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Attorneys for Plaintiff,
MARTA MACDONALD

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

MARTA MACDONALD, individually, and on behalf of other members of the general public similarly situated, and as an Aggrieved Employee pursuant to the Private Attorneys General Act ("PAGA"), Plaintiff, vs. METAVERSE MOD SQUAD, DBA MODSQUAD, INC., a California corporation; and DOES 1 through 10, inclusive, Defendants.	Case No.: 24CV001112 [Assigned for all purposes to the Hon. Jill Talley, Dept. 23] **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA SETTLEMENT** Dept: 23 Date: April 4, 2025 Time: 9:00 a.m.

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

PLEASE TAKE NOTICE that on April 4, 2025 at 9:00 a.m., or as soon thereafter as counsel may be heard, in Department 23 of the above-captioned court, the Honorable Jill Talley presiding, Plaintiff Marta MacDonald will, and hereby does, move this Court to:

1. Preliminarily approve the settlement set forth in the Joint Stipulation of Class Action Settlement and Release, attached as Exhibit 1 to the Declaration of Arnab Banerjee;
2. Conditionally certify the proposed Settlement Class;
3. Appoint Marta MacDonald as the representative for the Settlement Class;
4. Appoint Banner Law Group P.C. and Excelsis Law, P.C. as Class Counsel;
5. Approve distribution of the proposed Notice of Class Action Settlement to the Settlement Class;
6. Appoint Phoenix Settlement Administrators as the Settlement Administrator; and
7. Set a hearing date for final approval of the settlement.

This Motion is based upon: (1) this Notice of Motion and Motion; (2) the Memorandum of Points and Authorities in support of Motion for Preliminary Approval of Class Action Settlement; (3) the Declaration of Arnab Banerjee; (4) the Declaration of C. Genevieve Jenkins; (5) the Class Action Settlement and PAGA Agreement and Release of Claims; (6) the Notice of Class Action Settlement; (7) the [Proposed] Order Granting Preliminary Approval of Class Action Settlement; (8) the records, pleadings, and papers filed in this action; and (9) upon such other documentary and oral evidence or argument as may be presented to the Court at or prior to the hearing of this Motion.

Dated: March 12, 2025

Respectfully submitted,

By: [signature]
Arnab Banerjee

BANNER LAW GROUP, P.C.
Attorney for Plaintiff Marta MacDonald

By: C. Genevieve Jenkins
C. Genevieve Jenkins

EXCELSIS LAW, P.C.
Attorney for Plaintiff Marta MacDonald

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Marta MacDonald ("Plaintiff") seeks preliminary approval of the Class Action Settlement and PAGA Agreement and Release of Claims,[1] which, if approved, would provide considerable monetary relief for approximately ninety-six ("96") current and former employees of Defendant Metaverse Mod Squad, DBA Modsquad, Inc. ("Defendant" and, collectively with Plaintiff, the "Parties"). The principal terms of the Settlement provide for the following:

(1) Conditional certification of a Settlement Class defined as: All former and current hourly-paid or non-exempt employees in California and classified as a non-exempt employee who worked for Defendants from January 25, 2020 to November 15, 2024.

(2) A **non-reversionary** Gross Settlement Amount of $275,000. The Gross Settlement Amount includes:

(a) A Net Settlement Fund of approximately $142,333.33 (the Gross Settlement Amount minus the requested Attorneys' Fees and Costs, Settlement Administration Costs, the payment to the LWDA, the Class Representative Enhancement Payment), which will be allocated to all Class Members on a pro-rata basis according to the total workweeks worked by each Class Member during the Class Period. **The Entire Net Settlement Fund will be paid to all Class Members who do not opt out of the Settlement Class, and without the need to submit claims for payment.**

(b) Attorneys' fees in the amount of one-third of the Gross Settlement Amount (or $91.666.67), and litigation costs and expenses not to exceed $10,000, to Banner Law Group, P.C. and Excelsis Law, P.C. ("Plaintiff's Counsel").

(c) Settlement administration costs of approximately $6,000, to be paid to the jointly selected Settlement Administrator, Phoenix Class Action Administration

[1] Hereinafter "Settlement Agreement" or "Settlement," which is attached to the Declaration of Arnab Banerjee as **Exhibit 1**. Unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Settlement Agreement.

Solutions (“Phoenix”).

(d) A $20,000 PAGA settlement, of which 75% ($7,500) will be paid to the Labor & Workforce Development Agency (“LWDA”), and the remaining 25% ($5,000) (“PAGA Fund”), will be payable to PAGA Members, defined as: All former and current hourly-paid or non-exempt California and classified as a non-exempt employee who worked for Defendants from November 1, 2022 through November 15, 2024. The Entire PAGA Fund will be paid to all PAGA Members, and without the need to submit claims for payment.

(e) A Class Representative Enhancement Payment of $10,000 to Marta MacDonald for her service on behalf of the Settlement Class, and the risks she took in bringing the action on behalf of the class.

An objective evaluation of the Settlement confirms that the relief negotiated on the Settlement Class’s behalf is fair, reasonable, and valuable. The Settlement was negotiated by the Parties at arm’s length a mediation with mediator Jeffery Fuchsman, Esq. The Parties agreed to a settlement at the end of a full day mediation through a mediator’s proposal that was accepted by both sides. This relief—averaging approximately $1,483 per Class Member from the Net Settlement Fund—is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases, as well as the value of the limited claims brought in this action. Moreover, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendants prevailing at trial, or of Plaintiff prevailing at trial but losing on appeal.

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

II. FACTS AND PROCEDURE

A. Brief Overview of the Litigation

Defendant Modsquad is a Sacramento and Silicon Valley based technology company founded in 2007 that provides customer experience (CX) services to various businesses, including content moderation, customer support, community management, and social media assistance.

On November 2, 2023, Plaintiff Marta MacDonald sent notice of her claims to the LWDA. (Declaration of Arnab Banerjee ["Banerjee Decl."] ¶ 10.) Subsequently, on January 23, 2024, Plaintiff filed a wage and hour and PAGA action against ModSquad in Sacramento Superior Court. Plaintiff's core allegation is that Defendant has violated the California Labor Code by maintaining uniform policies and practices of failing to reimburse employees for all business-related expenses related to working from home, maintaining an illegal policy which prohibited Plaintiff and class members from discussing or disclosing his or her wages or the wages of others, and failing to maintain accurate wage statements and complete sick pay records, and thereby engaged in unfair business practices under the California Business and Professions Code and conduct that gives to penalties recoverable under Labor Code Private Attorney General Act ("PAGA"). (*Id.* at ¶ 11)

B. The Parties Settled After Mediation

The Parties agreed to participate in private mediation with Jeffery Fuchsman, Esq., a well-respected and experienced wage and hour class action mediator. As a condition of this mediation the Parties agreed to exchange additional informal discovery in order to maximize the chances of resolution. That mediation took place on November 15, 2024. Mr. Fuchsman helped to manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. Although the Parties did not settle at mediation, Mr. Fuchsman helped to narrow the gap between the Parties' respective positions and subsequently made a mediator's proposal that was accepted by the Parties approximately one week later. (Banerjee Decl. ¶ 12)

The terms of the settlement are now set forth in complete and final form in the Settlement Agreement. (Banerjee Decl. ¶ 9, Ex. 1.) At all times, the Parties' negotiations were at arms-length and non-collusive. The Settlement was therefore a product of arms-length bargaining after extensive investigation and discovery by the Parties and thus constitutes a fair, adequate, and reasonable compromise of the claims at issue. (*Id*. at ¶13.)

C. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. Composition of the Settlement Class

The proposed Settlement Class consists of all former and current non-exempt employees in

California who worked for Defendants from January 25, 2020 to November 15, 2024. (Settlement Agreement ¶¶ 1.6, 1.13.) There are approximately 96 Class Members who worked for Defendant during the class period.

2. Settlement Consideration

Plaintiff and Defendants have agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of $275,000. (Settlement Agreement ¶ 3.1.) The Gross Settlement Amount includes: (1) automatic payments to all Participating Class Members—meaning, all Class Members except those who submit timely and valid Requests for Exclusion—from the Net Settlement Fund; (2) $91,666,67 in attorneys' fees (*i.e.*, one-third of the common fund) and up to $10,000 in litigation costs to Plaintiff's Counsel; (3) Settlement Administration Costs of approximately $6,000; (4) a $15,000 payment to the LWDA and a $5,000 payment to PAGA Members; and (5) a Class Representative Enhancement Payment of $10,000 for Plaintiff's service on behalf of the Settlement Class, the risks he took in bringing his representative claims. (Settlement Agreement ¶ 3.2)

Subject to the Court approving Attorneys' Fees and Costs, Settlement Administration Costs, the PAGA Settlement Amount, and the Class Representative Enhancement Payment, the Net Settlement Fund will be distributed to Participating Class Members in full.

3. Formula for Calculating Class Claims Payments from the Net Settlement Fund

Defendants will calculate the total number of workweeks worked by each Class Member during the Class Period and the aggregate total number of workweeks worked by all Class Members during the Class Period. To determine each Participating Class Member's share of the Net Settlement Fund, the Settlement Administrator will use the following formula:

- The Net Settlement Fund will be divided by the aggregate total number of weekly pay periods worked during the Class Period, resulting in the "Qualifying Weeks." Each Class Member's "Individual Settlement Payment" will equal a *pro rata* share of the Net Distribution Fund based on their share of the total number of Qualifying Weeks.
- The Individual Settlement Payment will be reduced by any required deductions for each Participating Class Member as specifically set forth herein, including employee-side tax

withholdings or deductions. The entire Net Settlement Fund will be disbursed to all Class Members who do not submit timely and valid Requests for Exclusion.

- If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual Settlement Payment for each Participating Class Member according to the number of weekly pay periods worked, so that the amount actually distributed to the Settlement Class equals 100% of the Net Settlement Fund.

(Settlement Agreement ¶ 3.2.4.)

Given that there are approximately 96 Class Members, the average net recovery will be approximately $1,482. This average net recovery is significantly greater than many other wage and hour class action settlements approved by California state and federal courts. *See*, *e.g.*, *Sandoval v. Nissho of Cal., Inc.*, Case No. 37-2009-00091861 (San Diego County Super. Ct.) (average net recovery of approximately $145); *Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of approximately $120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of approximately $120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately $90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal.) (average net recovery of approximately $65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.) (average net recovery of approximately $60); *Jones v. Bath & Body Works, Inc.*, Case No. 2:13-cv-05206-FMO-AJW (C.D. Cal.) (average net recovery of approximately $50); and *Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct.) (average net recovery of approximately $80).

Similarly, with respect to the PAGA payments, the Settlement Administrator will calculate the total number of weeks worked by each PAGA Member during the PAGA Period and the aggregate total number of work weeks worked by all PAGA Members during the PAGA Period, and the Net PAGA Distribution Amount shall be paid to PAGA members based on a pro-rate distribution based on the number or weeks worked. (Settlement Agreement ¶ 3.2.5.)

4. Release by the Settlement Class

In exchange for the Gross Settlement Amount, Plaintiff and Participating Class Members will agree to release the Released Class Claims during the Class Period as follows:

> Upon the Effective Date and full funding of the Total Settlement Amount, Plaintiff and Class Members who do not submit a timely and valid Request for Exclusion (i.e., Participating Class Members) will be deemed to have fully, finally, and forever released settled, compromised, relinquished, and discharged all Released Parties from all claims under state, federal, or local law, arising during the Class Period out of the claims expressly pleaded in the Action and all other claims, such as those under the California Labor Code, Wage Orders, regulations, and/or other provisions of law, that could have been asserted based on the facts pleaded in the Action for: (1) failure to reimburse business expenses under Labor Code Sec. 2800, 2802; (2) failure to provide accurate, itemized wage statements and records regarding sick pay under Labor Code Sec. 226 and 247.5; and (3) violation of California's unfair competition law under Business and Professions Code Sec. 17200 based on the aforementioned. Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

(Settlement Agreement ¶ 5.4)

5. Release by PAGA Members

In exchange for the PAGA Settlement Amount, Plaintiff and PAGA Members will agree to release the Released PAGA Claims during the PAGA Period:

> Upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiff, and the State of California will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties from any and all claims for civil penalties under the California Private Attorneys General Act, California Labor Code section 2698, *et seq.*, pled or which could have been pled against Released Parties based on the factual allegations described in the PAGA Notice and only to the extent that they are expressly pleaded in the Action, including but not limited to violations of California Labor Code Sections 96(k), 98.6(b), 226, 232, 233, 234, 247.5, 246, 232.5, 558, 558.1, 1197.5 (k), and 2802, and violations of the California Industrial Welfare Commission ("IWC") Wage Orders arising during the PAGA Period as to the Aggrieved Employees ("Released PAGA Claims"). The Released PAGA Claims do not include other PAGA claims, underlying wage and hour claims, claims for vested benefits, wrongful termination, discrimination, unemployment insurance, disability and worker's compensation, and claims outside of the PAGA Period.

(Settlement Agreement ¶ 5.5)

III. ARGUMENT

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

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

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

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

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

Reasonableness and fairness are presumed where, as here: (1) the settlement is reached through "arms-length bargaining;" (2) investigation and discovery are "sufficient to allow counsel and the court to act intelligently;" (3) counsel is "experienced in similar litigation;" and (4) the percentage of objectors "is small" (collectively, "*Dunk* Factors"). *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996).[2]

[2] The presumption of fairness is consistent with California's public policy goal of favoring

2. Plaintiff's Counsel Conducted a Thorough Investigation of the Factual and Legal Issues and Objectively Assessed the Settlement's Reasonableness

Plaintiff's Counsel conducted a thorough investigation into the factual and legal issues implicated by Plaintiff's claims, and were able to objectively assess the settlement's reasonableness. (Banerjee Decl. ¶ 14.) Prior to filing the action, Plaintiff contacted Plaintiff's Counsel to discuss the factual bases for pursuing an action against Defendants for Labor Code violations. (*Id.*) During those conversations, Plaintiff explained how the policies and practices were instituted and provided valuable insight into how they gave rise to the alleged Labor Code violations. (*Id.*) Plaintiff also provided her counsel with numerous documents regarding her personal expenses, as well as wage statements, emails from Defendants specifically regarding her claims, and other policy documents. (*Id.*) Plaintiff's Counsel conducted thorough investigations of these individuals as well. (*Id.*) Based on this information, Plaintiff's Counsel determined that there were legally sufficient grounds for pursuing an action against Defendants. (*Id.*)

In preparation for drafting the complaint, Plaintiff's Counsel conducted their own preliminary investigation into the factual bases for Plaintiff's claims, which entailed, *inter alia*, a careful examination of Plaintiff's documents and associated records. (*Id.* at ¶ 15.) Plaintiff's Counsel also prepared a detailed letter to notify the LWDA of Plaintiff's intent to seek civil penalties and other available relief recoverable under PAGA for Labor Code violations. (*Id.*) Significant research and effort were expended to prepare a PAGA notice that was consistent with the developing legal requirements so as to withstand any challenge from Defendants regarding the notice's sufficiency. (*Id.*)

Plaintiff propounded several sets of discovery including Requests for Productions of Documents,

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settlements. *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1118 ("public policy generally favors the compromise of complex class action litigation"); *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) ("voluntary conciliation and settlement are the preferred means of dispute resolution . . . [t]his is especially true in complex class action litigation"); *Skulnick v. Roberts Express, Inc.*, 2 Cal. App. 4th 884, 891 (1992) ("public policy strongly discourages litigation and encourages settlement [because settlements] can produce peace and goodwill in the community while reducing the expense and persistency of litigation"). Additionally, in reviewing the fairness of a class action settlement, due regard should be given to what is "otherwise a private consensual agreement between the parties." *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1117. The inquiry "must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Id.* at 1118.

and Special Interrogatories, and drafted a *Bel-Air* opt-out notice. (*Id.* at 16.) Subsequently, the Parties agreed to attend mediation, and that, in lieu of formal discovery responses, Defendants would provide informal discovery in advance of mediation, including updated datapoints and records. (*Id.*) In response to Plaintiff's requests, Plaintiff's Counsel received a considerable amount of documents and data. *(Id.)* The documents and data exchanged allowed Plaintiff's Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, and ultimately enabled Plaintiff's Counsel to make an independent assessment of the reasonableness of the settlement's terms. (*Id.*)

In summary, Plaintiff's Counsel performed a thorough investigation into the claims at issue, which included: (1) determining Plaintiff's suitability as a private attorney general and class representative, background investigations, and analyses of his employment files and related records; (2) evaluating all of Plaintiff's potential representative claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing employees' business records and non-disclosure agreements; (5) reviewing Defendants' employment policies and practices; (6) researching settlements in similar cases; (7) evaluating Plaintiff's claims and estimating Defendants' liability for purposes of settlement; (8) drafting mediation briefs; (9) participating in a full-day mediation; (10) discussing and evaluating the mediator's proposal; and (11) preparing the settlement agreement, notice and other settlement related documents. (*Id.* at ¶ 17.)

By engaging in such a thorough investigation and evaluation of Plaintiff's claims, Plaintiff's Counsel can opine that the Settlement, for the consideration and on the terms set forth in the Settlement Agreement, is fair, reasonable, and adequate, and is in the best interests of Class Members in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, and various defenses asserted by Defendants. (*Id.* at ¶ 18.)

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

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

§ 11.51.

As explained above, on November 15, 2024, the Parties participated in a full day mediation with Jeffery Fuchsman, Esq., who is an experienced and well-respected mediator of wage and hour class actions. Although, the parties did not reach an agreement at mediation, Mr. Fuchsman continued to work with the parties after mediation and later made a mediator's proposal. The mediator's proposal was accepted by both Parties on November 21, 2024. (Banerjee Decl. ¶ 12). After the mediation the Parties also spent significant time negotiating the terms of the long-form settlement agreement. (*Id.*) Thus, at all times, the Parties' negotiations were adversarial and non-collusive. *See In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) (the presence of a neutral mediator is a factor weighing in favor of finding of no collusion); *In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 WL 4820784, at *3 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against any inference of a collusive settlement); *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a "mediator's involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure."); *Villegas v. J.P. Morgan Chase & Co.*, No. 09–00261, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (participation in mediation "tends to support the conclusion that the settlement process was not collusive"); *Ogbuehi v. Comcast of California/Colorado/Fla./Oregon, Inc.*, 303 F.R.D. 337, 350 (E.D. Cal. 2014) (accord).

The Parties were represented by experienced class action counsel throughout the negotiations resulting in this Settlement. Plaintiff is represented by Banner Law Group P.C. and Excelsis Law, P.C. Plaintiff's Counsel are seasoned class action attorneys who regularly litigate wage and hour claims through certification and on the merits, and have considerable experience settling wage and hour class actions. (Banerjee Decl. ¶¶ 2-8; Declaration of C. Genevive Jenkins ("Jenkins Decl.") ¶¶ 2-7.)

Defendants are represented by Porter Scott, LLP, a respected firm with significant experience with employment law and wage and hour class action defense.

B. The Consideration Provided for the Class Claims Is Fair and Reasonable in Light of the Amount in Controversy

In seeking approval, a settling party must provide sufficient information to "enable the court to make an independent assessment of the adequacy of the settlement terms." *Kullar v. Foot Locker Retail,* *Inc*., 168 Cal. App. 4th 116, 131-32 (2008). However, "[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair." *See Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982). "The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Id.* at 625. "Estimates of a fair settlement figure are tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often measured in years)." *In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014). In other words, in valuing the claims within a realistic *range* of outcomes, the settling plaintiff should discount the value of the settled claims for risks such as changes in the law, the probability of success, and other factors.[3]

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

Business Expense Reimbursement Claim: Plaintiff alleges that Defendants failed to reimburse Plaintiff and other employees who worked from home for their out-of-pocket expenses, including

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[3] Federal district courts also recognize that there is an inherent "range of reasonableness" in determining whether to approve a settlement "which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *In re World Trade Ctr. Lower Manhattan Disaster Site Litig.*, 66 F. Supp. 3d 477, 482 (S.D.N.Y. 2015); *see also Nat'l Rural Telecomm. Coop. v. Directv, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) ("well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery"); *see also In re IKON Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 184 (E.D. Pa. 2000) ("the fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate does not, in itself, weigh against the settlement; rather the percentage should be considered in light of strength of the claims").

internet, cell phone, home office, and other computer related expenses. Plaintiff's calculations indicate that employees spent approximately $56.16 per week. Thus, the damages are $56.16 × 10,200 work weeks = $572,832. Modsquad's reimbursement policy, which began on August 15, 2023, reimbursed employees $33.36 bimonthly or $16.68 per week. Therefore, subtracting this amount from the damages, the conservative exposure is $467,848 [$582,941 – ($16.68 × 6,294 post-August 15, 2023 workweeks)].

Wage Statement Violations: Plaintiff also alleges that defendant's wage statements failed to include all information including information regarding the correct amount of PTO and sick pay. Penalties for wage statement violations are calculated according to the formula provided by Labor Code section 226(e)(1): An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (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 to exceed an aggregate penalty of four thousand dollars ($4,000).

Defendants' maximum potential exposure would be calculated as follows: There are approximately 2,930 pay periods with corresponding wage statements in the one-year claims period for section 226(e) penalties. Multiplied by a $50 penalty for "initial violations" equals $146,500. *See Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008) (finding that the initial penalty applies until there is notification of a violation).

Gross Settlement Amount: In total, Plaintiff estimated Defendants' maximum exposure for the class claims at approximately $614,348:

Claim	Amount
Business Expense Claim	$467,848
Wage Statement Claim	$146,500
Total	**$614,348**

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(Banerjee Decl. ¶ 19.)

The above estimate assumes, however, that: every one of Plaintiff's claims would have been certified for class-wide resolution; Plaintiffs would have prevailed at trial; the jury would have awarded all of the damages requested; and the jury's verdict would have been affirmed on appeal. In other words, this estimate assumes complete and total victory. Understandably, for purposes of evaluating the settlement's reasonableness, this estimate must be "tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often measured in years)." *In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014).

Defendant obviously disputes all of these claims and contends that no wage and hour violations occurred, and further claims that even if there were instances of these violations, these would be highly individualized inquires that would not be suitable for class certification. *See, e.g., Purnell v. Sunrise Senior Living Mgmt., Inc.*, No. SA CV10-00897 JAK, 2012 WL 1951487, at *8 (C.D. Cal. Feb. 27, 2012); *Washington v. Joe's Crab Shack,* 271 F.R.D. 629, 641 (N.D. Cal. 2010) (denying certification because "an individualized inquiry will be required to determine whether any employee failed to take a meal break because he/she was too busy"); *Salazar v. Avis Budget Grp., Inc.*, 251 F.R.D. 529, 533 (S.D. Cal. 2008); *Ordonez v. Radio Shack, Inc.*, No. CV 10-7060-CAS JCGX, 2013 WL 210223, at *8 (C.D. Cal. Jan. 17, 2013); *Gonzalez*, 2012WL 5473764, at *5 (holding that "[why] any particular employee missed any particular break requires, ineluctably, individualized fact finding").

C. The Consideration Provided for the PAGA Claim Is Fair and Reasonable In Light of the Amount in Controversy

Pursuant to the Settlement Agreement, $20,000 from the Gross Settlement Amount shall be allocated to the resolution of the PAGA claim, of which 75% ($15,000) will be paid directly to the LWDA, and the remaining 25% ($5,000) will be paid to Participating Class Members. (Settlement Agreement ¶ 3.2.5.) This result was reached after good-faith negotiation between the parties. (Banerjee Decl. ¶ 20).

The primary additional claim (beyond the ones addressed above), subject to PAGA penalties is the Plaintiff's claim that ModSquad maintained a confidentiality policy which prohibited employees from discussing wages in violation of Labor Code §1197.5 and Labor Code §§ 96(k) & 98.6(b). Labor Code section 1197.5(k) states in relevant part "An employer shall not prohibit an employee from disclosing the employee's own wages, discussing the wages of others, inquiring about another employee's wages, or aiding or encouraging any other employee to exercise his or her rights under this section." *See also* Cal. Lab. Code §§ 96(k) & 98.6(b) (permitting employees to engage in lawful conduct during non-work hours away from their employer's premises, including the exercise of constitutional rights such as freedom of speech). Defendant disputes that the confidentiality policy / non-disclosure agreements prohibited such discussions, and argues that the agreements make no mention of wages or discussion of wages.

The PAGA settlement amount was valued as follows: Based on information and evidence produced by Defendants during discovery, Plaintiff's Counsel determined that aggrieved employees worked a combined total of approximately 2,930 pay periods during the PAGA statute of limitations period ("PAGA Period"). Statutory penalties would be calculated according to Labor Code 2699(f)(2): If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation.

A number of courts have found, however, that the "subsequent" penalty under PAGA applies only after a court or the Labor Commissioner determines that the employer has violated the Labor Code. *See Bernstein v. Virgin Am., Inc*., 990 F.3d 1157, 1173 (9th Cir. 2021) (reversing judgment as to "heightened civil penalties" because the defendant was not given notice by the Labor Commissioner when the "subsequent" violations occurred); *Vieyara-Flores v. Sika Corp.*, No. EDCV19606JVSKKX, 2019 WL 2436998, at *5 (C.D. Cal. June 10, 2019) ("employers are not subject to heightened penalties . . . until a court or commissioner notifies the employer that it is in violation of the Labor Code . . . [Plaintiff] has not offered evidence that the Labor Commission or a court has notified them of PAGA violations [thus] PAGA's heightened penalty of $200 for subsequent violations will not be calculated to determine the amount in controversy"); *Trang v. Turbine Engine Components Technologies Corp.*, No. CV 12–07658 DDP (RZx), 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012) ("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"), citing *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157 (2008). Under this line of cases, Defendant's exposure would be approximately $293,000 = 2,930 violative pay periods × $100.

It should be noted that PAGA gives the Court wide latitude to reduce the amount of civil penalties "based on the facts and circumstances of a particular case" when "to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Cal. Lab. Code § 2699(h). In reducing PAGA penalties, courts have considered issues including whether the employees suffered actual injury from the violations, whether the defendant was aware of the violations, and the employer's willingness to fix the violation. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018) (awarding PAGA penalties of only 0.2% of the maximum); *see also Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016); *Fleming v. Covidien Inc.*, No. ED CV 10-01487 RGK (OPX), 2011 WL 7563047, at *4 (C.D. Cal. Aug. 12, 2011).

For example, during the penalty phase of trial in *Carrington*, the plaintiff requested PAGA penalties in the amount of approximately $70 million. The trial court instead awarded only $150,000—or 0.21% of the maximum—and stated that this reduction was warranted because imposing the maximum penalty would be "unjust, arbitrary, and oppressive" based on Starbucks's "good faith attempts" to comply with meal period obligations and because the court found the violations were minimal. *Carrington*, 30 Cal. App. 5th at 517. The Court of Appeal affirmed the lower court's reduced award of a $150,000 penalty under PAGA. *Id.* at 529.

Likewise, in *Covidien*, the Court reduced the potential penalties by over 82%, awarding $500,000 instead of maximum penalties of $2.8 million. *Covidien*, 2011 WL 7563047 at *4; *see also Thurman v. Bayshore Transit Mgmt.*, 203 Cal. App. 4th 1112, 1135-36 (2012) (affirming 30% reduction under specified PAGA claim where the employer produced evidence that it took its obligations seriously); *Elder v. Schwan Food Co.*, No. B223911, 2011 WL 1797254, at *5-*7 (Cal. Ct. App. May 12, 2011) (reversing trial court decision denying any civil penalties where violations had been proven, remanding for the trial court to exercise discretion to reduce, but not wholly deny, civil penalties); *Li v. A Perfect Day Franchise, Inc.*, No. 5:10-CV-01189-LHK, 2012 WL 2236752, at *17 (N.D. Cal. June 15, 2012) (denying PAGA penalties for violation of California Labor Code section 226 as redundant with recovery on a class basis pursuant to California Labor Code section 226, directly); *Aguirre v. Genesis Logistics*, No. SACV 12-00687 JVS (ANx), 2013 WL 10936035 at *2-*3 (C.D. Cal. Dec. 30, 2013) (reducing penalty for past PAGA violations from $1.8 million to $500,000, after rejecting numerous other PAGA claims).

Plaintiff therefore determined an appropriate range of settlement for PAGA penalties as a percentage of the settlement range that was consistent with other hybrid class/PAGA settlements approved by California courts.[4] Where PAGA penalties are negotiated in good faith and "there is no indication that [the] amount was the result of self-interest at the expense of other Class Members," such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009); *see*, *e.g.*, *Nordstrom.Com Cases*, 186 Cal. App. 4th 576, 579 (2010) ("[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims.").

Here, Plaintiff resolved the PAGA claims for approximately 7% of the PAGA exposure and 7.3% of the total settlement, which is within the reasonable range of a PAGA settlement.

D. The Settlement Amount is Fair and Reasonable

Ultimately, Plaintiff's Counsel determined an appropriate range of recovery for settlement purposes by offsetting Defendants' maximum theoretical liability by: (i) the strength of the defenses to the merits of Plaintiff's claims; (ii) the risk of class certification being denied; (iii) the risk of losing on any of a number of dispositive motions that could have been brought between certification and trial (e.g., motions to decertify the class, motions for summary judgment, and/or motions in limine) that might have eliminated all or some of Plaintiff's claims, or barred evidence/testimony in support of the claims; (iv) the risk of losing at trial; (v) the chances of a favorable verdict being reversed on appeal; and (vi) the difficulties attendant to collecting on a judgment (collectively, the "Discount Factors"). (Banerjee Decl. ¶ 21.)

After taking into account the Discount Factors, Plaintiff's Counsel determined that it would be

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[4] *Dearaujo v. Regis Corp.*, No. 2:14-cv-01408-KJM-AC, 2016 WL 3549473 at *3 (E.D. Cal. June 29, 2016) (preliminarily approving $1.95 million settlement containing $10,000 PAGA penalties with $7,500 paid to LWDA); *Garcia v. Gordon Trucking, Inc.*, No. 1:10–CV–0324 AWI SKO, 2012 WL 5364575 at *7 (E.D. Cal. Oct. 31, 2012) (approving $3.7 million settlement containing $10,000 PAGA penalties with $7,500 paid to LWDA); *Chu v. Wells Fargo Invst., LLC*, No. C 05–4526 MHP, 2011 WL 672645 at *1 (N.D. Cal Feb. 16, 2011) (approving $6.9 million settlement containing $10,000 PAGA penalties with $7,500 paid to LWDA); *Parra v. Aero Port Services, Inc.*, No. BC483451 (L.A. County Super. Ct. April 20, 2015; Judge Jane Johnson) (gross settlement fund of approximately $1,458,900, of which $5,000 (or 0.3%) was allocated to the settlement of PAGA penalties); *Thompson v. Smart & Final, Inc.*, No. BC497198 (L.A. County Super. Ct. Nov. 18, 2014; Judge William F. Highberger) (gross settlement fund of $3,095,000, of which approximately $13,333 (or 0.4%) was allocated to the settlement of PAGA penalties); *Chavez v. Vallarta Food Enterprises, Inc.*, No. BC490630 (L.A. County Super. Ct. Nov. 10, 2014; Judge William F. Highberger) (gross settlement fund of $1,545,900, of which $10,000 (or 0.6%) was allocated to the settlement of PAGA penalties).

reasonable to settle for a discounted amount of Defendants' maximum potential exposure for the class claims and PAGA penalties, or approximately **30.3%** of the total exposure. (*Id.*) Such a discount is inherently reasonable given that Plaintiff would have had to overcome **multiple, dependent** contingencies to prevail on her claims. If anything, the projected odds for each of the above contingencies is generous to the class's position, since plaintiffs in employment cases rarely prevail on **all of the claims** at any of these dispositive stages. Courts routinely approve settlements that provide a similar discounted range of the maximum potential recovery. *See, e.g., In re Uber FCRA Litig.*, No. 14-CV-05200-EMC, 2017 WL 2806698, at *7 (N.D. Cal. June 29, 2017) (granting preliminary approval to class action settlement where gross settlement fund, prior to deducting attorneys' fees and services awards, was valued at 7.5% or less of total possible verdict); *Viceral v. Mistras Grp., Inc.*, No. 15-CV-02198-EMC, 2016 WL 5907869, at *7 (N.D. Cal. Oct. 11, 2016) (granting preliminary approval to class action settlement representing "8.1% of the full verdict value" with net settlement amount representing approximately 5.3% of full verdict value); *Stovall-Gusman v. W.W. Granger, Inc.*, No. 13-cv-02540-HSG, 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015) (granting final approval to settlement with net recovery to Plaintiffs valued at 7.3% of potential maximum recovery); *Balderas v. Massage Envy Franchising, LLP,* 2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014) (finding that settlement which amounted to 8% of maximum recovery "[fell] within the range of possible initial approval based on the strength of plaintiff's case and the risk and expense of continued litigation."); *In re Omnivision Techs., Inc.,* 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement of 6% to 8% of estimated damages).

E. The Court Should Preliminarily Approve the Negotiated Class Representative Enhancement Payment

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

Approximately 96 current and former employees will receive on average $1,483 each due entirely to the effort and commitment of Marta MacDonald. Subject to Court approval, therefore, the Settlement provides for a Class Representative Enhancement Payment of $10,000. The Class Representative Enhancement Payment is fair and reasonable compensation for Plaintiff's effort in pursuing the action, serving as a private attorney general under PAGA, assisting counsel with the litigation and settlement, regularly conferring with counsel on the status of her case and the strategies for prosecuting the claims, and reviewing the proposed settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class. (Declaration of Marta MacDonald ¶¶ 2-18)

Plaintiff will file a formal motion for the negotiated Class Representative Enhancement Payment once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated Class Representative Enhancement Payment.

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

The purpose of an attorneys' fee award in class action litigation is to reward counsel who took the risk of non-payment and invested in a case that achieved a substantial positive result for the class. California courts routinely award attorneys' fees equalling one-third or more of the potential value of the common fund. *See Laffitte v. Robert Half, Inc.*, 1 Cal. 5th 480 (2016) (affirming a fee award representing one-third of the common fund); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008) ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."). At final approval, Plaintiff will seek Court-approval of attorneys' fees of $91,666.67 (one-third of the Gross Settlement Amount) and up to $10,000 in actual litigation costs. Here, Class Counsel is requesting an amount that is less than their lodestar. Indeed, Class Counsel is seeking only approximately **63%** of their lodestar. (Banerjee Decl. ¶ 24, Jenkins Decl. ¶ 8). Thus, no matter the method used the requested fees and costs are fair and reasonable.

G. California Law Authorizes Provisional Certification for Settlement Purposes

1. The California Standard for Class Certification

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

Conditional certification of the proposed Settlement Class is particularly warranted here given the relatively relaxed standard for certification at the preliminary approval stage. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996) (courts can apply a "lesser standard of scrutiny" for class certification in settlement cases).[5] In *Dunk*, the California Court of Appeal specifically rejected the argument that the standard for certifying a class for purposes of settlement is identical to the standard for certifying the same class for purposes of litgiation:

> Geer argues the court must use the same standard under Federal Rules of Civil Procedure, rule 23 (28 U.S.C.) to determine the propriety of both settlement and litigation class certifications . . . That rule is contrary to the Ninth Circuit rule, stated in *Officers for Justice v. Civil Service Com. supra*, 688 F.2d at p. 633, and the position of the leading commentators (Newberg & Conte, supra, § 11.28 at p. 11–58), which allow a lesser standard of scrutiny for settlement cases . . . We agree with the latter. The two basic purposes for the Rule 23 certification requirements, as they relate to questions of a nationwide class, are: (1) to keep the lawsuit

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

> manageable for trial; and (2) to protect the interests of the non-representative class members. The first purpose is inapposite in the settlement context, and the second, as it relates to commonality of issues, only makes a difference if the non-representative class members would do much better by litigating on their own or in their own jurisdiction. The second category concerns are protected by the trial court's fairness review of the settlement.

Id. at n19.

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

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

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

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

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

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

The proposed Settlement Class consists of all former and current hourly-paid or non-exempt employees in California and classified as a non-exempt employee who worked for Defendant from January 25, 2020 to November 15, 2024. Because all Class Members are either current or former employees of Defendant, the class is readily ascertainable from Defendant's regular business records.

Here, common issues of fact and law predominate because the California statutes relating to each of Plaintiff's claims, and Defendant's defenses thereto, apply with equal force and effect to all Class Members. Factually, Plaintiff contends that Defendant's business expense, wage statement, sick pay, and confidentiality policies and practices all apply class-wide and Defendant's liability can be determined by facts common to all members of the class. The wage and hour issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Settlement Class Members.

Plaintiff's wage and hour claims are typical of the proposed Settlement Class because they arise from the same factual bases and are based on the same legal theories applicable to the other Class Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Class. Plaintiff maintains that she was injured by the same company-wide practices to which the proposed Settlement Class was subject and seeks the same relief. Plaintiff has already demonstrated her ability to advocate for the interests of the Class by initiating this litigation, sharing and evaluating documents related to class claims, and evaluating the proposed settlement to assure that it is fair.

Additionally, Plaintiff is represented by competent counsel who have extensive experience in litigating wage and hour class action cases. (Banerjee Decl. ¶¶ 2-8; Jenkins Decl ¶¶2-7.) Plaintiff's Counsel have successfully briefed, argued, certified, and gained state and federal court settlement approval of the same class-wide causes of action that are at issue in this case. (*Id.*) Plaintiff's Counsel's wage and hour class action expertise establishes that they are well qualified to represent the interests of this Class.

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

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

Class members are entitled to the best practical notice under the circumstances. *Kass v. Young*, 67 Cal. App. 3d 100, 106 (1977). The purpose of the notice is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. *Trotsky v. Los Angeles Fed. Savings & Loan Assn.*, 48 Cal. App. 3d 143, 151-52 (1975). The notice must advise class members "that they may be excluded from the class if they so request and that they will be bound by the judgment, whether favorable or not, if they do not request exclusion." *Kass*, 67 Cal. App. 3d at 106. In a case such as this involving a significant number of class members, California authorities generally require service of the class notice by mail or similar reliable means. *Chance v. Super. Ct.*, 58 Cal. 2d 275, 290 (1962); *Cartt v. Super. Ct.*, 50 Cal. App. 3d 960, 972 (1975).[6]

The Parties have jointly drafted the Notice of Class Action Settlement ("Class Notice") which fairly and neutrally informs Class Members of their rights and remedies in this action. The proposed Class Notice will be mailed to all Class Members by First Class mail and will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement's terms, the class definition, the procedure and time period within which to submit Requests for Exclusions or objections to the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the Released Claims. (Banerjee Decl. ¶ 23, Exhibit 3.)

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

IV. CONCLUSION

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

Respectfully submitted,

BANNER LAW GROUP, P.C.

Dated: March 12, 2025

By: ______________________________
Arnab Banerjee
Attorneys for Plaintiff, MARTA MACDONALD

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[6] Due process does not require that each Class Member actually receive a notice, but rather a procedure reasonably certain to reach Class Members. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986).

EXCELSIS LAW, P.C.

Dated: 3/12/2025

By: C. Genevieve Jenkins

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