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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF PLACER**

MARY LOU KENNEDY, an individual on
behalf of herself and all others similarly
situated,

Plaintiff,

vs.

CHAPA-DE INDIAN HEALTH
PROGRAM, INC., dba CHAPA-DE
INDIAN HEALTH, a California Non-Profit
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: S-CV-0051854

CLASS ACTION

Assigned for All Purposes To:
Hon. Alan V. Pineschi

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR AN ORDER
(1) PRELIMINARILY APPROVING THE
CLASS ACTION SETTLEMENT; (2)
APPROVING NOTICE OF SETTLEMENT;
AND (3) SETTING HEARING FOR FINAL
APPROVAL**

Date: March 13, 2025
Time: 8:30 am
Dept: 3

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Mary Lou Kennedy (hereinafter “Plaintiff” or “Class Representative”) filed a
4 class action complaint in the Superior Court of the State of California, Placer County, Case No. S-
5 CV-0051854 against Defendant Chapa-De Indian Health Program dba Chapa-De Indian Health
6 (“Defendant”). Plaintiff alleged the following causes of action: (1) Failure to Pay Minimum
7 Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal Period
8 Liability Under Labor Code § 226.7; (4) Rest Break Liability Under Labor Code § 226.7; (5)
9 Violation of Labor Code § 226(a); (6) Violation of Labor Code § 203; (7) Violation of Labor
10 Code §204; (8) Failure to Keep Required Payroll Records Under Labor Code §§ 1174 and
11 1174.5; (9) Failure to Reimburse Necessary Business Expenses § 2802; (10) Violation of
12 Business & Professions Code § 17200 *et seq*; and (11) Penalties under Private Attorney General
13 Act (“PAGA”).

14 Pursuant to the proposed Class Action and PAGA Settlement Agreement (“Settlement” or
15 “Settlement Agreement”), filed concurrently herewith, the class consists of “all persons employed
16 by Defendant in California and classified as non-exempt, hourly employees who worked for
17 Defendant at any time between December 18, 2019, to September 23, 2024.” After engaging in
18 substantial investigation and extensive negotiations with the assistance of a respected third-party
19 neutral, Brandon McKelvey, the parties have agreed to settle all claims alleged in the lawsuit on a
20 class-wide non-reversionary basis for Five Hundred Thirty-Five Thousand Dollars and Zero
21 Cents (\$535,000.00), inclusive of all fees and costs. All 453 Class Members shall receive a
22 settlement share unless they opt out.

23 The proposed settlement reflected in the Settlement Agreement is fair, reasonable, and
24 adequate, and in the best interests of the Class. Consequently, Plaintiff, with the consent of
25 Defendant, hereby moves this Court for an order: (1) granting preliminary approval of the
26 proposed class action settlement, as embodied in the Settlement Agreement filed concurrently
27 herewith; (2) approving the Notice of Settlement to be sent to Class Members; and (3) setting a
28 hearing for final approval of the class action settlement.

II. STATUS OF THE LITIGATION

A. Procedural History

On December 18, 2023, Plaintiff filed a class action complaint against Defendant alleging eleven causes of action: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal Period Liability Under Labor Code § 226.7; (4) Rest Break Liability Under Labor Code § 226.7; (5) Violation of Labor Code § 226(a); (6) Violation of Labor Code § 203; (7) Violation of Labor Code § 204; (8) Failure to Keep Required Payroll Records Under Labor Code §§ 1174 and 1174.5; (9) Failure to Reimburse Necessary Business Expenses § 2802; (10) Failure to Produce Requested Employment Records Under Labor Code §§ 226(b), 1198.5; and (11) Violation of Business & Professions Code § 17200 *et seq.* (Declaration of Natalie Haritounian (“Haritounian Decl.”), filed concurrently herewith, ¶ 10).

Plaintiff contends that Defendant failed to pay Class Members all wages due and owing, including by requiring off the clock work, unlawfully rounding to their detriment, failing to provide meal and rest breaks, failing to furnish accurate wage statements, failing to timely pay wages including final wages, failing to maintain accurate records, and failing to reimburse necessary business expenses. (Haritounian Decl., ¶ 11.)

On December 18, 2023, Plaintiff submitted a Private Attorneys General Act (“PAGA” Notice letter to the Labor Workforce Development Agency (“LWDA”) and served Defendant. (Haritounian Decl., ¶ 12.) The LWDA did not express an interest in investigating Plaintiff claims within the 65 day period. (*Id.*) Therefore, on February 22, 2024, Plaintiff filed a First Amended Complaint adding a cause of action for penalties under the PAGA. (*Id.*) The First Amended Complaint is the operative complaint.

B. Investigation

Before filing the lawsuit, Class Counsel investigated and researched the facts and circumstances underlying the pertinent issues and the law applicable thereto. (Haritounian Decl., ¶ 13.) This required thorough discussions and interviews between Class Counsel and Plaintiff, as well as preliminary research into the various legal issues involved in the case. (*Id.*) After conducting their initial investigation, Class Counsel determined that Plaintiff’s claims were well-

1 suited for class and representative action adjudication owing to what appeared to be a common
2 course of conduct affecting a similarly situated group of employees. (*Id.*)

3 After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and
4 claims giving rise to the action, including: (1) conducting informal and formal discovery and
5 meeting and conferring with defense counsel about same; (2) reviewing and analyzing a sampling
6 of time and pay records as well as employment handbooks, Plaintiff's personnel files, relevant
7 policies and other documentation; (3) researching the applicable law and potential defenses; (4)
8 constructing damage models based on interpretations of California law; and (5) reviewing
9 information provided by Defendant at the mediation. (Haritounian Decl., ¶ 14.) The Class
10 enumerated in this action is ascertainable because the Class Members may be readily identified
11 by reference to Defendant's records. (*Id.*) Defendant has agreed to share the information from
12 these records with the Settlement Administrator in order to identify and contact the Class
13 Members. (*Id.*) There are approximately 453 total Class Members. (*Id.*)

14 Defendant, for their part, vigorously contested liability, the amount of claimed damages,
15 and the propriety of class certification. (Haritounian Decl., ¶ 15.) After Class Counsel analyzed
16 the relevant documents and other gathered data, Class Counsel believed that this case was
17 appropriate for resolution via mediation. (*Id.*) Given the high level of risk present for both sides,
18 the parties elected to mediate Plaintiff's claims and explore the possibility of settlement. (*Id.*)

19 **C. Settlement Efforts**

20 On August 22, 2024, the parties mediated this case with Brandon McKelvey, a respected
21 and highly experienced mediator in wage and hour class actions. (Haritounian Decl., ¶ 16.)
22 During mediation, Plaintiff's and Defendant's counsel discussed all aspects of the case, including
23 the risks of litigation and the risks to both parties of proceeding with a motion for class
24 certification as well as the law relating to unpaid wages, meal periods, rest periods, wage
25 statements, and final pay. (*Id.*) As a result of the mediation, the parties agreed to settle the lawsuit
26 according to the terms set forth in the Settlement Agreement. (*Id.*; See Exhibit 1 attached to
27 Haritounian Decl., "Settlement" or "Settlement Agreement".)

28 From Class Counsel's review of the facts, strengths, and weaknesses of the case, the risks

1 and delays posed by further litigation, and Class Counsel’s own prior litigation experience, Class
2 Counsel believes that the recovery for each Class Member is fair and reasonable taking into
3 consideration the amounts received in other wage and hour class actions, the risks inherent in
4 litigation of this genre, and the reasonable tailoring of each Class Member’s claim to the
5 settlement award he or she will receive. (Haritounian Decl., ¶ 17.) Further, and based on the
6 settlement negotiations, which were extensive, and conducted in good faith and at arm’s length
7 between attorneys with substantial experience litigating class actions and wage and hour cases,
8 the Settlement Agreement was the product of a non-collusive settlement process in which the
9 parties were forced to make significant compromises in the interest of reaching a full and
10 complete settlement of the lawsuit. (*Id.*)

11 **III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS**

12 Under the terms of the proposed Settlement Agreement, Defendant has agreed to pay Five
13 Hundred Thirty-Five Thousand Dollars and Zero Cents (\$535,000.00) (“Gross Settlement
14 Amount”) on a non-reversionary basis to settle and release all claims asserted by Plaintiff in the
15 Class Action and PAGA Action on behalf of the proposed Class. (Haritounian Decl., ¶ 18; Exh. 1,
16 §3.1.) The Settlement Agreement defines the “Class” as “all persons employed by Defendant in
17 California and classified as non-exempt, hourly employee who worked for Defendant at any time
18 between December 18, 2019, to September 23, 2024.” (Haritounian Decl., ¶ 19; Exh. 1, §1.5 and
19 §1.12.) The “Net Settlement Amount,” available for distribution to Class Members, shall be the
20 Gross Settlement Amount, less the Attorneys’ Fees and Costs, the Class Representative
21 Enhancement Payment, Settlement Administration Costs, and seventy-five percent (75%) of the
22 LWDA Payment. (Haritounian Decl., ¶ 20; Exh. 1, §1.28.) These amounts are detailed as follows:

- 23 • not more than One Hundred Seventy-Eight Thousand Three Hundred and Thirty-
24 Three Dollars and Thirty-Three Cents (\$178,333.33) to Class Counsel for
25 attorneys’ fees, and not more than Twenty-Five Thousand Dollars and Zero Cents
26 (\$25,000.00) to Class Counsel for litigation costs; (Haritounian Decl., ¶ 20; Exh. 1,
27 §3.2.2);
- 28 • not more than Eleven Thousand Dollars and Zero Cents (\$11,000.00) for the

Settlement Administration Costs; (Haritounian Decl., ¶ 20; Exh. 1, §3.2.3);

- not more than Five Thousand Dollars and Zero Cents (\$5,000.00) to Plaintiff for a Class Representative Enhancement Payment; and (Haritounian Decl., ¶ 20; Exh. 1, §3.2.1);
- Thirty Thousand Dollars and Zero Cents (\$30,000.00) for civil penalties under the PAGA, where 75% (\$22,500.00) will be paid to the LWDA and 25% (\$7,500.00) will be paid to Class Members for their Individual PAGA Payments. (Haritounian Decl., ¶ 20; Exh. 1, §3.2.5.)

The “Individual Class Payment” and the “Individual PAGA Payment” is each Class Member’s share of the Net Settlement Amount, which will be calculated and apportioned from the Net Settlement Amount based on the number of workweeks a Class Member worked during the Class and PAGA Period as a non-exempt employee in California. (Haritounian Decl., ¶ 21; Exh. 1, §1.23 and §1.24.)

Defendant’s corporate payroll tax obligations shall be paid in addition to the Gross Settlement Amount, and none of the Gross Settlement Amount will revert to Defendant. (Haritounian Decl., ¶ 22; Exh. 1, §3.1.)

The settlement amount was a compromise figure, factoring in the inherent risks related to certification, liability and damages. (Haritounian Decl., ¶ 23.) However, taking into account all of the circumstances of the action and the defenses raised by Defendant against certification, liability and damages, Class Counsel believes that the settlement is fair and reasonable. (*Id.*)

Attached to the Settlement Agreement as Exhibit A is the Notice of Settlement (“Class Notice”). Class Members shall each receive a a Notice of Settlement (“Class Notice”) via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class List. (Haritounian Decl., ¶ 24; Exh. 1, §7.4.2). Before mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. (Exh. 1, §7.4.2). If the Class Notice is returned as non-deliverable on or before the Response Deadline and a new address is obtained by way of a returned Class Notice, then the Settlement Administrator will promptly forward the

1 original Class Notice to the updated address via first-class regular U.S. mail, indicating on the
2 original packet the date of such re-mailing. (Exh. 1, §7.4.3).

3 Class Members will have an opportunity to dispute the information provided in their Class
4 Notice and they may produce evidence to support the information is inaccurate. (Haritounian
5 Decl., ¶ 25; Exh. 1, §7.6; *see also* Class Notice, **Exhibit A** attached to the Settlement
6 Agreement.) The Settlement Administrator shall decide the dispute and may ask Defendant to
7 produce the personnel and payroll files of the Class Member disputing their credited workweeks
8 in order to resolve the dispute. (Haritounian Decl., ¶ *Id*; Exh. 1, §7.6.) Class Members wishing to
9 opt-out from the Settlement Agreement must sign and postmark a written request for exclusion to
10 the Settlement Administrator within the Response Deadline. (Haritounian Decl., ¶ 26; Exh. 1,
11 §7.5.) Class Members will also have the opportunity to object to the Settlement Agreement, by
12 serving a copy of the objection to the Settlement Administrator within the Response Deadline.
13 (Haritounian Decl., ¶ 26; Exh. 1, §7.7.) The Response Deadline will be sixty (60) calendar days
14 from the initial mailing of the Class Notice. (Haritounian Decl., *Id*; Exh. 1, §1.43.)

15 The parties have also agreed that Apex Class Action, LLC., shall handle the notice and
16 settlement administration (Exh. 1, § 7.1), and the parties respectfully request this Court to appoint
17 Apex Class Action, LLC., to handle those procedures. The procedures for mailing notice and
18 processing exclusions and objections as well as distribution of the Net Settlement fund is detailed
19 in the Stipulation. (Exh. 1, §7)

20 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE**

21 Express judicial policy favors maintaining wage and hour actions as class actions. (*Prince*
22 *v. CLS Transp., Inc.* (2004) 118 Cal. App. 4th 1320, 1328; *Richmond v. Dart Industries, Inc.*
23 (1981) 29 Cal. 3d 462.) Any doubt as to the appropriateness of class treatment should be resolved
24 in favor of class certification, subject to later modification if necessary. (*Richmond*, 29 Cal. 3d at
25 473-75.) The decision to certify a class is a procedural one, and should be based on the allegations
26 in the operative complaint, and not in the perceived factual or legal merit of the class claims.
27 (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 439-41.)

28 To certify a settlement class, the Court must find the two primary requirements for

maintaining a class action: (1) there must be an ascertainable class, and (2) there must be a well-defined community of interest in the questions of law and fact involving the parties to be represented. (*See Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 805-09; *Daar v. Yellow Cab Company* (1967) 67 Cal. 2d 695, 704.) These criteria are met here for the reasons set forth below.

A. There Is A Numerous and Ascertainable Class

Whether a class is ascertainable is determined by examining the class definition, the size of the class and the means available for identifying class members. (*See Vasquez, supra*, 4 Cal. 3d at 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263, 1271.) Class members are “ascertainable” where they may be readily identified without unreasonable expense or time.

Plaintiff contends, and Defendant does not dispute for settlement purposes only, this requirement and the requirement of numerosity is met. Class Members are “all persons employed by Defendant in California and classified as non-exempt, hourly employee who worked for Defendant during the period from December 18, 2019 to September 23, 2024. (Haritonian Decl., ¶ 73(a).) Documents and information exchanged between the parties reflect a class of approximately 453 Class Members. (Haritonian Decl., ¶ 73(a).) The Class Members have already been identified by reference to Defendant’s payroll and personnel records. (Haritonian Decl., ¶ 73(b).)

Therefore, and notwithstanding the foregoing, there is a numerous and ascertainable class.

B. There Is A Well-Defined Community of Interest

A community of interest is established by the predominance of common issues of law and fact. *See Vasquez*, 4 Cal. 3d at 811. The requirement of a community of interest:

[D]oes not depend upon an identical recovery, and the fact that each member of the class must prove his separate claim to a portion of any recovery by the class is only one factor to be considered ... The mere fact that separate transactions are involved does not of itself preclude a finding of the requisite community of interest so long as every member of the alleged class would not be required to litigate numerous and substantial questions to determine his individual right to recover subsequent to the rendering of any class judgment which determined in plaintiff’s favor whatever questions were common to the class.

1 *Id.* at 809.

2 Plaintiff contends, and Defendant does not dispute for settlement purposes only, that
3 common issues of fact and law predominate as to each of the claims alleged by Plaintiff, and the
4 Class is united in its proof. (Haritounian Decl., ¶ 73(e).) Because Plaintiff has alleged a single
5 scheme, “the relevant proof [does] not vary among class members” and “clearly presents a
6 common question fundamental to all class members.” (*See In Re NASDAQ Market-Makers*
7 *Antitrust Litigation* (SDNY 1997) 172 F.R.D. 119, 123 (citing *In Re NASDAQ Market-Makers*
8 *Antitrust Litigation*, (SDNY 1997) 169 F.R.D. 493, 518).) California courts show “no hesitancy”
9 in inferring class-wide causation, class-wide injury, and class-wide damages when a common
10 course of action has been shown. (*B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1350.) This
11 inference ““eliminates the need for each class member to prove individually the consequences of
12 the defendants’ actions to him or her.”” (*Id.* at 1351 (quoting *Rosack v. Volvo of America Corp*
13 (1982) 131 Cal. App. 3d 741, 753 [emphasis added]).)

14 This action involves, *inter alia*, a determination about Defendant’s alleged failure to
15 provide meal period and rest periods, failure to pay wages and overtime due to allegedly common
16 and unlawful policies, failure to pay final wages when required, failure to provide accurate
17 paystubs, and largely derivative claims under the Business & Professions Code and PAGA.
18 Plaintiff contends these practices affected Class Members in the same way. Plaintiff contends
19 these practices resulted in a failure to compensate employees at termination, and incomplete
20 wages displayed on wage statements. The outcome of litigation on this matter depends upon
21 questions that are common to Class Members. (Haritounian Decl., ¶ 73(e).) While Defendant
22 maintained otherwise, these issues will not be decided on the basis of facts peculiar to each Class
23 Member, but rather on the basis of facts common to them all. It is also true that these issues of
24 liability can be determined on a class-wide basis. (*Id.*)

25 **C. The Named Plaintiff’s Claims Are Typical**

26 A class representative’s claims are typical when they arise from the same event, practice,
27 or course of conduct that gives rise to the claims of other putative class members, and if their
28 claims rest on the same legal theories. The class representative’s claims must be “typical” but not

1 necessarily identical to the claims of other class members. It is sufficient that the representative is
2 similarly situated so that he or she will have the motive to litigate on behalf of all class members.
3 (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.*
4 (1987) 191 Cal.App.3d 1341, 1347 (“[I]t has never been the law in California that the class
5 representative must have identical interests with the class members.”) Thus it is not necessary that
6 the class representative should have personally incurred all of the damages suffered by each of the
7 other class members. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.)

8 Plaintiff contends, and Defendant does not dispute for settlement purposes only, that
9 Plaintiff’s claims are typical of Class Members’ claims because they arose from the same factual
10 basis and are based on the same legal theories. (Haritounian Decl., ¶ 73(c).) Plaintiff was
11 employed by Defendant during the Class Period, and was subject to the allegedly unlawful meal
12 and rest policies and pay practices at issue in this litigation. (*Id.*) Accordingly, Plaintiff is a
13 member of the Class. (*Id.*) The central issues of this litigation (whether Defendant failed to pay all
14 wages, whether Defendant failed to provide meal and rest periods, etc.), which would arise if this
15 was an individual action, applies to the other Class Members as well. The answer to these
16 questions would determine Defendant’s liability to the putative class. (*Id.*) Thus, the claims of
17 Plaintiff are typical of the claims of the putative class. (*Id.*) Accordingly, the typicality
18 requirement is satisfied.

19 **D. Adequacy of Class Counsel and Class Representative**

20 Class Counsel are experienced in class actions, has represented its client zealously and
21 have no conflicts of interest. (Haritounian Decl., ¶¶ 3-9, 73(d).) The Class Representative’s
22 interests are aligned with those of the Class Members, she has suffered the same injuries as the
23 Class Members, and has no conflicts of interest. (*Id.*) Therefore, Class Counsel and the Class
24 Representative are adequate.

25 **E. Predominance and Superiority**

26 Individual issues do not predominate over those common to the class. (Haritounian Decl.,
27 ¶73(f).) The class action mechanism is superior to individualized actions because Class Members
28 have little incentive to bring claims that are small. (*Id.*)

V. THE TWO-STEP APPROVAL PROCESS

Any settlement of class action litigation must be reviewed and approved by the Court. This is accomplished in two steps: (1) An early (preliminary) review by the trial court, and (2) a detailed review after the notice has been distributed to the class members for their comments or objections. In this regard, the Manual for Complex Litigation (Second) explains:

A two-step process is followed when considering class settlements... If the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representative or segments of the class, and falls within the range of possible approval, then the court should direct that notice be given to the class members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement.

(*Manual for Complex Litigation (Second)* (1985) at § 30.44.) The preliminary approval of the class action settlement by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. (See, e.g., *Newberg*, § 11.25; *North County Contractor's Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal. App. 4th 1085, 1094-95.) Thus, the preliminary approval of the class action settlement by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements.

Settlements to resolve PAGA claims also require court approval. (Labor Code § 2699(1)(2).) There is no articulated standard for approving PAGA settlements. PAGA settlements for as little as \$0 have been approved. (See *Nordstrom Com'n Cases* (2010) 186 Cal.App.4th 576, 589 (approving PAGA settlement and release that allocated \$0 to PAGA claim).) Courts have also approved settlements for \$20,000 or less. (See, e.g., *Hicks v. Toys 'R' Us-Delaware, Inc.*, (C.D. Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving \$5,000 PAGA payment in \$4 million settlement); *Chu v. Wells Fargo Invest. LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, at *1 (approving PAGA payment of \$7,500 in \$6.9 million settlement); *Williams v. Brinderson Constructors* (C.D. Cal. Feb. 6, 2017) 2017 WL 490901, at *5 (\$10,000 PAGA settlement in \$300,000 settlement).)

A review of the preliminary approval criteria demonstrates a substantial basis for granting the instant Motion and proceeding to a full settlement hearing.

VI. THE SETTLEMENT IS FAIR AND ADEQUATE

As a matter of public policy, courts both encourage the use of the class action device and favor settlement over continued litigation. (*See, e.g., Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 434 (“Courts have long acknowledged the importance of class actions as a means to prevent a failure of justice in our judicial system.”); *Class Plaintiff v. City of Seattle* (1992) 955 F.2d 1268, 1276 (“[S]trong judicial policy . . . favors settlements, particularly where complex class action litigation is concerned.”).)

Moreover, courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence to the contrary is offered. In short, there is a presumption that the negotiations were conducted in good faith. (*Newberg*, §11.51; *Rodriguez v. West Publ. Corp.* (C.D. Cal. August 10, 2007) 2007 U.S. Dist. LEXIS 74767, 24-25 ; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447.) Courts do not substitute their judgment for that of the proponents, particularly when settlement has been reached by experienced counsel familiar with the litigation. (*Rodriguez*, 2007 U.S. Dist. LEXIS 74767 at 24; *Hammon v. Barry* (D.D.C. 1990) 752 F. Supp. 1087.)

In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008), the court laid out several factors that should be analyzed in determining if a class action settlement should be approved. These factors include: (1) the strength of plaintiff’s case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the Class Members to the proposed settlement.

The Settlement here satisfies each of these factors. Class Counsel conducted extensive informal discovery before entering into meaningful settlement negotiations in this matter, including a detailed analysis of Defendant’s policies and a considerable sample of Defendant’s time and pay records. (Haritounian Decl., ¶¶ 13-14.) This discovery permitted Class Counsel to fairly evaluate the strengths of the case and the risks associated with ongoing litigation. Class Counsel is very experienced in the handling of wage and hour class actions and supports this

1 Settlement. (Haritounian Decl., ¶¶ 3-9.)

2 **A. The Strength of Plaintiff's Case.**

3 Plaintiff alleges that Defendant failed to pay minimum wages and overtime, failed to
4 provide proper meal breaks or provide premium pay in lieu thereof, failed to provide proper rest
5 breaks or provide premium pay in lieu thereof, failed to provide accurate wage statements, failed
6 to timely pay all wages upon termination, failed to reimburse necessary business expenses in
7 violation of California law. (Haritounian Decl., ¶ 28.)

8 Class Counsel felt confident that the claims in this case would be certified given that
9 Defendant's policies were applicable to all Class Members and unlawful on their face.
10 (Haritounian Decl., ¶¶ 28-56.) Defendant contended, however, that that the policies complied with
11 California law.

12 **B. The Risks Associated with the Merits.**

13 As with all litigation, there are risks that a party will not prevail on the merits. In this case,
14 Plaintiff contends that she and other Class Members were not properly provided meal periods.
15 (Haritounian Decl., ¶¶ 34-37.) Defendant contended that Class Members were given a reasonable
16 opportunity to take their meal periods, and in fact received their meal periods most of the time
17 (*Id.*) If Defendant's contentions are proven true and prevail in trial, the likely outcome of this
18 claim would be no recovery for the Class Members. (*Id.*) Plaintiff also contended that Defendant
19 did not provide Class Members with paid 10-minute rest breaks for every four hours or major
20 fraction thereof. (Haritounian Decl., ¶¶ 38-40.) Class Members consistently worked in excess of
21 consecutive four-hour shifts and were entitled to paid rest breaks of not less than ten minutes for
22 each consecutive four hour shift which they were denied. Class Members were required to work
23 through their rest breaks, and through their entire shifts. Defendant maintained that they did
24 provide the reasonable opportunity for Class Members to take duty-free rest breaks. (*Id.*)
25 Defendant also pointed out that, unlike meal periods, rest breaks need not be recorded and
26 Defendant disputes all allegations that breaks were not received. As these considerations would
27 likely depress the damages *vel non* ultimately awarded, Class Counsel applied significant and
28 appropriate discounts to the rest-break claim. (*Id.*)

1 Plaintiff alleged that Defendant failed to pay Plaintiff and Class Members minimum
2 wages for all hours worked, in violation of minimum wage laws. (Haritoonian Decl., ¶ 31.)
3 Plaintiff contended that Class Members were not paid all wages they were owed including for all
4 work performed and for all overtime hours worked. (*Id.*) Specifically, Plaintiff contended Class
5 Members had to wait in line to access a time clock to be able to clock in. (*Id.*) Additionally,
6 Plaintiff alleged Plaintiff and Class Members had their meal periods interrupted due to the
7 process and procedure, implemented by Defendant, by which Plaintiff and Class Members were
8 required to go through to clock back in for their meal break. (*Id.*)

9 Defendant contended that they paid for all reported hours worked, that Class Members
10 were trained to record all hours worked, and that they paid proper minimum wages. Defendant
11 also maintained that the allegations regarding failure to pay wages for hours worked in excess of
12 eight hours in a day did not constitute a basis for violation of Labor Code § 510. Defendant
13 argued that given their written policies and practices, any unrecorded hours were likely subject to
14 individualized inquiry and unlikely to be certified. Given the difficulty in certifying this claim,
15 Class Counsel had to apply a significant discount to damages based on this theory. (Haritoonian
16 Decl., ¶ 32-33)

17 **C. The Risks Associated with Paystub Violations and Waiting Time Penalties.**

18 In order to establish liability for these penalties, Plaintiff would first have to establish
19 liability for the underlying claims. Plaintiff would then have to establish that Defendant's conduct
20 was willful and knowing. (Labor Code §§ 203, 226(e).)

21 With waiting time penalties, there is always the risk that the trier of fact would not have
22 held that Defendant's actions were done "willfully." A good faith belief in a legal defense can
23 preclude a finding of willfulness. (*Gonzalez v. Downtown LA Motors* (2013) 215 Cal.App.4th 36,
24 54; 8 C.C.R. § 13520.) As discussed above, Plaintiff alleges that Defendant failed to pay for all
25 hours worked and premiums for non-compliant meal breaks due to the underreporting of hours
26 and off the clock work. Plaintiff contends the Class Members are entitled to these wages and
27 premiums, which they allege were not paid at the time of their termination or resignation. If
28 Plaintiff is successful on her claims, the penalties pursuant to Labor Code § 203 shall attach.

1 Defendant, however, contends it provided employees with the reasonable opportunity to take
2 meal breaks, asked Class Members to confirm the accuracy of their time records, and therefore
3 had good-faith defenses under *Brinker* and its progeny. Defendant likewise contends that it
4 properly paid all hours worked by its employees. Based upon Defendant's potential success in
5 establishing both that a good faith dispute existed with regard to unpaid wages, and Defendant
6 endeavored in good faith to supply accurate wage statements, Defendant argues the claims for
7 paystub violations and waiting time penalties have little or no value. *See Maldonado v. Epsilon*
8 *Plastics, Inc.*, 22 Cal. App. 5th 1308, 1336-1337 (2018) (wage statements that accurately report
9 wages paid to employees do not violate Labor Code § 226, even if it is later determined that
10 employer did not properly pay all wages due). As such, there was risk associated with wage
11 statement and waiting time penalties that Class Counsel had to consider. (Haritoonian Decl., ¶¶
12 41-47.)

13 **D. The Risks Associated with the PAGA Penalties.**

14 Labor Code § 2699.3 gives aggrieved employees the right to recover civil penalties for
15 specific Labor Code violations by way of a civil action. The PAGA provides a penalty amount of
16 one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation
17 and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
18 violation. Labor Code § 2699(e)(2). However, if a civil penalty is provided in a specified amount
19 by the Labor Code section relating to the underlying alleged Labor Code violation, that amount
20 shall apply. (*Id.*) The PAGA also gives the Court discretion to award any lesser amount than the
21 maximum civil penalty. (*Id.* ["...a court may award a lesser amount than the maximum civil
22 penalty amount specified by this part if, based on the facts and circumstances of the particular
23 case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
24 confiscatory."]); *See, e.g., Lopez v. Friant & Assocs., LLC*, 15 Cal. App. 5th 773, 788 (2017), *rev.*
25 *denied* (2018), (recognizing court's ability to reduce PAGA penalties). Courts have held that
26 situations similar to the current one (e.g. injuryless violations, technical errors, and substantial
27 compliance) should lead to reductions in penalties. *See Thurman v. Bayshore Transit*
28 *Management, Inc.*, 203 Cal. App. 4th 1112, 1134-1135 (2012) (holding that reduction was

1 justified when employer “attempted to comply with the law”); *Fleming v. Covdien, Inc.*, No. ED
2 CV10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590 at *8-9 (C.D. Cal. August 12, 2011)
3 (reducing PAGA penalties more than 80% – from \$2.8 million to \$500,000 – when “employees
4 suffered no injury” employers were “not aware” of the violation and “took prompt steps to correct
5 all violations once notified”).

6 Plaintiff discounted potential penalties under this claim given this authority, and for other
7 reasons. The PAGA claims are premised on the same underlying unpaid wages, meal and rest
8 break, wage statement, and waiting time claims, and thus subject to the same disputes and
9 defenses. There is also a dispute as to whether violations in later pay periods trigger the \$200
10 penalty under PAGA as a “subsequent violation.” (*Amaral v. Cintas Corp. No. 2*, 163 Cal. App.
11 4th 1157, 1203 (2008).) As such, there is a fair amount of risk associated with PAGA claims.
12 (Haritounian Decl., ¶¶ 50-53.) The parties also considered that the purpose of PAGA is to
13 “achieve maximum compliance with state labor laws,” and that through the proposed settlement,
14 Defendant has agreed to ensure policies comply with California law. (*Iskanian v. CLS Transp.*
15 *Los Angeles, LLC* (2014) 59 Cal. 4th 348, 379.) This makes the settlement’s contemplated PAGA
16 payment of \$30,000 appropriate. (*Id.*)

17 Based on this analysis, Class Counsel believes that this settlement is fair and reasonable
18 and in the best interest of the Class. (Haritounian Decl., *passim*.)

19 **E. The Risk, Expense, Complexity and Likely Duration of Any Litigation.**

20 Given the risks outlined above, the issues in this case were complex and the risk for
21 Plaintiff and the Class Members associated with this litigation was high. (Haritounian Decl., ¶¶
22 57-60.) A class trial would have required the retention of expensive expert witnesses, the accrual
23 of extensive litigation costs, and the parties would have had to spend a substantial amount of time
24 litigating this matter. (*Id.*)

25 Finally, given the complexity and unsettled nature of the issues, it is likely that any
26 outcome at trial would have resulted in a lengthy and costly appeal. An appeal would result in
27 further delay for the Class Members who have already waited years for resolution in this matter.
28

1 **F. The Risk of Maintaining Class Action Status Through Trial.**

2 In class actions, decertification is always a possibility. There is always a risk that a trial of
3 this magnitude can become unmanageable. (Haritounian Decl., ¶ 60.) Given cases like *Duran v.*
4 *U.S. Bank Nat. Assn.*, 59 Cal. 4th 1, 34 (2014) that deal with the complexity of using statistical
5 samples in class actions, decertification is a real risk that Class Counsel must take into account.

6 **G. The Amount Offered in Settlement.**

7 There can be no doubt that this Settlement is the result of vigorous, adversarial, non-
8 collusive, and arms-length negotiations between the parties with an experienced mediator. In
9 order to determine the approximate potential damages which would be owed to each of the Class
10 Members, Class Counsel analyzed the time records for Plaintiff and Defendant provided Class
11 Counsel with records for a sampling of the class members. By analyzing this information, Class
12 Counsel was able to estimate the full value of the case if Plaintiff was to prevail at trial.
13 (Haritounian Decl., ¶¶ 13-17.)

14 There are approximately 453 total Class Members. Based on the data provided, Class
15 Counsel estimated the following maximum exposures: unpaid wage claim at \$462,460, meal
16 period claim at \$190,017, rest period claim at \$310,482, wage statement claim at \$868,100,
17 waiting time penalties at \$1,072,499, reimbursement of business expenses claim at \$22,650, and
18 on PAGA, Plaintiff estimated the maximum exposure at \$884,600. (Haritounian Decl., ¶ 29.)

19 However, taking into account the difficulties of proof, the Defendant's defenses, and other
20 attendant risks, Plaintiff estimates that the total amount of damages, monetary penalties, or other
21 relief that the class could reasonably expect to be awarded at trial is significantly less than the
22 maximum exposure. (Haritounian Decl., ¶ 30.)

23 Once Class Counsel was able to determine the maximum potential damages, it was able to
24 determine a fair and reasonable settlement for the Class. (Haritounian Decl., at ¶¶ 28-56) Class
25 Counsel analyzed the likelihood of success on the merits. (*Id.*) It believes that the Class had a
26 reasonable likelihood of success on the core claims. (*Id.*) However, Defendant disputes this
27 contention, denies all wrongdoing in this matter and are confident they have strong legal and
28 factual defenses to Plaintiff's claims. Moreover, Class Counsel determined that the likelihood of

1 success on the claims for unpaid wages and waiting time penalties were not as strong, because
2 various defenses including issues not suitable for class treatment, no detriment to the class
3 members over time, and *de minimis* defenses. Defendant may have had the opportunity to
4 establish that they had a good faith belief that they were complying with law. (*Id.*) After taking
5 into account the likelihood of success on each claim and the challenges faced with certifying
6 these claims, Class Counsel determined that the settlement amount of Five Hundred Thirty-Five
7 Thousand Dollars and Zero Cents (\$535,000.00) was fair and reasonable.

8 Under the Settlement, each of the approximately 453 Class Members will receive on
9 average, assuming they worked throughout the class period, \$630.61 after expenses. (Haritounian
10 Decl., at ¶ 56) Plaintiff feels that this Settlement is fair, reasonable, and advantageous to the class.
11 (*Id.*)

12 To summarize, the Settlement here is fair because it provides a substantial payment to
13 each Class Member for releasing his or her claims; extinguishes the risk of litigation; and
14 provides a fair and adequate distribution of the settlement proceeds whereby the funds are
15 allocated to Class Members proportionally based on their Payout Ratio.

16 As detailed at length in the accompanying Declaration of Natalie Haritounian, the
17 settlement is the result of extensive settlement negotiations between the parties, conducted at
18 arm's length, and informed by substantial factual and legal investigations. (Haritounian Decl.,
19 *passim*.) Throughout this case, Class Members have been represented by experienced counsel
20 with many years of experience in employment class action litigation. (Haritounian Decl., ¶¶ 3-9.)

21 Class Counsel has devoted a considerable amount of time to the prosecution of this case,
22 including but not limited to, interviewing Plaintiff on repeated occasions; drafting pleadings;
23 conducting discovery, and meeting and conferring with defense counsel about same; reviewing
24 and analyzing time records and various handbooks and policies, Plaintiff's personnel file, and
25 other documentation; researching California law; preparing for and attending mediation; and
26 negotiating and finalizing the Settlement Agreement and related documents. (Haritounian Decl.,
27 ¶¶ 13-14.)

28 Among those matters considered during the course of settlement negotiations were the

1 strength of Plaintiff's case versus the amounts offered in settlement; the risks, expenses, and
2 length of further litigation, including class certification and the appeals process; the present state
3 of the law as it applies to wage and hour class actions, particularly in light of *Brinker*; the present
4 value of a settlement versus the long wait necessitated by any potential judgment in class
5 members' favor; the burdens of proof necessary to establish liability against Defendant; and
6 Defendant's defenses to the action. (Haritounian Decl., *passim*.)

7 These factors each indicated that the interests of Class Members are best served by a
8 settlement of this action in the manner and upon the terms set forth in the Settlement Agreement.
9 The Settlement Agreement confers a substantial benefit on the class of up to Five Hundred
10 Thirty-Five Thousand Dollars and Zero Cents (\$535,000.00). (Exh. 1, §3.1). Moreover, the
11 settlement awards for each Class Member will be tailored to their workweeks during the class
12 period. (Exh. 1, §7.6). In addition Class Counsel secured prospective relief for the class in that
13 Defendant will ensure their policies comply with California law. (Haritounian Decl., ¶ 63.)

14 Class Counsel believes that the settlement is fair and reasonable and serves the best
15 interests of the Class Members. Although the recommendations of counsel proposing the class
16 settlement are not conclusive, the Court can properly take the recommendations into account,
17 particularly if counsel has been involved in litigation for some period of time, appear to be
18 competent, and have experience with this type of litigation, and significant discovery has been
19 completed. *See Newberg*, §11.47.

20 **VII. THE CLASS REPRESENTATIVE ENHANCEMENT PAYMENT IS FAIR AND** 21 **REASONABLE**

22 It is appropriate to provide a relatively modest additional incentive payment to the class
23 representative. *See Newberg*, § 12.1; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901
24 F.Supp. 294.

25 Plaintiff is entitled to a reasonable service payment for her efforts and initiative in
26 bringing and helping to prosecute this class action. Plaintiff spent significant time better apprising
27 herself of her rights, deciding whether remedial action should be taken, how it should be taken,
28 searching for attorneys, and contacting Class Counsel, who spent many hours with Plaintiff

1 discussing the case and the law. In the end, Plaintiff decided to vindicate not only her own rights
2 but also those of her co-workers by filing a class action lawsuit. (Haritounian Decl., ¶ 68)

3 The courage it took to do this should not be underestimated. By suing Defendant, Plaintiff
4 contends she increased the risk of retaliation by prospective employers. Plaintiff's lawsuit has
5 now cost Defendant considerable resources, and Plaintiff contends such conduct will not be lost
6 on a prospective employer who has to choose between an applicant who has never sued a prior
7 employer and one who has. Plaintiff contends this risk is particularly real in the information age,
8 where employers can, more easily than ever, perform background checks of prospective
9 employees, sometimes with the stroke of a key. (Haritounian Decl., ¶ 69)

10 But Plaintiff did not allow the fear of the potential repercussions of being a class
11 representative deter her from acting for the benefit of Class Members. To the contrary, Plaintiff
12 has been intimately involved in this case since its inception. They have devoted a substantial
13 amount of time to helping Class Counsel effectively develop and prosecute this action at every
14 stage of the litigation. Both before and after the filing of this lawsuit, Plaintiff conferred with
15 Class Counsel to discuss every aspect of this case; Plaintiff has provided Class Counsel with
16 information about Defendant and about the industry generally, reviewed documents, identified
17 witnesses, consulted Class Counsel throughout the litigation, participated in the mediation
18 process, monitored the progress of the litigation with Class Counsel, and reviewed and signed the
19 settlement agreement. (Haritounian Decl., ¶ 70)

20 Plaintiff has spent a significant amount of time with Class Counsel detailing her
21 knowledge of Defendant's practices. She has diligently, adequately, and fairly represented Class
22 Members, and has not placed her interests above any member of the putative class. This sort of
23 payment to a class representative has been a common feature of settlements negotiated by Class
24 Counsel and has been routinely approved by trial courts. (Haritounian Decl., ¶ 71)

25 In light of the foregoing, Class Counsel believes that the incentive award in the amount of
26 \$5,000.00 to the Class Representative is fair and reasonable. (Haritounian Decl., ¶ 72)

1 **VIII. THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE**
2 **CLASS MEMBERS.**

3 Constitutional due process requires that class members be provided with notice sufficient
4 to give them an opportunity to be heard in the proceedings. *Mullane v. Central Hanover Bank &*
5 *Trust Co.* (1950) 339 U.S. 306. Proper notice must provide the class members with sufficient
6 information to make an informed decision as to whether to accept or object to the settlement. (*Id.*
7 at 314.) The notice must apprise the class members of the pendency of the action; reasonably
8 convey information regarding the settlement and the class members' rights, entitlements, and
9 obligations; and afford class members the opportunity to present their objections. (*Id.*)

10 The Class Notice meets constitutional standards because it provides all the information a
11 reasonable person would need to make a fully informed decision about the settlement. It will
12 notify all class members of the terms of the settlement, of its effect on their rights, of their options
13 as class members (i.e., participate, object, opt out, do nothing), and of the consequences of
14 exercising those options. (Haritonian Decl., ¶¶ 61-63.) Moreover, the Class Notice will
15 specifically direct any class members who have questions or concerns to contact the Settlement
16 Administrator, Apex Class Action, LLC., or Class Counsel. (*Id.*)

17 The standard for determining the adequacy of notice is whether the notice has "a
18 reasonable chance of reaching a substantial percentage of the class members." (*Cartt v. Superior*
19 *Court* (1975) 50 Cal.App.3d 960, 974.) The Judicial Council of California's Deskbook on the
20 Management of Complex Civil Litigation (Matthew Bender 2003), § 3.74 notes that individual
21 notice by mail is preferred when possible and dissemination of combined certification/settlement
22 notice is a common and accepted practice. (*In re Vitamin Cases* (2003) 107 Cal.App.4th 820,
23 828.)

24 Here, the Class Notice will be sent via first-class mail to each class member. (Haritonian
25 Decl., ¶ 24.) If any Class Notices are returned undeliverable without a forwarding address, the
26 Settlement Administrator will use the national change of address database and perform a skip
27 trace to locate the class member and mail a new Class Notice to him or her at the correct address.
28 (*Id.*) Thus, most, if not all, class members will likely receive the Class Notice.

1 Pursuant to controlling authority, the proposed Class Notice and method of distribution
2 fully comport with due process requirements. Therefore, the Court should approve the Class
3 Notice and direct that it be distributed as proposed herein.

4 **IX. STANDING TO OBJECT TO PROPOSED SETTLEMENT**

5 Non-settling parties and third parties periodically may attempt to object to proposed class
6 action settlements, but the right of non-settling parties to object at the final settlement approval
7 hearing, let alone the preliminary approval hearing, is quite limited. As a general rule, only class
8 members have standing to object to a proposed settlement. “Beginning from the unassailable
9 premise that settlements are to be encouraged, it follows that to routinely allow non-class
10 members to inject their concerns via objection at the settlement stage would tend to frustrate this
11 goal.” (*Gould v. Alleco, Inc.* (4th Cir. 1998) 883 F.2d 281, 284.) Since an application is being
12 filed to obtain a good faith determination, no persons other than class members have standing to
13 object to the proposed settlement. (*In re School Asbestos Litigation* (3rd Cir. 1990) 921 F.2d
14 1330.)

15 **X. THE STIPULATED AWARD OF ATTORNEYS’ FEES AND COSTS IS**
16 **REASONABLE AND SHOULD BE APPROVED.**

17 Under the Settlement Agreement, subject to approval by this Court, Class Counsel will
18 seek an award of fees of no more than One Hundred Seventy-Eight Thousand Three Hundred and
19 Thirty-Three Dollars and Thirty-Three Cents (\$178,333.33), approximately one-third of the Gross
20 Settlement Amount, and not more than Twenty Five Thousand Dollars and Zero Cents
21 (\$25,000.00) in costs. The requested fees are fair compensation for a law firm involved in
22 undertaking complex, risky, expensive, and time-consuming litigation solely on a contingent
23 basis. (Haritounian Decl. ¶¶ 65-67.) Defendant will not oppose Class Counsel’s fees and cost
24 request.

25 California courts routinely look to the federal courts on class action approvals. The Ninth
26 Circuit has recognized that an appropriate method for awarding attorneys’ fees in class actions is
27 to award a percentage of the “common fund” created as a result of the settlement. (*Vincent v.*
28 *Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) The purpose of the common

1 fund/percentage approach is to “spread litigation costs proportionally among all the beneficiaries
2 so that the active beneficiary does not bear the entire burden alone.” (*Id.*) Accordingly, courts
3 have discretion to choose either the percentage-of-the-fund method or the lodestar method. (*In re*
4 *Wash. Pub.Power Supply Sys. Sec. Litigation* (9th Cir. 1994) 19 F.3d 1291, 1295-96.)

5 Several courts have, however, expressed frustration with the “lodestar” approach for
6 deciding fee awards, which usually involves wading through voluminous time records. Thus, the
7 percentage approach can be preferable to the lodestar in certain situations because: (1) it aligns
8 the interests of class counsel and absent class members; (2) it encourages efficient resolution of
9 the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the
10 demands on judicial resources. (*In re Activision Securities Litigation*, (N.D. Cal. 1989) 723
11 F.Supp. 1373, 1378-79.) The Ninth Circuit has used the percentage of the common fund approach
12 to determine the award of attorneys’ fees. (*In re Pacific Enterprises Securities Litigation* (9th Cir.
13 1994) 47 F.3d 373, 378-79 (approving attorneys’ fee of 33 1/3% of settlement fund).)

14 Class Counsel’s application for attorneys’ fees in light of the facts and circumstances
15 surrounding this case is well within the range of reasonableness. Historically, courts have
16 awarded percentage fees in the range of 20% to 50% of the common fund, depending on the
17 circumstances of the case. (*Newberg*, at §14.03; *see also In re Activision Securities Litigation*,
18 723 F. Supp. at 1378.) *Newberg* further notes: “[A]chievement of a substantial recovery with
19 modest hours expended should not be penalized but should be rewarded for considerations of
20 time saved by superior services performed.” (*Id.* at §§ 14-10:14-11.)

21 The attorneys’ fees request provided for in the Settlement Agreement is commensurate
22 with judicial precedent. Both state and federal courts regularly approve fee awards equal to or
23 greater than the percentage requested in this case. (*See, e.g., In re Pacific Enterprises Securities*
24 *Litigation* (9th Cir. 1995) 47 F.3d 373, 379 (affirming an award equal to 33% of the common
25 fund); *In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375 (awarding
26 plaintiff’ counsel 32.8% of the common fund created to settle the litigation); *In re Ampicillin*
27 *Antitrust Litigation* (D. D.C. 1981) 526 F.Supp. 494 (awarding 45% of \$7.3 million settlement
28 fund); *Parker v. City of Los Angeles* (1974) 44 Cal.App.3d 556, 557-568 (affirming fee award to

1 counsel of one-third (1/3) of recovery achieved).)

2 In wage and hour class actions in particular, California trial courts have customarily
3 approved attorney's fees consistent with or greater than the percentage of the common fund
4 requested in this case. (*See Evans v. Coca-Cola*, Los Angeles County Super. Ct. Case No. BC
5 220525 (Hon. Richard C. Hubbell) (Dec. 2001) (approving an award of attorneys' fees of at least
6 33-1/3% of the settlement); *see also Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Super.
7 Ct. Case No. BC 262247 (May 2005) (Hon. Anthony J. Mohr); *Moreno v. Miller Brewing*, Los
8 Angeles County Super.Ct. Case No.BC 278170 (April 2004) (Hon. David M. Minning); *Josiah*
9 *Eaton v. Adolph Coors Company* (2003) Orange County Super. Ct. Case No. 01CC00140 (Hon.
10 Stephen J. Sundvold); *Kimbell v. Abercrombie & Fitch Stores, Inc.*, Los Angeles County
11 Super.Ct. Case No.BC 277359 (Sept. 2006) (Hon. Kenneth R. Freeman); *Daum v. Claim Jumper*
12 *Restaurants*, Orange County Super.Ct. Case No.02CC10201 (2006) (Hon. Ronald L. Bauer).)

13 Here, Class Counsel has borne the entire risk and costs of litigation and will not receive
14 any compensation until recovery is obtained. (Haritounian Decl., ¶¶ 65-67.) The Court should also
15 consider the benefit obtained by Class Counsel on behalf of Class Members. Thus, the requested
16 award for Class Counsel is reasonable.

17 **XI. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY**
18 **APPROVAL**

19 The parties respectfully request this Court, as part of the preliminary approval process, to
20 grant the following relief and make the following orders:

- 21 1. Review and approve the Settlement Agreement;
- 22 2. Review and approve the Class Notice, attached to the Settlement Agreement as Exhibit
23 A;
- 24 3. Consider and determine that the proposed class action settlement as set forth in the
25 Settlement Agreement preliminarily appears fair, reasonable, and adequate;
- 26 4. Enter an order conditionally certifying the action as a class action for settlement
27 purposes only and preliminarily approving the proposed class action settlement and the
28 Settlement Agreement;

1 5. Approve and appoint Natalie Haritounian of D.Law, Inc. to serve as Class Counsel for
2 settlement purposes;

3 6. Approve and appoint Apex Class Action, LLC., as the Settlement Administrator to
4 handle the notice and claims procedures as set forth in the Settlement Agreement;

5 7. Approve the proposed settlement's allocation of funds to claims made under PAGA;

6 8. Order Defendant to disclose to Apex Class Action, LLC., the names, last-known
7 addresses, telephone numbers, dates of employment, and social security numbers of class
8 members as set forth in the Settlement Agreement;

9 9. Order that Apex Class Action, LLC., mail the Class Notices to class members; and

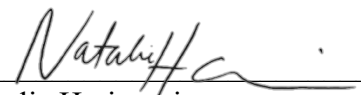
10 10. Set a date for the Final Approval Hearing.

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12 Dated: January 27, 2025

Respectfully submitted,

13 D.LAW, INC.

14
15 By



16 Natalie Haritounian
17 Attorneys for Plaintiff MARY LOU KENNEDY
18 on behalf of herself and others similarly situated
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