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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF RIVERSIDE—RIVERSIDE HISTORIC COURTHOUSE**
12

13 MARLENE DELGADO, on behalf of herself
14 and all others similarly situated,

15 Plaintiff,

16 vs.

17 L&P GROUP, INC., a California corporation;
18 and DOES 1–50, inclusive,

19 Defendants.
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Case No. CVRI2305262

[Assigned for All Purposes the Honorable
Harold W. Hopp of Department 1]

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

Hearing Information

Date: July 6, 2026
Time: 8:30 a.m.
Department: 1
Judge: Hon. Harold W. Hopp

Action Filed: October 4, 2023

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Marlene Delgado ("Plaintiff") respectfully requests that this Court preliminarily
4 approve the proposed Class Action and PAGA Settlement Agreement and Class Notice
5 ("Settlement" or "Settlement Agreement") between her and Defendant L&P Group, Inc.
6 ("Defendant"). The Settlement, which resulted from arm's-length negotiations between experienced
7 counsel with the assistance of a highly competent mediator (Steve Pearl), is a fair, adequate, and
8 reasonable compromise of the disputed wage and hour and PAGA claims of the below-defined
9 Settlement Class. It provides for a \$525,000.00 non-reversionary common fund, automatic payments
10 to the Settlement Class without any claim form requirement, and is estimated to yield mean
11 Individual Class Payments of more than \$4,000 per Class Member.

12 In the operative First Amended Complaint ("FAC"), Plaintiff asserts claims under the Labor
13 Code (including PAGA) and the Unfair Competition Law based on Defendant's alleged violations of
14 statutory minimum and overtime wage, meal and rest period, timely wage payment, recordkeeping
15 and itemized wage statement, and employee indemnification requirements. Based on these
16 violations, Plaintiff asserts that Defendant is liable for unpaid wages, statutory penalties, and civil
17 penalties. Defendant denies liability and contends that any potential violations are subject to good-
18 faith defenses, that the proposed Class Members' claims raise individualized issues that defeat class
19 certification, and that a large PAGA penalty award would be improper and confiscatory in light of
20 Defendant's small-business franchisee status.

21 Importantly, Plaintiff's PAGA Notice was mailed on October 4, 2023, well before the June
22 19, 2024 effective date of the 2024 PAGA Reform legislation. This action is therefore governed by
23 pre-reform PAGA ("Old PAGA"), and the Settlement reflects the 75%/25% LWDA/Aggrieved-
24 Employee split applicable under Old PAGA. (Lab. Code, former § 2699, subd. (i).) Plaintiff
25 nonetheless accounted for the substantial risk that this Court could exercise its broad discretion to
26 award lesser penalties consistent with the fairness considerations animating amended PAGA — for
27 example, by giving weight to Defendant's good-faith policy changes, the absence of any prior wage-
28 and-hour adjudication against Defendant, and its small-business franchisee status — even in a case



1 governed by Old PAGA. (*See* Lab. Code, § 2699, subd. (e)(2) [court "may award a lesser amount
2 than the maximum civil penalty amount specified by this part if, based on the facts and
3 circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary
4 and oppressive, or confiscatory"]; *Thurman v. Bayshore Transit Management, Inc.* (2012) 203
5 Cal.App.4th 1112, 1135.)

6 As explained herein, the Settlement warrants this Court's preliminary approval because: (1)
7 the Settlement Class meets all applicable class certification requirements under California law; (2)
8 the Settlement itself is a fair, adequate, and reasonable compromise of disputed claims; and (3) the
9 Notice Packet (and procedures in connection with it) comport with this Court's rigorous
10 requirements and constitutional due process. Plaintiff respectfully requests that this Court
11 preliminarily approve the Settlement and set a hearing on a Motion for Final Approval of Class
12 Action Settlement.

13 **II. FACTUAL AND PROCEDURAL BACKGROUND**

14 **A. The Operative Pleadings.**

15 Plaintiff was employed by Defendant as a water technician at Defendant's ServPro franchise
16 location in Riverside County from in or around April 2023 through June 20, 2023. (Declaration of
17 Louis Benowitz ["Benowitz Decl."], ¶ 4.) On October 4, 2023, Plaintiff served her PAGA Notice on
18 Defendant and the California Labor and Workforce Development Agency ("LWDA"), pursuant to
19 the California Private Attorneys General Act of 2004 (Lab. Code § 2698 *et seq.*, "PAGA"), of
20 alleged Labor Code violations by Defendant. (Benowitz Decl., ¶ 5 & Ex. 2 [PAGA Notice and
21 LWDA upload confirmation].)

22 On the same date, Plaintiff filed her original Class Action Complaint in this Court alleging
23 causes of action against Defendant for (1) unfair competition (Bus. & Prof. Code § 17200 *et seq.*);
24 (2) failure to pay minimum and overtime wages (Lab. Code §§ 1194, 1194.2); (3) failure to provide
25 meal periods (Lab. Code § 226.7); (4) failure to authorize and permit rest periods (Lab. Code §
26 226.7); (5) failure to indemnify business expenses (Lab. Code § 2802); (6) waiting time penalties
27 (Lab. Code § 203); and (7) itemized wage statement penalties (Lab. Code § 226). (Benowitz Decl., ¶
28 6.) Defendant filed its Answer on November 3, 2023. (*Id.*) Per stipulation of the parties, Plaintiff



1 filed her First Amended Complaint on December 11, 2023, adding a claim for civil penalties under
2 PAGA. (*Id.*, ¶ 7.) Defendant's earlier-filed Answer was deemed responsive to the FAC.

3 **B. Informal Discovery and Data Sampling.**

4 On or around March 13, 2024, Plaintiff requested that Defendant informally disclose
5 documents and data to enable Plaintiff to prepare for settlement discussions and mediation, including
6 the number of putative class members and aggrieved employees, the number of paychecks and
7 workweeks for the various limitations periods applicable to Plaintiff's claims, and a reasonable,
8 randomly selected sample of Defendant's time, payroll, and expense records, and related personnel
9 records. (Benowitz Decl., ¶ 8.) Plaintiff also requested Defendant's written policies applicable to the
10 claims at hand and asked Defendant to identify any and all comparable claims against it. (*Id.*)
11 Defendant produced Plaintiff's entire personnel file, copies of its relevant written policies, and a
12 sample of records consisting of 17 Class Members and 1,308 Workweeks. (*Id.*, ¶¶ 9, 11.) Defendant
13 disclosed that there have not been any comparable claims against it. (*Id.*, ¶ 10.)

14 Plaintiff had her own data analyst analyze the sample. (Benowitz Decl., ¶ 12.) Plaintiff also
15 used the Raosoft Sample Size calculator (<http://www.raosoft.com/samplesize.html>) to evaluate
16 statistical reliability. (*Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 746–755; *Duran v.*
17 *U.S. Bank Nat'l Ass'n* (2014) 59 Cal.4th 1, 38–50 (*Duran*).) Using a 32.4% margin of error
18 (acceptable under *Bell*), a 95% confidence level, and a population size of 73, Raosoft recommended
19 a sample of 9. (Benowitz Decl., ¶ 12 & Ex. 3 [Raosoft Calculation].) The sample of 17 Class
20 Members and 1,308 Workweeks comfortably exceeded that threshold.

21 **C. Mediation and Resolution.**

22 On May 4, 2024, the Parties participated in a full-day private mediation session before Steve
23 Pearl, a highly experienced class-action mediator. (Benowitz Decl., ¶ 13.) Although the matter did
24 not settle on that exact date, the Parties reached agreement on a class-wide settlement shortly after
25 the session with the mediator's assistance and executed a Memorandum of Understanding. (*Id.*) After
26 much negotiation, the Parties then executed the long-form Settlement that is attached as Exhibit 1 to
27 the Benowitz Declaration filed concurrently herewith. (*Id.*, ¶ 14.) Each side, represented by their
28 respective counsel, recognized the risk of an adverse result and agreed to settle the Action and all

1 matters covered by the Agreement on the terms and conditions therein. (*Id.*)

2 **III. OVERVIEW OF THE SETTLEMENT**

3 **A. Settlement Class and Aggrieved Employee Definitions.**

4 The Settlement defines the Settlement Class as "all current or former hourly paid or non-
5 exempt employees of Defendant employed by Defendant in California at any time during the Class
6 Period." (Settlement, ¶ 1.4.) "It shall be an opt-out class." (*Id.*) The Class Period is the period from
7 October 4, 2019 through September 3, 2024. (*Id.*) The "PAGA Employees" are non-exempt, hourly-
8 paid employees employed by Defendant during the PAGA Period. (*Id.*, ¶ 1.33.) The PAGA Period is
9 the period from October 4, 2022 through September 3, 2024. (*Id.*, ¶ 1.36.)

10 **B. Core Monetary Terms.**

11 **Gross Settlement Amount.** The Gross Settlement Amount ("GSA") is Five Hundred
12 Twenty-Five Thousand Dollars (\$525,000.00). (Settlement, ¶ 1.21 & 3.1.) Defendant shall separately
13 pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class
14 Payments. (*Id.*, ¶ 3.1.) None of the GSA will revert to Defendant. (*Id.*) The Administrator will
15 disburse the entire GSA without asking or requiring Participating Class Members or PAGA
16 Employees to submit any claim as a condition of payment. (*Id.*) The Settlement contains a 10%
17 workweek escalator: if total Workweeks for the Class Period exceed 6,531 (i.e., 5,938 plus 10%), the
18 GSA increases proportionally to the percentage by which the total Workweeks exceed that 10%
19 buffer. (*Id.*, ¶ 9.)

20 **Payments from the GSA.** Subject to Court approval, the Administrator will make the
21 following payments from the GSA:

22 **To Plaintiff:** A Class Representative Service Payment of not more than \$10,000.00 to
23 Plaintiff Marlene Delgado, in addition to any Individual Class Payment and Individual PAGA
24 Payment she is entitled to receive as a Participating Class Member and PAGA Employee.
25 (Settlement, ¶ 3.2.1.)

26 **To Class Counsel:** A Class Counsel Fees Payment of not more than 33.33% of the GSA,
27 currently estimated to be \$175,000.00, and a Class Counsel Litigation Expenses Payment of not
28 more than \$15,000.00. (Settlement, ¶ 3.2.2.)





1 To the Administrator: An Administration Expenses Payment not to exceed \$7,000.00, except
2 for a showing of good cause and as approved by the Court. (Settlement, ¶ 3.2.3.) The Parties have
3 selected Phoenix Class Action Administration Solutions ("Phoenix") as Administrator, after
4 obtaining bids from multiple reputable third-party administrators and selecting Phoenix's lowest bid.
5 (Benowitz Decl., ¶ 15 & Ex. 4 [Phoenix qualification and bid declaration].)

6 To PAGA Penalties: The PAGA Penalties total \$25,000.00, of which 75% (\$18,750.00) will
7 be paid to the LWDA and 25% (\$6,250.00) will be distributed pro rata to PAGA Employees as
8 Individual PAGA Payments. (Settlement, ¶ 1.35.) This Old-PAGA allocation reflects that Plaintiff
9 served her PAGA Notice on October 4, 2023, before the June 19, 2024 effective date of the 2024
10 PAGA Reform. (Benowitz Decl., ¶ 18.)

11 Net Settlement Amount. The Net Settlement Amount ("NSA") is the GSA less the
12 deductions above, currently estimated at approximately \$293,000.00. The NSA yields an estimated
13 workweek value of approximately \$44.83 to \$49.34, depending on final workweek totals, with an
14 estimated mean Individual Class Payment of approximately \$4,014 per Participating Class Member
15 (based on 73 Class Members and 5,938 Workweeks). (Benowitz Decl., ¶¶ 17, 19.)

16 Workweeks and PAGA Pay Periods. Based on a review of Defendant's records as of the
17 date of mediation, Defendant estimates there are 73 Class Members who collectively worked a total
18 of 5,938 Workweeks, and 57 PAGA Employees who were issued a total of 3,343 PAGA Period
19 Paychecks. (Settlement, ¶ 4.1; Benowitz Decl., ¶ 11.)

20 Tax Allocation. 20.00% of each Participating Class Member's Individual Class Payment will
21 be allocated to wage claims (the "Wage Portion") reported on an IRS Form W-2; 80.00% will be
22 allocated to claims for interest and penalties (the "Non-Wage Portion") reported on IRS Form 1099.
23 (Settlement, ¶ 3.2.4.1.) Individual PAGA Payments will be reported on IRS Form 1099. (*Id.*)

24 **C. Notice and Payment Process.**

25 No later than 15 days after the Court grants Preliminary Approval, Defendant will deliver the
26 Class Data and PAGA Data to Phoenix. (Settlement, ¶ 4.2.) Within 14 days of receiving the Class
27 Data, Phoenix will send all Class Members the Notice Packet by first-class U.S. mail, with Spanish
28 translation as appropriate. (*Id.*, ¶ 8.4.2.) The Response Deadline for objections, exclusion requests,



1 and Workweek/Paycheck Disputes is 45 days after mailing (plus an additional 14 days for re-mailed
2 Notice Packets). (*Id.*, ¶¶ 1.41, 8.4.4.) Defendant must fund the GSA (plus employer payroll taxes on
3 the Wage Portion) no later than 14 days after the Effective Date. (*Id.*, ¶ 4.3.) The Administrator will
4 mail settlement checks within 14 days after funding. (*Id.*, ¶ 4.4.) Settlement checks will be void if
5 uncashed 180 days after mailing, and the funds represented by uncashed checks will be transmitted
6 to the California Controller's Unclaimed Property Fund in the Class Member's or PAGA Employee's
7 name. (*Id.*, ¶ 4.4.3.)

8 **D. Releases of Claims.**

9 **Plaintiff's Release.** Plaintiff and her former and present spouses, representatives, agents,
10 attorneys, heirs, administrators, successors, and assigns release and discharge the Released Parties
11 from all claims, transactions, or occurrences that occurred during the Class Period that were, or
12 reasonably could have been, alleged based on the facts contained in the Operative Complaint or
13 Plaintiff's PAGA Notice. (Settlement, ¶ 6.1.) Plaintiff also waives Civil Code section 1542 as to her
14 release. (*Id.*, ¶ 6.1.1.)

15 **Release by Participating Class Members.** All Participating Class Members release the
16 Released Parties from all claims stated in the Operative Complaint, and those based solely on the
17 facts alleged therein. (Settlement, ¶ 6.2.)

18 **Release by PAGA Employees and the State of California.** All PAGA Employees (whether
19 Participating or Non-Participating Class Members) release the Released Parties from all claims for
20 PAGA civil penalties arising from the PAGA-period facts described in Plaintiff's PAGA Notice and
21 the Operative Complaint; the State of California is deemed to release the Released Parties from the
22 same. (Settlement, ¶ 6.3.)

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1 **IV. ARGUMENT**

2 **A. The Settlement Class Meets All Class Certification Requirements for Settlement**
3 **Purposes Under Code of Civil Procedure § 382, Rule of Court 3.769, and**
4 **Applicable Case Law.**

5 Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable and
6 its members are too numerous for joinder to be practical; (2) the representative and absent class
7 members share a community of interest and common questions of law and fact predominate over
8 individual issues; (3) the representative's claims are typical of the class; and (4) the representative
9 will fairly and adequately represent the class. (*See, e.g., Richmond v. Dart Industries, Inc.* (1981) 29
10 Cal.3d 462, 470.) In the settlement context, the Court applies a lesser standard than for litigated class
11 certification because the primary concern is whether the class is sufficiently cohesive for collective
12 settlement, not whether the class is manageable for trial. (*See, e.g., Dunk v. Ford Motor Co.* (1996)
13 48 Cal.App.4th 1794, 1807 (*Dunk*)). All requirements are easily satisfied here.

14 ***1. The Settlement Class is objectively ascertainable.***

15 A class is ascertainable when it may be readily identified without unreasonable expense or
16 time by reference to official records. (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932.)
17 The Settlement Class is ascertainable because its members may be identified by reference to
18 Defendant's payroll and personnel records, which Defendant has agreed to share with the
19 Administrator to facilitate the Settlement. (Benowitz Decl., ¶ 22.)

20 ***2. The Settlement Class is sufficiently numerous.***

21 No set number is required as a matter of law to maintain a class action. (*Hebbard v. Colgrove*
22 (1972) 28 Cal.App.3d 1017, 1030.) The California Supreme Court has upheld a class of as few as 10
23 individuals. (*Bowles v. Superior Court* (1955) 44 Cal.2d 574, 577–578, 587.) Defendant's records
24 reflect approximately 73 Class Members and 57 PAGA Employees. (Settlement, ¶ 4.1; Benowitz
25 Decl., ¶ 11.) Joining 73 employees as parties to a single action would be impractical and
26 economically inefficient, and counsel is unaware of any court that has refused to certify a class of
27 this size for settlement purposes. (Benowitz Decl., ¶ 22.) Numerosity is satisfied.

28 ///



1 **3. *The Settlement Class has a well-defined community of interest.***

2 The community of interest requirement embodies three factors: (1) predominant common
3 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
4 class representatives who can adequately represent the class. (*Sav-On Drug Stores, Inc. v. Superior*
5 *Court* (2004) 34 Cal.4th 319, 326 (*Sav-On*)). It does not require uniform or identical claims. (*Capitol*
6 *People First v. Dept. of Developmental Servs.* (2007) 155 Cal.App.4th 676, 692.) Rather, courts
7 focus on the defendant's internal policies and "pattern and practice" to assess whether common
8 conduct supports certification. (*Id.* [citing *Sav-On*, 34 Cal.4th at p. 333].)

9 Common questions predominate. Plaintiff contends that all Class Members were subject to
10 the same or similar policies, practices, and procedures, and that the claims arise from Defendant's
11 alleged policy-driven failures to: (1) pay wages, including by automatically deducting 30 minutes or
12 1 hour from employees' time for meal periods regardless of whether they were actually taken; (2)
13 maintain a written rest period policy compliant with California law; (3) provide compliant wage
14 statements; (4) timely pay wages on termination; and (5) indemnify employees for cellular telephone
15 and related business expenses. (Benowitz Decl., ¶ 23.) Common questions include, but are not
16 limited to: (1) whether Defendant's auto-deduction policy violated Labor Code §§ 510, 1194, and
17 applicable Wage Orders; (2) whether Defendant's lack of a compliant written rest-period policy gave
18 rise to systemic rest-period violations; (3) whether Defendant's wage statements omitted information
19 required by Labor Code § 226(a) on account of the foregoing; (4) whether Defendant willfully failed
20 to pay timely final wages under Labor Code §§ 201–203; (5) whether Defendant failed to indemnify
21 business expenses under Labor Code § 2802; and (6) whether the foregoing constitute unfair
22 business practices under Business & Professions Code § 17200 *et seq.* (Benowitz Decl., ¶ 24.)
23 Resolving these questions resolves Defendant's prima facie liability to all Class Members.

24 Plaintiff's claims are typical of the Class. Plaintiff worked for Defendant during the Class
25 Period and was subject to the same alleged auto-deduction practice, the same lack of compliant rest-
26 period policy, and the same alleged failures to indemnify cellular telephone expenses. (Benowitz
27 Decl., ¶ 25.) Her claims are subject to the same primary affirmative defenses as those of absent Class
28 Members. Accordingly, her claims are typical. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.)



1 Plaintiff and Class Counsel will adequately represent the Class. (*See McGhee v. Bank of*
2 *America* (1976) 60 Cal.App.3d 442, 451.) Class Counsel have extensive experience in employment
3 and wage-and-hour class action and PAGA litigation (Benowitz Decl., ¶¶ 28–35; *id.*, Ex. 6 [Nese
4 Decl., ¶¶ 3–7]) and no conflicts of interest with the Class (Benowitz Decl., ¶ 26; *id.*, Ex. 6 [Nese
5 Decl., ¶ 8]). Plaintiff has co-extensive interests with absent Class Members, has retained experienced
6 counsel, provided counsel with information and documents about Defendant's policies, participated
7 in the mediation, reviewed and approved the Settlement, and exposed herself to the risk of an
8 adverse fee-shifting order under Labor Code §§ 218.5 and 218.6 had this case been unsuccessful.
9 (Benowitz Decl., ¶ 25; *id.*, Ex. 7 [Delgado Decl., ¶¶ 3–8].)

10 4. ***Class treatment is the superior means of adjudication.***

11 The predominance of common legal and factual questions shows that this Court could fairly
12 adjudicate Class Members' claims through a single class action. (Benowitz Decl., ¶ 27.) Considering
13 the alternatives — representative PAGA action (with significantly less monetary relief available to
14 employees), individual civil lawsuits, or wage claims through the Division of Labor Standards
15 Enforcement (each with relatively little money at stake but substantial transactional cost) — class
16 action treatment is plainly superior for settlement purposes.

17 **B. The Settlement Warrants Preliminary Approval Because It Is a Fair, Adequate,**
18 **and Reasonable Compromise of Disputed Wage and Hour and PAGA Claims.**

19 1. ***Applicable legal standards.***

20 California Rule of Court 3.769 provides three steps for class settlement approval: (1)
21 preliminary approval after submission of a written motion, the proposed Settlement, and proposed
22 Class Notice; (2) issuance of notice to class members; and (3) a final settlement approval hearing.
23 The decision to approve or reject a class settlement is committed to the Court's broad discretion.
24 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128 (*Kullar*).) Approval may be
25 reversed only upon a showing of "clear abuse of discretion." (*Id.*)

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1 **2. The Settlement is presumptively fair.**

2 A "presumption of fairness exists where (1) the settlement is reached through arm's-length
3 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
4 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
5 small." (*Kullar*, 168 Cal.App.4th at p. 128 [quoting *Dunk*, 48 Cal.App.4th at p. 1794].) The
6 Settlement satisfies all of these factors.

7 The Settlement resulted from thorough, arm's-length negotiations between experienced
8 counsel with the assistance of a respected mediator after sufficient discovery was exchanged to
9 assess each side's strengths, weaknesses, and Defendant's estimated exposure. (Benowitz Decl., ¶¶
10 8–14, 46.) Plaintiff prepared "damages" estimates in advance of mediation based on records
11 produced by Defendant. (*Id.*, ¶¶ 36–37.) Plaintiff calculated Defendant's maximum possible
12 exposure for restitution and penalties at approximately \$2,668,508.68 based on 5,938 Workweeks
13 and an average of 4.70 shifts per workweek (yielding 27,909 total shifts) and an average recorded
14 shift of 8.68 hours (with the alleged auto-deduction), consisting of \$408,163.28 in unpaid overtime
15 wages (representing the 13,954 hours of auto-deducted time at the overtime rate of \$29.25/hour,
16 given that the recorded 8.68-hour shift already exceeds the 8-hour daily overtime threshold),
17 \$544,217.70 in meal period premiums (one premium hour per shift at the regular rate of
18 \$19.50/hour, capped at one premium per workday under *Brinker Restaurant Corp. v. Superior Court*
19 (2012) 53 Cal.4th 1004 (*Brinker*)), \$544,217.70 in rest period premiums (same formula),
20 \$148,450.00 in unreimbursed business expenses, \$164,000.00 in wage statement penalties under
21 section 226(e), \$196,560.00 in waiting time penalties under section 203, and \$662,900.00 in PAGA
22 penalties (calculated for a single substantive violation of Labor Code § 510 only, on the realistic
23 assumption that the Court would not assess additional per-pay-period PAGA penalties for technical
24 or derivative statutory violations arising from the same underlying conduct). (*Id.*)

25 These maximum estimates make no allowance for the substantial risks described below, the
26 risk that class certification would be denied, or the risk that Defendant would launch a *Pick-Up Stix*
27 campaign and pick off Class Members one by one. The Settlement represents approximately 19.7%
28 of the maximum exposure — well within the range routinely approved by California courts for cases



1 with comparable risk profiles. (Benowitz Decl., ¶ 45.)

2 As reflected in this breakdown, the \$2,668,508.68 maximum-exposure figure is inclusive of
3 PAGA — it incorporates Plaintiff's maximum PAGA penalty exposure of \$1,312,000.00 alongside
4 the underlying Labor Code restitution and statutory penalty exposures. In other words, Plaintiff's
5 exposure analysis covers both class and PAGA claims on a combined basis; the Settlement of
6 \$525,000.00 therefore reflects approximately 19.7% of total class-plus-PAGA maximum exposure.
7 Measured against the non-PAGA claims alone — that is, the approximately \$1,356,508.68 in non-
8 PAGA maximum exposure (\$2,668,508.68 total less the \$1,312,000.00 PAGA component) — the
9 \$525,000.00 Settlement represents approximately 38.7% of non-PAGA maximum exposure.

10 Plaintiff is aware of only two significant awards under PAGA in contested proceedings, both
11 issued by federal district courts. PAGA penalty awards are often small even for egregious,
12 intentional violations of the Labor Code. (Benowitz Decl., ¶ 33.) For instance, on October 24, 2017,
13 the Los Angeles Superior Court awarded a prevailing PAGA plaintiff, represented by very
14 experienced counsel, civil penalties totaling only \$50.00. (*Shields v. Security Paving Company, Inc.*,
15 L.A. Sup. Ct. No. BC492828.) Further, in *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504,
16 529, the Court of Appeal affirmed judgment which provided for a PAGA penalty of only \$5 per pay
17 period for the defendant's meal period violations. A similar result could occur here.

18 **3. The Settlement satisfies the Kullar approval factors.**

19 The *Kullar* factors include: (1) the strength of plaintiff's case; (2) the risk, expense,
20 complexity, and likely duration of further litigation; (3) the risk of maintaining class action status
21 through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage of
22 the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental
23 participant; and (8) the reaction of the class members to the proposed settlement. (*Kullar*, 168
24 Cal.App.4th at p. 128.)

25 **a. Risks associated with Defendant's financial condition.**

26 Defendant's financial condition was a significant factor in reaching this Settlement.
27 (Benowitz Decl., ¶ 47.) Defendant is a small business and a franchisee of ServPro. (*Id.*) A large class
28 action judgment would almost certainly put the company out of business or interfere with its ability



1 to continue operations without significant staff reductions. (*Id.*) "[T]he poor financial health of [the
2 defendant will] seriously increase[] the chance that Plaintiffs would be left with nothing if they
3 continued to litigate their claims." (*Torrisi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370,
4 1376; *Spann v. J.C. Penney Corp.* (C.D. Cal. 2016) 211 F.Supp.3d 1244, 1256 [uncertainty
5 concerning defendant's financial stability "strongly supports the reasonableness of the settlement"].)
6 Defendant's financial condition supports preliminary approval.

7 ***b. Risks associated with unpaid wages and auto-deduction claims.***

8 Plaintiff's unpaid-wages claim is largely an off-the-clock claim arising from an alleged
9 automatic 30-minute or 1-hour meal-period deduction. (Benowitz Decl., ¶ 48.) The difficulty
10 inherent in proving off-the-clock work poses a significant hurdle. Plaintiff would rely on
11 declarations and witness statements, while Defendant would submit contrary declarations from
12 current employees stating they always took the full deducted time. (*See Duran*, 59 Cal.4th at pp. 39–
13 40, 50–51 [statistical evidence in wage-and-hour cases].) Individualized inquiries would be required
14 person-by-person, day-by-day, to determine whether each employee in fact worked off-the-clock
15 minutes on a regular basis — a significant risk that the Court could conclude individual issues
16 predominate.

17 Beyond these general off-the-clock evidentiary problems, courts in California have
18 repeatedly denied or decertified class treatment of meal-period and off-the-clock claims predicated
19 on an automatic-deduction policy, precisely because the existence and reason for any
20 uncompensated work during an auto-deducted meal period turn on highly individualized questions.
21 (*See Dilts v. Penske Logistics, LLC* (S.D. Cal. 2010) 267 F.R.D. 625, 637–638 (*Dilts*) [decertifying
22 class action for meal- and rest-period violations tied to an auto-deduction policy because liability
23 turned on individualized questions about why each employee did or did not take a duty-free break];
24 *Brown v. Federal Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587–588 [denying certification of
25 meal-period and off-the-clock claims under an auto-deduct theory because individualized inquiries
26 into each putative class member's actual experience predominated over the existence of the policy
27 itself]; *Kenny v. Supercuts, Inc.* (N.D. Cal. 2008) 252 F.R.D. 641, 645–647 [same; auto-deduct cases
28 necessarily require employee-by-employee inquiry into actual working conditions and employer



1 knowledge]; *Salazar v. AvalonBay Communities, Inc.* (S.D. Cal. Aug. 16, 2017) 2017 WL 3531546,
2 at *6–*9 [denying class certification on auto-deduction off-the-clock claim]; *Quinlan v. Macy's*
3 *Corp. Servs., Inc.* (C.D. Cal. Aug. 22, 2013) 2013 WL 11091572, at *5–*6 [denying class
4 certification where plaintiff's auto-deduct theory required individualized inquiry into each shift]; *In*
5 *re AutoZone, Inc. Wage & Hour Employment Practices Litig.* (N.D. Cal. 2016) 318 F.R.D. 502,
6 514–520 (*AutoZone*) [decertifying meal- and rest-period classes premised on policy-based theories
7 where actual employee experience varied]; see also *Pryor v. Aerotek Scientific, LLC* (C.D. Cal.
8 2011) 278 F.R.D. 516, 530–532 [denying certification of off-the-clock claim].) The case law thus
9 shows that California auto-deduct theories are notoriously fragile at the class certification stage, and
10 Defendant had a credible roadmap to defeat certification of the meal-period and unpaid-wages
11 claims entirely.

12 The *Dilts* factual pattern is especially analogous here. As in *Dilts*, Defendant maintained a
13 uniform automatic 30-minute or 1-hour meal-period deduction without requiring employees to clock
14 in and out for meal periods, but Defendant's position is that employees in fact took the deducted
15 breaks in the field. (Benowitz Decl., ¶ 50.) That same dispute is what drove the *Dilts* court to find
16 that "whether each putative class member was actually relieved of duty during each automatically-
17 deducted meal period" was an individualized question that defeated predominance. (*Dilts*, 267
18 F.R.D. at p. 638.) Plaintiff would have had to overcome that same hurdle here.

19 The threat of decertification, even if Plaintiff initially obtained certification, also factored
20 heavily into the settlement calculus. (Benowitz Decl., ¶ 51.) *AutoZone* illustrates how an auto-deduct
21 or policy-based meal- and rest-period class can be certified at the front end of a case and then
22 decertified after individualized discovery shows variation in actual practice. (*AutoZone*, 318 F.R.D.
23 at pp. 514–520.) That sequence would have produced years of class-period uncertainty, additional
24 litigation costs, and the prospect of being left with no class-wide remedy after substantial expense.

25 Finally, even if class certification of the auto-deduct claims survived these challenges,
26 Plaintiff would still have faced the *Brinker/Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58
27 (*Donohue*) framework at the merits stage, under which Defendant could rebut the presumption of
28 meal-period liability with declarations from current employees attesting that they had in fact taken



1 meal periods and that Defendant did not impede their ability to do so. (*Donohue*, 11 Cal.5th at pp.
2 70–77; *Brinker*, 53 Cal.4th at pp. 1040–1041.) Combined with the certification risks described
3 above, the realistic settlement value of the auto-deduct meal-period and unpaid-wages claims was
4 therefore meaningfully lower than the maximum exposure calculated for mediation, and the
5 Settlement Amount reflects an appropriate, well-supported compromise.

6 ***c. Risks associated with meal period claims.***

7 To establish a meal-period violation, a plaintiff must do more than show the absence of an
8 accurate time record reflecting a meal period during the first five hours of work. (*Brinker*, 53 Cal.4th
9 at pp. 1040–1041.) So long as the employer provides a "reasonable opportunity" to take a duty-free
10 meal period, it has no further duty to "police meal breaks." (*Id.*) "[T]he crucial issue with regard to
11 the meal break claim is the reason that a particular employee may have failed to take a meal break."
12 (*Washington v. Joe's Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641.) While *Donohue*, 11
13 Cal.5th at p. 70, establishes a rebuttable presumption of liability from facial time-record violations,
14 the employer retains a waiver defense. Defendant updated its policies after the lawsuit was filed and
15 began having employees punch in and out for meal periods. (Benowitz Decl., ¶ 53.) Of the records
16 that show late or missed meal periods, individualized evidence would be required to determine
17 whether they resulted from Defendant's conduct or each employee's choice. (*Id.*) These risks
18 substantially discount the value of the meal-period claim.

19 ***d. Risks associated with rest period claims.***

20 Employers are not required to record rest periods. (Benowitz Decl., ¶ 54.) Defendant
21 contends it provided non-exempt employees the opportunity to take rest periods consistent with
22 California law. (*Id.*) Unlike meal periods, where there are often records showing whether an
23 employee clocked out, there are no records to prove a missed rest period or that the employer refused
24 to authorize and permit one. (*Id.*) Plaintiff would depend on sample witness testimony and surveys,
25 and on Defendant's pre-suit absence of a written rest-period policy. While victory with such
26 evidence is possible, the case law makes such claims risky from a trial-management and due-process
27 perspective. (*Duran*, 59 Cal.4th at p. 31; *Tyson Foods, Inc. v. Bouaphakeo* (2016) 577 U.S. 442;
28 *Comcast Corp. v. Behrend* (2013) 569 U.S. 27.)

1 ***e. Risks associated with failure to indemnify claim.***

2 There is a risk that the Court could consider Plaintiff's claims as to Defendant's alleged
3 failure to indemnify business expenses to be individual in nature and thus decline to certify the class.
4 (Benowitz Decl., ¶ 55.) Although Defendant did not provide cellular phones, valuing the claim is
5 difficult because most employees have unlimited cellular plans and would incur no additional
6 expense from work use. (*Id.*) Even if certified, the claim is likely to yield modest recovery.

7 ***f. Risks associated with statutory penalties claims.***

8 Plaintiff's wage statement and waiting time penalty claims are derivative of the underlying
9 wage claims. (Benowitz Decl., ¶ 56.) As the California Supreme Court's decision in *Naranjo v.*
10 *Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056, 1085–1089 (*Naranjo III*) demonstrates,
11 derivative penalty claims are highly fact-specific, can yield different liability findings based on the
12 state of the law at various times, and are anything but certain. Defendant contends its operations
13 stopped when employees were working on job sites because all work purportedly stopped during
14 breaks (an exception to the Wage Order recordkeeping requirements). (*Id.*) This gives rise to
15 meaningful good-faith defenses to willfulness and knowing-and-intentional intent.

16 ***g. Risks associated with a Pick Up Stix campaign.***

17 An employer may settle a putative class member's disputed wage claims individually,
18 without consent or involvement of class counsel. (*Chindarah v. Pick Up Stix, Inc.* (2009) 171
19 Cal.App.4th 796, 803–804 (*Pick Up Stix*)). Defendant could have launched a "pick off" settlement
20 campaign to pursue individual release agreements from the 73 Class Members, narrowing the size of
21 the Class until it was no longer numerous enough for class certification. (Benowitz Decl., ¶ 57.) This
22 risk alone justifies a significant discount and represents one of the strongest considerations
23 supporting the Settlement.

24 ***h. Risks associated with PAGA claim (Old PAGA, with court discretion***
25 ***to apply New-PAGA fairness logic).***

26 Plaintiff's PAGA Notice was served on October 4, 2023, before the June 19, 2024 effective
27 date of the 2024 PAGA Reform. (Benowitz Decl., ¶ 5.) This action is therefore governed by Old
28 PAGA, with the traditional 75% LWDA / 25% Aggrieved Employee allocation. (Lab. Code, former



1 § 2699, subd. (i).) Even under Old PAGA, however, the Court retains broad discretion to award a
2 lesser amount than the maximum penalty. (Lab. Code, § 2699, subd. (e)(2); *Thurman v. Bayshore*
3 *Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135.)

4 There is a substantial risk that the Court could deem the maximum civil penalty award
5 against this small-business franchisee to be confiscatory, particularly in light of Defendant's financial
6 condition. (Benowitz Decl., ¶ 44.) The COVID-19 pandemic, which spanned a meaningful portion of
7 the Class Period, could further motivate the Court to reduce the penalty award. (*Id.*) Plaintiff's
8 counsel also estimated a maximum exposure of \$1,312,000.00 assuming a PAGA violation in every
9 single pay period and "stacking" of penalties for multiple Labor Code violations in the same pay
10 period — assumptions that no California state court has expressly endorsed. (*Id.*)

11 Significantly, Plaintiff and her counsel evaluated the PAGA claim with full awareness that —
12 although Old PAGA technically governs — there is a real risk that this Court could be persuaded by
13 the fairness considerations animating the 2024 PAGA Reform and exercise its existing discretion to
14 reduce penalties on equitable grounds. (Benowitz Decl., ¶ 58.) In particular, this Court could be
15 moved by: (1) Defendant's small-business franchisee status; (2) the absence of any prior wage-and-
16 hour adjudication, citation, or complaint against Defendant; (3) Defendant's good-faith policy
17 changes after this lawsuit was filed (including the adoption of facially-compliant break policies and
18 the requirement that employees punch in and out for meal periods); (4) the New-PAGA principle
19 that penalty stacking is generally disfavored; and (5) the New-PAGA principle that an employer who
20 takes reasonable steps to comply with the Labor Code is entitled to substantial penalty reductions.
21 Although those statutory reduction mechanics do not apply directly under Old PAGA, the Court has
22 independent equitable discretion under section 2699, subdivision (e)(2), to apply the same fairness
23 logic on a case-by-case basis — and may well "deem it unfair to penalize one employer more than
24 another solely based on the date when an employee mailed notice to the LWDA." (Benowitz Decl., ¶
25 58.) This is a meaningful risk that supported a significant discount for settlement purposes.

26 Re-Analyzed PAGA Exposure Based on the Paycheck Counts in the Executed Settlement.

27 Based on Defendant's records as reflected in the executed Settlement Agreement, 57 PAGA
28 Employees were issued a total of 3,343 PAGA Period Paychecks during the PAGA Period.



(Settlement, ¶ 4.1.) Applying Old PAGA's default per-pay-period formula — \$100 for the initial violation per aggrieved employee and \$200 for each subsequent violation per pay period (Lab. Code, § 2699, subd. (f)(2)) — the maximum PAGA penalty per substantive Labor Code provision violated is approximately \$662,900 ($\$100 \times 57$ initial violations = \$5,700, plus $\$200 \times 3,286$ subsequent pay periods = \$657,200). (Benowitz Decl., ¶ 59.) Plaintiff's pre-mediation maximum-exposure estimate of \$1,312,000 in PAGA penalties corresponds to roughly two stacked substantive violations at the default \$100/\$200 rates and assumes a violation in every pay period. (*Id.*) The theoretical maximum under aggressive stacking — five separate substantive provisions (unpaid wages, meal periods, rest periods, expense indemnification, and the derivative wage-statement provision under section 226(a)) at the default rates — would be approximately \$3,314,500. (*Id.*) Plaintiff's \$1,312,000 mediation figure therefore already reflected a substantial, good-faith discount from the theoretical PAGA ceiling, even before further discounting for the certification, evidentiary, and equitable risks discussed elsewhere in this brief.

Re-Analyzed Section 226 Wage Statement Penalty Exposure Based on the Settlement Paycheck Counts. Plaintiff's \$164,000 estimate for wage statement penalties under Labor Code section 226(e) reflects \$50 for each Class Member's first violation plus \$100 for each subsequent violation up to the \$4,000 per-employee statutory cap, applied to the Class Members who were issued paychecks during the one-year limitations period preceding the filing of the Complaint. (Lab. Code, § 226, subd. (e)(1); Code Civ. Proc., § 340, subd. (a).) The absolute statutory ceiling for the 73 Class Members in this Action is $73 \times \$4,000 = \$292,000$, which would only be reached if every Class Member received more than approximately 40 paychecks during the limitations period. (Benowitz Decl., ¶ 60.) Plaintiff's \$164,000 estimate (which averages approximately \$2,247 per Class Member) is a realistic mid-range projection accounting for the fact that many Class Members had shorter tenures and never approached the per-employee cap. (*Id.*)

PAGA Exposure Re-Analyzed Under New PAGA Without Derivative Violations. As noted, this Action is governed by Old PAGA. (Lab. Code, former § 2699, subd. (i).) Even under Old PAGA, however, the Court has independent equitable discretion to award lesser penalties to avoid an "unjust, arbitrary and oppressive, or confiscatory" outcome (Lab. Code, § 2699, subd. (e)(2)), and



1 Plaintiff's counsel reasonably anticipates that this Court could be influenced by the fairness
2 considerations underlying New PAGA. Plaintiff's counsel therefore separately re-analyzed what the
3 PAGA claim would be worth if this Action were re-analyzed under New PAGA and stripped of its
4 derivative-violation components. (Benowitz Decl., ¶ 61.)

5 New PAGA, in section 2699, subdivision (i), bars PAGA penalties for derivative violations
6 of Labor Code sections 201, 202, 203, 204, 226(a), 226.2, and 1174.5 unless those violations were
7 "knowing and intentional" or "willful." Stripping out the derivative wage-statement (§ 226(a)) and
8 waiting-time (§ 203) components would leave at most four substantive PAGA-eligible categories in
9 this Action: (1) unpaid minimum and overtime wages (Lab. Code, §§ 1194, 1194.2, 1198); (2) meal
10 periods (Lab. Code, §§ 226.7, 512); (3) rest periods (Lab. Code, § 226.7); and (4) failure to
11 indemnify business expenses (Lab. Code, § 2802). (Benowitz Decl., ¶ 61.)

12 Applying New PAGA's flat \$100-per-aggrieved-employee-per-pay-period default rate
13 (without the doubled subsequent-violation rate that applies under Old PAGA) to the 3,343 PAGA
14 Period Paychecks, the maximum exposure per substantive violation would be approximately
15 \$334,300 ($\$100 \times 3,343$). Stacking all four substantive categories (which Plaintiff could not
16 necessarily achieve under New PAGA's anti-stacking principles) yields a ceiling of approximately
17 \$1,337,200 — roughly the same order of magnitude as Plaintiff's \$1,312,000 Old-PAGA mediation
18 estimate, but without any contribution from derivative violations.

19 New PAGA further affords penalty reductions of up to 85% for an employer that took "all
20 reasonable steps" to comply with the Labor Code before receiving the PAGA Notice, and up to 70%
21 for an employer that took "reasonable steps" within sixty days of the Notice. (Lab. Code, § 2699,
22 subds. (g)(1)–(2).) Applied to the \$1,337,200 New-PAGA-without-derivatives ceiling, those
23 statutory reduction mechanics would yield a realistic exposure range of approximately \$200,580
24 (85% reduction) to \$401,160 (70% reduction). Although Defendant cannot invoke the New-PAGA
25 statutory reduction mechanics directly under Old PAGA, the equivalent equitable considerations —
26 small-business franchisee status, prompt good-faith policy changes after this lawsuit was filed
27 (including the adoption of facially compliant meal- and rest-period policies and requiring employees
28 to punch in and out for meal periods), and the absence of any prior wage-and-hour adjudication



1 against Defendant — give rise to a real risk that this Court could use its existing discretion under Old
2 PAGA (Lab. Code § 2699, subd. (e)(2)) to award penalties in the same reduced range. (Benowitz
3 Decl., ¶ 63.)

4 The \$25,000 PAGA component of this Settlement (75% / \$18,750 to the LWDA and 25% /
5 \$6,250 to PAGA Employees) is therefore well within the range of realistic Old-PAGA outcomes
6 after accounting for risk, and well within the range of equivalent New-PAGA-fairness-adjusted
7 outcomes. Even the most generous reasonable-PAGA recovery analysis on a substantive-only basis
8 (without derivative penalties) suggests a realistic court-awarded PAGA penalty after a hypothetical
9 contested trial of \$200,000 to \$400,000, with substantial probability of a much lower award given
10 Defendant's small-business status and the Court's broad discretion. The PAGA Settlement amount
11 thus reflects a fair and reasonable allocation in light of the actual risk profile of the PAGA claim.

12 ***i. Allocation of PAGA Payment.***

13 The settlement of PAGA penalties in the sum of \$25,000.00 — 75% (\$18,750.00) to the
14 LWDA and 25% (\$6,250.00) to PAGA Employees, consistent with Old PAGA — is reasonable and
15 appropriate. (Benowitz Decl., ¶ 65.) The Parties negotiated the PAGA amount in good faith. Where
16 settlements "negotiate[] a good faith amount" for PAGA penalties and "there is no indication that
17 this amount was the result of self-interest at the expense of other Class Members," such amounts are
18 generally considered reasonable. (*Hopson v. Hanesbrands Inc.* (N.D. Cal. 2009) 2009 WL 928133,
19 at *9.) Courts have approved similar or smaller PAGA settlements in significantly larger common
20 funds. (*See, e.g., Chu v. Wells Fargo Investments, LLC* (N.D. Cal. 2011) 2011 WL 672581, at *4–*5
21 [approving \$7,500 LWDA payment out of \$6.9 million common fund]; *Hicks v. Toys "R" Us-*
22 *Delaware, Inc.* (C.D. Cal. 2014) 2014 WL 4703915, at *3 [approving \$5,000 PAGA payment in \$4
23 million settlement]; *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 589 [approving PAGA
24 settlement allocating \$0 to the PAGA claim].)

25 ***j. Presence of governmental participant.***

26 As required under Labor Code § 2699, subd. (l)(2), Plaintiff has provided notice of this
27 Settlement to the LWDA in conjunction with the filing of this Motion. (Benowitz Decl., ¶ 66 & Ex.
28 5 [LWDA upload confirmation].)

1 ***k. Reaction of Class Members to Settlement.***

2 If the Settlement is preliminarily approved, Class Members will receive Notice Packets
3 containing the Class Notice, Workweek Dispute Form, Exclusion Form, and Objection Form, and
4 the opportunity to object. (Benowitz Decl., ¶ 67; Settlement, Exs. A–D.) The parties' proposed notice
5 fully complies with California Rules of Court 3.766(d) and 3.769(f) and will allow Class Members
6 to make informed responses to the proposed Settlement.

7 **C. The Settlement Fairly, Adequately, and Reasonably Compensates Class**
8 **Members and PAGA Employees Based on the Likely Extents of Their**
9 **Potential Injuries.**

10 The Individual Class Payments will be paid pro rata based on each Participating Class
11 Member's Workweeks during the Class Period compared to total Workweeks. (Settlement, ¶ 3.2.4.)
12 This method compensates Class Members based on the likely extent of their potential injuries —
13 those who worked longer for Defendant likely experienced more violations. (Benowitz Decl., ¶ 67.)
14 Plaintiff estimates that the NSA yields an estimated Workweek value of between approximately
15 \$44.83 and \$49.34 ($\$293,000.00 \text{ NSA} \div 6,531 \text{ Workweeks} = \$44.83$; $\$293,000.00 \text{ NSA} \div 5,938$
16 $\text{Workweeks} = \$49.34$). (*Id.*) The estimated mean Individual Class Payment is approximately \$4,014
17 per Participating Class Member based on 73 Class Members. (*Id.*)

18 Under the Settlement, each PAGA Employee will receive a pro rata distribution of 25% of
19 the PAGA Penalties based on the number of PAGA Period Paychecks each had during the PAGA
20 Period. (Settlement, ¶ 3.2.5.) Based on 3,343 PAGA Period Paychecks, the value per Paycheck is
21 approximately \$1.87 ($25\% \text{ of } \$25,000.00 \div 3,343 = \$1.87$). (Benowitz Decl., ¶ 20.) The estimated
22 mean Individual PAGA Payment is approximately \$109.65 per PAGA Employee based on 57 PAGA
23 Employees. (*Id.*)

24 **D. The Proposed Class Counsel Fees and Litigation Expenses Payments Are**
25 **Fair, Adequate, and Reasonable.**

26 The Settlement allows Class Counsel to seek attorneys' fees of up to 33.33% of the GSA
27 (estimated at \$175,000.00) and up to \$15,000.00 in actual reasonable litigation costs. (Settlement, ¶
28 3.2.2.) Defendant will not oppose requests up to those amounts. (*Id.*, ¶ 3.2.2.) Trial courts have





1 "wide latitude" in assessing attorneys' fees, and their decisions will not be disturbed on appeal absent
2 manifest abuse of discretion. (*Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41.) "[T]he
3 experienced trial judge is the best judge of the value of professional services rendered in his court."
4 (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132.) California law provides that attorney fee awards
5 should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and
6 risk incurred. (*Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503.) The California Supreme
7 Court has approved fees equal to one-third (1/3) of the common fund. (*Id.*) Many other courts have
8 approved fee awards equal to or greater than the percentage requested here. (*E.g., In re Pacific*
9 *Enterprises* (9th Cir. 1995) 47 F.3d 373, 379 [33%]; *In re Activision* (N.D. Cal. 1989) 723 F.Supp.
10 1373, 1375 [32.8%]; *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494, 498 [45%].)

11 The fees and costs requested are commensurate with: (1) the risk Class Counsel took in
12 bringing the case against a financially fragile small business franchisee; (2) the extensive time,
13 effort, and expense invested in the case; (3) the skill and determination Class Counsel applied; (4)
14 the results Class Counsel achieved, including a recovery valued at approximately 38.7% of non-
15 PAGA maximum exposure (and approximately 19.7% of combined class-plus-PAGA maximum
16 exposure) despite Defendant's small size, and (5) the other cases Class Counsel turned down.
17 (Benowitz Decl., ¶ 68; *id.*, Ex. 6 [Nese Decl., ¶¶ 9–14].) Class Counsel obtained information from
18 Plaintiff and from Defendant, communicated with defense counsel to obtain necessary policies and
19 data, reviewed and analyzed hundreds of pages of records, researched applicable law, prepared
20 "damages" estimates, attended a full-day mediation, drafted the long-form Settlement Agreement
21 and Notice Packets, and prepared this motion. (*Id.*)

22 **E. The Proposed Class Representative Service Payment Is Fair and Reasonable.**

23 Courts routinely approve incentive awards to compensate named plaintiffs for their services
24 and the risks they incur during class litigation, often in much higher amounts than that sought here.
25 (*Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726; *Van Vranken v. Atlantic Richfield Co.*
26 (N.D. Cal. 1995) 901 F.Supp. 294, 299 [approving \$50,000 enhancement].) The Settlement provides
27 that Plaintiff may seek a Class Representative Service Payment of \$10,000.00. (Settlement, ¶ 3.2.1.)
28 This amount is entirely reasonable given Plaintiff's efforts and risks. Plaintiff has devoted many



1 hours advancing the Class's interests by retaining experienced counsel, providing information about
2 her work history and Defendant's policies, participating in mediation, and remaining actively
3 involved through finalization of the Settlement. (Benowitz Decl., Ex. 7 [Delgado Decl., ¶¶ 4–8].) In
4 doing so, she has exposed herself to significant risks, including the risk of paying Defendant's
5 attorney's fees and costs if this action had been unsuccessful. (Lab. Code §§ 218.5, 218.6.)

6 **F. The Proposed Administration Expenses Payment Is Fair and Reasonable.**

7 Before agreeing to Phoenix Class Action Administration Solutions at a bid of \$7,000.00, the
8 Parties sought and reviewed bids from multiple reputable third-party administrators (including
9 ILYM, Xpand, Simpluris, and CPT), and selected the lowest qualified bid. (Benowitz Decl., ¶ 15 &
10 Ex. 4.) Phoenix is a qualified and experienced settlement administrator. (*Id.* & Ex. 4 [Phoenix
11 Qualification Declaration].) The Administration Expenses Payment warrants preliminary approval.

12 **G. The Proposed Notice and Settlement Administration Plan Warrant the Court's**
13 **Approval.**

14 The standard for determining the adequacy of notice is whether the notice has "a reasonable
15 chance of reaching a substantial percentage of the class members." (*Cartt v. Superior Court* (1975)
16 50 Cal.App.3d 960, 974.) The Settlement provides for distribution of the Notice Packet by First-
17 Class U.S. mail with Spanish translation as appropriate (Settlement, ¶ 8.4.2), with re-mailing of
18 returned notices following Class Member Address Searches (*id.*, ¶ 8.4.3). Although there are some
19 current employee Class Members, Defendant's records of contact information may not include email
20 addresses, and Class Members performing field work are not necessarily positioned to check email
21 regularly. Notice by mail is therefore fair, adequate, and reasonable.

22 "[T]he notice given to the class must fairly apprise the class members of the terms of the
23 proposed compromise and of the options open to dissenting class members." (*Trotsky v. Los Angeles*
24 *Fed. Sav. & Loan Assn.* (1975) 48 Cal.App.3d 134, 151–152.) The Notice Packets (Exhibits A–D to
25 the Settlement) clearly and concisely explain: (1) what the Settlement is about; (2) who is a
26 Settlement Class Member; (3) how Class Counsel will be paid; (4) how to submit an exclusion
27 request; (5) how to object to the Settlement; (6) how the Settlement will be allocated; (7) how
28 payments will be calculated; (8) how disputes will be resolved; (9) each Class Member's estimated

1 Individual Class Payment and each PAGA Employee's Individual PAGA Payment; and (10) each
2 individual Class Member's number of Workweeks and each individual PAGA Employee's number
3 of PAGA Period Paychecks. (Benowitz Decl., ¶ 70.) Thus, the Notice Packet should be approved.

4 **V. CONCLUSION**

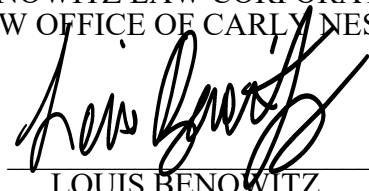
5 For the reasons stated above, this Court should grant Plaintiff's Motion in its entirety and
6 adopt the [Proposed] Order submitted concurrently herewith.

7 Respectfully submitted,

8 BENOWITZ LAW CORPORATION
9 LAW OFFICE OF CARLY NESE, PC

10
11 Dated: June 10, 2026

12 BY



13 LOUIS BENOWITZ
14 Attorneys for Plaintiff,
15 MARLENE DELGADO
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PROOF OF SERVICE

State of California,
County of Los Angeles

I, LOUIS BENOWITZ, declare:

1. I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to the within action. My business address is 8605 Santa Monica Boulevard, PMB 79183, West Hollywood, CA 90069.

2. On June 10, 2026, I served the foregoing document(s) described as
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF MARLENE DELGADO'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT on interested parties by transmitting them in the manner(s) described below:

Attorneys for Defendant

Jasmine Shams
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Gabriel.Hudson@lewisbrisbois.com

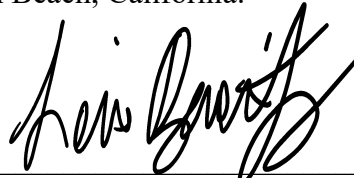
Co-Counsel for Plaintiff

Carly Nese
Law Office of Carly Nese, PC
CNese@NeseLaw.com

XXXX BY EMAIL: I transmitted a PDF version of this document by electronic mail to the persons indicated using the email addresses indicated.

XXXX (STATE): I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

EXECUTED on June 10, 2026, at Manhattan Beach, California.



LOUIS BENOWITZ
Declarant