

Barbara DuVan-Clarke (State Bar No. 259268)
BDC@blackstonepc.com
Danielle GruppChang (State Bar No. 313881)
dgruppchang@blackstonepc.com
P.J. Van Ert (State Bar No. 234858)
pjvanert@blackstonepc.com
Annabel Blanchard (State Bar No. 258135)
ablanchard@blackstonepc.com
BLACKSTONE LAW, APC
8383 Wilshire Boulevard, Suite 745
Beverly Hills, California 90211
Tel: (310) 622-4278 / Fax: (855) 786-6356

Attorneys for Plaintiff Malayasia Lewis, individually
and on behalf of others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

MALAYASIA LEWIS, individually, and on
behalf of others similarly situated,

Plaintiff,

v.

EASTERSEALS NORTHERN CALIFORNIA;
EASTER SEALS, INC. DBA EASTERSEALS;
CATALIGHT FOUNDATION; BEHAVIORAL
HEALTH PROVIDER NETWORK, LLC; XOLV
TECHNOLOGY SOLUTIONS;
and DOES 1 through 25, inclusive,

Defendants.

Case No. 24CV060401

Honorable Michael Markman
Department 23

**NOTICE OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: November 25, 2025
Time: 10:00 a.m.
Dept.: 23

Complaint Filed: January 17, 2024
FAC Filed: September 15, 2025
Trial Date: Not Set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on **November 25, 2025 at 10:00 a.m.** in Department 23 of
3 the above-captioned Court located at 1225 Fallon Street, Oakland, California 94612, pursuant to
4 California Code of Civil Procedure section 382 and Rule 3.769 of the California Rules of Court, Plaintiff
5 Malayasia Lewis (“Plaintiff”) will and hereby does move the Court for an Order granting preliminary
6 approval of the proposed class action and PAGA settlement between Plaintiff and Defendants Easterseals
7 Northern California, Easter Seals, Inc. dba Easterseals, Catalight Foundation, Behavioral Health Provider
8 Network, LLC, and Xolv Technology Solutions (collectively, “Defendants”).

9 Plaintiff requests that the Court enter an Order:

10 1. Preliminarily approving the Joint Stipulation of Class Action and PAGA Settlement and
11 Amendment No. 1 to Joint Stipulation of Class Action and PAGA Settlement (together, the “Settlement”
12 or “Settlement Agreement”) attached as Exhibits 3a and 3b to the Declaration of Annabel Blanchard in
13 Support of Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA Settlement
14 (“Blanchard Decl.”);

15 2. Certifying the Class for Settlement purposes only;

16 3. Appointing Plaintiff Malayasia Lewis as the Class Representative for Settlement purposes
17 only;

18 4. Appointing Jonathan M. Genish, Barbara DuVan-Clarke, Danielle GruppChang, P.J. Van
19 Ert, and Annabel Blanchard of Blackstone Law, APC as Class Counsel for Settlement purposes;

20 5. Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as
21 Exhibit A to the Settlement Agreement, to be mailed to the Class;

22 6. Approving the opt-out and objection procedures provided in the Settlement Agreement
23 and set forth in the Class Notice;

24 7. For each Class Member, directing Defendants to furnish their full name, last known
25 mailing address, Social Security number, dates worked for Defendants during the Class Period,
26 Workweeks worked for Defendants during the Class Period, and Pay Periods worked for Defendants
27 during the PAGA Period (if applicable), to the Settlement Administrator within twenty-one (21) calendar
28 days after entry of the order granting preliminary approval of the Settlement;

8. Approving the proposed deadlines for the settlement administration process; and

9. Setting a Final Approval Hearing.

Pursuant to California Labor Code section 2699(1)(2), on June 6, 2025, a copy of the Settlement was submitted to the California Labor and Workforce Development Agency (“LWDA”) via online submission through the LWDA’s website. (Blanchard Decl., ¶ 48 and Exh. 4).

This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the Declaration of Annabel Blanchard, the Declaration of Plaintiff Malayasia Lewis, the Declaration of the Settlement Administrator (Sean Hartranft of Apex Class Action Administrators, LLC), the pleadings and other records on file with the Court in this matter, and any other further evidence or argument that the Court may properly receive at or before the hearing.

Respectfully submitted,

Dated: September 23, 2025

BLACKSTONE LAW, APC

By: A. Blanchard
Annabel Blanchard
Attorneys for Plaintiff Malayasia Lewis

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	FACTUAL AND PROCEDURAL BACKGROUND.....	2
III.	THE SETTLEMENT TERMS	3
	A. Class Definition	3
	B. Amount of Settlement.....	4
	C. Allocation and Funding of the Gross Settlement Amount	4
	D. Released Claims	6
IV.	STANDARD OF REVIEW FOR PRELIMINARY APPROVAL	7
V.	THE SETTLEMENT IS PRESUMED FAIR.....	8
	A. The Settlement Was Reached as a Result of Arm’s-Length Bargaining	8
	B. Sufficient Investigation and Discovery by Experienced Class Counsel	9
	C. The Settlement is Fair and Reasonable in Light of the Parties’ Respective Legal Positions and Recovery Risks.....	9
	1. Class Counsel’s Analysis of the Maximum Available Liability and Damages	10
VI.	CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED	15
	A. An Ascertainable Class Exists Which is So Numerous That Joinder of All Members is Impracticable.....	15
	B. The Class Shares a Well-Defined Community of Interest	16
	C. A Class Action is Superior to a Multiplicity of Litigation.....	17
VII.	THE REQUESTED ENHANCEMENT PAYMENT IS REASONABLE.....	17
VIII.	THE REQUESTED ATTORNEYS’ FEES AND COSTS ARE REASONABLE	18
IX.	THE CLASS NOTICE AND THE OPT-OUT AND OBJECTION PROCESS MEETS DUE PROCESS REQUIREMENTS.....	19
X.	CONCLUSION	21

TABLE OF AUTHORITIES

Cases

<i>Aguirre v. Genesis Logistics</i> , 2013 WL 10936035 (C.D. Cal. 2013)	13
<i>Armstrong v. Board of School Directors of City of Milwaukee</i> , 616 F.2d 305 (7th Cir. 1980).....	7
<i>B.W.I. Custom Kitchen v. Owens-Illinois, Inc.</i> , 191 Cal.App.3d 1341 (1987)	15
<i>Bradley v. Networkers Int’l, LLC</i> , 211 Cal.App.4th 1129 (2012)	10
<i>Brinker Restaurant Corp. v. Superior Court</i> , 53 Cal.4th 1051 (2012);.....	9, 10
<i>Carrington v. Starbucks Corp.</i> 30 Cal.App.5th 504, 529 (2018)	13
<i>Castillo v. ADT, LLC</i> , 2017 WL 363108 (E.D. Cal. Jan. 25, 2017)	13
<i>Choate v. Celite Corp.</i> , 215 Cal App. 4th 1460, 1468 (2013)	11
<i>Clark v. Am. Residential Servs. LLC</i> , 175 Cal. App. 4th 785 (2009)	8
<i>Clothesrigger, Inc. v. GTE Corp.</i> , 191 Cal.App.3d 605 (1987)	14
<i>Cotter v. Lyft, Inc.</i> , 193 F.Supp.3d 1030 (N.D. Cal. 2016).....	13
<i>Daar v. Yellow Cab Co.</i> , 67 Cal. 2d 695 (1967).....	14, 15
<i>Duran v. U.S. Bank Nat. Assn.</i> , 59 Cal.4th 1 (2014).....	10
<i>Elliot v. Spherion Pac. Work, LLC</i> , 572 F.Supp.2d 1169, 1181-82 (C.D. Cal. 2008).....	12
<i>Gaudin v. Saxon Mortgage Servs., Inc.</i> , 2015 WL 7454183 (N.D. Cal. Nov. 23, 2015)	17
<i>Hebbard v. Colgrove</i> , 28 Cal.App.3d 1017, 1030 (1972).....	14
<i>In re Cellphone Fee Termination Cases</i> , 186 Cal.App.4th 1380 (2010).....	18
<i>In re Online DVD Rental</i> , 779 F.3d 934 (9th Cir. 2014)	16
<i>Jaimez v. DAIOHS USA, Inc.</i> , 181 Cal.App.4th 1286 (2010).....	11
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116.....	9
<i>Lealao v. Beneficial Cal, Inc.</i> , 82 Cal.App.4th 19 (2000)	17
<i>Linder v. Thrifty Oil Co.</i> , 23 Cal.4th 429 (2000)	16
<i>McGee v. Bank of America</i> , 60 Cal.App.3d 442 (1976)	16
<i>Miller v. Woods</i> , 148 Cal.App.3d 862 (1983).....	14
<i>Munoz v. BCI Coca-Cola Bottling Co.</i> , 186 Cal.App.4th 399 (2010)	16
<i>Naranjo v. Specturm Security Services, Inc.</i> , 40 Cal.App.5th 444 (2019).....	11

1	<i>Officers for Justice v. Civil Service Commission of City and County of San Francisco</i> , 688 F.2d 615 (1982).....	7
2	<i>Price v. Starbucks Corp.</i> , 192 Cal.App.4th 1136 (2011).....	12
3	<i>Blanchard v. City of Hayward</i> , 126 Cal.App.3d 926, 934 (1981)	14
4	<i>Sanchez v. McDonalds Restaurants of California, Inc.</i> , 2017 WL 4620746 (LA Super. Ct. July 6, 2017)	13
5		
6	<i>Seastrom v. Neways, Inc.</i> , 149 Cal.App. 4th 1496 (2007)	15
7	<i>See In re Microsoft I-V Cases</i> , 135 Cal.App.4th 706 (2006).....	7
8	<i>Smith v. Lux Retail North America, Inc.</i> , 2013 WL 2932243 at *3 (N.D. Cal. June 13, 2013).....	13
9	<i>Thurman v. Bayshore Transit Management, Inc.</i> , 203 Cal.App.4th 1112,1131 (2012)	13
10	<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal.App.4th 224 (2001).....	7, 8
11	<i>Wesson v. Staples the Office Superstore, LLC</i> , 68 Cal.App.5th 746 (2021).....	12
12	Statutes	
13	Code of Civil Procedure Section 382.....	14
14	Labor Code section 203	11
15	Other Authorities	
16	<i>Findings of the Study of California Class Action Litigation</i> , 2000-2006, available at http://www.courts.ca.gov/ documents/class-action-lit-study.pdf	10
17	Rules	
18	Cal. Rules of Court, Rule 3.769(c)	7
19	Cal. Rules of Court, Rule3.769(g)	7
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Malayasia Lewis (“Plaintiff”) seeks preliminary approval of the Joint Stipulation of Class
4 Action and PAGA Settlement and Amendment No. 1 to the Joint Stipulation of Class Action and PAGA
5 Settlement (together, the “Settlement” or “Settlement Agreement”) entered into between Plaintiff and
6 Defendants Easterseals Northern California, Easter Seals, Inc. dba Easterseals, Catalight Foundation,
7 Behavioral Health Provider Network, LLC, and Xolv Technology Solutions (collectively, “Defendants”)
8 (together, with Plaintiff, the “Parties”). (Declaration of Annabel Blanchard in Support of Plaintiff’s
9 Motion for Preliminary Approval of Class Action and PAGA Settlement [“Blanchard Decl.”], Exhs. 3a,
10 3b). The Settlement terms are outlined as follows:

- 11 • Class Size: Approximately 349 individuals.
- 12 • Gross Settlement Amount: Nine Hundred Fifty Thousand Dollars and Zero Cents
13 (\$950,000.00).
- 14 • Attorneys’ Fees and Costs: Attorneys’ fees of thirty-five percent (35%) of the Gross
15 Settlement Amount (\$332,500.00 if the Gross Settlement Amount is \$950,000.00) plus actual
16 litigation costs and expenses not to exceed Thirty Thousand Dollars and Zero Cents
17 (\$30,000.00), to be paid from the Gross Settlement Amount.
- 18 • Enhancement Payment: Ten Thousand Dollars and Zero Cents (\$10,000.00), to be paid from
19 the Gross Settlement Amount.
- 20 • Settlement Administration Costs: Not to exceed Ten Thousand Dollars and Zero Cents
21 (\$10,000.00), to be paid from the Gross Settlement Amount.
- 22 • PAGA Amount: Fifty Thousand Dollars and Zero Cents (\$50,000.00) from the Gross
23 Settlement Amount, 75% of which will be paid to the Labor and Workforce Development
24 Agency (“LWDA”) and the remaining 25% to be paid to the PAGA Employees.
- 25 • Estimated Net Settlement Amount: Five Hundred Seventeen Thousand Five Hundred Dollars
26 and Zero Cents (\$517,500.00) to be distributed to Settlement Class Members.

27 As set forth herein, the Settlement is the product of informed discovery and arms-length
28 negotiations, and provides a fair, adequate, and reasonable recovery for the Class. Plaintiff therefore
respectfully requests that the Court grant preliminarily approval of the Settlement, conditionally certify

the Class, approve the proposed Notice of Class Action Settlement (“Class Notice”), and set a hearing date for final settlement approval, among other requested relief.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendants are a premier home and community-based services organization. Plaintiff was employed by Defendants as an hourly-paid, non-exempt direct services worker from approximately July 2022 to approximately October 2023. (Declaration of Plaintiff Malayasia Lewis in Support of Motion for Preliminary Approval of Class Action and PAGA Settlement [“Lewis Decl.”], ¶ 2).

On January 8, 2024, Plaintiff provided written notice to the LWDA by online submission and to Defendants by U.S. Certified Mail, pursuant to California Labor Code Section 2699.3, of the specified provisions of the California Labor Code alleged to have been violated by Defendants (“PAGA Letter”). (Blanchard Decl., ¶ 9 and Exh. 2a).

On August 15, 2025, Plaintiff provided an amended written notice to the LWDA by online submission, and to Defendants by U.S. Certified Mail, of the specified provisions of the California Labor Code alleged to have been violated by Defendants (“Amended PAGA Letter”). (Blanchard Decl., ¶ 10 and Exh. 2b).

On January 17, 2024, Plaintiff filed a Class Action Complaint for Damages in the action entitled *Malayasia Lewis v. Easterseals Northern California; Easter Seals, Inc. dba Easterseals*, Alameda County Superior Court Case No. 24CV060401, thereby commencing a putative class action against Defendants (“Class Action”). The Class Action Complaint alleges nine (9) causes of action for violations of the California Labor Code for: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide compliant meal periods and premium payments in lieu thereof, (4) failure to provide compliant rest periods and premiums payments in lieu thereof, (5) failure to timely pay wages during employment, (6) failure to provide accurate wage statements, (7) failure to timely pay wages upon termination, (8) failure to reimburse necessary business expenses, and (9) for violations of California Business & Professions Code Section 17200, et seq. based on the aforementioned California Labor Code violations. (*Id.*, ¶ 11).

On March 14, 2024 Plaintiff filed a Complaint for Enforcement Action Under the Private Attorneys General Act, Cal. Labor Code §§ 2698 et seq. (“PAGA Complaint”) in the action entitled

1 *Malayasia Lewis v. Easterseals Northern California; Easter Seals, Inc. dba Easterseals*, Alameda
2 County Superior Court Case No. 24CV067883 against Defendants (“PAGA Action”). The PAGA
3 Complaint alleges a single cause of action for civil penalties under the Private Attorneys General Act of
4 2004 pursuant to California Labor Code Section 2698 et seq. (“PAGA”) based on the aforementioned
5 California Labor Code violations. The PAGA Letter, the Amended PAGA Letter, the Class Action, and
6 the PAGA Action shall collectively be referred to herein as the “Action” (*Id.*, ¶ 12).

7 On September 15, 2025, Plaintiff filed a First Amended Complaint in the Class Action to add the
8 PAGA claim to the Class Action and to add those Defendants who were not named in the initial Class
9 Action Complaint or PAGA Complaint: Catalight Foundation, Behavioral Health Provider Network,
10 LLC, and Xolv Technology Solutions. (*Id.*, ¶ 13).

11 On January 28, 2025, the Parties participated in a formal mediation conducted by Lynn Frank,
12 Esq. (“Mediator”), a neutral and respected mediator with extensive experience in complex wage and hour
13 matters, and with the assistance of the Mediator’s evaluations, the Parties were able to reach an agreement
14 to resolve this dispute on a class and representative basis. (*Id.*, ¶ 13). The Parties then worked diligently
15 to negotiate and memorialize the terms in a long form settlement agreement. (*Ibid.*).

16 On May 5, 2025 the Parties executed the Joint Stipulation of Class Action and PAGA Settlement
17 (“Original Agreement”). On September 19, 2025, the Parties executed Amendment No. 1 to the Joint
18 Stipulation of Class Action and PAGA Settlement (“Amendment No. 1”). Together, the Original
19 Agreement and the Amendment No. 1 shall be referred to as the “Settlement” or “Settlement Agreement.”
20 (*Id.*, ¶ 15 and Exhs. 3a, 3b).

21 **III. THE SETTLEMENT TERMS**

22 **A. Class Definition**

23 For purposes of settlement only, the Parties have agreed that the Class shall be defined as “all
24 hourly or non-exempt employees employed by Defendants within the State of California at any time
25 during the Class Period” (“Class” or Class Member(s)). (Blanchard Decl., ¶ 16; Settlement Agreement,
26 ¶ 6.b). The Class Period is defined as the period from January 17, 2020 through May 8, 2025. (Blanchard
27 Decl., ¶ 16; Settlement Agreement, ¶ 6.f). Based on information provided by Defendants, as of January
28

28, 2025, it is estimated that there are a total of Three Hundred Forty Nine (349) Class Members. (Blanchard Decl., ¶ 16).

B. Amount of Settlement

The Parties have agreed to settle the class and PAGA claims at issue in the Action for a non-reversionary Gross Settlement Amount of Nine Hundred Fifty Thousand Dollars and Zero Cents (\$950,000.00), exclusive of employer-side payroll taxes. (Blanchard Decl., ¶ 17; Settlement Agreement, ¶ 6.p).

C. Allocation and Funding of the Gross Settlement Amount

The Gross Settlement Amount is a common fund and therefore includes all requested costs, fees, and other allocations. (Blanchard Decl., ¶ 17; Settlement Agreement, ¶ 6.p). The Gross Settlement Amount includes: (1) Class Counsel’s fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$332,500.00 if the Gross Settlement Amount is \$950,000.00); (2) Class Counsel’s actual litigation costs and expenses, not to exceed Thirty Thousand Dollars and Zero Cents (\$30,000.00); (3) Settlement Administration Costs, not to exceed Ten Thousand Dollars and Zero Cents (\$10,000.00); (4) Enhancement Payment in the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00); and (5) PAGA Amount of Fifty Thousand Dollars and Zero Cents (\$50,000.00). (Blanchard Decl., ¶ 17; Settlement Agreement, ¶¶ 6.p, 12, 13, 14, and 15). After the above-estimated amounts are deducted from the Gross Settlement Amount, the Net Settlement Amount that will be available for Class Members is currently estimated to be Five Hundred Seventeen Thousand Five Hundred Dollars and Zero Cents (\$517,500.00). (Blanchard Decl., ¶ 17). Additionally, 25% of the PAGA Amount (“PAGA Employee Amount”), which is \$12,500.00 out of \$50,000.00 will be fully distributed to “all hourly or non-exempt employees employed by Defendants in the State of California at any time during the PAGA Period” (“PAGA Employee(s)”). (Blanchard Decl., ¶ 17; Settlement Agreement, ¶¶ 6.w, 6.x, 6.y, and 14). The “PAGA Period” is defined as the period from January 8, 2023 through May 8, 2025. (Blanchard Decl., ¶ 17; Settlement Agreement, ¶ 6.z).

The Net Settlement Amount will be distributed and paid to all Class Members who do not submit a timely and valid Request for Exclusion (“Settlement Class Member(s)”) on a *pro rata* basis based on the number of weeks each Class Member worked for Defendants as an hourly or non-exempt employee

1 in California during the Class Period (“Workweeks”). (Blanchard Decl., ¶ 19; Settlement Agreement, ¶¶
2 6.ll and 6.mm). An employee will be considered to have worked a workweek if the employee worked at
3 least one day during the workweek. (Settlement Agreement, ¶ 6.mm). The *pro rata* share of the Net
4 Settlement Amount that a Class Member may be eligible to receive under the Class Settlement
5 (“Individual Settlement Share”) will be calculated by the Settlement Administrator, in accordance with
6 the Settlement Agreement. (Blanchard Decl., ¶ 19; Settlement Agreement, ¶¶ 6.s and 17).

7 The PAGA Employee Amount will be distributed and paid to all PAGA Employees on a *pro rata*
8 basis based on the number of pay periods each PAGA Employee worked for Defendants as an hourly or
9 non-exempt employee in California during the PAGA Period (“Pay Periods”). (Blanchard Decl., ¶ 20;
10 Settlement Agreement, ¶¶ 6.bb and 14). An employee will be considered to have worked a pay period of
11 the employee worked at least one day during the pay period. (Settlement Agreement, ¶ 6.bb). The *pro*
12 *rata* share of the PAGA Employee Amount that a PAGA Employee may be eligible to receive under the
13 PAGA Settlement (“Individual PAGA Payment”) will be calculated by the Settlement Administrator, in
14 accordance with the Settlement Agreement. (Blanchard Decl., ¶ 20; Settlement Agreement, ¶¶ 6.q and
15 18).

16 Each Individual Settlement Share will be allocated as twenty percent (20%) wages and eighty
17 percent (80%) penalties, interest, and non-wage damages. (Blanchard Decl., ¶ 21; Settlement Agreement,
18 ¶ 19). The portion allocated to wages will be reported on an IRS Form W-2 and the portions allocated to
19 penalties, interest, and non-wage damages will be reported on an IRS Form 1099 (if applicable) by the
20 Settlement Administrator. (Blanchard Decl., ¶ 21; Settlement Agreement, ¶ 19). The Settlement
21 Administrator will withhold the employee’s share of taxes and withholdings with respect to the wages
22 portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their net
23 payment of their Individual Settlement Share (“Individual Settlement Payment”). (Blanchard Decl., ¶
24 21; Settlement Agreement, ¶¶ 6.r and 19). The employer’s share of taxes and contributions in connection
25 with the wages portion of Individual Settlement Shares will be paid by Defendants separately and in
26 addition to the Gross Settlement Amount. (Blanchard Decl., ¶ 21; Settlement Agreement, ¶¶ 6.p and 19).
27 Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be
28 reported on an IRS Form 1099 (if applicable) by the Settlement Administrator. (Blanchard Decl., ¶ 21;

Settlement Agreement, ¶ 19).

The Settlement Agreement is a non-reversionary and non-claims made settlement. (Blanchard Decl., ¶ 22; Settlement Agreement, ¶¶ 6.p and 34). The Net Settlement Amount will be fully distributed to Settlement Class Members and the PAGA Amount will be fully distributed to the LWDA and PAGA Employees, in accordance with the Settlement Agreement. (Blanchard Decl., ¶ 22; Settlement Agreement, ¶¶ 17 and 18). No money will revert to Defendants. (Blanchard Decl., ¶ 22; Settlement Agreement, ¶ 6.p).

Each Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall be canceled. (Blanchard Decl., ¶ 23; Settlement Agreement, ¶ 36). Any funds associated with such canceled checks will be distributed by the Settlement Administrator to the Foundation for Advocacy and Inclusion (“FAIR”) as the cy pres beneficiary. (Blanchard Decl., ¶ 23; Settlement Agreement, ¶ 36).

D. Released Claims

Upon the full funding of the Gross Settlement Amount, Plaintiff and all Settlement Class Members will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Class Claims. (Settlement Agreement, ¶ 37).

Upon the full funding of the Gross Settlement Amount, Plaintiff, and the State of California with respect to all PAGA Employees, will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released PAGA Claims. (*Id.*, ¶ 38).

“Released Class Claims” means any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys’ fees, damages, or causes of action which were alleged or which could have been alleged based on the factual allegations in the Class Action Complaint (including any amendment thereto), arising during the Class Period, under any federal, state, or local law, and shall specifically include claims for Defendants’ alleged (1) failure to pay minimum wages, (2) unpaid overtime, (3) meal break violations, (4) rest break violations, (5) wages not timely paid during employment, (6) wage statement violations, (7) untimely final wages, (8) failure to reimburse necessary

business expenses, (9) violation of Business & Professions Code section 17200, *et seq.*, (10) failure to pay all regular rate wages (including sick leave pay), (11) failure to pay sick or vacation pay, (12) failure to maintain complete and accurate payroll records, in violation of California Labor Code Sections 201, 202, 203, 204, 210, 226(a), 226.7, 227.3, 246, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and Industrial Welfare Commission Wage Orders, including inter alia, Wage Order 4-2001, and all claims for attorneys' fees and costs and statutory interest in connection therewith, California Business and Professions Code sections 17200, *et seq.*, and any other claims, including claims for statutory penalties, pertaining to the Class Members. (*Id.*, ¶ 6.ee).

"Released PAGA Claims" means any and all claims arising from any of the factual allegations in the PAGA Letter, arising during the PAGA Period, for civil penalties under the Private Attorneys General Act of 2004, California Labor Code Sections 2698 *et seq.*, including all claims for attorneys' fees and costs related thereto, for Defendants' alleged failure to pay overtime and minimum wages, pay all regular wages, including sick pay and vacation pay, provide compliant meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide compliant wage statements, maintain complete and accurate payroll records, and reimburse necessary business-related expenses in violation of California Labor Code Sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 246, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and Industrial Welfare Commission Wage Orders, including inter alia, Wage Order 4-2001. (*Id.*, ¶ 6.ff).

"Released Parties" means Defendants and their current and former officers, directors, members, insurers, shareholders, subsidiaries, affiliates, predecessors, successors, and assigns. (*Id.*, ¶ 6.gg).

IV. STANDARD OF REVIEW FOR PRELIMINARY APPROVAL

The settlement of a class action requires court approval. (*See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996)). "In general, questions whether a settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion." (*Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 234-35 (2001) (disapproved on other grounds)).

The review and approval of a proposed class action settlement involves a two-step process. (*See* Cal. Rules of Court, Rule 3.769(c)). First, counsel submit the proposed terms of the settlement and the

1 Court makes a preliminary assessment of whether the settlement appears to be sufficiently within the
2 range of a fair settlement to justify providing notice of the proposed settlement to class members. After
3 notice is provided to the class, the Court must conduct a second inquiry into whether the proposed
4 settlement is fair, reasonable, and adequate. (Ibid).

5 The initial evaluation of the settlement at the preliminary approval step “is not a fairness hearing.”
6 (*Armstrong v. Board of School Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980)).
7 Rather, the limited purpose of this initial inquiry is to determine, at a threshold level, only whether the
8 proposed settlement is within the range of possible approval and, as a result, “whether there is any reason
9 to notify the class members of the proposed settlement and to proceed with a fairness hearing.” A
10 presumption of fairness exists where: (1) the settlement is reached through arm’s length bargaining; (2)
11 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel
12 is experienced in similar litigation; and (4) the percentage of objectors is small. (*See In re Microsoft I-V*
13 *Cases*, 135 Cal. App. 4th 706, 723 (2006)).

14 Preliminary approval does not require a court to make a final determination that the settlement is
15 fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after notice
16 of the settlement has been given to the class members and they have had an opportunity to object or
17 exclude themselves from the settlement. (*See* Cal. Rules of Court, Rule 3.769(g)). In considering a
18 potential class settlement, the court need not reach any ultimate conclusions on the issues of fact and law
19 which underlie the merits of the dispute and need not engage in a trial on the merits. (*See Officers for*
20 *Justice v. Civil Service Commission*, 688 F.2d 615, 625 (9th Cir. 1982)).

21 **V. THE SETTLEMENT IS PRESUMED FAIR**

22 **A. The Settlement Was Reached as a Result of Arm’s-Length Bargaining**

23 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is
24 reached through arm’s-length bargaining.” (*Wershba*, 91 Cal.App.4th at 245; *see also Clark v. Am.*
25 *Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009)). Here, the Parties’ settlement negotiations
26 were at all times made at arm’s-length and were adversarial. (Blanchard Decl., ¶ 24). The Settlement
27 was reached following a full day of mediation with a highly respected mediator with substantial
28 experience mediating wage and hour cases. (Ibid). At all times, Class Counsel was willing and prepared

1 to litigate this matter through class certification and trial if the Parties had been unable to reach a favorable
2 resolution. (*Id.*, ¶ 44).

3 **B. Sufficient Investigation and Discovery by Experienced Class Counsel**

4 Courts typically assess the status of discovery in determining whether a class action settlement
5 agreement is fair, reasonable, and adequate. (*Dunk*, 48 Cal.App.4th at 1801). Prior to mediation,
6 Defendants produced a random sampling of putative class members' time and pay records as well as
7 Plaintiff's personnel file, Defendants' relevant wage and hour policies, and information regarding the
8 total number of putative class members, the number of current versus former employees, the total
9 workweeks and pay periods worked by the putative class members, and the average rate of pay for the
10 putative class members. (Blanchard Decl., ¶ 25).

11 This allowed Class Counsel to conduct an informed assessment and analysis of the strengths and
12 weaknesses of the claims and the potential class-wide damages. (*Id.*, ¶ 26). Based on information
13 exchanged, the Parties extensively briefed issues regarding class certification and liability and provided
14 their analyses to the Mediator who helped the Parties debate the strengths and weakness of their respective
15 positions. (*Id.*, ¶ 27). Additionally, settlement negotiations were conducted by highly capable and
16 experienced counsel. (Blanchard Decl., ¶¶ 1-8). Accordingly, Class Counsel had sufficient information
17 and experience to act intelligently in negotiating the Settlement.

18 **C. The Settlement is Fair and Reasonable in Light of the Parties' Respective Legal Positions** 19 **and Recovery Risks**

20 A settlement is not judged against what might have been recovered had a plaintiff prevailed at
21 trial, nor does the settlement have to obtain 100% of the damages sought to be fair and reasonable.
22 (*Wershba*, 91 Cal.App.4th at 246, 250). In evaluating the reasonableness of a settlement, a trial court
23 must consider "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further
24 litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the
25 extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the
26 presence of a governmental participant, and the reaction of the class members to the proposed settlement."
27 (*Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008)).

28 Here, the reasonableness of the Settlement is underscored by the fact that Defendants have various

1 legal and factual grounds for defending the Action. Based upon Class Counsel's experience litigating
2 similar complex matters, Plaintiff reasonably expected a vigorous and lengthy defense to both class
3 certification and the merits of the Action absent a settlement.

4 **1. Class Counsel's Analysis of the Maximum Available Liability and Damages**

5 Class Counsel analyzed all available data and estimated Defendants' maximum potential exposure
6 to be approximately \$4,501,826, assuming the litigation was successful at trial on all claims at issue and
7 every employee had a violation for each claim on every shift worked. (Blanchard Decl., ¶ 28). This
8 maximum potential analysis was then reduced based on the challenges facing the likelihood of obtaining
9 class certification, prevailing at trial, and other attendant risks. (*Ibid*). This estimate is based off an
10 estimated maximum liability for all claims at issue and the total aggregate workweeks during the relevant
11 time period, less interest, and based on the analysis of the data which was extrapolated out for all class
12 members across the entire putative class period, which included: \$24,048 for meal period violations (less
13 meal period premiums paid); \$2,217,818 for rest period violations at a 100% violation rate; \$635,776 for
14 unpaid off-the-clock work for 1 hour per workweek of off-the-clock work; \$8,012 for unpaid overtime
15 wages; \$181,260 for unreimbursed business expenses; \$1,003,412 for waiting time penalties; and
16 \$431,500 for wage statement penalties. (*Ibid*). Plaintiff further estimated that Defendants faced an
17 additional exposure of \$441,800 in potential, non-stacked (i.e., one penalty, per employee, per pay period
18 during the PAGA statutory period) PAGA penalties. (*Ibid*). Together with the PAGA penalties, Plaintiff
19 calculated Defendants' maximum potential exposure at \$4,943,626 in damages. (*Ibid*).

20 **2. Class Counsel's Risk-Based Analysis and Risk-Based Adjustments**

21 While Plaintiff believes that Defendants faced significant exposure, substantial barriers to a
22 recovery existed. Defendants vigorously argued that Plaintiff's claims were not suitable for class
23 certification because individual issues and affirmative defenses would predominate should this case go
24 to trial. (Blanchard Decl., ¶ 31; *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012);
25 *Duran v. U.S. Bank Nat. Assn.*, 59 Cal.4th 1, 35-36 (2014); *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct.
26 2541, 2551 (2011)). While Plaintiff and Class Counsel disagree with Defendants' predictions, they also
27 recognize that there is a significant risk that the Court may deny class certification. (Blanchard Decl., ¶
28 31; *see also, Findings of the Study of California Class Action Litigation*, 2000-2006, available at

1 <http://www.courts.ca.gov/documents/class-action-lit-study.pdf> (finding that only 21.4% of all class
2 actions were certified either as part of a settlement or as part of a contested certification motion)).

3 For example, Plaintiff's meal period claims, which were based on Defendants' alleged failure to
4 provide lawful meal periods, have been increasingly difficult to certify in recent years. (Blanchard Decl.,
5 ¶ 32; *See Brinker*, 53 Cal. 4th at 1034-35). Plaintiff's theory of liability for meal period violations was
6 based on allegations that Defendants had failed to implement their policies and that their practices failed
7 to allow Class Members to take meal breaks in the manner required under California law. (Blanchard
8 Decl., ¶ 32; *See Bradley v. Networkers Int'l, LLC*, 211 Cal.App.4th 1129, 1150 (2012) (holding that "the
9 lack of a meal/rest break policy and uniform failure to authorize such breaks are matters of common
10 proof.")). Defendants contended that their policies and practices at all times during the Class Period were
11 lawful as Defendants maintained a comprehensive and lawful written meal period policy and paid meal
12 period premiums for any noncompliance with its policy. (Blanchard Decl., ¶ 32). Defendants further
13 argued that the rate of purported meal period violations reflected in the data would require individualized
14 inquiry and that such inquiry would prohibit a class from being certified. (*Ibid*). Class Counsel also had
15 to consider the risk that the Court would find validity in an individualized proof defense to certification
16 of Plaintiff's meal period claim. (*Ibid*).

17 Additionally, a large portion of Defendants' theoretical overall liability lies in Plaintiff's rest
18 period allegations. (*Id.*, ¶ 33). As with the meal period allegations, Defendants adamantly argued that
19 they had a lawful written rest period policy, provided compliant rest breaks, and relieved Class Members
20 of all duties as required under California law. (*Ibid*). Additionally, this claim was even more uncertain
21 given the difficulties associated with proving the alleged rest period violations, as Defendants were not
22 required to record these breaks. (*Ibid*). Given the lack of records demonstrating rest period violations,
23 there were legitimate concerns Plaintiff would not be able to certify these claims or prove substantial
24 damages with requisite certainty, which made the estimated value of this claim subject to much challenge.
25 (*Ibid*).

26 Plaintiff also faced challenges certifying and proving liability for her minimum wage and
27 overtime claims. (*Id.*, ¶ 34). These claims were largely based on Defendants' alleged unrecorded, off-
28 the-clock work performed by the Class Members both before and after their shifts and during purported

1 meal and rest periods, which Defendants adamantly disputed. (*Ibid*). However, the individualized nature
2 of why this work was performed and the individualized nature of damages presented substantial concerns
3 regarding the manageability of the case and the risk the Court could find these issues prevented
4 certification, and the estimated damages for this claim were based on an assumption that all Class
5 Members worked off the clock for at least one hour per week. (*Ibid*).

6 Plaintiff also contended that Defendants failed to reimburse Plaintiff and the other Class Members
7 for necessary business-related expenses, such as the usage of personal cell phones for work-related
8 purposes. (*Id.*, ¶ 35). Defendants contended that they had a policy and practice of reimbursing employees
9 for necessary business-related expenses and provided employees with all the necessary tools and supplies
10 to perform their job duties. (*Ibid*). Defendants further contended that, with respect to the alleged
11 expenses for which Plaintiff and the other Class Members never requested reimbursement from
12 Defendants, they did not know and had no reason to know that alleged business-related expenses had
13 been incurred. (*Ibid*). Defendants further contended that the reason why a Class Member undertook
14 certain expenses, while not others, and failed to receive reimbursement for certain expenses while not
15 others, would raise individual issues that could not be certified. (*Ibid*).

16 There are also substantial risks associated with Plaintiff's waiting time penalties and wage
17 statement claims. (*Id.*, ¶ 36). First, these claims were derivative of Plaintiff's claims for unpaid meal
18 period premiums, unpaid rest period premiums, unpaid minimum wages, and unpaid overtime wages,
19 and if certification was denied on those underlying claims, these derivative claims for penalties would
20 also likely fail. (*Ibid*). Further, even if Plaintiff prevailed on her underlying claims, she would still be
21 required to demonstrate that Defendants' violations of California Labor Code section 203 were *willful*
22 violations. (Blanchard Decl., ¶ 36; *See, e.g., Choate v. Celite Corp.*, 215 Cal App. 4th 1460, 1468 (2013)
23 (holding that "an employer's reasonable, good faith belief that wages are not owed may negate a finding
24 of willfulness")). Wage statement claims have also seen varying treatment at the appellate level because
25 such claims have an element of discretion attached to them rather than a pure calculation of damages after
26 liability is proven. (Blanchard Decl. ¶ 36; *Jaimez v. DAIOHS USA, Inc.*, 181 Cal.App.4th 1286 (2010)
27 *with Price v. Starbucks Corp.*, 192 Cal.App.4th 1136 (2011)). Accordingly, these derivative claims,
28

1 which comprised a substantial portion of Defendants’ estimated liability, were therefore uncertain.
2 (Blanchard Decl., ¶ 36).

3 Class Counsel also recognized that, even if Plaintiff prevailed at class certification, proving the
4 amount of wages due to Class Members would be an expensive, time-consuming, and uncertain
5 proposition. (*Id.*, ¶ 37). In order to prove liability and damages, Class Counsel will need to request and
6 analyze thousands of pages of documents, obtain the Class Members’ contact information, contact them,
7 and obtain their declarations at great expense. (*Ibid*). Obtaining the cooperation of current employees
8 would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a current
9 employer. (*Ibid*). On the other hand, Defendants would likely be able to obtain the cooperation of their
10 employees. (*Ibid*). Moreover, even if Plaintiff prevailed at class certification and trial, possible appeals
11 would substantially delay any recovery by the Class. (*Ibid*).

12 Therefore, taking into account how each of the above risks potentially effected Plaintiff’s ability
13 to first obtain class certification, and then prove the underlying violations, plus the cost and delay in
14 recovering the alleged potential damages, Class Counsel discounted Defendants’ estimated liability based
15 on the challenges facing his ability to succeed on class certification by 60% to \$1,977,450.40. (*Id.*, ¶ 37).
16 The merits-based risk factors further reduced Defendants’ estimated liability by an additional 50%.
17 (*Ibid*). This resulted in an adjusted estimated liability of \$988,725.20. (*Ibid*). In light thereof, the
18 settlement amount of \$950,000 is a significant settlement. (*Ibid*).

19 Class Counsel also contemplated the risks of proceeding with the PAGA claim and potential
20 liability Defendants could face from this claim as part of the global resolution. (*Id.*, ¶ 39). Existing case
21 law makes PAGA claims subject to the same defenses and risks as Plaintiff’s underlying wage claims.
22 (Blanchard Decl., ¶ 39; see, *Elliot v. Spherion Pac. Work, LLC*, 572 F.Supp.2d 1169, 1181-82 (C.D. Cal.
23 2008) (“Plaintiff’s claim under [PAGA] is wholly dependent upon her other claims. Because all of
24 Plaintiff’s other claims fail as a matter of law, so does her PAGA claim”)). Class Counsel also anticipated
25 that even if successful on the merits at trial, the imposition of cumulative civil penalties based on the
26 alleged wage and hour violations could be considered unjust, arbitrary and oppressive, or confiscatory,
27 and that Defendants would argue that they made a good faith attempt to comply with its legal obligations
28

warranting a reduction in penalties. (Blanchard Decl., ¶ 39).¹ Class Counsel also anticipated Defendants would argue that the violations per pay period were low, warranting an additional reduction in civil penalties. (*Ibid*). Finally, Class Counsel was also mindful of the fact that PAGA is fundamentally not intended to be compensatory in nature but is instead intended to facilitate enforcement of California’s labor laws by financing state activities and educating and deterring non-compliance. (*Ibid*).

Therefore, after considering this multitude of factors, Plaintiff and Class Counsel concluded that it was in the best interest of the State of California and the PAGA Employees to enter into the Settlement, and to allocate Fifty Thousand Dollars and Zero Cents (\$50,000.00) of the Gross Settlement Amount towards the PAGA claim, which represents approximately 5.26% of the Gross Settlement Amount. (*Id.*, ¶ 40). This percentage of the settlement is well within the range of wage and hour settlements regularly approved in both state and federal court for cases that include both a class and PAGA action. (*Ibid*). Typically, such hybrid cases allocate only 1% of the gross settlement value to resolve PAGA claims, and, indeed, settlements allocations as little as 0.22% of the gross settlement amount have been approved as reasonable by courts. (*Ibid*). Moreover, the overall relief obtained by the Settlement is significant, not only from a monetary perspective, but also because it fulfills the public policy objectives of PAGA—to promote enforcement of California’s labor laws, provide funds to the state, and deter future non-compliance by the employer. (*Ibid*).

The Settlement is in the best interest of the Class Members, the PAGA Employees, and the State of California and is within the accepted range of recoveries for this type of litigation given the inherent risk of litigation, the risk of obtaining and maintaining class certification, and the costs of further litigation. (*Id.*, ¶ 41).

¹ See, e.g., *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1131 (2012) (imposition of both statutory and civil penalties for same conduct is impermissible double recovery) (disapproved on other grounds); *Aguirre v. Genesis Logistics*, 2013 WL 10936035, at *3 (C.D. Cal. 2013) (“duplicative effect” of penalties is a factor in favor of “reducing ...the PAGA penalty”); *Smith v. Lux Retail North America, Inc.*, 2013 WL 2932243, at *3 (N.D. Cal. June 13, 2013) (declining to stack penalties based on the same conduct); *Castillo v. ADT, LLC*, 2017 WL 363108, at *4 (E.D. Cal. Jan. 25, 2017); *Sanchez v. McDonalds Restaurants of California, Inc.*, 2017 WL 4620746 (LA Super. Ct. July 6, 2017) (declining to stack penalties arising out of the same conduct); *Fleming v. Covidien, Inc.*, 2011 WL 756304718, at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by 80%); *Cotter v. Lyft, Inc.*, 193 F.Supp.3d 1030 (N.D. Cal. 2016) (indicating that a substantial reduction is warranted where good faith dispute exists in legal obligations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (approving reduction in penalties from \$50 per pay period to \$5 per pay period based on good faith attempts to comply with obligations and minimal violations).

1 **VI. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED**

2 Code of Civil Procedure Section 382 provides that three basic requirements must be met in order
3 to sustain any class action: (1) there must be an ascertainable class; (2) there must be a well-defined
4 community of interest in the question of law or fact affecting the parties to be represented; and (3)
5 certification will provide substantial benefits to litigants and the courts, i.e., proceeding as a class action
6 is superior to other methods. (*See Dunk*, 48 Cal.App.4th at 1806). Plaintiff contends that the Action,
7 which is based upon Defendants' wage and hour policies and practices, satisfies the class certification
8 requirements under California Code of Civil Procedure section 382. Defendants deny Plaintiff's
9 allegations, but for purposes of the Settlement only, Defendants have stipulated to certification of the
10 Class.

11 **A. An Ascertainable Class Exists Which is So Numerous That Joinder of All Members is**
12 **Impracticable**

13 Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of
14 the class, and (3) the means of identifying the class members. (*See Miller v. Woods*, 148 Cal.App.3d 862,
15 873 (1983)). In this case, all three considerations strongly favor class certification. Here, the Class is
16 defined as "all hourly or non-exempt employees employed by Defendants within the State of California
17 at any time during the Class Period." (Blanchard Decl., ¶ 16; Settlement Agreement, ¶ 6.b). This provides
18 a clear and definite scope for the proposed class.

19 Next, the Class is sufficiently numerous. There is no magic number that satisfies the numerosity
20 requirement. Courts have certified classes with as few as ten or twenty-eight class members. (*Blanchard*
21 *v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981); *Bowles v. Superior Court*, 44 Cal. 2d 574 (1995);
22 *Hebbard v. Colgrove*, 28 Cal.App.3d 1017, 1030 (1972)). Here, the estimated Class size of three hundred
23 forty-nine (349) individuals meets the numerosity requirement.

24 Finally, the question of whether class members are easily identifiable turns on whether a plaintiff
25 can establish "the existence of an ascertainable class." (*Daar v. Yellow Cab Co.*, 67 Cal.2d 695 at 706
26 (1967)). The existence of an ascertainable class in this case can be established through Defendants'
27 payroll records, and the Class definition is sufficiently specific to enable the Parties, Class Members, and
28 the Court to determine the parameters of the Class. (*See Clothesrigger, Inc. v. GTE Corp.*, 191

1 Cal.App.3d 605, 617 (1987)).

2 **B. The Class Shares a Well-Defined Community of Interest**

3 The community of interest requirement embodies three factors: (1) predominant questions of law
4 and fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives
5 who can adequately represent the class. (*Dunk*, 48 Cal.App.4th at 1806). Here, all three requirements
6 are easily satisfied.

7 The commonality criterion requires the existence of common question of law or fact and is
8 generally established with the issues of predominance and typicality. (*See Daar*, 67 Cal.2d 695, 706).
9 What is required is that a common question of fact or law exists which predominates over issues unique
10 to individual plaintiffs. The existence of individual issues or facts—generally present in any case arising
11 from employment—is not a bar to class certification as long as they do not render class litigation
12 unmanageable or predominate over the common issues. (*See B.W.I. Custom Kitchen v. Owens-Illinois,*
13 *Inc.*, 191 Cal.App.3d 1341, 1354 (1987)).

14 Here, Plaintiff's claims present common issues of law and fact that predominate and warrant class
15 certification. Plaintiff alleges that Defendants denied compliant meal and rest periods to employees,
16 required employees to perform work off-the-clock, failed to properly calculate the regular rate, and failed
17 to fully compensate employees for all time actually worked, among other things. These policies and
18 practices meant that Defendants allegedly failed to pay minimum and overtime wages, and other related
19 claims. Plaintiff alleges that Defendants' policies and practices were uniform as to all Class Members.
20 Thus, class treatment is appropriate.

21 To satisfy the typicality requirement, California law does not require that plaintiffs' claims be
22 identical to the other class members. Rather, the test of typicality for a class representative is whether
23 other members have the same or similar injury, whether the action is based on conduct which is not
24 unique to the named plaintiff, and whether other class members have been injured by the same course of
25 conduct. (*See Seastrom v. Neways, Inc.*, 149 Cal.App.4th 1496, 1502 (2007)). The typicality requirement
26 for a class representative refers to the nature of the claim or defense of the representative, and not to the
27 specific facts from which it arose or the relief sought. (*See Ibid*).

28 Here, Plaintiff alleges that her claims are similar to those of the other Class Members and that

1 Plaintiff's claims arise out of the same alleged course of conduct giving rise to the claims of the other
2 Class Members. Because Plaintiff's claims are based upon the same alleged conduct and business
3 practices as those of Class Members, the typicality requirement has been satisfied.

4 Finally, the question of adequacy of representation "depends on whether the plaintiff's attorney
5 qualifies to conduct the proposed litigation in the plaintiff's interest or not antagonistic to the interests of
6 the class." (*McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976)). Here, these considerations are
7 satisfied. Class Counsel is well-regarded and is qualified and experienced in employment-related, class-
8 action litigation. (Blanchard Decl., ¶¶ 1-8). Plaintiff will vigorously, adequately, and fairly represent the
9 interests of the Class. Plaintiff has, at all times, throughout the course of the litigation considered the
10 interests of the Class and understood that she must take steps to adequately represent the Class and their
11 interests. (Lewis Decl., ¶ 10). Because Plaintiff's claims are typical of other Class Members and are not
12 based on unique circumstances, there is no antagonism between the interests of Plaintiff and the Class.

13 **C. A Class Action is Superior to a Multiplicity of Litigation**

14 Under the circumstances, proceeding as a class action is a superior means of resolving this dispute,
15 as the Class Members and the Court will derive substantial benefits. Class certification would serve as
16 the only means to deter and redress the alleged violations. (*See Linder v. Thrifty Oil Co.*, 23 Cal.4th 429,
17 434 (2000) (relevant considerations include the probability that each class member will come forward to
18 prove his or her separate claim and whether the class approach would actually serve to deter and redress
19 the alleged wrongdoing)). Further, individual actions arising out of the same operative facts would
20 unduly burden the courts and could result in inconsistent results. Therefore, class action proceedings are
21 superior to individual litigation.

22 **VII. THE REQUESTED ENHANCEMENT PAYMENT IS REASONABLE**

23 Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as compensation
24 "for the expense or risk they have incurred in conferring a benefit on other members of the class." (*Munoz*
25 *v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010)). Courts routinely grant approval of
26 class action settlement agreements containing enhancements for the class representative, which are
27 necessary to provide incentive to represent the class and are appropriate given the benefit the class
28 representatives help to bring about for the class. (*See In re Online DVD Rental*, 779 F.3d 934, 947-948

(9th Cir. 2014) (approving incentive award 417 times larger than individual payments where incentive award made up a mere .17% of the settlement); *Gaudin v. Saxon Mortgage Servs., Inc.*, 2015 WL 7454183, at *10 (N.D. Cal. Nov. 23, 2015) (finding service award of \$15,000 to be “fair and reasonable”)).

Plaintiff initiated this litigation on behalf of her former co-workers who will now be entitled to receive payment from the Settlement. Plaintiff invested substantial time and effort into litigation, including her own research, reviewing documents, and extensive discussions with Class Counsel. (Lewis Decl., ¶¶ 3-5). Further, the requested amount for Plaintiff is also reasonable given the average award and the benefit gained by other Class Members. For these reasons, Plaintiff requests that an Enhancement Payment of Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff be preliminarily approved by the Court. (Blanchard Decl., ¶ 42; Lewis Decl., ¶ 12).

VIII. THE REQUESTED ATTORNEYS’ FEES AND COSTS ARE REASONABLE

Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” (*Lealao v. Beneficial Cal, Inc.*, 82 Cal.App.4th 19, 41 (2000)). California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. (*Id.* at 47). In cases where class members present claims against a common fund and the defendant agrees to a percentage of the fund as part of the settlement, use of the percentage method is appropriate. (*Id.* at 32).

Here, the requested attorneys’ fees of thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$332,500.00 if the Gross Settlement Amount is \$950,000.00) is disclosed to Class Members in the proposed Class Notice. (Settlement Agreement, Exh. A). The requested fee was freely negotiated, is common in the legal marketplace, and is not opposed by Defendants. The Motion for Final Approval will elaborate on the nature of the legal services provided and will also support Class Counsel’s request for the reimbursement of litigation costs and expenses not to exceed Thirty Thousand Dollars and Zero Cents (\$30,000.00). (Blanchard Decl., ¶¶ 42 and 43). The Attorneys’ Fees and Costs that are not ultimately approved by the Court shall instead be included in the Net Settlement Amount to be distributed to Settlement Class Members. (Settlement Agreement, ¶ 12).

1 **IX. THE CLASS NOTICE AND THE OPT-OUT AND OBJECTION PROCESS**
2 **MEETS DUE PROCESS REQUIREMENTS**

3 The Parties have jointly drafted the Class Notice, which will be mailed to the Class Members.
4 (*Id.*, Exh. A). The Class Notice will include information regarding the nature of the Action, a summary
5 of the terms of the Settlement, the Class definition, information on how to object to and/or opt-out of the
6 Class Settlement and to dispute Workweeks and/or Pay Periods, and the date of the Final Approval
7 Hearing. (*Ibid*). The Class Notice will list each Class Member’s total Workweeks and their estimated
8 Individual Settlement Share and each PAGA Employee’s total Pay Periods and their estimated Individual
9 PAGA Payment. (*Ibid*).

10 Within twenty-one (21) calendar days after entry of the preliminary approval order, Defendants
11 will provide a list in a formatted readable Microsoft Office Excel spreadsheet to the Settlement
12 Administrator containing the following information for each Class Member: full name; last known
13 mailing address; Social Security number; dates worked for Defendants during the Class Period;
14 Workweeks worked for Defendants during the Class Period; and Pay Periods worked for Defendants
15 during the PAGA Period (if applicable) (collectively referred to as the “Class List”). (*Id.*, ¶¶ 6.d and 26).
16 Within seven (7) calendar days after receiving the Class List from Defendants, the Settlement
17 Administrator will perform a search based on the National Change of Address Database or other similar
18 services available, such as provided by Experian, for information to update and correct for any known or
19 identifiable address changes, and will mail a Class Notice in English and Spanish to all Class Members
20 via First-Class U.S. Mail, using the most current, known mailing addresses identified by the Settlement
21 Administrator. (*Id.*, ¶ 27.a). The Parties have agreed to use Apex Class Action Administrators, LLC as
22 the Settlement Administrator. (Blanchard Decl., ¶ 46; Settlement Agreement, ¶ 6.jj).

23 In determining whether to approve a settlement of a class action, a trial court has virtually
24 complete discretion as to the manner of giving notice to class members, and review on appeal is governed
25 by the abuse of discretion standard. (*See In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380
26 (2010)). Here, Class Counsel is not aware of an alternative method of providing notice to the Class which
27 would result in a higher likelihood of actual notice. (Blanchard Decl., ¶ 47). The original source of the
28 mailing addresses is from Class Members, who provided the information to Defendants. (*Ibid*).

1 Class Members will have forty-five (45) calendar days from the initial mailing of the Class Notice
2 by the Settlement Administrator to submit a Request for Exclusion, Notice of Objection, and/or
3 Workweeks Dispute (“Response Deadline”). (Settlement Agreement, ¶ 6.ii).

4 Any Class Notice returned to the Settlement Administrator as undeliverable on or before the
5 Response Deadline will be sent promptly via First-Class U.S. Mail to the forwarding address affixed
6 thereto and the Settlement Administrator will indicate the date of such re-mailing on the Class Notice.
7 (*Id.*, ¶ 27.b). If no forwarding address is provided, the Settlement Administrator will promptly attempt
8 to determine a correct address using a skip-trace or other search, using the name, address, and/or Social
9 Security number of the Class Member, and perform a single re-mailing within five (5) calendar days.
10 (*Ibid.*). In the event that a Class Notice is re-mailed to a Class Member, the Response Deadline for that
11 Class Member shall be extended fifteen (15) calendar days from the original Response Deadline. (*Id.*, ¶
12 6.ii).

13 Class Members will have an opportunity to dispute the number of Workweeks and/or Pay Periods
14 with which they have been credited, as reflected in their respective Class Notices, by submitting a timely
15 and valid letter (“Workweeks Dispute”) to the Settlement Administrator, by mail, postmarked on or
16 before the Response Deadline. (*Id.*, ¶¶ 6.nn and 28). A Workweeks Dispute must: (a) contain the case
17 name and number of the Action; (b) contain the Class Member’s full name, signature, address, telephone
18 number, and the last four (4) digits of the Class Member’s Social Security number; (c) clearly state that
19 the Class Member disputes the number of Workweeks and/or Pay Periods credited to that Class
20 Member/PAGA Employee and what the Class Member/PAGA Employee contends is the correct number;
21 and (d) attach documentation demonstrating that the Class Member/PAGA employee was not credited
22 with the correct number of Workweeks and/or Pay Periods; and (e) be returned by mail to the Settlement
23 Administrator at the specified address, postmarked on or before the Response Deadline. (*Id.*, ¶ 6.nn).

24 Any Class Member wishing to be excluded from the Class Settlement must submit a timely and
25 valid letter (“Request for Exclusion”) to the Settlement Administrator, by mail, postmarked on or before
26 the Response Deadline. (*Id.*, ¶¶ 6.hh & 26). A Request for Exclusion must: (a) contain the case name
27 and number of the Action; (b) contain the Class Member’s full name, signature, address, telephone
28 number, and last four (4) digits of the Class Member’s Social Security number; (c) clearly state that the

1 Class Member does not wish to be included in the Class Settlement; and (3) be returned by mail to the
2 Settlement Administrator at the specified address, postmarked on or before the Response Deadline. (*Id.*,
3 ¶ 6.hh). Notwithstanding the above, all PAGA Employees will be bound by the PAGA Settlement and
4 will be issued their Individual PAGA Payment, irrespective of whether they submit a Request for
5 Exclusion. (*Id.*, ¶ 29).

6 To object to the Class Settlement in writing, Settlement Class Members must submit a timely and
7 complete written objection (“Notice of Objection”) to the Settlement Administrator, by mail, postmarked
8 on or before the Response Deadline. (*Id.*, ¶¶ 6.v & 29). A Notice of Objection must: (a) contain the case
9 name and number of the Action; (b) contain the objector’s full name, signature, address, telephone
10 number, and the last four (4) digits of the objector’s Social Security number; (c) contain a written
11 statement of all grounds for the objection accompanied by any legal support for such objection; (d)
12 contain copies of any papers, briefs, or other documents upon which the objection is based; and (e) be
13 returned by mail to the Settlement Administrator at the specified address, postmarked on or before the
14 Response Deadline. (*Id.*, 6.v). Settlement Class Members, individually or through counsel, may also
15 present their objection orally at the Final Approval Hearing, regardless of whether they have submitted a
16 Notice of Objection. (*Id.*, ¶ 30).

17 X. CONCLUSION

18 For all of the foregoing reasons, Plaintiff respectfully requests that this Court grant Plaintiff’s
19 Motion for Preliminary Approval of Class Action and PAGA Settlement and the relief requested herein.

20 Respectfully submitted,

21 Dated: September 23, 2025

BLACKSTONE LAW, APC

22 By: A. Blanchard
23 Annabel Blanchard
24 Attorneys for Plaintiff Malaysia Lewis
25
26
27
28



Superior Court of Alameda County Public Portal

Court Reservation Receipt

Reservation

Reservation ID: 850239713491	Status: RESERVED
Reservation Type: Motion re: (PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT)	Number of Motions: 1
Case Number: 24CV060401	Case Title: LEWIS vs EASTERSEALS NORTHERN CALIFORNIA, et al.
Filing Party: Malaysia Lewis (Plaintiff)	Location: Rene C. Davidson Courthouse - Department 23
Date/Time: November 25th 2025, 10:00AM	Confirmation Code: CR-HO7ETAIVCK7AW6YHZ

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	.00	1	.00
Court Technology Fee	1.00	1	1.00
TOTAL			\$1.00

Payment

Amount: \$1.00	Type: MasterCard
Account Number: XXXX9913	Authorization: 502068
Payment Date: 2025-09-23	

[◀ Back to Main](#)[🖨 Print Page](#)[Terms of Service](#)[Contact Us](#)[About this Site](#)