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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MADERA

MARTHA SANCHEZ PADILLA, an individual, on behalf of herself, the State of California, as a private attorney general, and on behalf of all others similarly situated,

Plaintiff,

v.

CENTRAL IRRIGATION, INC., a California corporation; and DOES 1 TO 50,

Defendants.

Case No. MCV090815

NOTICE OF MOTION AND PLAINTIFF'S MOTION FOR ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

[*Declarations of Jonathan Melmed, Martha Sanchez Padilla, and [Proposed] Order filed concurrently herewith*]

Date: April 24, 2025
Time: 8:30 A.M.
Dept: 44
Judge: Hon. Brian W. Enos

Complaint Filed: November 29, 2023
First Amended Complaint Filed: July 8, 2024
Trial Date: None Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that, on April 24, 2025, at 8:30 a.m., or as soon thereafter as the matter may be heard, in Department 44 of the Superior Court of California, County of Madera before the Honorable Brian W. Enos, pursuant to California Code of Civil Procedure section 382 and California Rule of Court 3.769(c), Plaintiff Martha Sanchez Padilla ("Plaintiff") individually, and on behalf of all others similarly situated, and on behalf of the Aggrieved Employees (as defined herein) will and does hereby move this Court for entry of an Order:

1. Preliminarily certifying the Class for purposes of settlement;

2. Preliminarily appointing Plaintiff as Class Representatives for purposes of settlement;

3. Preliminarily appointing Jonathan Melmed, Esq. and Laura M. Supanich, Esq. of Melmed Law Group P.C. as Class Counsel for purposes of settlement;

4. Preliminarily approving the settlement as fair, adequate, and reasonable, based upon the terms set forth in the Parties' <u>Settlement Agreement and Release of Class Action</u> (the "Settlement Agreement"), including payment by defendant Central Irrigation, Inc. ("Defendant") of the non-reversionary Gross Settlement Amount ("GSA") of $205,000.00, plus the employer's side payroll taxes;

5. Preliminarily approving Class Counsel's request for up to one third of the GSA as attorneys' fees (*i.e.*, up to $68,333.33), plus reimbursement of actual litigation costs up to $25,000.00;

6. Preliminarily approving an allocation of PAGA penalties of $20,000.00, including payment to the Labor and Workforce Development Agency for its share of 75% of the PAGA penalties pursuant to PAGA in an amount of $15,000.00;

7. Preliminarily approving a Class Representative Incentive Award to Plaintiff Martha Sanchez Padilla in an amount of up to $7,500.00 from the Gross Settlement Amount to compensate her for the burdens, responsibilities, time, effort and risks involved in coming forward on behalf of the Class;

8. Appointing Apex Class Action Administration as the third-party Settlement Administrator for mailing notices and for settlement administration, and approving that $20,000.00 be deducted from the GSA for the costs of settlement administration; and

9. Approving the proposed Notice of Proposed Class Action Settlement ("Class Notice"), and ordering they be disseminated to the Class as provided in the Settlement Agreement.

This Motion is based upon the supporting Memorandum of Points and Authorities, the Declarations of Jonathan Melmed, Esq. and Plaintiff Martha Sanchez Padilla, the Settlement Agreement, and the [Proposed] Order filed concurrently herewith, along with such evidence and argument of counsel as may be presented at the hearing, and such additional matters as the Court may consider at the hearing on this Motion.

Lastly, given the multiplicity of issues addressed in this Motion, and because this Motion is unopposed, Plaintiff believes that there is good cause to exceed the page limit set forth in California Rule of Court 3.764(c)(2), and respectfully requests that the Court consider Plaintiff's memorandum of points and authorities, which exceeds the statutory page limit.

Dated: April 2, 2025

Respectfully submitted,

MELMED LAW GROUP P.C.

By:______________________________

Jonathan Melmed, Esq.
Laura Supanich, Esq.
Attorneys for Plaintiff, the Putative Class and Aggrieved Employees

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Motion seeks preliminary approval of a wage-and-hour class action settlement between Plaintiff and Defendant on behalf of *all individuals who are or were employed by Defendants as non-exempt employees in California during the Class Period* (the "Class" or the "Class Members"). The Class Period is defined as the period of time from November 29, 2019, through May 30, 2024. Defendant has identified 190 Class Members and approximately 9,206 workweeks in the Class Period.

After engaging in substantial independent investigation and a full-day mediation session before experienced wage and hour mediator Steven J. Serratore, and hard-fought negotiations, the Parties agreed to a *non-reversionary* gross settlement amount of $205,000.00 plus the employer-side payroll taxes. Declaration of Jonathan Melmed in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("JM Decl.") ¶ 3.

Subject to court approval, after deductions for attorneys' fees and litigation expenses to Class Counsel, incentive award payment to the Class Representative, Settlement Administration expenses, and a payment to the Labor Workforce and Development Agency ("LWDA") under PAGA, the remaining amount (the "Net Settlement Amount") will be distributed to Class Members who did not opt out of the Settlement as follows:

Gross Settlement Amount	**$205,000.00**
Attorneys' Fees (1/3 of the GSA)	(up to $68,333.33)
Litigation Costs and Expenses	(up to $25,000.00)
Class Rep. Enhancement Award	(up to $7,500.00)
Settlement Administration Costs	(up to $20,000.00)
PAGA payment to the LWDA	(up to $15,000.00)
Net Settlement Amount	**$69,166.67**

Through this motion, Plaintiff requests entry of an order: (1) conditionally certifying the Class under California Code of Civil Procedure section 382 and California Rule of Court 3.769(c) for settlement purposes and preliminarily approving the Settlement; (2) approving the proposed Class

Notice to be distributed to Class Members pursuant to the Settlement Agreement;[1] (3) appointing Apex Class Action Administration the Settlement Administrator; and (4) scheduling a hearing for final approval, for the Court to consider the ultimate fairness of the settlement and the requested fees and costs following distribution of notice to the Class, and examination of the results of the notice process.

II. BACKGROUND

A. Procedural History, Discovery, and Investigation

On November 29, 2023, Plaintiff gave notice to the LWDA and Defendant of her claims for Defendant's violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 256, 510, 512, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804 and the IWC Wage Order No. 14 under the Private Attorney General Act ("PAGA"). JM Decl. ¶ 8.

On the same day, Plaintiff filed her class action complaint against Defendant alleging causes of action for: (1) failure to pay all minimum wages; (2) failure to pay all overtime wages; (3) failure to provide rest periods and pay missed rest period premiums; (4) failure to provide meal periods and pay missed meal period premiums; (5) failure to maintain accurate employment records; (6) failure to pay wages timely during employment; (7) failure to pay all wages earned and unpaid at separation; (8) failure to indemnify and pay all necessary business expenditures; (9) failure to furnish accurate itemized wage statements; and (10) violations of California's Unfair Competition Law. JM Decl. ¶ 9.

On July 8, 2024, Plaintiff filed a First Amended Complaint adding a cause of action for civil penalties under the PAGA based on the foregoing. JM Decl. ¶ 10.

On March 20, 2025, Plaintiff filed a Supplemental PAGA Notice with the LWDA alleging Defendant violated Labor Code section 246, and IWC Wage Order No. 7. JM Decl. ¶ 11.

On March 31, 2025, as part of the settlement terms, Plaintiff filed a Motion for Leave to File a Second Amended Complaint to include a claim for Defendant's alleged failure to pay sick leave, and alleged violation of the IWC Wage Order No. 7. JM Decl. ¶ 12.

Plaintiff's counsel, Melmed Law Group, P.C. ("Class Counsel") has conducted sufficient discovery, investigation, and exercised due diligence in the prosecution of the Action. *See*, JM Decl. ¶ 13. This discovery, investigation, and prosecution has included, among other things, (a) numerous

[1] The Class Notice and the Share Form are attached to the Settlement Agreement as internal **Exhibits 1** and **2**, respectively. *See,* Melmed Decl. at **Exhibit A**.

telephonic conferences with Plaintiff; (b) inspection and analysis of documents and other information produced by Plaintiff and/or Defendant; (c) analysis of the legal positions and defenses taken by Defendant; (d) investigation into the viability of class treatment and representative nature of the claims asserted in the Action; (e) analysis of potential class-wide damages, including information sufficient to understand Defendant's potential defenses to Plaintiff's claims; (f) research of the applicable law with respect to the claims asserted in the Complaint and the potential defenses thereto; and (g) assembling and analyzing of data for calculating damages. *Id*.

The Class Representative has vigorously prosecuted this case, and Defendant has vigorously contested it. JM Decl. ¶ 14. The Parties engaged in sufficient investigation and discovery to assess the relative merits of the claims of the Class and of Defendant's defenses to them. *Id*.

B. Mediation and Settlement

In consideration thereof, and in advance of sinking substantial costs into further contested proceedings, the Parties attended private mediation before experienced employment law neutral Steven J. Serratore on August 27, 2024. JM Decl. ¶ 15. During mediation, the Parties exchanged further information and discussed all aspects of the case, including the risks and delays posed by additional litigation, the risks to both Parties for proceeding with a motion for class certification, along with the evolving legal landscape and evidentiary challenges to establishing respective claims and defenses. *Id*. These were contentious issues because of the factual and legal complexity of the case. *Id*. However, the Parties reached a settlement at mediation. *Id*.

The settlement negotiations were hard-fought and conducted in good faith and at arm's length between attorneys with substantial experience litigating class action and wage-and-hour cases. JM Decl. ¶ 16. The settlement was the product of a non-collusive settlement process in which the Parties were forced to make significant compromises in the interest of reaching a full and complete settlement of the action. *Id*. The final settlement amount was reached as a result of reasonable compromises in light of these considerations. *Id*. The Parties entered into a long form Settlement Agreement which is now presented for Court approval. *Id*.

From Class Counsel's review of the facts, strengths, and weaknesses of the case, the risks and delays posed by further litigation, and Class Counsel's own prior litigation experience, Class Counsel believe that the recovery for each Settlement Class Member is fair and reasonable taking into consideration the amounts received in other wage and hour class actions, the risks inherent in litigation of this genre, and the reasonable tailoring of each Settlement Class Member's claims to the settlement award he or she will receive. JM Decl. ¶ 17.

To Plaintiff's knowledge, there are no other actions, whether in the pre-filing LWDA stage, or pending in court, that may be affected by this settlement. JM Decl. ¶ 18.

III. SUMMARY OF THE PARTIES' CLAIMS AND DEFENSES

In the operative complaint, Plaintiff, individually and on behalf of the putative Class, alleges causes of actions for: **(1)** failure to pay minimum wage (Labor Code §§ 1194, 1194.2, 1197); **(2)** failure to pay overtime wages (Labor Code §§ 510); **(3)** failure to provide rest periods and pay missed rest period premiums (Labor Code § 226.7); **(4)** failure to provide meal periods and pay missed meal period premiums (Labor Code §§ 226.7 and 512) **(5)** failure to maintain accurate employment records (Labor Code § 1174); **(6)** failure to pay wages timely during employment (Labor Code §§ 204 and 210) **(7)** failure to pay all wages earned and unpaid at separation (Labor Code §§ 201-203); **(8)** failure to indemnify and pay all necessary business expenditures (Labor Code § 2802); **(9)** failure to provide complete and accurate wage statements (Labor Code § 226); **(10)** failure to pay sick leave (Labor Code § 246); **(11)** unfair business practices based on the foregoing (Business & Professions Code § 17200 *et seq.*); and **(12)** PAGA civil penalties based on the foregoing. JM Decl. ¶ 19.

As used herein for ease of reference to the reader, the term "Plaintiff and the Class" shall refer to Plaintiff, the putative Class Members, and the Aggrieved Employees.

A. Plaintiff's Minimum Wage Claim

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. JM Decl. ¶ 20. Similarly, Labor Code section 1194 entitles "any employee receiving less than the legal minimum wage . . . to recover in a civil action the unpaid balance of the full amount of this minimum wage." *Id*. Further, the IWC Wage Order obligates employers to pay each employee minimum wages for all hours worked. *Id*.

These minimum wage standards apply to each hour employees worked for which they were not paid. JM Decl. ¶ 21. Therefore, an employer's failure to pay for any particular hour of time worked by an employee is unlawful, even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. *Id*.

Here, Plaintiff alleged Defendant failed to pay the Class Members minimum wages for all hours worked. JM Decl. ¶ 22. Specifically, Plaintiff alleged she was regularly required to conduct pre- and post-shift duties off the clock. *Id*. These duties included turning off the sensors and alarms and opening all four gates at the beginning of each shift prior to clocking in and turning on all sensors and alarms and locking all gates after clocking out at the end of her shift. *Id*. These tasks were essential to Plaintiff's and the Class Members' work duties and directly benefitted Defendant. *Id*. However, Plaintiff alleged she and the Class Members were not compensated for this required work time. *Id*.

Plaintiff also alleged that when she and the Class Members were provided meal periods, they were on-duty and interrupted. JM Decl. ¶ 23. For example, Plaintiff alleged that her supervisor frequently asked her to clock out for her meal period and continue working to answer questions from customers and other employees. *Id*.

Finally, Plaintiff alleged that her supervisors regularly sent her text messages asking work-related questions on Sundays when so was not scheduled to work and was off the clock. JM Decl. ¶ 24. Therefore, Plaintiff alleged that she and the Class Members were not paid for all hours suffered or permitted to work. *Id*.

B. Plaintiff's Overtime Claim

Labor Code section 510 states, "[e]ight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. JM Decl. ¶ 25. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee." *Id.*

For the reasons stated above, Plaintiff alleged that she and the Class Members worked certain hours for which they were not paid. JM Decl. ¶ 26. Because Plaintiff and the Class Members spent eight hours or more working on "compensated" time, this uncompensated time should have been compensated at the overtime rate. Instead, no compensation was paid at all to Plaintiff and the Class Members. *Id*.

Further, Plaintiff alleged that when Defendant has paid overtime wages, they were not paid at the proper rate to the Class Members. JM Decl. ¶ 27. For example, Plaintiff alleged that she and the Class Members were paid base hourly wages plus additional compensation for various bonuses. *Id*. Plaintiff alleged that these additional payments, part commission, part piece-rate compensation, part non-discretionary bonus, represent and represented a significant portion of the Class Members' regular rate of pay. *Id*. Regardless, Plaintiff alleged that she and the Class Members only received overtime compensation based on their base hourly wage and not based on their regular rate of pay. *Id*. As a result, Plaintiff alleged that Defendant did not take this compensation into consideration when calculating the regular rate of pay used in overtime calculations. *Id*.

C. Plaintiff's Meal Period Claim

Under California Labor Code section 512 and the IWC Wage Order, no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. JM Decl. ¶ 28. During this meal period of not less than thirty (30) minutes, the employer is to be completely free of the employer's control and must not perform any work for the employer. *Id*. If the employee does perform work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. *Id*. Also, the employee is to be compensated for any work performed during the thirty (30) minute meal period. *Id*. Finally, an employer may not employ an employee for a work period of more than ten (10) hours a day without providing the employee with another meal period of not less than thirty (30) minutes. *Id*.

Plaintiff alleged that, due to the demands of the job, Defendant frequently required the Class Members to clock out for their meal periods and continue working off the clock, or forego their meal periods entirely. JM Decl. ¶ 29. Thus, Plaintiff alleged that these practices deprived the Class Members from uninterrupted and off-duty meal periods required by law. *Id*.

In addition to failing to provide compliant meal periods, Plaintiff alleged that she and the Class Members were not compensated with one (1) hour's-worth of pay at their regular rate of compensation when they were not provided with a compliant meal period in accordance with Labor Code section 226.7(b). JM Decl. ¶ 30.

D. Plaintiff's Rest Period Claim

Pursuant to Labor Code section 226.7, and the applicable IWC Wage Order, Plaintiff alleged that Defendant failed to provide Plaintiff and the Class members with compensated, duty-free rest periods of not less than ten (10) minutes for every major fraction of four hours worked. JM Decl. ¶ 31.

The IWC Wage Order states in pertinent part: "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. JM Decl. ¶ 32. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof." *Id.*

Here, Plaintiff alleged that Defendant failed to authorize or permit the Class Members to take duty-free rest periods of not less than ten (10) minutes for every major fraction of four (4) hours worked. JM Decl. ¶ 33. Specifically, Plaintiff alleged that she and the Class Members were regularly interrupted during their rest periods by their supervisors. *Id*. Thus, Plaintiff alleged that she and the Class Members were not authorized or permitted to take compliant rest periods at any time during their employment with Defendant. *Id*.

In addition to failing to authorize and permit compliant ret periods, Plaintiff alleged that she and the Class Members were not compensated with one (1) hour's-worth of pay at their regular rate of compensation when they were not provided with a compliant rest period in accordance with Labor Code section 226.7(b). JM Decl. ¶ 34.

E. Plaintiff's Wage Statement Claim

Labor Code section 226(e) provides that an employee is entitled to recover $50 for initial day period in which a violation of Labor Code section 226 occurs and $100 for each subsequent pay period, not to exceed $4,000.00, as well as an award of costs and reasonable attorneys' fees, for all such pay periods. JM Decl. ¶ 35.

Pursuant to Labor Code section 226(e), an employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars ($4,000), and is entitled to an award of costs and reasonable attorney's fees." JM Decl. ¶ 36.

Plaintiff argued that due to Defendant's failure to provide Plaintiff and the Class Members with lawful off-duty meal and rest periods and/or pay meal and rest period premiums, and failure to pay minimum and overtime wages, the wage statements issued by Defendant do not indicate the correct amount of gross wages earned, total hours worked, net wages earned, or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code sections 226(a)(1), (2), (5) and (9). JM Decl. ¶ 37.

F. Plaintiff's Recordkeeping Claim

Labor Code section 226(a) requires employers to keep an accurate record of, among other things, all hours worked by employees. JM Decl. ¶ 38. Plaintiff alleged that Defendant failed to provide Plaintiff and the Class Members with accurate, itemized wage statements. *Id*. Defendant did so in part because they failed to accurately track all hours worked by Plaintiff and the Class Members. *Id*. The failure to track all hours worked also resulted in a failure of Defendant to keep a record of all "payroll records showing the hours worked daily by" Defendant's employees, including Plaintiff and the Class Members, in violation of Labor Code section 1174(d). *Id*.

G. Plaintiff's Waiting Time Penalty Claim

Sections 201-203 of the Labor Code provides that former employees must be paid all wages due on termination of employment. JM Decl. ¶ 39. If departing employees do not receive all wages due, then they can recover penalties up to thirty days' worth of wages against their former employer. *Id.*

Here, Plaintiff alleged that, due to Defendant's faulty policies described above, Plaintiff and the Class Members whose employment with Defendant concluded were not compensated for each and every hour worked or at the appropriate rate. JM Decl. ¶ 40.

Additionally, Plaintiff alleged that Defendant has failed to pay all Class Members for meal and rest period premiums and all unpaid minimum and overtime wages, whose sums were certain, at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter. JM Decl. ¶ 41.

H. Plaintiff's Untimely Wages During Employment Claim

Labor Code section 204 expressly requires employers who pay employees on a weekly, bi-weekly, or semi-monthly basis to pay all wages "not more than seven calendar days following the close of the payroll period. JM Decl. ¶ 42. Plaintiff argued that, due to Defendant's failure to pay Plaintiff and the Class Members all wages, as described herein, along with rest and meal break premiums, Defendant failed to timely pay Plaintiff and the Class Members within seven (7) calendar days following the close of payroll in accordance with Labor Code section 204 on a regular and consistent basis. *Id.*

I. Plaintiff's Claim for Unreimbursed Business Expenses

Labor Code section 2802 provides that "an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer. JM Decl. ¶ 43. The purpose of this section is to "prevent employers from passing along their operating expenses onto their employees." (*Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 562.) *Id.* The duty to reimburse extends to the use of equipment the employee may already own and would be required to pay for anyway. (*Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1144 [employer must reimburse an employee for the reasonable expense of the mandatory use of a personal cell phone].) *Id.*

Importantly, an employer may not simply place the burden on employees to request reimbursement for their expenses. JM Decl. ¶ 44. Employers have a "duty to exercise due diligence and take any and all reasonable steps to ensure that the employee is paid" for their reimbursable expenses. (*Stuart v. RadioShack Corp.* (N.D. Cal. 2009) 641 F.Supp.2d 901, 904.) *Id.* This duty creates an obligation on the part of employers to determine the scope and extent of reimbursable expenses when the employer has reason to know that such expenses are being incurred. *Id.*

Here, Plaintiff alleged that she and the Class Members used their personal cell phones for necessary work-related purposes to perform their job duties with the knowledge of and/or acquiescence of Defendant. JM Decl. ¶ 45. Specifically, Plaintiff argued that Defendant requires the Class Members maintain contact with their supervisors to obtain work assignments. *Id.* Plaintiff alleged that Defendant unlawfully requires the Class Members to shoulder the cost associated with business use of their personal cell phones and personal devices. *Id.*

J. Plaintiff's Sick Leave Claim

Labor Code section 246 provides that every employee who works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days. JM Decl. ¶ 46. These paid sick days generally accrue at a rate of not less than one hour per every 30 hours worked, and must be paid out using the employees' regular rate of pay. *Id.* The "regular rate of pay" for these purposes must factor in all nondiscretionary payments for work performed by the employee, including non-discretionary bonuses, commissions, and other forms of wage payments exceeding the employees' base hourly rate. see, e.g., *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 878. *Id.*

As set forth above, Plaintiff alleged that Defendant employed the Class Members for 30 or more days within a year from the commencement of employment. JM Decl. ¶ 47. Plaintiff alleged that Defendant nevertheless failed to fully pay the Class Members for all sick pay that was lawfully earned and accrued. *Id.* By failing to fully pay accrued sick time, Plaintiff alleged that Defendant has underpaid the Class Members and have violated California Labor Code provisions including, but not limited to, section 246. *Id.*

K. Plaintiff's Unfair Competition Claim

Plaintiff contended that by committing the above-described Labor Code violations, Defendant engaged in unlawful, unfair, and/or fraudulent business practices in violation of California Business and Professions Code sections 17200-17204 and is liable for restitution to the Plaintiff and the Class. JM Decl. ¶ 48. Moreover, this cause of action lengthens the statute of limitations of the Class' claims to four years preceding the filing of the Complaint. *Id*.

L. Plaintiff's PAGA Claim

The Private Attorney General Act of 2004 ("PAGA" - Labor Code §§ 2699-2699.5) allows an aggrieved employee to bring suit against an employer for violations of most Labor Code provisions. Suits brought under PAGA do not affect the employee's right to recover other remedies under state or federal law. *See* Labor Code § 2699(g); *Caliber Bodyworks, Inc. v. Superior Court* (2005) 134 Cal. App. 4th 365, 375. JM Decl. ¶ 49. Wherever the Labor Code gives the Labor and Workforce Development Agency discretion to assess a civil penalty, a court is authorized to exercise the same discretion. Labor

Code § 2699(e)(1). *Id.* The statute of limitations for PAGA suits is one year. *Id.* An employee who prevails in an action brought under PAGA is entitled to an award of reasonable attorney's fees and costs. *Id.* The penalties available under PAGA are those provided in the underlying Labor Code provision that is violated or, if no penalty is listed, those provided by PAGA itself. *Id.* Where the Labor Code does not provide for a penalty, PAGA establishes a civil penalty of $100 for each aggrieved employee per pay period for the initial violation and $200 for each aggrieved employee per pay period for each subsequent violation. Labor Code § 2699(f). *Id.* For any civil penalties collected under PAGA, seventy-five percent of the penalties are distributed to the LWDA for enforcement and education, and twenty-five percent is distributed to the aggrieved employees. *Id.*

Plaintiff alleged that by virtue of each of Defendant's foregoing Labor Code violations, Plaintiff and the Class are, in addition to other remedies, entitled to civil penalties under PAGA. JM Decl. ¶ 50. This cause of action opens Defendant to additional penalties for the Labor Code violations, in addition to attorneys' fees and costs. *Id.*

M. Defendant's Total Denial of Liability and Its Legal and Factual Defenses

Defendant denied and continues to deny generally the claims and contentions alleged in the Complaint. JM Decl. ¶ 51.

First, Defendant argued that all its employees are authorized and permitted to take legally compliant meal periods and are required to document meal periods on their timecards. JM Decl. ¶ 52. Defendant argued that each individual employee is responsible for personally clocking in and out to ensure accurate documentation of time worked and meal periods. *Id.*

Defendant argued that although it emphasizes to employees the importance of taking complete and uninterrupted meal periods of a minimum of 30 minutes before the end of the 5th and 10th hour worked, its operation allows employees the flexibility to take meal periods when the employees chose to do so, especially given the fact that nearly all of its employees do not work under close supervision by a management-level employee. *Id.* Defendant argued that it ensures its employees are provided with a clear explanation regarding meal period timing requirements in its Handbook, Policies, Waivers and Acknowledgement Forms during training that occurs when employees start working with Defendant, and during regular training sessions and meetings. *Id.* Defendant argued that the fact that its employees are in no way prohibited or even discouraged from taking legally compliant meal periods, in particular, is unequivocally established by varying start times for the employees' meal periods shown on the sample timecards. *Id.* While the Defendant argued that its expert analysis showed that there may be a pay periods where there was a potential meal period violation reflected on the timecards and the corresponding wage statements did not show a meal period premium was paid, its diligent efforts to comply with the law must be recognized, and must result in an extremely significant reduction in the settlement value of this case. *Id.*

Additionally, Defendant argued if its employees were asked to testify about its meal period policy and the reason their timecards may reflect meal periods that start after the 5th hour worked, they would all testify that they know they are required to start meal periods before the end of the 5th hour worked, that they actually make the personal decision regarding when to take their meal periods without, that they do not believe they were ever forced to take a non-compliant meal period, and that they are not entitled to meal period premiums because an non-compliant meal period premium reflected on any timecard was not the result of its operational needs. *Id.*

Defendant also argued that it is important to recognize the fact that due to the nature of its operation, employees are encouraged to stop working for their meal periods, as there are no production or timing requirements that interfere with any employee's ability to determine the timing and length of their meal periods. *Id.* As we analyze the very rare circumstances in which a potential meal period premium issue may be asserted, we must reasonably apply the governing standard described in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040-1041: "Proof an employer had knowledge of employees working through meal periods will not alone subject the employer to liability for premium pay; employees cannot manipulate the flexibility granted them by employers to use their breaks as they see fit to generate such liability… An employer's duty with respect to meal breaks…is an obligation to provide a meal period to its employees. *Id.* The employer satisfies this obligation if it relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute meal break, and does not impede or discourage them from doing so…the employer is not obligated to police meal breaks and ensure no work thereafter is performed. *Id.* Bona fide relief from duty and the relinquishing of control satisfies the employer's obligations, and work by a relieved employee during a meal break does not thereby place the employer in violation of its obligations and create liability for premium pay…" *Id.*

Donahue v. AMN Services, LLC (2021) 11 Cal.5th 58, 76-78, reiterated these principles as follows: "An employer is liable only if it does not provide an employee with the opportunity to take a compliant meal period. *Id.* The employer is not liable if the employee chooses to take a short or delayed meal period or no meal period at all. *Id.* The employer is not required to police meal breaks to make sure no work is performed." (emphasis added).

Defendant argued that even assuming that any employees could actually prove they are entitled to some meal period premiums, its expert analysis figures contain unattainable stacked penalties. *Id.* Defendant argued it should not be required to pay exorbitant (and stacked) penalties, which are intended to punish employers who knowingly violate the law since all its employees personally clock in and out for meal periods on their own and all employees are in complete control over when they take meal periods and the duration of each meal period. *Id.*

Second, Defendant argued that although its employees do not document rest periods on their timecards, which is typical of most employers, employees are advised of their right and obligation to take legally compliant rest periods in its Employee Handbook, Policies, Waivers and Acknowledgement Forms and during training. JM Decl. ¶ 53. Furthermore, Defendant argued that rest periods are not required by Labor Code §226.7, nor the Wage Orders, to be documented on timecards. *Id.* To the contrary, each relevant Wage Order explicitly states: "Meal periods during which operations cease and authorized rest periods need not be recorded." (emphasis added). Many, if not most, employers do not document the start and stop times of rest periods because they are treated as time worked, for which employees must be paid. Labor Code §226.7(d). Accordingly, Defendant argued no exposure should be allocated to the rest period claim. *Id.*

Third, Defendant argued that Plaintiff's claim for unreimbursed business expenses for cell phone use is easily disproven, as any employees that is ever required to use a personal cell phones for any work-related purpose is given a cell phone stipend. JM Decl. ¶ 54. Defendant argued that Plaintiff, like most other employees, and certainly all Store Clerks, was not required to use a personal cell phone for any work-related purpose, as there was already a land line available for employees to use. *Id.*

Fourth, Defendant argued that PAGA penalties would be limited. Defendant argued that even if Plaintiff prevailed, the recoverable penalties under PAGA are minimal. JM Decl. ¶ 55. First, courts to consider the issue have refused to "stack" PAGA penalties. *See Carrington v. Starbucks Corporation* (Cal. Ct. App. Nov. 27, 2018) No. D072392 (published Dec. 19, 2018) (approving PAGA penalty reduction to $5 per pay period); accord *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809. Moreover, Defendant argued that Plaintiff is not entitled to recover PAGA penalties at the subsequent violation rate of $200 per pay period. *Id.* California's appellate courts have held that "[u]ntil the employer has been notified that it is violating a Labor Code provision (whether or not the commissioner or court chooses to impose penalties), the employer cannot be presumed to be aware [of the violation]" and therefore, until a Court or the Commissioner issues a finding of a violation, the initial $100 violation rate applies for each pay period in which the alleged violation occurred. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209; accord *Amalgamated Transit Union Local 1309 v. Laidlaw Transit Service, Inc.* (S.D. Cal. Aug. 10, 2009) 2009 WL 2448430, at *9 ("[u]nder California law, courts have held that employers are not subject to heightened penalties for subsequent violations unless and until a court or commissioner notifies the employer that it is in violation of the Labor Code"). Thus, Defendant argued that even if the Plaintiff was able to establish any violation of the Labor Code, the PAGA penalties assessed for these violations will be computed at the $100 rate, as opposed to the $100 per pay period rate at maximum, and there is a likelihood that a further reduction of the penalty to $5 per pay period as approved in *Carrington* would apply given Defendant's compliance with the Labor Code as discussed above. Defendant further argued that even if Plaintiff was able to recover some PAGA penalties on behalf of other aggrieved employees, courts frequently use their discretion under Section 2699(e)(2) to significantly reduce PAGA penalties where such penalties would be unjust, arbitrary and improper. *See, e.g.*, *Stuart v. RadioShack Corp.* (N.D. Cal. 2009) 641 F. Supp. 2d 901, 902–03; *Hernandez v. BCI Coca-Cola Bottling Co.* (C.D. Cal. Apr. 12, 2012) 2012 WL 12272348, at *2, *judgment entered,* 2012 WL 12092593 (C.D. Cal. May 9, 2012), and *aff'd,* 554 F. App'x 661 (9th Cir. 2014). *Id.* Defendant maintains that given their good faith attempts to comply with the Labor Code, and *de minimis* defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiff's claims. *Id. See also*, Labor Code §§ 203, 2699(e)(2); *Thurman v.*

Bayshore Transit Mgmt., Inc. (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties for wage statement violations from $2,800,000 to $500,000, because "the aggrieved employees suffered no injury" as a result of the violations, the defendants "were not aware" their wage statements violated the law, and the defendants "took prompt steps to correct all violations once notified."); *Fleming v. Covidien, Inc.* (C.D. Cal. Aug. 12, 2011, No. (OPX)) 2011 WL 7563047, at *4 (reducing PAGA penalties from $2.8 million to $500,000). *Id.*

Fifth, Defendant asserted that any violations of the Labor Code were unintentional, and that Plaintiff would have difficulty proving willfulness or intentionality for penalty purposes, including claims for civil penalties under PAGA and claims for waiting time penalties. JM Decl. ¶ 56. Defendant further argued that Plaintiff would be unable to prove "injury" for purposes of recovering penalties under Labor Code 226(e). *Id*.

In considering these significant risks and others, as well as the time, expense and cost of litigation, trial and appeals, the Parties agreed that Settlement was appropriate, and that the Settlement here is fair and reasonable. JM Decl. ¶ 57.

N. Fair Valuation of Plaintiff's Claims

In coming to a determination that this settlement is fair and reasonable and in the best interests of the Class, Plaintiff took into consideration the risk of the court not certifying the class; the risk that the Court may not award wage statement penalties, PAGA penalties, or waiting time penalties based on a lack of willfulness or difficulties in establishing bad faith; and other potential defenses of Defendant on the merits. JM Decl. ¶ 60. If Defendant prevailed on any of these defenses, the claims of the Class would potentially be worth **nothing**. JM Decl. ¶ 59. The settlement, given the risks, is fair and reasonable. *Id.* A detailed claim-by-claim analysis of the fair valuation of Plaintiff's claims followed by a risk discount analysis of Defendant's defenses is set forth in the JM Declaration at paragraphs 52-58.

The estimated 190 Class Members will enjoy substantial monetary recovery amounting to an average recovery per class member of approximately $364.04 net, and an approximate maximum recovery of $910.09 net. JM Decl. ¶ 58.

IV. SUMMARY OF BASIC SETTLEMENT TERMS

The Settlement Agreement entered into by the Parties is attached as **Exhibit A** to the JM Decl.

and incorporated herein by reference in its entirety. The following is a summary of the principal terms of the Settlement Agreement:

A. The Settlement Sum, Attorneys' Fees, Costs, and Representative Award

The non-reversionary Gross Settlement Amount ("GSA") of $205,000.00 to be paid by Defendant in full settlement includes: (1) Class Counsel's attorneys' fees in a sum of up to one-third of the GSA as attorneys' fees (*i.e.*, up to $68,333.33); (2) litigation costs of up to $25,000.00; (3) the California Labor Workforce and Development Agency PAGA Penalties in the sum of $15,000.00; (4) settlement administration costs to Apex Class Action Administration in the sum of $15,000.00; and (5) the Class Representative service award ($7,500.00). Settlement Agreement, at § 8.1.

B. Net Funds Available to Class Members

After all Court-approved deductions from the non-reversionary GSA, it is estimated that **$69,166.67** (the "Net Settlement Amount" or "NSA") will be distributed to the Class Members. The Net Settlement Amount shall be distributed pro rata on a "checks cashed" basis based on the proportional number of weeks worked by each Class Member during the Class Period. Settlement Agreement, at 8.2.

Class Members will be provided with notice of the settlement, its terms and their right to opt out, object, appear at the fairness hearing. Settlement Agreement, at § 7.2.

C. Release

Upon final approval of the settlement, the Class Members who do not seek to be excluded from the settlement release those claims arising out of or related to the allegations set forth in the operative complaint and/or PAGA notice to the California Labor and Workforce Development Agency that arose during the Class Period and/or PAGA Period, including claims for: **(1)** failure to pay minimum wage at the appropriate legal rate for all hours worked in violation of Labor Code sections 1194 and 1194.2, and the applicable IWC Wage Order(s); **(2)** failure to pay proper overtime wages at the appropriate legal rate in violation of Labor Code sections 510, 1197, and 1198, and the applicable IWC Wage Order(s); **(3)** failure to provide compliant rest periods and/or pay missed rest break premiums in violation of Labor Code section 226.7 and the applicable IWC Wage Order(s); **(4)** failure to provide compliant meal periods and/or pay missed meal period premiums in violation of Labor Code sections 226.7 and 512, and the applicable IWC Wage Order(s); **(5)** failure to maintain accurate employment records in violation of

Labor Code section 1174; **(6)** failure to pay timely wages during employment in violation of Labor Code sections 204, 210; **(7)** failure to pay all wages due and owing at separation in violation of Labor Code sections 201, 202, and 203; **(8)** failure to reimburse business expenses in violation of Labor Code sections 2802 and 2804; **(9)** failure to provide accurate itemized wage statements (based on both direct and derivative theories of liability); **(10)** failure to maintain accurate payroll and employment records; **(11)** failure to provide paid sick leave or pay paid sick leave at the appropriate legal rate; **(12)** deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California's Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210); **(13)** statutory penalties based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698-2699.6); and **(14)** all claims for liquidated damages, penalties, premiums, interest, attorneys' fees, expert and/or consultant fees and costs based on the foregoing. Settlement Agreement, at § 1.34.

No other claims are released other than those claims specifically plead in the Complaint or otherwise specifically identified herein.

D. Class Notice and Administration

Subject to Court approval, the parties agree to engage Apex Class Action Administration, who will be responsible for be mailing the Class Notice and Share Form to Class Members; posting notice of entry of final order and judgment certifying the Class Settlement and approving this Settlement Agreement; handling inquiries from Class Members concerning the Class Notice; determining Individual Settlement Amounts; determining individual payments to members of the PAGA Settlement Class; maintaining the settlement funds in an appropriate interest-bearing account; preparing, administrating, and distributing Individual Settlement Amounts to Class Participants; preparing, administrating, and distributing individual payments to members of the PAGA Settlement Class; distributing the portion of the PAGA Payment payable to the LWDA; issuing a final report and performing such other duties as the Parties may direct. Additionally, the Settlement Administrator will handle all tax document preparation and reporting, including state and federal tax forms, if any. Settlement Agreement § 7.1.

On a weekly basis, the Settlement 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 Opt Out requests. The Settlement Administrator will serve on Class Counsel and Defense Counsel via e-mail date-stamped copies of the original Opt Out requests and objections no later than seven (7) days after their receipt. The Settlement Administrator will provide Class Counsel with proof of mailing of the Class Notice, without listing individual Class Member names which the Settlement Administrator will file with the Court at the time Class Counsel files its motion in support of the Court's Final Approval and Fairness Hearing. *Id*.

No later than thirty (30) days prior to the Final Approval and Fairness Hearing, the Settlement Administrator will compile and deliver to Class Counsel and Defense Counsel a report with summary information regarding **(a)** the total amount of final Individual Settlement Amounts of each Class Participant, without any identifying personal information; **(b)** the number of Class Participants to receive such payments, and **(c)** the final number of Opt-Outs and objections. *Id*.

The Class Notice will inform Class Members of their estimated share of the settlement and the number of workweeks they worked during the Class Period. Class Members may dispute their workweeks if they believe they worked more weeks in the Class Period than Defendant's records show by submitting information to the Settlement Administrator no later than sixty (60) days after being mailed the Class Notice and Share Form by the Settlement Administrator, which is the defined Response Deadline. The Settlement Administrator will jointly work with Plaintiff and Defendants to resolve the dispute in good faith. If Plaintiff and Defendants cannot agree over the workweeks to be credited, the Settlement Administrator shall make the final decision based on the information presented by the Class Member and Defendants. Settlement Agreement § 7.2.

Apex Class Action Administration has administered hundreds of class action settlements and is qualified to administer the settlement. Information about Apex Class Action Administration is available at https://apexclassaction.com/.

E. Notice Process

Class Members will have sixty (60) calendar days from the date the Notice Packets (*i.e.,* the Class Notice, and Share Form) are mailed by the Settlement Administrator to postmark their requests for exclusion and/or objections. Settlement Agreement § 7.2. The date of the postmark on the return envelope shall be exclusive means used to determine whether a participating Class Member has "timely" disputed the calculation or application of the formula for determining Settlement Awards. *Id.*

The Settlement Administrator will certify jointly to Class Counsel and Defense Counsel the number of exclusions. Settlement Administrator shall be responsible for calculation of the Settlement Sums, issuance of checks, as well as withholding and remitting, all required state and federal taxes, and for communicating this information to Defense Counsel. *See* Settlement Agreement § 7.1. Within two hundred and ten (210) days of mailing the Individual Settlement Amounts to Class Participants, the Settlement Administrator shall file with the Court and provide to Class Counsel a declaration of payment. Settlement Agreement § 8.7. Any funds associated with checks that have not been cashed within 180 days from date of issuance, will become void and the Individual Settlement Amount associated with the un-cashed check shall be remitted pursuant to Code of Civil Procedure section 384 to Jessica's House (https://www.jessicashouse.org/), subject to approval by the Court. Settlement Agreement § 8.8.

F. Tax Treatment

Ten percent (10%) of each Individual Settlement Amount shall constitute wages in the form of back pay (and each Class Participant will be issued an IRS Form W-2 for such payment to him or her), ninety percent (90%) of each Individual Settlement Amount shall constitute interest and penalties (and each Class Participant will be issued an IRS Form 1099 for such payment to him or her). *See* Settlement Agreement, § 5.5.

V. PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS UNDER THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY CERTIFICATION IS APPROPRIATE FOR PURPOSES OF SETTLEMENT

California Rule of Court 3.769(d) provides that the Court may make an order approving certification of a provisional settlement class at the preliminary approval stage. It is well-established that trial courts should use a "lesser standard of scrutiny" for determining the propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor Co.* 9 ("*Dunk*") (1996) 48 Cal. App. 4th 1794, 1807 n.19. The reasons include that no trial is anticipated in a settlement class, so the case management issues inherent in determining if the class should be certified need not be confronted; and the trial court's fairness review of the settlement protects the interests of the non-representative class members. (*Id.*); *see also Officers for Justice*, 690 F.2d at 633 ("Th[e] relationship between the certification determination and the merits of the case is further attenuated within the context of the settlement evaluation process . . . .[C]ertification issues raised by class action litigation that is resolved short of a decision on the merits must be viewed in a different light."); *Amchem Prods., Inc. v. Windsor* (1987) 521 U.S. 591, 620 ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . .for the proposal is that there be no trial."). As discussed below, for the purposes of this settlement only, the parties ask this Court to provisionally certify the Class, as defined above, under section 382 of the Code of Civil Procedure.

A. Numerosity and Ascertainability

Numerosity is met if a proposed class is so large that joinder of all members would be impracticable. *See* Cal. Code Civ. Proc. § 382. A proposed settlement class is ascertainable if the class members can be objectively identified and given notice of the litigation without unreasonable time or expense. *See Medrazo v. Honda of N. Hollywood* (2008) 166 Cal. App. 4th 89, 101. Here, the Parties have determined that the size of the Class is approximately 190 Class Members. JM Decl. ¶ 7.

B. Well-Defined Community of Interest

1. <u>Commonality</u>

To justify certification, the class proponent must show that questions of law or fact common to the class predominate over the questions affecting the individual members. *See Arenas v. El Torito Rests., Inc*. (2010) 183 Cal. App. 4th 723, 732 (citing *Washington Mut. Bank v. Superior Court* (2001) 24 Cal. 4th 906, 913. While the Parties dispute whether a class would be appropriate if the litigation were to continue, they agree, for the purposes of this settlement only, that the Class is subject to common compensation policies, the payment of minimum and overtime wages, payment of sick leave, and the reimbursement of business expenses. JM Decl. ¶¶ 19-50.

2. <u>Typicality</u>

Typicality "focuses on whether there exists a relationship between the plaintiff's claims and the claims alleged on behalf of the class." *Newberg,* § 3:13. Again, the Parties dispute whether Plaintiff's claims are typical of the Class for the purposes of any continued litigation of the Action, but agree for the purposes of this settlement only, that Plaintiff asserts claims regarding Defendant's compensation practices, and reimbursement practices, that are at the core of the lawsuit. JM Decl. ¶¶ 19-50.

3. <u>Adequacy of Representation</u>

The proposed class representative must establish that he or she will adequately represent the proposed class. *See Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal. App. 4th 540, 546. Specifically, Plaintiff is adequate to represent the class because she was employed by Defendant during the Class Period, experienced the same wage and hour practices as the rest of the class, understood her duties as class representative, has been willing to undergo the risk of litigation, and has no conflict of interest with the other Class Members.

Adequacy may be established by the fact that counsel are experienced practitioners. *See Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001) 244 F.3d 1152, 1162. Here, Plaintiff alleges, and Defendant does not dispute, for purposes of this settlement, that Plaintiff and the Class are represented by counsel with extensive experience in wage-and-hour litigation. JM Decl. ¶¶ 67-70.

4. <u>Superiority</u>

Certification of the Class for settlement purposes is superior here because there will be a global resolution of all claims at once, which fosters judicial economy. Class certification is also vastly superior to litigation of numerous individual claims because most of the claims are too small to litigate outside of the class context.

VI. <u>THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT, WHICH IS FAIR, ADEQUATE, AND REASONABLE</u>

A. Class Action Settlements Are Subject to Judicial Review and Approval Under the California Rules of Court

The law favors settlements. *Bush v. Superior Court* (1992) 10 Cal. App. 4th 1374, 1382. This is particularly true in class actions where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. However, a class action may not be dismissed, compromised, or settled without the Court's approval. Cal. R. Ct. 3.769(a). The California Rules of Court set forth the procedures for court approval of a class action settlement: (1) the Court preliminarily approves the settlement; (2) class members receive notice as directed by the Court; and (3) the Court conducts a final approval hearing to inquire into the fairness of the proposed settlement. Cal. R. Ct. 3.769(c), (e)-(g).

> The decision to approve or reject a proposed settlement lies within the Court's sound discretion. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 234-35. Nevertheless, in considering a potential settlement for approval, a court is not to turn the approval hearing "into a trial or rehearsal for trial on the merits. . . . [or] to reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute." *Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 690 F.2d 615, 625.

The Court's ultimate duty is to determine whether the settlement is fair, adequate, and reasonable. *See Dunk,* 48 Cal. App. 4th at 1801 (setting forth the "fair, adequate, and reasonable" standard) (citing *Officers for Justice*, 690 F.2d at 625); *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177 Cal. App. 4th 734, 742 43 (a trial court must approve a class action settlement agreement, but only after determining that it is "'fair, adequate and reasonable,'" considering factors such as the "'risk, expense, [and] complexity'" of continued litigation). The Court enjoys broad discretion in making its fairness determination, and should consider factors including but not limited to:

> [T]he strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel . . . .and the reaction of the class members to the proposed settlement. *Dunk*, 48 Cal. App. 4th at 1801 (setting forth a non-exhaustive list of factors for the court's consideration at final approval).

The above factors are not exclusive, ". . . .and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." *Wershba*, 91 Cal. App. 4th at 245. However, in doing so, the Court must give "[due] regard to what is otherwise a private consensual agreement between the parties." *Id.* The inquiry must be limited "to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties." *Id*. (citation and internal quotation marks omitted).

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* Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* ("*Newberg*") § 11:25 (4th ed. 2002). 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*, 48 Cal. App. 4th at 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*, 48 Cal. App. 4th at 1802 (citing *Newberg* § 11:41). As shown below, the settlement falls well within the range of approval because there are no grounds to doubt its fairness.

B. The Settlement Is the Result of Serious, Informed, Non-Collusive Negotiations and Reflects a Fair Compromise of Claims and Risk Factors

The settlement was the product of extensive arm's-length negotiations. JM Decl. ¶¶ 16, 63. Though cordial and professional, the settlement negotiation was adversarial and non-collusive in nature. *Id.* The settlement reached is the product of substantial effort by the parties and their counsel. *See* generally, JM Decl.

Although Plaintiff and her counsel believed that there was a strong possibility of certifying the claims, they recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or on the damages awarded, and/or on an appeal that can take several more years to litigate. JM Decl. ¶ 63. Plaintiff and her counsel further recognized the very real risk of recovering nothing if this case proceeded with expensive protracted litigation. *Id.*

The resulting Settlement was based on calculations, risk assessment, and non-collusive negotiation; it takes the risks identified above and others into account in arriving at the non-reversionary settlement amount of $205,000.00. JM Decl. ¶ 64.

C. The Extent of The Informal Discovery and Investigation Was More Than Sufficient to Permit Preliminary Approval of The Settlement

The parties thoroughly investigated and evaluated the factual and legal strengths and weaknesses of this case before reaching the settlement. JM Decl. ¶ 65. As described above, the settlement was reached after extensive investigation and research, thorough calculations and risk evaluation, substantial exchanges of documents, a thorough evaluation of data for the Class, and an exchange of information required to evaluate Defendant's defenses. *Id.* The settlement came only after the case was thoroughly investigated by Plaintiff's counsel. *Id.*

D. The Risks Inherent in Continued Litigation Are Great

To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court also should consider "[t]he strength of plaintiff's case, the risk, expense, complexity and likely duration of further litigation, [and] the risk of maintaining class action status." *See Dunk*, 48 Cal. App. 4th at 1801. As described above, Defendant has strong defenses to Plaintiff's claims, which create a real possibility that the claims might not be certified and/or might fail on the merits. JM Decl. ¶¶ 51-56. Proceeding with litigation would impose a significant risk of no recovery as well as ongoing, substantial additional expenditures of time and resources. *Id*. If settlement were not achieved, continued litigation of the claims would take a substantial amount time and possibly confer no benefit on Class Members. *Id*. By contrast, the settlement will yield a prompt, certain, and substantial recovery for the Class, which also benefits the parties and the Court. *Id.*

Another risk inherent in continued litigation is the risk of non-certification and/or maintaining class action status through trial, and appeal. JM Decl. ¶¶ 60-61, 63. In considering these risks, the choice was overwhelmingly in favor of settlement. *Id*.

E. The Class Notice Plan Conforms to All Applicable Statutes and Rules

The proposed Class Notice should be approved, as it fully informs the Class Members of the nature of the lawsuit and each Class Member's rights under the terms of the Settlement Agreement and applicable law. *See* Settlement Agreement, **Exhibit 1**. The manner in which the Class Notice shall be disseminated, as outlined above, will ensure that all or nearly all of the Class Members will be properly notified of the proposed settlement.

The Court has wide discretion in approving the means of providing notice, so long as the class representative "provide(s) meaningful notice in a form that should have a reasonable chance of reaching a substantial percentage of class members." *Archibald v. Cinerama Hotels* (1976) 15 Cal. 3d 853, 861. Here, the Parties' notice plan is that notice of the Settlement will be disseminated directly to the class members by first class mail by the settlement administrator within 14 days of preliminary approval. Settlement Agreement § 7.2.

The notice plan and the Class Notice satisfy the requirements of Rule of Court 3.766 and afford Settlement Class Members with all due process protections required by the United States Constitution. Moreover, the contents of the Class Notice are in compliance with California Rule of Court 3.766(d), because the Notice includes, without limitation (1) a detailed explanation of the case, including the basic contentions or denials of the parties; (2) a statement that the court will exclude the member from the class if the member so requests by a specified date; (3) a procedure for the member to follow in requesting exclusion from the class; (4) a statement that the judgment, whether favorable or not, will bind all members who do not request exclusion; and (5) a statement that any member who does not request exclusion may, if the member so desires, enter an appearance through counsel. *See* Settlement Agreement, **Exhibit 1**. The 60-calendar day deadline for Class Members to exclude themselves or challenge their weeks worked is reasonable, as it provides Class Members with sufficient time to do so and, if they so choose, to seek independent legal advice in the interim.

F. Plaintiff's Counsel Are Experienced in Similar Wage-And-Hour Litigation.

Plaintiff's Counsel are experienced in wage-and-hour class actions. Numerous state and federal courts have certified them as adequate and competent class counsel in such class actions. JM Decl. ¶¶ 67-71.

The Parties' counsel agree that this settlement is fair and reasonable in light of the nature of the claims, realistic risk adjusted value of damages, complexities of the case, the state of the law, and uncertainties of class certification and litigation. *See, generally* JM Decl. Given the risks inherent in litigation and the defenses asserted, this settlement is fair, adequate, and reasonable and in the best interests of Class Members and should be preliminarily approved. *Id*.

Experienced counsel, operating at arm's length, have weighed the strengths and risks of the case, and endorse the proposed settlement. *See* JM Decl. ¶¶ 60-61, 63. The view of the attorneys actively conducting the litigation is entitled to significant weight in deciding whether to approve the settlement. *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *aff'd*, 661 F.2d 939 (9th Cir. 1981); *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 128 (court must take into account "the experience and view of counsel").

G. The Attorneys' Fees Under the Settlement Agreement Are Fair

Under the terms of the Settlement Agreement, Class Counsel is requesting $68,333.33 in attorneys' fees. JM Decl. ¶ 72. This amount is one-third (1/3) of the $205,000.00 agreed upon by the parties as the non-reversionary Gross Settlement Amount. *See Id.*

As the California Supreme Court has made clear, 1/3 of the common fund is a reasonable percentage for a trial court to award as attorney fees in a class action where a common fund was generated as a result of the case. *See Laffitte v. Robert Half International* (2016), I Cal. 5th 480, 506 (Cal. Aug. 11, 2016) ("We therefore agree with the Court of Appeal below that 'the percentage of fund method survives in California class action cases, and the trial court did not abuse its discretion in using it, in part, to approve the fee request [of 1/3 of the common fund] in this class action"). The California Supreme Court further clarified that trial courts "have discretion to conduct a lode-star cross check on a percentage fee, as the court did here; they also retain the discretion to forgo a lodestar cross check and use other means to evaluate the reasonableness of a requested percentage fee.").[2]

In similar class action cases, numerous courts have approved fees of up to 1/3 of the common fund. *See e.g., Martin v. FedEx Ground Package System, Inc.*, 2008 WL 5478576, at *8 (N.D. Cal. Dec. 31, 2008) (federal district court approved attorneys' fees of 1/3 of common fund); *Stuart v. RadioShack Corp.*, No. C-07-4499 EMC, 2010 WL 3155645 (N.D. Cal. Aug. 9, 2010) (approving fee award of 1/3 of the total maximum settlement and noting that the fee award of 1/3 of the total settlement was "well within the range of percentages which courts have upheld as reasonable in other class action lawsuits"); *Wilson v. Kiewit Pacific Co.*, No. 09-cv-03630, ECF No. 119 (N.D. Cal. 2012) (approving fee award of 1/3 of the common fund and noting that such award is fair, reasonable and appropriate); *Romero v.*

[2] Once the Court grants preliminary approval of the Settlement Agreement and Class Notice is disseminated, Plaintiff's Counsel will later submit a comprehensive motion for attorneys' fees and costs to be heard at the same time as the final approval hearing or include same in Plaintiff's Motion for Final Approval of Class Action Settlement.

Producers Dairy Foods, Inc., No. 1:05cv0484 DLB, 2007 WL 3492841, at *4 (E.D. Cal. Nov. 14, 2007) (awarding fees of 1/3 of common fund in a wage and hour class action, noting: "[f]ee awards in class actions average around one-third of the recovery."). Significantly, the Retainer Agreement in this case provides fees up to one-third of the amount obtained. *See Id.* Accordingly, preliminary approval of attorneys' fees of one-third of the common fund are reasonable and should be conditionally approved here.

H. The Class Representative Incentive Award is Fair and Appropriate

Plaintiff requests payment of an Incentive Award from the non-reversionary Gross Settlement Amount to the Class Representative in the amount of $7,500.00, in addition to whatever payments she is otherwise entitled to receive as a Class Member. The proposed Incentive Award is reasonable compensation given the time and effort that the named Plaintiff devoted to this case and the valuable assistance she provided to Class Counsel. JM Decl. ¶¶ 74-76.

Plaintiff provided invaluable assistance to Class Counsel and the Class in this case, including providing factual background for mediation and the Class Complaint; reviewing the relevant documents, and Complaint; participating in phone calls with her lawyers to discuss litigation and settlement strategy; and reviewing the settlement documents. Plaintiff agreed to participate in this case with no guarantee of personal benefit. *Id.*

Further, Plaintiff agreed to undertake the financial risk of serving as Class Representative and exposed herself to the risk of negative publicity by anyone who opposed this case. *Id.* Moreover, the requested $7,500.00 Incentive Award for the Class Representative falls within the range of incentive payments typically awarded to Class Representatives in similar class actions. *See e.g. Bond v. Ferguson Enterprises, Inc.*, No. 1:09–cv–1662 OWW MJS, 2011 WL 2648879 (E.D. Cal. June 30, 2011) (approving $11,250 service award to each of the two class representatives in a trucker meal break class action; *Ross v. US Bank National Association*, No. C 07-02951 SI, 2010 WL 3833922, at *2 (N.D. Cal. Sept. 29, 2010) (approving $20,000 enhancement award to Class Representative in California wage-and-hour class action settlement); *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 493 (E.D. Cal. 2010) (approving service awards in the amount of $10,000 each from a $300,000 settlement fund in a wage/hour class action); *West v. Circle K Stores, Inc.*, NO. CIV. S-04-0438 WBS GGH, 2006 U.S.

Dist. LEXIS 76558, at *28 (E.D. Cal. Oct. 19, 2006) ("the court finds plaintiffs' enhancement payments of $ 15,000 each to be reasonable."); *Glass v. UBS Fin. Servs*., No. C-06-4068 MMC, 2007 U.S. Dist. LEXIS 8476, at *52 (N.D. Cal. Jan. 26, 2007) (finding "requested payment of $ 25,000 to each of the named plaintiffs is appropriate" in wage and hour settlement); *Louie v. Kaiser Found. Health Plan, Inc*., CASE NO. 08cv0795 IEG RBB, 2008 U.S. Dist. LEXIS 78314, at *18 (S.D. Cal. Oct. 6, 2008) (approving "$25,000 incentive award for each Class Representative" in wage an hour settlement); *Garner v. State Farm Mut. Auto. Ins. Co*., No. CV 08 1365 CW (EMC), 2010 WL 1687832, at *17 n.8 (N.D. Cal. Apr. 22, 2010) ("Numerous courts in the Ninth Circuit and elsewhere have approved incentive awards of $20,000 or more where, as here, the class representative has demonstrated a strong commitment to the class"). *Id.*

VII. THE COURT SHOULD APPOINT APEX CLASS ACTION ADMINISTRATION AS SETTLEMENT ADMINISTRATOR

The parties propose that the Court appoint Apex Class Action Administration to serve as the Settlement Administrator. JM Decl. ¶ 77. Apex Class Action Administration is experienced in administering class action settlements. *Id.,* as **Exhibit E**.

VIII. THE COURT SHOULD SCHEDULE A FINAL APPROVAL HEARING

The last step in the approval process is the formal hearing, whereby proponents of the settlement may explain and describe its terms and conditions and offer argument in support of approval, and Class Members or their counsel may be heard in support of or in opposition to the settlement. The parties propose that the Court schedule a hearing for final approval of the settlement, including Plaintiff's request for attorneys' fees, costs and the service award, after October 15, 2025.

IX. <u>CONCLUSION</u>

For all of the foregoing reasons, Plaintiff respectfully request that the Court grant their motion for preliminary approval of the Parties' settlement.

Respectfully submitted,

Dated: April 2, 2025

MELMED LAW GROUP P.C.

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