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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

LILY LIVINGSTON, as an individual and on behalf of all others similarly situated, Plaintiff, vs. VERBAL BEHAVIOR ASSOCIATES, a California Corporation; and DOES 1 through 100, Defendants.	CASE NO. 37-2024-00003049-CU-OE-CTL *[Case assigned for all purposes to the Hon. Judy Bae, Department C-62]* **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** Date: July 2, 2026 Time: 9:10 a.m. Dept.: C-62 Action Filed: January 23, 2024 Trial Date: None Set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on July 2, 2026, at 9:10 a.m. in Department C-62 of the above-entitled Court, located at 330 W. Broadway, San Diego, CA 92101, Plaintiff Lily Livingston, individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

1. Preliminary approval of the proposed Settlement of this lawsuit;
2. Pursuant to California Code of Civil Procedure § 382, provisional certification of the Settlement Class defined as follows:

   > All current and former non-exempt persons employed by Defendant Verbal Behavior Associates in California during the period of January 23, 2020 through November 8, 2024 (the "Class Period").

3. Preliminary appointment of Lily Livingston as Class Representative;
4. Preliminary appointment of Paul K. Haines, Sean M. Blakely, and Alexandra R. McIntosh of Haines Law Group, APC as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to award amounts for the Class Representative Service Payment, Settlement Administrator costs, payment to the Labor & Workforce Development Agency for its share of civil penalties under the Private Attorneys General Act, as well as attorneys' fees and costs to Class Counsel;
6. Appointment of ILYM Group, Inc. as the third-party Settlement Administrator for mailing notices; and
7. Approval of the proposed Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval (the "Class Notice") and an Order instructing the Class Notice to be disseminated to the proposed Settlement Class as provided in the Settlement.

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This Motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the declarations of Sean M. Blakely, Paul K. Haines, Alexandra R. McIntosh, Plaintiff Lily Livingston, Anthony Rogers on behalf of ILYM Group, Inc., and the exhibits attached thereto, the pleadings and other papers filed in this action, and on any further oral or documentary evidence or argument presented at the time of hearing.

Dated: November 24, 2025

Respectfully Submitted,
HAINES LAW GROUP, APC

By: ______________________________
Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Lily Livingston ("Plaintiff") filed this putative class action (the "Action") on behalf of all current and former non-exempt employees of Defendant Verbal Behavior Associates ("Defendant") in California who worked at any time between January 23, 2020 and November 8, 2024 (the "Class Period"). Plaintiff and Defendant will be referred to collectively herein as the "Parties."

Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary, common-fund class action settlement,[1] in which Defendant has agreed to pay $435,000.00 on behalf of the following Settlement Class:

> All current and former non-exempt persons employed by Defendant Verbal Behavior Associates from January 23, 2020 through November 8, 2024 and who do not opt out of the Settlement.

The Settlement was only reached after extensive informal discovery, and a full-day mediation with Kevin Barnes, Esq., a well-respected wage and hour class action mediator. Prior to mediation, Defendant produced timekeeping and payroll records for a sampling of the putative class, applicable wage and hour policies/procedures, and information regarding Defendant's financial condition. After extensive research and analysis, including Plaintiff's expert's analysis of Defendant's timekeeping and payroll records, the Parties attended mediation on July 26, 2024. Although the Parties did not settle at mediation, Mr. Barnes issued a mediator's proposal in the weeks following mediation, which was ultimately accepted by the Parties.

If the Settlement is approved, Defendant will pay a non-reversionary Gross Settlement Amount of $435,000.00. After deducting settlement administration costs, Plaintiff's requested service payment, the amount set aside as PAGA civil penalties, and requested attorneys' fees and

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[1] The Class Action and PAGA Settlement Agreement ("Settlement") is attached to the Declaration of Sean M. Blakely as **Exhibit 1**. The proposed Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval is attached to the Settlement as **Exhibit A**. All defined terms in this motion have the same definition as that in the Settlement.

costs, the remaining Net Settlement Amount ("NSA") of approximately $218,150.00 will be distributed to all Settlement Class members who do not opt out of the Settlement based on the proportionate number of workweeks worked by each Settlement Class member during the Class Period.

Significantly, Settlement Class members do not need to file a claim to benefit from the Settlement as all Settlement Class members will automatically receive a payment unless they affirmatively opt-out. There are approximately 1,186 Settlement Class members, and the average payment to participating Settlement Class Members is estimated to be approximately $183.94. This is a favorable result for Settlement Class members, who will be agreeing to a release of only those claims that were asserted in this litigation.

This proposed Settlement is well within the range of possible approval in light of the significant legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation, and the tangible monetary benefits to be received by the Settlement Class. For the reasons discussed herein, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement.

II. SUMMARY OF THE LITIGATION

Defendant provides behavior and educational consulting services to children with disabilities and/or behavior issues throughout Southern California. *See* Declaration of Sean M. Blakely ("Blakely Decl."), ¶ 8. Plaintiff was employed by Defendant as a non-exempt "Behavior Interventionist" from May 2019 to approximately August 2024. *See* Declaration of Lily Livingston ("Livingston Decl."), ¶ 2. Like all Settlement Class members, Plaintiff was subject to Defendant's wage and hour policies and practices at issue in this Action. *Id.*

On January 23, 2024, Plaintiff filed the initial Class Action Complaint alleging Defendant: (i) failed to pay all overtime wages; (ii) failed to pay all minimum wages; (iii) failed to provide all meal periods; (iv) failed to authorize and permit all rest periods; (v) failed to reimburse all necessary business expenses; (vi) failed to issue accurate, itemized wage statements; and (vii) violated California's Unfair Competition law. Blakely Decl., ¶ 9. On March 29, 2024, Plaintiff filed a First Amended Complaint, adding a cause of action for civil penalties under

PAGA. *Id.* On May 14, 2025, as part of the Settlement, Plaintiff filed the operative Second Amended Complaint ("SAC") to add a ninth cause of action for Defendant's alleged failure to pay all wages owed upon separation of employment. *Id.* The theories of liability alleged in the Action along with Defendant's defenses are discussed below.

A. PLAINTIFF'S CLAIMS AND DEFENDANT'S DEFENSES

1. Arbitration Agreements

As an initial matter, Defendant asserts that the vast majority of Settlement Class members signed valid and enforceable arbitration agreements with class action waivers. Blakely Decl., ¶ 15. Setting aside any arguments as to the merits of Plaintiff's claims, Defendant contends that absent settlement, a class-wide recovery for Settlement Class members was not possible and that only PAGA civil penalties could potentially be recovered on behalf of a subset of Settlement Class members. *Id*. As such, Defendant contends that absent its agreement to not raise the arbitration agreements as an affirmative defense, any recovery to the vast majority of Settlement Class members would be limited to only the employee's potential 25% share of PAGA civil penalties. *Id*.

2. Unpaid Wages Due to Unlawful Timekeeping Policies/Practices

Plaintiff alleges that during the Class Period, Defendant utilized a timekeeping system that systematically underpaid wages to Settlement Class members as it only recorded Plaintiff and other non-exempt employee's scheduled hours rather than all their hours actually worked. Blakely Decl., ¶ 16. Specifically, Plaintiff alleges that Defendant required Plaintiff and other non-exempt employees to clock in and out using a system that only allowed employees to record their time spent with Defendant's clients rather than all time that they spent completing tasks on behalf of Defendant, such as completing paperwork and traveling in between job sites. *Id*.

Defendant counters that its timekeeping policies/practices complied with California law and that it has always properly compensated Settlement Class members for all hours worked throughout the Class Period. Blakely Decl., ¶ 16. Moreover, Defendant contends that employees often worked less than their scheduled time and were therefore, often overpaid for their hours worked. *Id*. Finally, Defendant asserts that Plaintiff would be unable to certify this claim since its timekeeping policies/practices are facially neutral and individualized inquiries would be necessary to determine whether employees were underpaid, or potentially overpaid, for each workday in question, resulting in an unmanageable series of mini-trials. *Id*.

3. <u>Meal Period Violations</u>

Plaintiff alleges that Defendant failed to provide employees with timely meal periods of at least 30-minutes. Blakely Decl., ¶ 17. Defendant counters that it has maintained compliant written meal period policies throughout the Class Period and has always provided compliant meal periods in line with those policies. *Id*. Defendant also contends that under *Brinker*, it is only required to "provide" the opportunity to take meal periods, not "ensure" meal periods are taken. *Id.*; *see Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1038 (2012) (rejecting "ensure" standard and holding employers only have to "provide" employees the opportunity to take meal periods). Further, Defendant maintains that any short, missed, or late first meal periods were the result of lawful employee waivers or choice, thereby precluding liability. Blakely Decl., ¶ 17. Defendant asserts that this is especially true in this case as employees were working off-site and therefore, had control over when to take their meal and rest periods. *Id.* Defendant also argues that the majority of shifts are under 6.0 hours and employees made the lawful choice to waive their meal periods. *Id.* Finally, Defendant argues that individualized inquiries will be required to determine why each meal period was taken late or short or missed by each employee, and whether there was a valid waiver, thereby making class certification of this claim unlikely. *Id*.

4. <u>Rest Period Violations</u>

Plaintiff alleges that Defendant failed to authorize and permit all legally compliant off-duty rest periods to Plaintiff and other non-exempt employees as the nature of Plaintiff's and other non-exempt employees' job, including providing constant supervision to children, often prevented Plaintiff and other employees from taking their rest periods. Blakely Decl., ¶ 18.

In response, Defendant argues that it has always maintained and enforced lawful rest period policies/practices during the Class Period, and that any alleged failure to take rest periods was the result of employee choice and not any uniform policy or practice. Blakely Decl., ¶ 18. Defendant further contends that employees were rarely supervised, and therefore could take their rest periods whenever they pleased. *Id.* Defendant further argues that it actually paid employees an additional 10 minutes per rest period to, according to Defendant, further indicate to employees that they should be taking their paid rest periods. *Id.* Lastly, Defendant asserts that this claim is not amenable to class treatment as individualized inquiries would be required to determine which employees failed to take a rest period, how often, and the reasons why. *Id.* Defendant argues that these manageability concerns are especially present with respect to rest period claims given that rest periods are not required to be recorded. *Id*.

5. <u>Failure to Reimburse for All Necessary Business Expenses</u>

Plaintiff alleges that Defendant required its employees to download an application on their personal cell phones in order to clock in and out but failed to reimburse its employees for use of their personal cellphones in violation of Labor Code § 2802. *See* Labor Code § 2802(a) ("An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties."); *see also Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137 (2014) (holding employer must reimburse use of personal cell phone, even where employee already has "unlimited" plan); *See* Blakely Decl., ¶ 19.

In response, Defendant argues that it has paid its employees for all necessary business expenses including use of their personal cellphones to clock-in. Blakely Decl., ¶ 19. Defendant further argued that many employees have cellphones with unlimited data and therefore it is questionable whether employees even incur any additional expense as a result of clocking in and clocking out through the application. *Id.* Defendant further argues that even if employees did not have a cellphone plan with unlimited data, employees almost always had access to free internet on campus and during tutoring sessions, such that it was not necessary for employees to use any of their personal data to clock-in and out. *Id.* Further, Defendant contends that it began regularly reimbursing employees for their cellphones in 2021. *Id.* On this basis, Defendant maintains that this claim is not suited for class certification as it would require a series of mini-trials to determine which employees actually incurred any additional cellphone expenses and whether those expenses were reasonable and/or necessary. *Id*.

6. Wage Statement Penalties, Waiting Time Penalties, and PAGA Penalties

As a result of these alleged violations, Plaintiff contends that Defendant is liable for derivative wage statement violations, waiting time penalties, and civil penalties under the PAGA. Blakely Decl., ¶¶ 20-22. Defendant argues that the alleged wage statement violations were not "knowing and intentional," and that Plaintiff could not show she "suffer[ed] injury," as required by Labor Code § 226(e) for imposition of penalties. *Id.,* at ¶ 21.

Defendant further contends that it possesses strong, good faith defense to Plaintiff's underlying claims, thus precluding recovery of waiting time penalties (which are only available for the "willful" failure to pay wages). Blakely Decl., ¶ 20; *see also,* 8 Cal. Code Regs. § 13520 ("[A] good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203…A good-faith dispute that any wages are due occurs when an employer presents a defense, based in law or fact which, if successful, would preclude any recovery on the part of the employee.").

Since Plaintiff's PAGA claim is derivative of Plaintiff's underlying wage claims, Defendant asserts the PAGA claim would fail with those claims. Blakely Decl., ¶ 22. Defendant also maintains that, given its good-faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiff's underlying claims. *Id*.

B. DISCOVERY AND MEDIATION

In connection with mediation, Defendant provided timekeeping data and payroll records for approximately 20% of putative class members, who were randomly selected by Plaintiff. Blakely Decl., ¶ 10. Defendant also provided relevant data points including the number of putative class members and the aggregate number of workweeks worked during the Class Period, all employee handbooks that were in effect during the Class Period, templates of Defendant's arbitration agreements, data related to the number of employees and workweeks subject to a possible motion to compel arbitration, and various documents related to Defendant's financial condition. *Id.* Plaintiff hired a labor economist with a Ph.D. in economics to assist Plaintiff in conducting a comprehensive analysis and extrapolation of the payroll and timekeeping data produced by Defendant to create a detailed exposure analysis for all claims at issue. *Id*. Plaintiff also retained a forensic accountant to review Defendant's financial records to assist Plaintiff in evaluating Defendant's financial condition. *Id*. This discovery allowed the Parties to assess the merits and value of Plaintiff's claims, the chances of certification of Plaintiff's claims, and Defendant's potential defenses. *Id*.

On July 26, 2024, the Parties participated in a full-day mediation with Kevin Barnes, Esq., a highly experienced wage and hour class action mediator. Blakely Decl., ¶ 11. During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, the legal basis for the claims and defenses, and Defendant's financial condition. *Id*. The Parties did not reach a settlement at mediation and continued their negotiations in the weeks following mediation. *Id*. Ultimately, Mr. Barnes issued a mediator's proposal for a class-wide settlement, which was ultimately accepted by all Parties. *Id.* During the months that followed, the Parties finalized the terms of the Settlement and executed the long-form Settlement Agreement now before the Court. *Id*.

III. THE PROPOSED SETTLEMENT

If the Court preliminarily approves the Settlement, Defendant will pay a Gross Settlement Amount ("GSA") of $435,000.00.[2] *See* Settlement, §§ 1.21, 3.1 Significantly, this Settlement is non-reversionary, and no Settlement Class member will have to submit a claim form to receive an Individual Class Payment. *Id*., at § 3.1. Each Settlement Class Member will automatically receive an Individual Class Payment unless they affirmatively opt out of the Settlement. *Id*. The monetary terms of the Settlement are summarized below:

- Gross Settlement Amount ("GSA"): $435,000.00
- Minus Court-approved attorneys' fees: $145,000.00
- Minus Court-approved verified costs (up to): $30,000.00

[2] Following Defendant's representation of its financial condition, Defendant turned over its financial records to Plaintiff's retained expert, Keith Messerschmidt, who is a forensic accountant and has consulted or provided expert testimony in dozens of litigation and insurance matters. Blakely Decl., ¶ 12. With Mr. Messerschmidt's assistance, Plaintiff determined that Defendant could not reasonably afford to pay more than the Gross Settlement Amount and that the requested payment plan was necessary to avoid serious interruptions to its business operations. *Id.*

• Minus Court-approved Service Payment:	$10,000.00
• Minus amount set aside as PAGA penalties:	$20,000.00
• Minus estimated settlement administration costs:	$11,850.00
Net Settlement Amount ("NSA"):	$218,150.00
• **Plus 25% "PAGA Amount":**	**$5,000.00**
Total Amount Paid to Settlement Class Members:	**$223,150.00**

1. <u>The Settlement Provides for Reasonable Monetary Payments</u>

After deducting amounts for the Court-approved attorneys' fees and costs, Class Representative Service Payment to Plaintiff, the amount set aside as PAGA civil penalties, and settlement administration costs, the Settlement requires Defendant to pay a Net Settlement Amount ("NSA") of at least $218,150.00 to all Settlement Class members who do not timely opt-out. *See* Settlement, §§ 1.27, 3.2. All of the NSA shall be distributed to all participating Settlement Class members based on the proportionate number of workweeks each participating Settlement Class Member worked during the Class Period. Settlement, § 3.2.4. Additionally, Five Thousand Dollars and Zero Cents ($5,000.00) shall be designated as the "Individual PAGA Payments" and shall be distributed to all Settlement Class members (regardless of whether they opt-out) proportionately based on the number of PAGA workweeks worked at any time from January 23, 2023 through November 4, 2024 ("PAGA Period"). *Id*., at §§ 1.32, 3.2.5.1.

According to Defendant, there are approximately 1,186 Settlement Class members. Blakely Decl., ¶ 14. Therefore*,* the average Individual Class Payment from the NSA is projected to be approximately $183.94. *Id*. Settlement Class members will have forty-five (45) calendar days from the mailing of the Notice Packets to opt-out or object to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying the Settlement. *See* Settlement, §§ 1.40, 7.5.1, 7.7.2. Those Settlement Class members who do not opt-out of the Settlement will be bound by its terms and will release all claims against Defendant included within the Settlement. *See Id*., at § 7.5.3.

2. <u>Attorneys' Fees and Costs, Service Payment, and PAGA Payment</u>

Plaintiff will apply for Class Representative Service Payment at the time of seeking final approval of the proposed class action settlement in the amount of $10,000.00 for her services to the Settlement Class. *See* Settlement, §§ 1.14, 3.2.1; Blakely Decl., ¶ 26. "[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases,* 186 Cal.App.4th 1380, 1393-94 (2010). As will be fully briefed at the time of final approval, Plaintiff's requested service payment is intended to recognize the time and effort Plaintiff expended on behalf of the Settlement Class, including providing substantial factual information and documents to Class Counsel, discussing the claims and theories at issue in the litigation, actively participating in the prosecution of her claims, and the significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case, especially given Plaintiff's status as a current employee at the time of initiating this Action. *See generally*, Livingston Decl.

Class Counsel will also apply for an attorneys' fees award of one-third of the GSA, which is currently estimated to be $145,000.00, and up to $30,000.00 in verified costs reimbursement. *See* Settlement, § 3.2.2; Blakely Decl., ¶ 25. Plaintiff submits the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. *Id*. Class Counsel has incurred substantial attorneys' fees conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, conducting extensive informal discovery, analyzing Settlement Class members' timekeeping and payroll records with the help of a retained expert, creating a comprehensive damages model, preparing for and attending mediation, reviewing Defendant's financials with the help of a retained forensic accountant, negotiating and preparing the long-form Settlement Agreement, preparing this Motion, and otherwise litigating the case. *Id*. Class Counsel expects to expend additional attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding questions from Settlement Class members, preparing the Final Approval papers, and attending the Final Approval hearing. *Id*.

California courts recognize that an appropriate method for awarding attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of a settlement. *See, e.g., Laffitte v. Robert Half Int'l, Inc.,* 1 Cal.5th 480, 506 (2016) (holding "the percentage of fund method survives in California class action cases"). Class Counsel's request for fees of one-third of the Gross Settlement Amount is well within the range of reasonableness and indeed is considered the typical rate for common fund settlements. Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. *See* 4 Newberg on Class Actions § 14.6 (4th Ed. 2013).

Class Counsel submit that their request for attorneys' fees is reasonable when viewed as an overall percentage of the Settlement and in light of the substantial risks and significant work undertaken, the results obtained, and the efficiency with which the litigation has been conducted. Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys' fees and verified costs upon seeking final approval.

Additionally, the parties have agreed to designate $20,000.00 of the Gross Settlement Amount as PAGA civil penalties, of which $15,000.00 (75%) will be paid to the LWDA, with the remaining $5,000.00 (25%) for distribution to the Aggrieved Employees, as the PAGA requires such penalties to be allocated per Labor Code § 2699(i). *See* Settlement, § 3.2.5. Plaintiff submits this allocation to the LWDA for civil PAGA penalties is appropriate. *See, e.g., Chu v. Wells Fargo Investments, LLC*, Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (N.D. Cal. 2011) (approving PAGA payment of $7,500 to LWDA out of $6.9 million common-fund settlement); *Lazarin v. Pro Unlimited, Inc.*, Case No. C11-03609 HRL, 2013 WL 3541217 (N.D. Cal. 2013) (approving PAGA payment of $7,500 to LWDA out of $1.25 million common-fund settlement).

IV. <u>ARGUMENT</u>

A. <u>PRELIMINARY APPROVAL IS WARRANTED</u>

California Rule of Court 3.769 conditions settlement of a class action on court approval, which is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012) (Rule 3.769 requires trial court to determine "that the settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule 23(e) requires the trial court to determine "whether a proposed settlement is fundamentally fair, adequate, and reasonable"). Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). The Court's role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See* e.g., *Hanlon*, supra, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the Settlement was negotiated at arm's-length by class counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g.*, *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

1. Standard for Preliminary Approval

To make a fairness determination, the Court should consider several factors, including: "the strength of Plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and views of counsel." *Dunk v. Ford Motor Co.,* 48 Cal.App.4th 1794, 1801 (1996). "The list of factors is not exclusive, and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." *Wershba v. Apple Computer, Inc.,* 91 Cal.App.4th at 245 (2001). As discussed below, the proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors in this case.

a. The Strength of Plaintiff's Case

Although Plaintiff steadfastly maintains that her claims are meritorious, Plaintiff acknowledges that there were substantial risks and uncertainty in proceeding with litigation. As described above, Defendant presented multiple defenses to Plaintiff's claims, both on the merits and with respect to class certification. Thus, while Plaintiff was prepared to litigate these claims through class certification and ultimately trial, success was far from certain, especially in light of Defendant's arbitration agreements and financial condition.

b. Risk, Expense, Complexity, and Duration of Further Litigation

Although the Parties engaged in significant informal discovery prior to mediation, the Parties still had significant formal discovery to complete had the matter not been settled. Blakely Decl., ¶ 24. This would have required the expenditure of substantial time and resources by both Parties that would have very likely spanned several years. *Id*. Even if Plaintiff was to certify the classes, the Parties would incur considerably more attorneys' fees and costs through a possible decertification motion, trial, and possible appeal. *Id.* This Settlement avoids those risks and the accompanying expense. *Id.*

c. **Risk of Maintaining Class Action Status**

Plaintiff had not yet filed her class certification motion, and as such, the extent to which Plaintiff's proposed classes were certifiable is somewhat speculative. Absent settlement, there was a risk there would not be a certified class at trial, or if there were, that it would consist of a significantly smaller group of employees than the proposed Settlement Class, especially in light of Defendant's arbitration agreements, and the expected recovery would be significantly reduced. Thus, this factor supports preliminary approval.

d. Amount Offered in Settlement Given Realistic Value of Claims

The Settlement provides a positive recovery for the Settlement Class in the face of disputed claims, arbitration agreements, and financial issues. Plaintiff, with the help of her retained expert, conducted a detailed analysis of alleged unpaid wages, meal period violations, rest period violations, failure to reimburse for all necessary business expenditures, wage statement penalties, waiting time penalties, and PAGA civil penalties. A summary of the results of Plaintiff's exposure analysis are discussed below:

Unlawful Timekeeping Policies/Practices: **$71,399**

Plaintiff alleges that Defendant failed to pay its employees for all hours worked. Blakely Decl., ¶ 16. Specifically, Plaintiff alleges that Defendant had a policy and practice of requiring its employees to record their scheduled hours worked rather than all hours on the clock. *Id*. Plaintiff estimates that employees worked a total of 30 minutes off-the-clock per workweek. *Id*. Additionally, based on Plaintiff's expert's analysis and extrapolation of employee timekeeping records, Plaintiff determined that Plaintiff and other non-exempt employees worked a total of 50,974 workweeks. *Id.* Plaintiff's expert further calculated the average rate of pay for employees during the Class Period to be approximately $26.68 per hour. *Id.* Accordingly, Plaintiff calculated Defendant's potential exposure for unpaid wages to be approximately $679,993 (50,974 workweeks * 0.5 hours * $26.68 average hourly rate). *Id*.

In response, Defendant contends that its timekeeping policies/practices complied with California law and that it has always properly compensated Settlement Class members for all hours worked throughout the Class Period. Blakely Decl., ¶ 16. Defendant states that to the extent that employees worked over their scheduled hours, they were instructed to inform Defendant and would always be paid for the hours that were reported. *Id.* Defendant further asserts that employees often worked less than their scheduled time and were therefore, often overpaid for their hours worked. *Id*. Finally, Defendant asserts that Plaintiff would be unable to certify this claim since its timekeeping policies/practices are facially neutral and individualized inquiries would be necessary to determine whether employees were underpaid, or potentially overpaid, for each workday in question, resulting in an unmanageable series of mini-trials. *Id*. Based on these defenses, Plaintiff discounted Defendant's potential liability by 70% for a risk of non-certification and the existence of arbitration agreements, and by an additional 65% to account for the risk of being unsuccessful on the merits or failure to recover the full amount sought, for a projected total of approximately $71,399. *Id*.

<u>Meal Period Violations</u>: **$66,798**

Based on Plaintiff's expert's review and extrapolation of the timekeeping records produced by Defendant, there were approximately 16,691 non-compliant meal periods during the Class Period. Blakely Decl., ¶ 17. Therefore, Plaintiff calculated Defendant's maximum exposure for meal period violations at approximately $445,316 (16,691 non-complaint meal periods * $26.68 average premium). *Id*.

However, Defendant contends that it maintained compliant meal period policies throughout the Class Period and provided compliant meal periods in line with those policies. Blakely Decl., ¶ 17. Defendant also asserts that under *Brinker* it is only required to "provide" the opportunity to take meal periods, not "ensure" meal periods are taken, and that, as described above, they have always done so, and that any non-complaint meal periods in the timekeeping records were the result of lawful employee waiver or choice. *Id.* Defendant also maintains that Plaintiff's meal period claim is not suited for class certification, since individual inquiries would be needed to assess which employees took non-compliant meal periods, how many meal periods were non-compliant, and the reasons why a particular employee did not take a compliant meal period on a particular shift. *Id.* In light of these defenses, Plaintiff discounted Defendant's maximum exposure by 70% for the risk of non-certification and the existence of arbitration agreements, an additional 50% to account for Defendant's defenses on the merits or failure to recover the full amount sought, to arrive at an estimated total of approximately $66,798. *Id.*

<u>Rest Period Violations</u>: **$129,376**

Plaintiff alleges that Defendant failed to authorize and permit all legally compliant off-duty rest periods to Plaintiff and other non-exempt employees as the nature of Plaintiff's and other non-exempt employees' job, including providing constant supervision to children, often prevented Plaintiff and other employees from taking their rest periods. Blakely Decl., ¶ 18. Based on Plaintiff's expert's analysis of Defendant's time records, Plaintiff calculates employees worked 161,639 shifts in excess of 3.5 hours during the Class Period. *Id.* Plaintiff further estimates, based on her experience, that employees were not permitted to take all off-duty rest periods on at least two shifts per workweek, which is approximately a 40% violation rate. *Id.* Accordingly, Plaintiff estimated Defendant's exposure for failure to permit and authorize paid rest periods to be approximately $1,725,011 (161,639 shifts * .40 violation rate * $26.68 average premium). *Id*.

However, in response, Defendant contends that it has always permitted its employees to take their rest periods, and that given that employees work off-site, employees are free to take their rest periods whenever they choose. Blakely Decl., ¶ 18. Defendant also asserts that this claim is not amenable to class treatment as individualized inquiries would be required to determine which employees failed to take a rest period, how often, and the reasons why. *Id.* Defendant argues that these manageability concerns are especially present with respect to rest period claims given that rest periods are not required to be recorded. *Id*. In light of these defenses, Plaintiff discounted the maximum amount that the class could potentially recover by 75% for risk of non-certification and due to the existence of the arbitration agreements, and an additional 70% to account for the risk of being unsuccessful on the merits, to arrive at a projected exposure of approximately $129,376. *Id*.

<u>Failure to Reimburse Necessary Business Expenses</u>: **$19,115**

Plaintiff alleges that Defendant required Plaintiff and other non-exempt employees to use their personal cellphone to clock in and clock out for their shifts but failed to reimburse Plaintiff and other employees for use of their personal cell phones in violation of Labor Code section 2802. Blakely Decl., ¶ 19. Plaintiff estimates that there were approximately 50,974 workweeks worked by employees during the Class Period and that $2.50 per workweek ($10 per month) is an adequate reimbursement for cell phone expenses. *Id.* Therefore, Plaintiff calculated Defendant's exposure for this claim at approximately $127,435 (50,974 workweeks * $2.50 reimbursement). *Id*.

But as noted above, Defendant presented several defenses to this claim, including that Defendant began regularly reimbursing employees for use of their cellphones, and that employees could request additional reimbursement if they incurred more than $10 per month. Blakely Decl., ¶ 19. Additionally, Defendant argues that this claim is not suitable for class treatment, since it would require hundreds of mini-trials to determine whether each employee incurred expenses, whether their expenses were reasonable, and whether they were reimbursed enough for their cellphone. *Id.* In light of these defenses, Plaintiff discounted this claim by 70% for the risk of non-certification and in light of the arbitration agreements, and an additional 50% to account for Defendant's defenses on the merits or failure to recover the full amount sought, to arrive at a realistic estimated exposure of approximately $19,115. *Id*.

<u>Waiting Time Penalties</u>: **$222,905**

Defendant's records show approximately 557 non-exempt employees who separated their employment with Defendant since January 23, 2021, and are therefore eligible for waiting time penalties. Blakely Decl., ¶ 20. Based on an hourly rate of $26.68, Plaintiff estimated the average waiting time penalty per former employee to be approximately $6,403 ($26.68 * 8 hours per day * 30 days). *Id*. Therefore, Plaintiff calculated Defendant's maximum exposure for potential waiting time penalties to be approximately $3,566,471 (557 former employees * $6,403 average penalty). *Id*.

Defendant presented several defenses to this claim, most notably its assertion that because it possessed good-faith defenses to the underlying claims, and voluntarily made retroactive payments to employees for known violations, any failure to pay wages was not "willful" as a matter of law. Blakely Decl., ¶ 20. Defendant further asserts that Plaintiff's waiting time penalty exposure was grossly inflated as not every former employee experienced the alleged Labor Code violations. *Id*. Moreover, because the waiting time claim is derivative of Plaintiff's underlying wage claims, Plaintiff would need to overcome Defendant's defenses, both as to class certification and on the merits, as to their underlying claims. *Id*. To account for Defendant's defenses, Plaintiff discounted the maximum exposure by 75% for the risk of non-certification and in light of the arbitration agreements, and an additional 75% for the risk of losing on the merits and/or not receiving the maximum penalties sought, to arrive at an estimated exposure of approximately $222,905. *Id*.

<u>Wage Statement Penalties</u>: **$77,564**

Plaintiff alleges that Defendant is liable for wage statement penalties as a result of the unpaid wages as well as its failure to pay all meal and rest period premiums. Blakely Decl., ¶ 21. Those penalties are calculated as $50 for each "initial" violation and $100 for each "subsequent" violation, with a maximum of $4,000 per employee. *See* Labor Code § 226(e). *Id*. Based on Plaintiff's determination that there were approximately 549 unique employees and approximately 10,623 pay periods worked during the liability period applicable to Plaintiff's wage statement claim, Plaintiff calculated Defendant's potential wage statement exposure to be approximately $1,034,850 ((549 initial violations * $50 initial penalty) + (10,074 subsequent violations * $100 subsequent penalty)). *Id*.; *see also* Labor Code § 226(e).

In light of Defendant's arguments that no violations occurred, that employees suffered no "injury," that any alleged violations were not "knowing and intentional," that the wage statements always accurately reflected hours worked and amounts paid to employees, the risks associated with Plaintiff's underlying claims discussed above, Plaintiff discounted the maximum exposure by 70% for risk of non-certification, and by an additional 75% for risk of being unsuccessful on the merits or failure to recover the full amount sought, for an estimated realistic exposure of approximately $77,564. Blakely Decl., ¶ 21.

PAGA Penalties: **$39,836**

Plaintiff estimated a maximum total PAGA exposure of approximately $1,062,300 (10,623 pay periods * $100 "initial" penalty). Blakely Decl., ¶ 22; *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207 (2008) (finding "initial" violation rate applies until employer is notified that it is violating a Labor Code provision). However, these penalties derive from the underlying wage and hour violations discussed above, which Defendant disputes vigorously. Blakely Decl., ¶ 22; *see e.g.*, *Green v. Lawrence Service Co.* 2013 WL 3907506, *5, n.5 (C.D. Cal. 2013) (explaining that a PAGA claim's success was determined by the merits of its underlying claims). Defendant also asserts that the Court would drastically reduce any award of PAGA penalties as "confiscatory." Blakely Decl., ¶ 22; *see also Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc*. (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from $2.8 million to $500,000). Therefore, Plaintiff discounted the maximum figure by 75% for the risk of losing on the merits and/or not recovering a PAGA penalty for each and every pay period, and an additional 85% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of approximately $39,836. Blakely Decl., ¶ 22.

Using these estimated figures for each of the claims described above, Plaintiff predicted that the potential realistic recovery for the Settlement Class would be approximately $626,993. Blakely Decl., ¶ 23. The proposed Settlement of $435,000 represents approximately 70% of the reasonably forecasted recovery for the Settlement Class. *Id*. Preliminary approval is appropriate since the Settlement will provide significant monetary relief to the Settlement Class, which is consistent with what Plaintiff's counsel believes could have been recovered had the case proceeded through trial, especially when considering Defendant's financial condition and arbitration agreements.

e. **The Experience and Views of Counsel**

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific*

Enterprises Securities Litigation 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff is represented by competent, experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class actions and who have been appointed as class counsel in numerous cases alleging similar claims. *See* Blakely Decl., ¶¶ 2-6; *see also* Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 2-8; Declaration of Alexandra R. McIntosh ("McIntosh Decl."), ¶¶ 2-5. Counsel, with the help of a retained expert, conducted an in-depth review of Defendant's timekeeping and payroll records and drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. The Settlement was also reached with the assistance of an experienced and respected wage-and-hour class action mediator. Blakely Decl., ¶ 11. This factor strongly supports preliminary approval of the Settlement. *See Kullar*, *supra*, 168 Cal.App.4th at 130.

2. <u>The Preliminary Approval Standard Is Met</u>

At this stage, the Court can grant preliminary approval of the Settlement and direct that notice be given if the proposed Settlement: (1) falls within the range of possible approval; (2) appears to be the product of serious, informed, and non-collusive negotiations; and (3) has no obvious deficiencies. *See* Manual for Complex Litigation § 30.41(3rd Ed. 1995); 4 Newberg on Class Actions § 11:24-25 (4th Ed. 2013).

a. <u>The Settlement Is Within the Range of Possible Approval</u>

The proposed Settlement reflects approximately 70% of the estimated recovery the Settlement Class could reasonably expect in light of the significant litigation risks and will provide tangible, substantial monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure recovered in this case far exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL 221862, *4 (N.D. Cal. 2007) (approving settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler*, 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) ("it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Settlement Class members at trial"). Further, the average Individual Class Payment of approximately $183.94 is in line with average payments achieved in other wage and hour class action settlements.[3] Thus, Plaintiff submits that the proposed settlement is within the range of possible approval, such that notice should be provided to the Settlement Class members so that they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Settlement Class members have had the opportunity to opt-out or object.

b. **The Settlement Resulted from Serious, Informed Negotiations**

The Settlement resulted from an exchange of substantial information, arm's-length negotiations by counsel, two full-day mediations before an experienced wage and hour mediator, and additional months of negotiating the long-form settlement agreement. Thus, the Settlement is entitled to an initial presumption of fairness. *See Kullar*, *supra*, 168 Cal.App.4th at 130. As discussed above, Plaintiff carefully vetted the claims at issue, reviewed extensive timekeeping and payroll data, and conducted a detailed statistical analysis of the data with the help of a retained expert to arrive at her estimated class-wide damages figures. *See* Blakely Decl., ¶¶ 15-23. Plaintiff also hired a forensic accountant to review Defendant's financial records to determine a settlement amount that Defendant could reasonably afford to pay. *Id.* Thus, this factor supports preliminary approval.

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[3] *See e.g.*, *Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9, 2012) (average net recovery of approximately $105); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (Los Angeles County Super. Ct. Jan. 2, 2009) (average net recovery of approximately $90); *Palencia v. 99 Cents Only Stores*, Case No. 34-2010-00079619 (Sacramento County Super. Ct.) (average net recovery of approximately $80); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average recovery of approximately $65); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct. Jan. 20, 2006) (average net recovery of approximately $35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (Los Angeles County Super. Ct. July 23, 2010) (average net recovery of approximately $20); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. Dec. 17, 2008) (wage and hour class action settlement approved where average recovery was approximately $60); and *Williams v. Centerplate, Inc.*, Case Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC, 2013 WL 4525428 (S.D. Cal. Aug. 26, 2013) (average recovery of approximately $108).

c. **<u>The Settlement Is Devoid of Obvious Deficiencies</u>**

Preliminary approval of the Settlement is also warranted because there are no obvious deficiencies. The Settlement will provide substantial monetary relief to Settlement Class members. The amounts proposed for Class Counsel's attorneys' fees and costs, LWDA payment, and Plaintiff's Class Representative Enhancement Payment, are all reasonable and appropriate based on the facts of this case. Because the Settlement is devoid of obvious deficiencies, this factor supports preliminary approval.

B. <u>THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS</u>

The Settlement Class satisfies the criteria for certification of a settlement class under California law because: (1) the Settlement Class is so numerous that joinder would be impractical; (2) common questions of law and fact predominate over individual questions such that class certification is the most efficient and desirable way to maintain this litigation; (3) Plaintiff's claims are typical of the claims of absent Settlement Class members; and (4) Plaintiff and her counsel will fairly and adequately represent Settlement Class members' interest. *See* Cal. Civ. Proc. § 382.

1. <u>The Proposed Class Is Ascertainable and Numerous</u>

A class is "ascertainable" where the members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target Corp.* 189 Cal.App.4th 905, 916 (2010) (alterations in original). Here, the proposed class is defined as all current and former non-exempt employees who worked for Defendant in California during the Class Period. *See* Settlement, § 1.5. Therefore, Settlement Class members can be identified from Defendant's personnel and employment records. Defendant represents that the Settlement Class consists of approximately 1,186 current and former non-exempt employees. *See* Blakely Decl., ¶ 14; Settlement § 4.1. It would therefore be impracticable to bring all Settlement Class members before the Court or for each Settlement Class member to bring an individual lawsuit. Thus, the proposed Settlement Class satisfies numerosity. *See, e.g., Bowles v. Sup. Ct.*, 44 Cal.2d 574 (1955) (holding a class representing 10 beneficiaries of a trust sufficiently numerous).

2. **Common Issues of Law and Fact Predominate**

The focus in a certification dispute is not on the merits but rather on what types of questions, "common or individual," are likely to arise in the Action. *See Sav-On Drug Store, Inc. v. Superior Court (Rocher)* 34 Cal.4th 319, 327 (2004). Plaintiff's claims are predicated on, among other issues, Defendant's uniform timekeeping policies and/or practices, meal and rest period policies/practices, and reimbursement policies/practices. These types of claims are commonly held to be proper for class certification. *See e.g.*, *Benton v. Telecom Network Specialists, Inc.*, 220 Cal.App.4th 701, 726 (2013) (certifying meal and rest period claims).

3. **The Claims of the Named Plaintiff Are Typical**

The typicality requirement is satisfied where class representatives have claims that are typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* 191 Cal.App.3d 1341, 1347 (1987) (finding typicality satisfied where named Plaintiff purchased the same goods as the putative class in a consumer class action). Here, Plaintiff's claims are typical of those held by the Settlement Class members. First, Defendant employed Plaintiff as a non-exempt employee during the Class Period, and Plaintiff was subject to Defendant's wage and hour policies at issue in this case. *See* Livingston Decl., ¶ 2. Second, Plaintiff was injured by the same challenged policies/practices that allegedly injured the Settlement Class as a whole. For example, Plaintiff asserts that she was deprived of all legally compliant meal and rest periods. *Id*., at ¶¶ 3-4. Plaintiff further asserts that she did not receive accurate and compliant wage statements and did not receive all wages at the time of separation of employment. *Id*. Because Plaintiff has suffered the same injuries as the other members of the Settlement Class, the typicality requirement is satisfied.

4. **Plaintiff and Class Counsel Will Fairly and Adequately Represent the Class**

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *See Capital People First v. State Dept. of Developmental Services* 155 Cal.App.4th 676, 697 (2007). Plaintiff and her counsel will adequately represent the Settlement Class, as there are no conflicts between Plaintiff and the proposed Settlement Class, and Plaintiff possesses claims that are in line with those of the Settlement Class. *See McGhee v. Bank of America* 60 Cal.App.3d 442, 450-51 (1976) (adequacy satisfied where there was no indication that Class Counsel were not qualified and the named plaintiff had no interests antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage and hour class action litigation. *See* Blakely Decl., ¶¶ 2-6; Haines Decl., ¶¶ 2-8; McIntosh Decl., ¶¶ 2-5.

C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE

This Court should order distribution to the Settlement Class of the proposed Class Notice by U.S. Mail, postage prepaid, using the last known mailing address information provided by Defendant. *See* Settlement, § 7.4.2. This manner of giving notice is the "best notice practicable" under the circumstances because it provides "individual notice to all members who can be identified through reasonable effort." *See Eisen v. Carlisle & Jacquelin* 417 U.S. 156, 173 (1974). Here, the Parties propose that the Settlement be administered by ILYM Group, Inc. ("ILYM"), an experienced class action settlement administrator. *See generally* Declaration of Anthony Rogers ("Rogers Decl.") and attached exhibits. Settlement Class members' addresses will be ascertainable through Defendant's personnel and payroll records, which Defendant will provide to ILYM within thirty (30) calendar days of preliminary approval of the Settlement. *See* Settlement, § 4.2. Within fourteen (14) calendar days of receiving the Class Data, ILYM will mail the Class Notice to all Settlement Class members. *Id.*, at § 7.4.2. To the extent that any notices are returned, ILYM will perform a "skip trace" to track any Settlement Class member's current mailing address. *Id.*, at § 7.4.3.

The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because it advises Settlement Class members of the nature of the claims, basic contentions and denials of the parties, and the key terms of the Settlement, the 45-day deadline to opt-out or object to the Settlement and the procedures by which to do so, explains the recovery formula and expected recovery amount for each Settlement Class member, and advises them that they will be bound by the terms of the Settlement if they do not opt-out. *See* Blakely Decl., Exh. A to Exh. 1. The proposed Class Notice will also notify Settlement Class members of the final approval hearing date and provides the Settlement Class contact information for Class Counsel and advises Settlement Class members that they may enter an appearance through counsel if they wish to. *Id.* This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching Settlement Class members.

D. <u>THE COURT SHOULD SET A FINAL APPROVAL HEARING</u>

Finally, this Court should set a hearing for Final Approval of the Settlement on a date appropriately scheduled to follow the deadline by which Settlement Class members must file objections to the Settlement or opt-out. *See* California Rule of Court 3.769.

V. <u>CONCLUSION</u>

For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily approve the proposed Settlement, provisionally certify the Settlement Class, and enter the Proposed Order submitted concurrently herewith.

Dated: November 24, 2025 HAINES LAW GROUP, APC

By: ______________________
Sean M. Blakely
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