying theory of recovery supporting the claim for PAGA penalties. This includes, but is not limited to, any claims for failure to pay wages, including minimum wages and overtime and including but not limited to wages due based on alleged time rounding and/or off-the-clock work, failure to pay wages (including overtime wages) at the regular rate of pay, failure to provide meal or rest periods, failure to authorize and permit rest periods, short/late meal and rest periods, failure to relieve employees of all duties during meal and/or rest periods, failure to pay for time worked off the clock during meal periods, failure to pay meal or rest premiums or properly compensate meal or rest break premiums at the regular rate of pay, failure to furnish accurate wage statements, failure to keep accurate records, failure to timely pay wages during employment, failure to pay sick time wages, failure to reimburse for necessary expenses, failure to timely pay wages at separation, violation of temperature control guidelines, failure to provide suitable seating, unlawful background and credit checks as well as claims derivative and/or related to these claims, liquidated damages, conversion of wages, claims under California Labor Code §§ 201, 202, 203, 204, 210, 216, 218.5, 218.6, 221, 222, 223, 224, 226, 226.3, 226.7, 245, 246, 247, 248, 249, 510, 512, 516, 558, 1024.5, 1174, 1182.12, 1194, 1194.2, 1195, 1197, 1198, 2802 and claims under the applicable IWC Wage Order. (Settlement Agreement, ¶ 11.2.)

In addition to the release given by each Participating Class Member and Aggrieved Employee, and in exchange for the Service Award, Plaintiff agrees to a general release of all claims, known or unknown, under federal, state, and/or local law, statute, ordinance, regulation, common law, or other source of law, including but not limited to claims arising from or related to Plaintiff's employment with BBSI and alleged employment with Michael Kors and her compensation while employed by BBSI and placed to work at a Michael Kors facility which occurred at any time including before or during the Class Period. This general release includes a waiver of rights under section 1542 of the California Civil Code. (Settlement Agreement, ¶ 11.3.)

E. Class Notice And Settlement Administration

Subject to Court approval, the parties agreed to retain Apex Class Action Administrators ("Apex") as the Settlement Administrator ("Administrator"), who will be responsible for mailing the Class Notice to Class Members, posting notice of entry of final order and judgment certifying the Class Settlement and approving the Settlement Agreement, handling inquiries from Class Members concerning the Class Notice, determining Individual Class and PAGA Payments, maintaining the settlement funds in an appropriate account, distributing all Court-approved payments under the Settlement, issuing a final report on the disbursement of funds, and performing such other duties as the parties may direct. (Settlement Agreement, ¶¶ 1.40, 8, 12.1.1–5.) Additionally, the Settlement Administrator will handle all tax document preparation and reporting. (*Id.*, ¶ 8.)

On a weekly basis, the Administrator will provide reports to Class Counsel and Defense Counsel with summary information updating them as to the number of validated and timely objections and requests for exclusion. (Settlement Agreement, ¶ 12.1.1.) Not later than five days after the expiration of the deadline for submitting opt-out requests, the Administrator shall provide to Class Counsel and Defense Counsel a final report listing the total number of Class Members who submitted a request for exclusion or objected to the Settlement. (Settlement Agreement, ¶ 12.1.3.)

The Class Notice will inform Class Members of their estimated Individual Class Payment, their estimated Individual PAGA Payment, and the number of workweeks and pay periods they worked during the Class Period and PAGA Period. (Settlement Agreement, ¶ 12.3.1.) Class Members may challenge the number of workweeks and pay periods allocated to them in the Class Notice by contacting the Administrator no later than 50 calendar days after the Administrator mails the Class Notice ("Response Deadline") (plus an additional 14 calendar days for Class Members whose Class Notice is re-mailed). (*Id.*, ¶¶ 1.36, 12.3.1.1.) Challenges will be resolved without hearing by the Administrator, who will make a decision based on Defendants' records and any documents or other information presented by the Class Member making the challenge, Class Counsel, or Defendants. (Settlement Agreement, ¶ 12.3.1.1.) The Administrator's determination of each Class Member's allocation of workweeks shall be final and not appealable. (*Ibid*.) The Administrator shall promptly provide copies of all challenges to the calculation of Pay Periods Worked to Defense Counsel and Class Counsel, along with the Administrator's determination of the challenges. (*Ibid*.)

F. Notice Process

Class Members who wish to exclude themselves from the Settlement must send the Administrator, by fax, email, or mail, a signed written request for exclusion not later than 50 calendar days after the Administrator mails the Class Notice (plus an additional 14 calendar days for Class Members whose Class Notice is re-mailed). (Settlement Agreement, ¶¶ 12.3.6, 14.1–2.) To be valid, a request for exclusion must be timely faxed or postmarked by the response deadline. (*Ibid*.) Every Class Member who does not submit a timely and valid request for exclusion will be entitled to all benefits and bound by all terms and conditions of the Settlement. (Settlement Agreement, ¶ 14.4.) Any Class Member who submits a valid and timely request for exclusion will not receive a Settlement Payment or have the right to object to the class action components of the Settlement, but will nonetheless be entitled to a PAGA Payment and will be bound by the Release of PAGA Claims. (Settlement Agreement, ¶¶ 14.3, 14.5.)

Any Class Member who does not submit a valid and timely request to opt out of the settlement may send written objections to the Administrator by fax, email, or mail no later than the Response Deadline. (Settlement Agreement, ¶ 13.1.) Class Members may also appear in Court (or retain an attorney to appear on their behalf) to present verbal objections at the Final Approval Hearing. (*Id.*, ¶ 13.2.) A Class Member who elects to send a written objection to the Administrator must do so not later than 50 calendar days after the Administrator's mailing of the Class Notice (plus an additional 14 calendar days for Class Members whose Class Notice was re-mailed). (*Id.*, ¶ 13.1.)

Upon completion of administration of the Settlement, the Administrator shall provide written certification of such completion to the Court, Class Counsel and Defendants' Counsel. (Settlement Agreement, ¶ 12.1.5.) Any funds associated with that have not been cashed within 180 days will become void and the payment associated with the uncashed check will be distributed to the State of California Unclaimed Property Fund in the name of each Class Member or Aggrieved Employees, pursuant to Code of Civil Procedure section 384, except that uncashed Individual PAGA Payments mailed to Non-Participating Class Members who are Aggrieved Employees will be sent to the LWDA. (*Id.*, ¶ 9.4.)

G. Tax Treatment Of Individual Payments

20% of each Class Member's Settlement Payment will be allocated to the settlement of wage claims, and will be subject to tax withholding and reported on an IRS Form W-2. (Settlement Agreement, ¶ 10.1.) The remaining 80% of each Settlement Payment shall constitute interest and penalties, and each Class Member will be issued an IRS Form 1099 for such payment. (*Ibid.*) PAGA Payments will be treated as penalties for tax purposes, and if applicable, the Administrator will issue each recipient an IRS Form 1099. (*Ibid.*)

IV. PROVISIONAL CERTIFICATION IS APPROPRIATE

Courts have generally found that class action suits are appropriate "when the question is one of a common or general interest . . . or when the parties are numerous, and it is impracticable to bring them all before the court." (Code Civ. Proc. § 382; see *Richmond v. Dart Indus., Inc*. (1981) 29 Cal.3d 462, 469-475.) In order to sustain a class action, two requirements must be met: (1) there must be an ascertainable class; and (2) there must be a "well-defined community of interest in the questions of law and fact involved affecting the parties to be represented." (*Daar v. Yellow Cab. Co.* (1967) 67 Cal.2d 695, 704.)

To ensure efficient use of judicial resources, California law and policy favor the fullest and most flexible use of the class action device. (*Richmond, supra,* 29 Cal. 3d at pp. 469-475.) Indeed, courts have acknowledged "the importance of class actions as a means to prevent a failure of justice in our judicial system" particularly where the rights of numerous "small claimants" are at issue. (See *Linder v. Thrifty Oil Co*. (2000) 23 Cal.4th 429, 434-435, 445.) Any doubt as to the appropriateness of class treatment should be resolved in favor of certification. (*Richmond, supra*, 29 Cal.3d at pp. 473-475.)

A. There Is A Numerous And Ascertainable Class

Numerosity is met if the proposed class is so large that joinder of all members would be impracticable. (See Code Civ. Proc. § 382.) Whether a class is ascertainable is determined by examining the class definition, the size of the class and the reasonable means available for identifying members of the class. (See *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal.App.3d 1263, 1271.) Class members are "ascertainable" where they may be readily identified without unreasonable expense or time. (*Id.* at p. 1275 [citing *Hypolite v. Carleson* (1975) 52 Cal.App.3d 566, 578-579].)

Plaintiff contends, and Defendants do not dispute, that for settlement purposes only, there is a numerous and ascertainable class. (Settlement Agreement, ¶ 3.1.) Documents and information exchanged between the parties reflect a Class of approximately 1,734 Class Members. (Hawkins Decl., ¶ 65.) Moreover, Class Members have already been identified by reference to Defendants' payroll and personnel records. (*Ibid.*) Because joinder of more than 1,700 employees would be impracticable, and Class Members can readily be determined by Defendants' personnel records, there is a numerous and ascertainable class that is suitable for provisional certification.

B. There Is A Well-Defined Community Of Interest

As a general rule, a community of interest is established where (1) there are predominant common questions of law or fact; (2) the named plaintiff has "claims or defenses typical of the class"; and (3) the named plaintiff is able to adequately represent the class. (See *Dunk v. Ford Motor. Co.* (1996) 48 Cal.App.4th 1794, 1806.)

1. Common Questions Of Law And Fact Exist

Whether a class action is the appropriate mechanism will depend largely upon "whether the common questions are sufficiently pervasive to permit adjudication in a class action rather than in a multiplicity of suits." (*Richmond, supra,* 29 Cal.3d at pp. 477-478.) In determining whether common questions of law and fact exist, courts generally look at the allegations in the complaint, as well as the declarations of class counsel. (*Id.* at p. 478.) The primary purpose of this inquiry is to ascertain whether the proposed class is sufficiently cohesive to warrant adjudication by representation. (See, e.g., *Clothesrigger, Inc. v. GTE Corp*. (1987) 191 Cal.App.3d 605, 612; *Lazar v. Hertz Corp*. (1983) 143 Cal.App.3d 128, 138-139; *Hogya v. Superior Court* (1977) 75 Cal.App.3d 122, 142.) Simply because class members must prove their own damages does not mean that individual questions predominate. (*Clothesrigger, Inc.*, *supra,* 191 Cal.App.3d at p. 617.)

Common questions of law and fact exist among Class Members in this case. The consolidated action alleges claims for: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide lawful meal periods; (4) failure to provide lawful rest periods; (5) failure to timely pay all wages during employment; (6) failure to timely pay wages owed upon separation of employment; (7) failure to furnish accurate itemized wage statements; (8) failure to maintain accurate employment records; (9) violation of the unfair competition law; and (10) civil penalties pursuant to PAGA. (Hawkins Decl., ¶ 7–8.) Thus, at minimum, some of the common questions of law and fact that affect the Class are whether Defendants included shift differentials when calculating Class Members' regular rate of pay for purposes of paying sick leave and meal rest period premiums; whether Class Members were provided compliant meal and rest periods; whether the wage statements Defendants provided to Class Members complied with California law; whether Defendants failed to maintain accurate employment records as required under Labor Code sections 1174 and 1174.5; and whether Defendants' policies and practices constitute unfair business practices for purposes of Business and Professions Code section 17200 et seq. (*Id.*, ¶¶ 67–68.)

Here, the required commonality element is satisfied because there are questions of law and fact common to Plaintiff and the Class, and those questions predominate over any such questions affecting only Plaintiff or individual Class Members. As such, the underlying claims are sufficiently cohesive to warrant adjudication by representation. (See *Clothesrigger, Inc., supra,* 191 Cal.App.3d at p. 612.)

2. Plaintiff's Claims Are Typical Of Class Members' Claims

The typicality requirement for purposes of class certification focuses on the typicality of the named plaintiff's claims as they relate to the defendants' policies and practices. (See *Medrazo v. Honda of North Hollywood* (2008) 166 Cal.App.4th 89, 99 [typicality met where plaintiff alleged that defendant subjected her to the same unlawful conduct that other putative class members were subjected to].) Indeed, the mere fact that a defendant may raise defenses against some members of the class does not negate the typicality of the plaintiff's claims. (*Ibid.*)

Here, Plaintiff's claims are typical of the claims of the Class. As detailed in the operative complaint, Class Members were all subject to the same policies and practices while working for Defendants, including the company's payroll and timekeeping policies, and meal and rest period policies. (Hawkins Decl., ¶ 68.) As such, all sustained the same or similar damages resulting from Defendants' alleged violations of California wage-and-hour laws, including unpaid regular, minimum and overtime wages, noncompliant meal and rest periods, and inaccurate wage statements. (*Ibid.*) Because each Class Member would be required to demonstrate the same elements in order to recover on their claims against Defendants, Class Members' interests are sufficiently aligned with Plaintiff's so as to meet the typicality requirement. (See *Medrazo, supra,* 166 Cal.App.4th at p. 99.)

3. Plaintiff And Class Counsel Have And Will Continue To Adequately Represent The Class

A class representative is an adequate representative of the class so long as his or her interests are not antagonistic or in conflict with the objectives that he or she purports to represent. (*Richmond, supra*, 29 Cal.3d at p. 470.) Additionally, Class Counsel "must be qualified, experienced and generally able to conduct the proposed litigation." (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 875.) Here, Plaintiff meets both of the requirements necessary to adequately represent the Class.

First, Plaintiff's interests are not antagonistic to the interests of the Class. As discussed, Plaintiff alleges that Class Members were all subject to the same allegedly unlawful policies and practices by Defendants, and thus suffered identical harm. Consequently, Plaintiff seeks the same relief sought by every other member of the Class. (See *Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 591, 625-26 ["[A] class representative must be part of the class and possess the same interest and suffer the same injury as the class members."].) For a year and a half, Plaintiff has prosecuted this case on behalf of the other Class Members. (Hawkins Decl., ¶ 51.) She spent numerous hours reviewing documents, meeting and corresponding with Class Counsel, answering questions regarding her experiences while working for Defendants, and evaluating settlement options. (Hawkins Decl., ¶ 51.; Muro Decl. ¶ 12)

In addition, Plaintiff retained counsel with extensive experience prosecuting complex wage and hour class actions, who have worked diligently to obtain the Settlement on behalf of the Class. (Hawkins Decl., ¶ 69.) Class Counsel thoroughly investigated the claims raised in this action, the underlying case law, the merits of Defendants' defenses, opposing Defendant's efforts to compel Plaintiff's claims to individual arbitration, and meticulously reviewed the information and documents exchanged prior to attending mediation. (Hawkins Decl., ¶¶ 11-17.) Thus, Class Counsel was sufficiently informed prior to engaging in settlement negotiations. (*Ibid*.) Moreover, the Settlement before the Court is the result of arm's-length, non-collusive, and informed negotiations that were overseen by a highly experienced mediator, Louis Marlin. (Hawkins Decl., ¶¶ 18–20.) Over the course of this litigation, Plaintiff and Class Counsel have adequately represented the interests of the Class, and will continue to do so.

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT, WHICH IS FAIR, ADEQUATE, AND REASONABLE

A. The Proposed Settlement Meets The Standards For Preliminary Approval

California Rules of Court, rule 3.769, requires court approval for class action settlements. "Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement." (Cal. R. Ct. 3.769(g).) Courts act within their discretion in approving settlements that are fair, not collusive, and take into account "all the normal perils of litigation as well as the additional uncertainties inherent in complex class actions." (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179, *cert. den. sub nom. Iowa Beef Processors. Inc. v. Meat Price Investigators Ass'n* (1981) 452 U.S. 905.)

The purpose of the preliminary evaluation of class action settlements is to determine only whether the proposed settlement is within the range of reasonableness, and, therefore, whether notice to the class and the scheduling of a formal fairness hearing are warranted. (*Wershba v. Apple Computer. Inc.* (2001) 91 Cal.App.4th 224, 234-235; *Newberg on Class Actions* (4th Ed.) § 11:25.) Courts have broad powers to determine whether a proposed settlement is fair under the circumstances of the case. (*Wershba, supra*, 91 Cal.App.4th at 234-235; *Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438.) In determining whether a settlement meets the standards for preliminary approval, courts must consider several relevant factors, including "the strength of the Plaintiff's 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, [and] the experience and views of counsel . . . ." (*Dunk, supra*, 48 Cal.App.4th at 1801.) "The list of factors is not exclusive, and the court is free to engage in a balancing and weighing, of the factors depending on the circumstances of each case." (*Wershba, supra*, 91 Cal.App.4th at 245.) Furthermore, courts must give "proper deference to the private consensual decision of the parties" because "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit 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." (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027.)

At the preliminary approval stage, the Court need only determine that the 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* § 11:25.) Indeed, the Court should grant preliminary approval if there are no "grounds to doubt its fairness or other obvious deficiencies . . . and [the settlement] appears to fall within the range of possible approval." (Manual For Complex Litigation (Third) § 30.41 (1995); see *Dunk, supra*, 48 Cal.App.4th at p. 1802.) 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." (*Dunk*, *supra*, 48 Cal.App.4th at p. 1802 [citing *Newberg* § 11:41].)

As shown below, the proposed Settlement in this case falls well within the range of possible approval and there are no grounds to doubt its fairness.

1. The Settlement Is The Result Of Serious, Informed, Non-Collusive Negotiations Overseen By A Highly Experienced Mediator

The proposed Settlement was reached as a result of arm's-length negotiations facilitated by an experienced mediator following significant investigation of the facts and law during and in preparation for mediation. (Hawkins Decl., ¶¶ 11–20.) The settlement negotiations have been, at all times, adversarial and non-collusive in nature. Indeed, continued good-faith but occasionally contentious negotiations were required to ultimately reach an agreement following a full-day mediation with respected class action mediator, Louis Marlin. While Plaintiff believes in the merits of her case, she also recognizes the inherent risks of litigation and understand the benefit of the Class receiving settlement funds immediately as opposed to delaying payment or risking an unfavorable decision on the motion to compel arbitration, summary adjudication, motion for class certification, at trial or on appeal, all of which have the potential to eliminate any relief for Class Members. (Hawkins Decl., ¶¶ 27, 45.)

2. The Extent Of The Information Provided Through Discovery And The Stage Of The Proceedings Support The Settlement

There is a presumption that a proposed settlement is fair and reasonable when there has been sufficient investigation and discovery to permit counsel and the court to act intelligently, and counsel are experienced in similar litigation. (*Dunk, supra*, 48 Cal.App.4th at 1802.)

Here, the parties thoroughly investigated and evaluated the factual and legal strengths and weaknesses of this case before reaching the Settlement. (Hawkins Decl., ¶¶ 11-17.) As described above, the Settlement was reached only after extensive investigation and research, thorough calculations and risk evaluation, substantial informal discovery, and a thorough evaluation of timekeeping and payroll data for a sample of the Class. (*Id.*, ¶¶ 11-17, 66.) Plaintiff retained an expert to evaluate the data and to provide calculations regarding Defendants' potential exposure. (*Id.*, ¶ 14.) Counsel for the parties have investigated the law as applied to the facts regarding the claims asserted and potential defenses thereto. (Hawkins Decl., ¶ 15.) Defendants asserted during the investigation, and continues to assert that Plaintiff could not identify any unlawful policies from Defendants.

The proposed Settlement came only after the case was fully investigated by experienced counsel. (Hawkins Decl., ¶¶ 11-17, 47, 71–75.) This litigation, therefore, had reached the stage where the parties had a clear view of the strengths and weaknesses of their cases, sufficient to support the Settlement. (*See Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 617.)

3. Class Counsel Is Experienced In Similar Litigation

Experienced counsel, operating at arm's-length, have weighed the strengths of the case and examined all of the issues and risks of litigation and endorse the proposed settlement. The view of the attorneys actively conducting the litigation is entitled to significant weight in deciding whether to approve a settlement. (*Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, affd. (9th Cir. 1981) 661 F.2d 939.)

Throughout this litigation, Class Members have been represented by well-qualified counsel who have years of experience in wage and hour class action litigation. (Hawkins Decl., ¶ 47, 71–78.) Class Counsel have litigated hundreds of complex class and representative actions. (*Ibid.*) In short, Class Counsel are experienced and qualified to evaluate the class claims, to evaluate the benefits of settlement versus trial on a fully informed basis, and to evaluate the viability of the defenses asserted. Counsel on both sides share the view – endorsed by an experienced class action mediator – that this is a fair and reasonable settlement in light of the complexities of the case, the state of the law and uncertainties of litigation and trial, and the benefit the Settlement confers on the Class. (Settlement Agreement, ¶¶2.11–12.) Given the risks inherent in litigation, in class certification proceedings, and in the defenses asserted, this Settlement is fair, adequate, and reasonable and in the best interests of the class. (Hawkins Decl., ¶ 79.)

4. The Settlement Is Fair And Reasonable Based On The Strengths Of Plaintiff's Case And The Risks And Costs Of Further Litigation

Plaintiff and class counsel have concluded it was reasonable to enter into the proposed Settlement. Defendants have contested and continue to contest liability for the claims asserted in this action. (Settlement Agreement, ¶¶ 2.8.) Although Defendants believe it is unlikely that Plaintiff would succeed on the merits of her claims, Defendants nonetheless agreed to resolve this action through settlement to avoid the expense, distraction, and uncertainty of protracted litigation. (*Ibid.*)

There are significant legal uncertainties associated with cases such as this, as they can be factually complex and require protracted litigation to resolve. (Hawkins Decl., ¶¶ 26, 45.) A settlement is not judged solely against what might have been recovered had the plaintiffs prevailed at trial, nor does the settlement have to provide 100 percent of the damages sought to be fair and reasonable. (*Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242; *Wershba*, *supra*, 91 Cal.App.4th at pp. 246, 250; *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1139.) Instead, "[c]ompromise is inherent and necessary in the settlement process . . . even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation." (*Wershba*, *supra*, 91 Cal.App.4th at p. 250.)

Based on information obtained through investigation, informal discovery, and during mediation, Class Counsel were able to assess the strengths and weaknesses of the claims and the benefits of an early settlement. (Hawkins Decl., ¶¶ 15–18.) As a result, Class Counsel believes that the Settlement before the Court represents a very favorable resolution for the Class. (Hawkins Decl., ¶¶ 22, 27.)

5. The Proposed Settlement Is A Reasonable Compromise Of Claims

a. The Settlement Provides Relief to Class Members in Light of the Significant Risks and Expense of Further Litigation

To evaluate a settlement, the trial court must receive "basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) The record need not contain an explicit statement of the maximum theoretical recovery, but rather evidence sufficient to allow "an understanding of the amount that is in controversy and the realistic ranges of outcomes of the litigation." (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409 [citing *Kullar*, *supra*, 168 Cal.App.4th at p. 120].)

Here, the Settlement results in a significant benefit to Class Members and the Gross Settlement Amount of $600,000 is a good result. (Hawkins Decl., ¶ 22.) In reaching this Settlement, Class Counsel carefully considered the strength of the case versus the amount offered in settlement; the risk, expense, complexity, and likely duration of further litigation and obtaining and maintaining class certification through trial; the present state of the law as it applies to wage and hour class actions; and the burdens of proof necessary to establish liability against Defendants. (*Id*., ¶ 48.)

Although Plaintiff maintains all claims are meritorious and believe she would have prevailed had she taken this case to trial, she also acknowledged that Defendants have viable defenses to liability, class certification, and manageability. (Hawkins Decl., ¶¶ 34, 45.) Defendants have consistently denied all material allegations in the complaint, that they violated any applicable laws, that they are liable for damages, penalties, interest, restitution, attorneys' fees, or for any other remedy on account of the claims asserted, and that class certification or representative treatment is appropriate as to any claim. (*Id*., ¶¶ 23, 47; see also Settlement Agreement, ¶¶ 2.8, 3.1.) Such considerations pose a substantial obstacle for Plaintiff to maintain her claims, as well as establishing the full amount of Plaintiff's estimated damages and civil penalties for such claims at trial. (Hawkins Decl., ¶¶ 26–27)

Under the terms of the Settlement, each Class Member will be entitled to receive a pro rata portion of the Net Settlement Amount available for distribution based upon his or her respective number of workweeks during the Class Period. (Settlement Agreement, ¶ 5.1.1.) This means that Class Members who worked a greater number of Workweeks during the Class Period will receive a larger portion of the Settlement. (Hawkins Decl., ¶ 46.) All Class Members are therefore treated equitably and fairly, and no Class Member is granted improper preferential treatment, as distribution of the Net Settlement Amount takes into consideration the length of employment for each Class Member and the respective number of violations he or she would have suffered during the Class Period.

b. *The Amount Offered in Settlement Given the Estimated Value of the Claims Favors Preliminary Approval of the Settlement*

As set forth in the accompanying Declaration of James R. Hawkins, Class Counsel estimated Defendants' maximum-possible exposure to be $12,894,335.00. (Hawkins Decl., ¶ 25.) This estimate assumed that Plaintiff could continue to pursue her class claims, class certification would be granted, and that Plaintiff would prevail on all claims at trial, as well as recover the full amount of the estimated damages. (*Ibid*.) Plaintiff's expert also projected that the maximum amount of civil penalties Plaintiff could recover under PAGA was approximately $9,294,000.00. (Hawkins Decl., ¶ 33.) This projection was calculated based on the assumption that PAGA penalties can be stacked – a question that remains unsettled by California courts, and disregarding very real risk that the Court may further reduce Plaintiff's estimated amount under Labor Code § 2699(e)(2), or limit the award as unjust, arbitrary, and oppressive, or confiscatory. (*Ibid.*) Accordingly, the estimated value of the PAGA penalties is also premised on a likely inflated "everything goes right" scenario. (*Ibid*.)

With approximately 1,734 Class Members holding various different non-exempt positions throughout the state, class certification is by no means a certainty. (Hawkins Decl., ¶ 26–27.) Additionally, this was made increasingly difficult by the complex structure of the class, being comprised of two overarching subclasses with separate class periods: (1) the approximately 1,312 employees assigned to Defendant Michael Kors through Defendant BBSI from September 1, 2019, through December 4, 2024; and (2) the approximately 422 employees staffed directly with Michael Kors from January 24, 2022, through December 4, 2024. (*Ibid.*) This case is further complicated by the existences of arbitration agreements among members of the class which would further inhibit class certification. (Hawkins Decl.,. ¶ 26.) As such, for purposes of settlement, Class Counsel assumes an 85 percent discount on the merits to account for the possibility that Plaintiff will not prevail on all claims and the potential for a reduction in any PAGA penalties awarded. (*Ibid.*) Accordingly, Class Counsel believes a more realistic valuation of the claims in this case after incorporating discounts is $1,934,150. (*Ibid.*)

While the $600,000 Gross Settlement Amount represents a significant discount on Plaintiff's estimate of Defendants' potential exposure in this matter, the reduction represents an extremely reasonable compromise considering the substantial risks that Plaintiff and Class Members faced in this litigation. (Hawkins Decl., ¶ 34.) As explained above, Defendants have legitimate defenses to class certification, manageability, and the merits of the underlying claims. (*Ibid*.) In negotiating the Settlement before the Court, Class Counsel considered the likelihood of obtaining and maintaining class certification of Plaintiff's claims through trial, and obtaining 100 percent of the damages sought. (*Id*., ¶ 35.) Moreover, Plaintiff considered the significant risk that the Court may deny class certification or reverse a favorable ruling on the merits on appeal – risks that are obviated by the Settlement. (*Ibid*.) In addition, continued litigation would likely to be extremely expensive, reducing and substantially delaying any recovery by Class Members. (*Ibid*.) In contrast, the proposed Settlement will guarantee that Class Members receive timely relief and avoid the risk of an unfavorable judgment. (*Id.* ¶ 27.)

Finally, as it relates to the imposition of any penalties under PAGA, there was a very real risk that the Court would exercise its discretion and reduce the award because it was unjust, arbitrary, or confiscatory. (Hawkins Decl., ¶ 33.) This is particularly true because throughout the Class and PAGA Periods, Defendants maintained facially lawful written policies regarding many of the claims asserted. (*Id*., ¶ 23.)

B. The PAGA Settlement Should Be Approved

Where a settlement includes a good faith amount for PAGA penalties and "there is no indication that this amount was the result of self-interest at the expense of other" class members, such amounts are generally considered reasonable. (*Hopson v. Hanesbrands, Inc.* (N.D. Cal. Apr. 3, 2009) 2009 WL 928133 at *1, *9.) Courts routinely approve settlements where only a small portion of the gross settlement amount is allocated to PAGA penalties. (See *Nordstrom Commission Cases* (2010) 186 Cal.App.4th 576 [approving a settlement where no portion was allocated to PAGA penalties; *Jack v. Hartford Fire Ins. Co.* (S.D. Cal. Oct. 13, 2011) 2011 WL 4899942 at *6 [approving a PAGA payment of 0.25%]; *McKenzie v. Fed. Express Corp.* (C.D. Cal. Jan. 23, 2012) 2012 WL 12882124 at *5 [acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement].) Here, the parties negotiated a good faith settlement amount of $30,000, 75% percent of which ($22,500) will be paid to the LWDA, with the remaining 25% ($7,500) to be distributed to Aggrieved Employees. (Settlement Agreement at ¶ 5.2.) The $30,000 allocated to PAGA penalties equates to 5% of the Gross Settlement Amount, which is in line with amounts that are routinely approved by courts in this state. Therefore, the settlement of the claim for penalties under PAGA is reasonable because it was negotiated in good faith and was not the result of self-interest at the expense of any Class Member. (Hawkins Decl., ¶ 33.)

Had a higher amount been allocated to the PAGA claim, the burden to pay civil penalties would have effectively shifted to the Aggrieved Employees as it would reduce the amount that they ultimately receive under the Settlement. Although this burden shifting may achieve the enforcement objective of the PAGA statute, it would do so at the expense of the same employees that the statute was designed to protect. The Settlement has been submitted to the LWDA as required by statute. (Hawkins Decl., ¶ 5, Ex. 2.) Accordingly, the proposed $30,000 allocation to PAGA penalties strikes a balance between the interest of all parties, including the LWDA and the general public, by penalizing the employer and providing relief to the Aggrieved Employees. As such, Plaintiff respectfully requests that the Court approve the allocation of $30,000 to PAGA penalties.

C. The Requested Class Representative Service Award Are Fair And Reasonable

Courts routinely approve class representative payments to compensate named plaintiffs for the services they provide and the risks they incur during the course of class litigation. (See *Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726 [upholding service payments to plaintiffs for their efforts in bringing a class case]; *Manual for Complex Litigation* (Fourth) (2004) § 21.62 n. 971 [noting that service awards are warranted].) In approving such payments, California courts frequently approve awards of $10,000 or more. (*In re Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-1395 [upholding $10,000 service award to each of four class representatives]; *West v. Circle K Stores, Inc.* (E.D. Cal. Oct. 19, 2006) 2006 U.S. Dist. LEXIS 76558, *28 ["the court finds plaintiffs' enhancement payments of $ 15,000 each to be reasonable"]; *Glass v. UBS Fin. Servs.* (N.D. Cal. Jan. 26, 2007) 2007 U.S. Dist. LEXIS 8476, *52 [finding "requested payment of $ 25,000 to each of the named plaintiffs is appropriate" in wage and hour settlement].) The factors courts use in determining the amount of an award include: (1) a comparison between the service awards and the range of monetary recovery available to the class; (2) time and effort put into the litigation; (3) whether the litigation will further the public policy underlying the statutory scheme; and (4) the risk of retaliation. (*Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 608, 804.)

By being the named class representative in this action, Plaintiff put her name forward on the public record at the risk of potential employers choosing not to hire her. (Hawkins Decl., ¶ 52; Muro Decl. ¶ 7.) Plaintiff also ran the risk of being liable for Defendants' attorneys' fees and costs as a result of the fee shifting provisions of the Labor Code. (See, e.g., Labor Code § 218.5.) Over the course of this litigation, Plaintiff spent a significant amount of time reviewing documents, communicating with counsel, identifying potential witnesses, and helping Class Counsel prepare for mediation. (Hawkins Decl., ¶ 51; Muro Decl. ¶ 12.) As part of the proposed Settlement, Plaintiff has also agreed to a general release of any and all claims arising out of her employment with Defendants. (Settlement Agreement, ¶ 11.3.) The proposed Class Representative Service Award in the amount of $7,500 to Plaintiff is fair and reasonable given the risk she took and the work she bore for the benefit of the Class. (Hawkins Decl., ¶¶ 50–54)

D. The Requested Attorneys' Fees And Costs Are Fair And Reasonable

The California Supreme Court has unanimously held "that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created." (*Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503.) The Court further held that although trial courts have discretion to use a lodestar multiplier cross-check or to forego a lodestar multiplier cross-check if some other means to evaluate the reasonableness of a requested fee percentage exists, "the percentage method is a valuable tool that should not be denied our trial court." (*Id.* at pp. 503-506.) California courts have awarded common fund fees calculated using a percentage-of-fund method that is not dependent on counsel's lodestar amount. (Pearl, *California Attorney Fee Awards* (CEB 3d Ed. 2010) § 5.19 [citing *In re Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512]; *Bell, supra*, 115 Cal.App.4th at p. 726; *Apple Computer, Inc. v. Superior Ct.* (2005) 126 Cal.App.4th 1253, 1270.)

Here, the Settlement provides that Class Counsel may seek Attorneys' Fees of up to $200,000 (one-third of the Gross Settlement Amount), in addition to reimbursement for actual litigation expenses in an amount not to exceed $25,000. (Settlement Agreement, ¶ 6.) As demonstrated in the Declaration of James R. Hawkins, Class Counsel performed a significant amount of work litigating this action, including performing extensive legal and factual research, which counsel used to measure the relative strengths and weaknesses of Plaintiff's claims to better identify an appropriate range of settlement figures. (Hawkins Decl., ¶¶ 55–63.) Class Counsel committed, and continue to commit, significant financial and staffing resources to this case, diverted many of their resources in order to contend with Defendants' vigorous defense, and undertook this action on a contingency basis, thereby bearing all the costs of this complex, risky, expensive, and time-consuming litigation. (*Ibid.*) The requested Attorneys' Fees and Attorneys' Costs payments are fair and reasonable, and should be preliminarily approved.

VI. THE COURT SHOULD SCHEDULE A FINAL APPROVAL HEARING

The final step in the settlement approval process is a final approval hearing, at which time the Court may hear all evidence and arguments necessary to conclusively evaluate the proposed Settlement. Should the Court grant Plaintiff's motion for preliminary approval, Plaintiff requests that a hearing on the issues of final approval of the Settlement, approval of the Class Representative Service Award to Plaintiff, approval of the Class Counsel's Attorneys' Fees and Litigation Expenses, and approval of the Administration Costs be scheduled approximately 120 days after preliminary approval.

VII. CONCLUSION

Plaintiff respectfully requests that this Court enter an Order: (1) provisionally certifying the Class under Code of Civil Procedure section 382 and California Rule of Court 3.769(c) for settlement purposes; (2) preliminarily approving the Settlement; (3) approving as to form the Notice of Class Action Settlement and ordering that the Notice of Class Action Settlement be distributed to all Class Members; (4) appointing Named Plaintiff Bianca Muro as the Class Representative; (5) appointing Apex Class Action

Administrators as the Settlement Administrator; (6) appointing James Hawkins APLC as Class Counsel; and (7) setting this matter for a hearing on the issues of final approval of the proposed Settlement, approval of the Class Representative Service Award, approval of Attorneys' Fees and Costs, and approval of the Administration Fees and Costs.

Dated: January 30, 2025

JAMES HAWKINS APLC

By: ______________________________

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