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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

ROSALBA BRITO, an individual, on behalf of herself and all others similarly situated, Plaintiff, v. AGUSTIN JANITORIAL CLEANING CORP., a California Corporation; and DOES 1 TO 50, Defendants.	Case Number: 37-2024-00004766-CU-OE-CTL **Plaintiff's Notice of Motion and Motion for Preliminary Approval of Class Action and PAGA Settlement** Hearing Date: January 8, 2027 Hearing Time: 10:30 a.m. Dept: C-64 Judge: Hon. Loren G. Freestone Complaint Filed: February 01, 2024 FAC Filed: June 12, 2024 Trial Date: None Set

NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on January 8, 2027, at 10:30 a.m., or as soon thereafter as the matter may be heard, in Department C-64 of the San Diego Superior Court for the State of California, located at 330 West Broadway, San Diego, California 92101, Plaintiff Rosalba Brito ("Plaintiff"), on behalf of herself, the State of California, as a private attorney general, and on behalf of all others similarly situated, will and hereby does move this court for entry of an order:

1. Preliminarily certifying the settlement class for purposes of settlement pursuant to California Code of Civil Procedure section 382 and California Rules of Court, rule 3.769;

2. Preliminarily appointing Plaintiff as class representative for purposes of settlement;

3. Preliminarily appointing Jonathan Melmed, Kyle D. Smith, and Jaqueline Antillon of Melmed Law Group P.C. as class counsel for purposes of settlement;

4. Preliminarily approving the settlement as fair, adequate, and reasonable, based upon the terms set forth in the parties' *Class Action and PAGA Settlement Agreement and Class Notice* (hereafter referred to as the "Settlement Agreement"), including payment by Defendant Agustin Janitorial Cleaning Corp. ("Defendant") of the non-reversionary gross settlement amount of $980,000.00 ("Gross Settlement Amount");

5. Preliminarily approving payment of reasonable attorneys' fees from the Gross Settlement Amount in an amount not to exceed one-third of the Gross Settlement Amount (i.e., up to $326,666.67), plus necessary litigation costs not to exceed $15,000.00;

6. Preliminarily approving a class representative service payment in an amount of up to $10,000.00 for Rosalba Brito from the Gross Settlement Amount to compensate her for the responsibilities, time, effort, and risks involved in coming forward on behalf of the proposed class;

7. Preliminarily approving the allocation of $245,000.00 for penalties pursuant to the California Labor Code Private Attorneys General Act of 2004, of which 75% (i.e., $183,750.00) shall be paid to the California Labor and Workforce Development Agency ("LWDA") from the Gross Settlement Amount, with the remaining 25% (i.e., $61,250.00) payable to the aggrieved employees;

8. Appointing Apex Class Action, LLC (the "Settlement Administrator") as the settlement administrator to handle the notice and administration process and preliminarily approving settlement administration costs not to exceed $15,000.00;

9. Approving the proposed class notice and ordering it be disseminated to the class members as provided in the Settlement Agreement;

10. Directing the Settlement Administrator to mail the class notice to the proposed class;

11. Approving the proposed deadlines for the notice and administration process as reflected in this motion and in the Settlement Agreement;

12. Setting a date for a final fairness hearing to determine, following dissemination of the proposed class notice packet, whether to grant final approval of the settlement; and

13. Granting Plaintiff leave to file the overlength brief included with this motion, due to the complex nature of this motion.

Pursuant to California Rules of Court, Rule 3.769(d) and (e), this motion is made on the grounds that the proposed Settlement Agreement satisfies all criteria for preliminary approval and falls well within the range of reasonableness. The Settlement Agreement was reached through informed, arm's length bargaining between experienced attorneys with the assistance of an experienced neutral, and Plaintiff and Plaintiff's Counsel will fairly and adequately represent the Class.

This motion is based on this Notice of Motion and Motion for Preliminary Approval of Class Action Settlement; the Memorandum of Points and Authorities in support thereof; the declaration of Plaintiff's counsel Kyle D. Smith; the declaration of Plaintiff; the Settlement Agreement; the proposed class notice; the proposed order granting preliminary approval of the Settlement Agreement and setting a settlement fairness hearing; the other records, pleadings, and papers filed in this action; and upon such other evidence or argument as may be presented to the court at the hearing of this motion.

Dated: June 9, 2026

MELMED LAW GROUP P.C.

KYLE D. SMITH
Attorney for Plaintiff, the Putative Class, and the Aggrieved Employees

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I. INTRODUCTION

This motion seeks preliminary approval of a wage-and-hour class action and PAGA settlement between Plaintiff Rosalba Brito ("Plaintiff") and Defendant Agustin Janitorial Cleaning Corp. ("Defendant") (collectively, the "Parties") for the Gross Settlement Amount of $980,000.00. A true and correct copy of the *Class Action and PAGA Settlement Agreement and Class Notice* (the "Settlement Agreement") is attached as **Exhibit A** to the concurrently filed *Declaration of Kyle D. Smith in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement* ("Declaration of Kyle D. Smith" or "Smith Decl."). The Settlement Agreement, in its entirety, is incorporated herein by reference.

Under the Settlement Agreement, the Gross Settlement Amount is to be distributed to approximately 318 individuals defined as: *All individuals who are or were employed by Defendant as non-exempt employees in California during Settling Class Period*. The "Settling Class Period" is defined as February 1, 2020, through March 8, 2025. (Settlement Agreement, at pp. 1, 2.) These employees are referred to herein individually as the "Class Members" or collectively as the "Class."

Plaintiff also represents a group of approximately 239 aggrieved employees on behalf of the State of California as a private attorney general pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698 through 2699.6 ("PAGA"). The definition of the "Aggrieved Employees" for these purposes is identical to that of the Class Members, except that the applicable "PAGA Period" is defined as the period from February 1, 2023, through March 8, 2025. (Settlement Agreement, at p. 3.)

The Settlement Agreement is a non-reversionary settlement, meaning that none of the Gross Settlement Amount will revert to Defendant. (Settlement Agreement, at p. 6; Smith Decl., ¶ 7.) Subject to court approval, the "Net Settlement Amount" of at least **$429,583.33**, will be distributed to Class Members who do not request exclusion from the settlement and the Aggrieved Employees, less applicable taxes.

Gross Settlement Amount	**$980,000.00**

Attorneys' Fees Litigation Costs Settlement Administration Costs Service Award to Plaintiff PAGA Payment to LWDA	(up to $326,666.67) (up to $15,000.00) (up to $15,000.00) (up to $10,000.00) ($183,750.00)
Net Settlement Amount	**$429,583.33**

Because the settlement is fair and reasonable, was negotiated at arm's length between counsel following extensive investigation and discovery, was reached after participation in a full-day mediation, it should be preliminarily approved.

II. BACKGROUND

A. THE PARTIES

14. Defendant Agustin Janitorial Cleaning Corp. is a janitorial company specializing in housekeeping services. Plaintiff Rosalba Brito worked for Defendant in California as a housekeeper from approximately 2021 to December 31, 2023. Plaintiff alleges that Defendant's employees experienced various violations of California's wage-and-hour laws. (Smith Decl., ¶¶ 21–22.)

B. PROCEDURAL SUMMARY

On or about January 29, 2024, Plaintiff submitted a letter to the California Labor and Workforce Development Agency ("LWDA") to notify the LWDA, pursuant to PAGA, of Plaintiff's intent to seek civil penalties against Defendant for violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246, 256, 510, 512, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and others that may be applicable; and California Industrial Welfare Commission ("IWC") Wage Orders 4-2001 and/or 5-2001 (the "Applicable Wage Orders"). (Cal. Code of Regs., tit. 8, §§ 11040, 11160; Smith Decl., ¶ 23.) The letter attached Plaintiff's original complaint, and incorporated the original complaint by reference, and thus sought penalties for claims identical to those alleged in the case. For the Court's reference, a copy of Plaintiff's letter to the LWDA is attached as **Exhibit B** to the concurrently filed Declaration of Kyle D. Smith.

On February 1, 2024, Plaintiff commenced this action by filing a class action complaint alleging causes of action against Defendant for **(1)** failure to pay minimum wage for all hours worked in violation of Labor Code sections 1194 and 1194.2, and the Applicable Wage Orders; **(2)** failure to pay proper overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the Applicable Wage Orders; **(3)** failure to provide compliant rest periods and pay missed rest break premiums in violation of Labor Code section 226.7 and the Applicable Wage Orders; **(4)** failure to provide compliant meal periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512, and the Applicable Wage Orders; **(5)** failure to maintain accurate employment records in violation of Labor Code section 1174; **(6)** failure to pay timely wages during employment in violation of Labor Code sections 204, 210; **(7)** failure to pay all wages due and owing at separation in violation of Labor Code sections 201, 202, and 203; **(8)** failure to reimburse business expenses in violation of Labor Code sections 2802 and 2804; **(9)** failure to provide complete and accurate wage statements in violation of Labor Code sections 226 and 226.3; **(10)** failure to pay sick leave in violation of Labor Code section 246, and **(11)** deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California's Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210). (Smith Decl., ¶ 24.)

On June 12, 2024, Plaintiff filed a first amended complaint alleging causes of action against Defendant for those described in the original Complaint and adding one cause of action for penalties based on the foregoing pursuant to PAGA. (Lab. Code, §§ 2698–2699.6.) The first amended complaint is the operative complaint in the action (the "Operative Complaint"). (Smith Decl., ¶ 25.)

Thereafter, the Parties agreed to attend a private mediation with Louis Marlin. Prior to the mediation, Plaintiff's counsel conducted significant informal discovery. Discovery, investigation, and prosecution has included, among other things, numerous telephonic conferences with Plaintiff; inspection and analysis of hundreds of pages of documents; analysis of work-related data from a sample of Class Members and Aggrieved Employees; an analysis of the legal positions taken by Defendant; investigation into the viability of class treatment of the claims asserted in the action; analysis of potential class-wide damages, including information sufficient to understand Defendant's potential defenses to Plaintiff's claims; research of the applicable law with respect to the claims asserted in the

Operative Complaint and the potential defenses thereto; and assembling and analyzing of data for calculating damages. (Smith Decl., ¶ 26.)

Among other key pieces of information, Plaintiff's counsel requested in its informal discovery letter the wage statements and time records for a statistically significant sample size of Class Members during the Class Period. Defendant produced a sample size that, although smaller than Plaintiff's request, was nonetheless sufficient for Plaintiff's statistical analysis. This sampling included payroll records for Class Members during the Class Period, but did not include time records. From these records, Plaintiff was able to carefully craft an assumption-based damages model for each of the categories of alleged claims for which the data would reflect violations. (Smith Decl., ¶ 27.)

On February 6, 2025, the Parties participated in a full-day mediation with Louis Marlin who is a full-time mediator with extensive experience in California wage and hour class action lawsuits. The mediation negotiations were contentious; however, the Parties reached an agreement on the condition that Defendant produce confirmatory discovery. After further negotiation, the Parties executed the longform Settlement Agreement, now before the Court for approval. (Smith Decl., ¶ 28.)

Plaintiff now seeks the Court's preliminary approval of the Settlement Agreement.

III. SUMMARY OF THE CLAIMS, DEFENSES, AND EXPOSURE

Plaintiff alleged several categories of wage and hour violations on behalf of the Class Members and Aggrieved Employees. Plaintiff's claims stem from several categories of illegal employment practices. Most importantly, Plaintiff alleged off-the-clock practices and asserted that Defendant kept no time records whatsoever for Class Members, issued no wage statements, paid Class Members seemingly under-the-table, and failed to reimburse business expenses. These practices largely stemmed from Defendant's practice of misclassifying the Class Members as independent contractors, which Plaintiff alleged was a violation of Labor Code sections 226.8 and 2775. (Smith Decl., ¶ 29.)

Defendant has persistently denied all liability of any kind associated with the claims and allegations, and further denied that the Plaintiff, the Class Members, or the Aggrieved Employees are entitled to any relief. Defendant also denies that these allegations are appropriate for class or representative treatment for any purpose other than the settlement. Defendant maintains, among other things, that it has complied with California laws in all respects. (Smith Decl., ¶ 30.) These claims, defenses, and potential damages are summarized in more detail below. (Smith Decl., ¶ 31.)

A. OFF-THE-CLOCK PRACTICES (MINIMUM WAGE AND OVERTIME)

Labor Code section 1197 requires employees to be paid at least the minimum wage fixed by the IWC, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code section 1194 entitles "any employee receiving less than the legal minimum wage . . . to recover in a civil action the unpaid balance of the full amount of this minimum wage." (See also Lab. Code, §§ 1185 [giving the Applicable Wage Order the force of law], 1198 [same].) Labor Code sections 1194, subdivision (a), and 1194.2, subdivision (a), provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon. (See also Lab. Code, §§ 1197.1, 1199.) Liquidated damages under this provision, however, may not be applicable where the employer acted in good faith and "had reasonable grounds for believing that the act or omission was not a violation of any provision of the Labor Code relating to minimum wage, or an order of the commission." (Lab. Code, § 1194.2, subd. (b).)

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

Here, Plaintiff alleges that Defendant failed to track the Class Members' hours entirely. Plaintiff states that she regularly worked more than 8 hours per day and more than 40 hours per week. However, because Defendant did not maintain any time records for Plaintiff or the Class, the precise hours worked cannot be confirmed. Plaintiff further alleges that this policy inherently benefited Defendant, as the hours worked by Plaintiff and the Class Members were never recorded, effectively requiring them to work off the clock while leaving discretion over payment solely in Defendant's hands. Plaintiff alleged that these untracked hours resulted in time worked off-the-clock and therefore constituted a minimum wage violation. Plaintiff further alleged that this time worked off-the-clock also resulted in Defendant having undercounted the employees' overtime hours, in violation of Labor Code section 510. (Smith Decl., ¶¶ 32–33.)

Defendant, for its part, maintained that it harbored a genuine, good-faith belief that Plaintiff and the Class Members were independent contractors rather than employees, and that this belief was both reasonable and dispositive of the off-the-clock theory. Defendant pointed to the Janitorial Service Agreement, under which Plaintiff and the Class Members purportedly agreed to "assume all responsibilities of being self-employed," as evidence that the relationship was structured—and understood by all parties—as an independent-contractor arrangement. Defendant further contended that it exercised little or no control over the manner and means by which the work was performed. From this premise, Defendant argued that it had no legal obligation to record hours, pay overtime, or otherwise extend the Labor Code's wage protections to the Class Members, and that any failure to do so was the product of a reasonable, good-faith view of the relationship rather than a knowing violation. (Smith Decl., ¶ 34.)

Plaintiff recognized the real risk these defenses posed. Because Defendant kept no time records whatsoever, Plaintiff's off-the-clock and overtime claims rested almost entirely on Plaintiff's own testimony and assumption-based extrapolation, with no contemporaneous documentary evidence to corroborate the precise hours worked. Had the Court credited Defendant's classification defense—or simply found the absence of records fatal to Plaintiff's ability to prove the hours allegedly worked—the Class Members could have recovered substantially less than the modeled exposure, or nothing at all. (Smith Decl., ¶ 35.)

Plaintiff estimated that Class Members performed an average of 5 hours of off-the-clock work per workweek at the overtime rate, resulting in total estimated damages of $2,074,350. In light of Defendant's good-faith defense that Plaintiff was an independent contractor—and therefore not entitled to employee protections under the Labor Code, including but not limited to reliance on a purportedly signed Janitorial Service Agreement—Plaintiff ascribed a 75% discount due to the very real risks that this court would agree with Defendant's good faith defenses and the very difficult obstacles that Plaintiff faced in proving these claims. Plaintiff estimated Defendant's realistic exposure for unpaid overtime wages to be approximately **$518,587.50**. (Smith Decl., ¶¶ 36–37.)

B. MEAL AND REST PERIOD ALLEGATIONS

Under Labor Code section 226.7 and the Applicable Wage Orders, employers are required to provide their non-exempt employees with compensated, duty-free rest periods of not less than ten minutes for every major fraction of four hours worked. Employers are also required to provide their nonexempt employees with a thirty-minute uninterrupted and duty-free meal period within the first five hours of work, and a second meal period for any employee who works more than ten hours per day. (Lab. Code, § 512, subd. (a).) Labor Code section 226.7 also provides that employers must pay their employees one additional hour of pay at the employee's regular rate for each workday that a "meal or rest or recovery period is not provided." (Lab. Code, § 226.7, subd. (c).) The California Supreme Court has held that, during required meal rest periods, "employers must relieve their employees of all duties and relinquish any control over how employees spend their break time." (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260.)

Plaintiff alleged that Defendant failed to authorize or permit Plaintiff and the Class Members to take duty-free meal and rest periods. Plaintiff alleged that she and the other Class Members were required to travel to different locations during shifts. For example, a typical day included cleaning five locations, each approximately 30–40 minutes apart. Each location would take approximately 2–3 hours to clean, leaving Plaintiff with no time for rest breaks or lunch breaks. Plaintiff was never provided rest breaks or lunch periods despite working more than 8 consecutive hours. None of these missed breaks, however, were recorded because Defendant failed to track Plaintiff and the Class Members' hours entirely. Accordingly, the Class Members were not provided with meal or rest period premiums. (Smith Decl., ¶ 38.)

As discussed above, Defendant contends that, under the Janitorial Service Agreement, Plaintiff and the Class Members agreed to assume all responsibilities associated with being self-employed. Accordingly, Defendant argued that any breaks that appear noncompliant were voluntarily waived based on their purported status as independent contractors, thereby relieving Defendant of any liability for late or missed meal or rest periods. (Smith Decl., ¶ 39.)

Based on Plaintiff's testimony, the allegations in the case, and Plaintiff's damages analysis, Plaintiff estimated that Defendant's potential exposure for unpaid meal break premiums—assuming a

50% violation rate—was $933,465, with an additional $933,465 for rest break premiums, for an approximate total of $1,866,930. (Smith Decl., ¶ 40.) Plaintiff then applied a 90% discount because the meal and rest break violation rates were based largely on Plaintiff's own testimony in the absence of recorded hours, making the claim difficult to prove, and the very real risks that this Court would agree with Defendant's good faith defense present in the Janitorial Service Agreement—as well as the possibility of a Court finding that Plaintiff and the Class Members could have elected to take meal and rest periods of their own accord. Plaintiff estimated Defendant's realistic exposure for this claim to be approximately **$186,693.00**. (Smith Decl., ¶ 40.)

C. REIMBURSEMENT ALLEGATIONS

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

First, Plaintiff alleged that she was required to travel to different locations during her shifts. Plaintiff reports being required to use her personal vehicle to travel between locations and reported driving a minimum of approximately 50 miles per week without any mileage reimbursement. Further, Plaintiff was required to purchase and provide her own cleaning supplies. Plaintiff reports purchasing cleaning equipment with her own money with no reimbursement. Finally, Plaintiff reports using her own personal cell phone to communicate with Defendant with no reimbursements. (Smith Decl., ¶ 41.)

Defendant contended that under the Janitorial Service Agreement signed by Plaintiff, both Plaintiff and the other Class Members agreed to provide their own equipment and supplies. Defendant further argued that because Plaintiff and the Class Members were purportedly independent contractors rather than employees, Defendant had no legal duty to reimburse them for these expenses and therefore could not be held liable for this claim. (Smith Decl., ¶ 42.)

Plaintiff estimated that Defendant's exposure, excluding the purchase of cleaning supplies, was approximately $0.65 per mile at 50 miles per week, totaling $449,442. (Smith Decl., ¶ 43.) In consideration of Defendant's good faith defense, Plaintiff ascribed a 50% discount, totaling approximately **$224,721**.

D. DERIVATIVE WAITING TIME PENALTY ALLEGATIONS

Plaintiff alleged that, because of the violations described above, several derivative causes of action arise. First, Plaintiff sought recovery for waiting time penalties under Labor Code section 203. As with Plaintiff's other claims, Defendant argued that the employees were independent contractors and therefore not entitled to employee protections under the Labor Code and/or PAGA. Defendant thus concluded that it is unlikely that Plaintiff will establish waiting time penalties because Defendant had no legal duty to fully and timely compensate the employees upon discharge. (Smith Decl., ¶ 44.)

Plaintiff estimated that the formerly-employed Class Members worked approximately 8 hours per day at $30 per hour resulting in a total exposure of $1,720,800. However, after ascribing a 90% discount due to the very real risks that this Court would agree with Defendant's good faith and independent contractor defense, because Plaintiff's calculations were based on an estimate, and because the claim is derivative of the underlying claims which may also fail to be certified or win on the merits, Plaintiff estimated Defendant's realistic exposure for this claim to be approximately **$172,080**. (Smith Decl., ¶ 45.)

E. DERIVATIVE WAGE STATEMENT ALLEGATIONS

Labor Code section 226, subdivision (a), obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement. Employers that knowingly and intentionally fail to provide their employees with accurate, itemized wage statements may be subject to penalties under Labor Code section 226, subdivision (e). Plaintiff alleged that, by virtue of the allegations that Defendant failed to properly pay the employees their wages as described above, Defendant had likewise failed to provide the employees with compliant wage statements reflecting their gross wages earned and their net wages earned.

As with Plaintiff's other claims, Defendant argued that the employees were independent contractors and therefore not entitled to employee protections under the Labor Code and/or PAGA.

Defendant thus concluded that Plaintiff will not be able to establish a violation that impacts the wage statement for each class member/aggrieved employee for every pay period to recover the applicable PAGA penalty. (Smith Decl., ¶ 46.)

In terms of Defendant's exposure for this claim, Plaintiff calculated that approximately 239 Class Members worked a total of approximately 3,744 pay periods during the applicable statutory period for this claim. Based on Plaintiff's estimate of a 100% violation rate, Plaintiff determined that Defendant's maximum exposure for this claim was $362,000. Plaintiff then ascribed a 75% discount based on the very real risks that: **(1)** this Court might find that Plaintiff and the Class Members were independent contractors and therefore not entitled to employee protections, such that the penalties would not be triggered, and **(2)** this Court might find that Defendant's alleged wage statement errors caused little or no injury to the Class Members. Plaintiff calculated that Defendant's realistic exposure for this claim was **$90,500**. (Smith Decl., ¶ 47.)

F. PAGA PENALTIES

Under former Labor Code section 2699, subdivision (f)(2), and section 2699.5, employers that violate certain provisions of the Labor Code are subject to penalties according to the following formula:

1. $100.00 for the initial violation per employee per pay period; and
2. $200.00 for each subsequent violation per employee per pay period.

These penalties must be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the affected employees. (Lab. Code, § 2699, subd. (i).) Plaintiff alleged that, because of the violations described above, Defendant was liable for these penalties for each applicable pay period during the applicable PAGA Period. In ascertaining Defendant's exposure for this claim, Plaintiff considered that courts have refused to "stack" PAGA penalties, severely limiting the recoverable PAGA penalties. (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 [approving PAGA penalty reduction to $5 per pay period]; accord *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809.) Plaintiff also considered that, given the nature of the allegations and Defendant's efforts at good faith compliance with the Labor code, there is a likelihood that a further reduction of the penalty to $5 per pay period as approved in *Carrington* would apply. (Smith Decl., ¶ 48; *Carrington v. Starbucks Corp.*, *supra*, 30 Cal.App.5th at p. 529.)

Here, there were approximately 3,744 pay periods within the applicable PAGA period. Plaintiff assumed arguendo for mediation purposes that all the PAGA pay periods are "initial," leading Defendant's alleged exposure for PAGA penalties to be $100 × 3,744 (or $374,400.00) per Labor Code violation. However, Plaintiff ascribed a 10% discount in consideration of Defendant's defenses and the very real risk of a court reducing the amount of awarded PAGA penalties. Notably, the discount applied to Plaintiff's PAGA penalty allegations was smaller than other discounts applied by Plaintiff, in light of Defendant's heightened penalty exposure under Labor Code section 226.8. Plaintiff calculated that the Defendant's realistic exposure for this claim was **$336,960.00**. (Smith Decl., ¶ 49.)

IV. SUMMARY OF THE PROPOSED SETTLEMENT

Under the Settlement Agreement, Defendant will be released of all claims set forth in the action in exchange for paying $980,000.00. (See generally, Settlement Agreement.) The Gross Settlement Amount includes: **(1)** the fees and expenses of the Settlement Administrator, currently estimated to not exceed $15,000.00; **(2)** attorneys' fees not to exceed one-third of the Gross Settlement Amount, i.e., $326,666.67; **(3)** litigation costs not to exceed $15,000.00; **(4)** service awards to the named Plaintiff of up to $10,000.00; and **(5)** payment to the LWDA for its share of the PAGA penalties in the amount of $183,750.00. (Settlement Agreement, at pp. 6–8.) After all Court-approved deductions from the Gross Settlement Amount, the remaining amount (i.e., the Net Settlement Amount), which consists of at least $429,583.33, will be distributed as follows: the payment of taxes and required withholdings; a payment of $61,250 going to the Aggrieved Employees for their share of the PAGA penalties; and the remainder being distributed to all participating Class Members. (Settlement Agreement, at p. 8; Lab. Code, § 2699, subd. (i).)

A. REASONABLENESS OF THE GROSS SETTLEMENT AMOUNT

Plaintiff has applied appropriate discounts on the maximum settlement value as calculated above to come to Defendant's realistic exposure of $1,529,542. As explained above, the issues in this case were hotly contested—both legally and factually. While Plaintiff continues to believe in the merits of the case, Defendant argued that they fully complied with California's wage and hour laws, and thus faced minimal exposure, if any. Therefore, the Gross Settlement Amount of $980,000.00 is an excellent result and within the zone of reasonableness for all parties. If preliminary approval is granted, Plaintiff will have recovered **64.07%** of Defendant's realistic exposure in this case—a fair compromise of the claims, by any measure. (Smith Decl., ¶ 50.)

The Gross Settlement Amount in the Settlement Agreement was reached only after the case was thoroughly investigated by Plaintiff's counsel. As explained above, Plaintiff reviewed, among other key pieces of information, the records provided by Defendant. Defendant produced a sample size that, although smaller than Plaintiff's request, was nonetheless sufficient for Plaintiff's statistical analysis. This sampling included payroll records and wage statements for Class Members' shifts during the Class Period, but did not include time records. From these records, Plaintiff was able to carefully craft an assumption-based damages model for each of the categories of alleged claims for which the data would reflect violations. In total, Plaintiff's counsel reviewed hundreds of pages of documents prior to agreeing to settle the case. (Smith Decl., ¶ 51.)

These documents, along with the other investigation and discovery described above, were sufficient to allow counsel to act intelligently in reaching the Settlement Agreement and determining that the Gross Settlement Amount was adequate. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) Indeed, after a thorough review of all available evidence in the case, Plaintiff's counsel have concluded that the Gross Settlement Amount represents an excellent result for the Class. (Smith Decl., ¶ 52.)

B. SETTLEMENT ALLOCATION FORMULA

Individual payments to the Class Members from the class-portion of the settlement will be calculated and apportioned based on the number of weeks worked as an eligible Class Member in California by the participating Class Member during the Class Period (the "Individual Settlement Payments"). (Settlement Agreement, at p. 7.)

C. SELECTION OF THE SETTLEMENT ADMINISTRATOR

Plaintiff, through counsel, has obtained bids from several settlement administration companies for the settlement administration of this case. Of those, Apex Class Action, LLC presented the lowest qualified bid. Accordingly, the Parties propose to use Apex Class Action, LLC as the settlement administrator. (Smith Decl., § V; Settlement Agreement, at p. 13.) The settlement administrator will be responsible for processing the settlement payments and providing notice to the Class Members as outlined in the Settlement Agreement. (Settlement Agreement, at pp. 13–17.)

D. NOTICE PROCEDURES

Within 15 days of the Court granting preliminary approval of the Settlement Agreement, Defendant shall provide the Settlement Administrator with an updated list of Class Members and Aggrieved Employees containing names, number of Class Period workweeks, number of PAGA Period pay periods, addresses, and social security numbers (the "Class Data"). (Settlement Agreement, at p. 8.)

Within 14 days after receiving the Class Data, the Settlement Administrator shall send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice with Spanish translation. (Settlement Agreement, at p. 13.) Plaintiff proposes using the Class Notice attached as **Exhibit A** to the Settlement Agreement.

Class Members who do not timely request exclusion from the Settlement Agreement will be deemed to be a participating Class Member without having to submit a claim form or take any other action. (Settlement Agreement, at p. 15.) To request exclusion from the Settlement Agreement, the Class Member must submit a written request for exclusion from the Settlement Agreement to the Settlement Administrator ("Request for Exclusion"), postmarked no later than 60 calendar days after the Settlement Administrator mails the Class Notice to the Class Members. (Settlement Agreement, at p. 14.)

E. RESIDUAL AMOUNT

Class Members will have 180 days to cash their settlement checks. If a Class Member fails to cash his/her check by the deadline, then such funds will be paid to the California Controller's Unclaimed Property Fund in the name of the Class Member pursuant to the escheat procedures set forth in the California Code of Civil Procedure section 384, subd. (b). (Settlement Agreement, at p. 9.)

F. TAX TREATMENT

The Settlement Agreement provides that 20% of each individual settlement payment from the class-portion of the Settlement Agreement shall constitute wages (for which each participating Class Member will be issued an IRS Form W-2 for such payment), and the remaining 80% shall constitute interest, reimbursement, and penalties (for which each participating Class Member will be issued an IRS Form 1099 for the interest and penalty allocation). (Settlement Agreement, at p. 7) This allocation was selected because alleged violations relating to non-wage damages, such as wage statement penalties, waiting-time penalties, reimbursement obligations, interest, and statutory penalties under the Labor Code and PAGA composed the bulk of Defendant's realistic exposure in this action.

With respect to the individual payments made under the PAGA-portion of the Settlement Agreement, all such payments shall be treated as payments owing for penalties and interest (for which each Aggrieved Employee will be issued an IRS Form 1099 for the interest and penalty allocation). (Settlement Agreement, at p. 8.) Further, 100% of Plaintiff's Service Award will be allocated to ordinary income, payable on an IRS Form 1099. (Settlement Agreement, at p. 6.)

V. <u>THE CLASS SHOULD BE PRELIMINARILY CERTIFIED</u>

A. THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY CONSIDERATION IS APPROPRIATE

California Rules of Court, rule 3.769, subdivision (d), provides that the court may make an order approving certification of a provisional settlement class at the preliminary approval stage. It is well-established that trial courts should use a "lesser standard of scrutiny" for determining the propriety of certifying a settlement class, as opposed to a litigation class. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807, fn.19.) Since no trial is anticipated in a settlement class, the case management issues inherent in determining if a class should be certified need not be confronted, and the trial court's fairness review of the settlement protects the interests of the non-representative class members. (*Ibid.*; see also *Officers for Justice v. Civil Service Com'n of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 633; *Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 591, 620 ["Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial."].)

B. THE PROPOSED CLASS IS NUMEROUS AND ASCERTAINABLE

Numerosity is met if a proposed class is so large that joinder of all members would be impracticable. (See Code Civ. Proc., § 382.) A proposed settlement class is ascertainable if the class members can be objectively identified and given notice of the litigation without unreasonable time or expense. (See *Medrazo v. Honda of North Hollywood* (2008) 166 Cal.App.4th 89, 101.) Defendant has represented that the proposed Class consisted of approximately 318 Class Members ascertained through Defendant's records. As such, these requirements are met.

C. MEMBERS OF THE PROPOSED CLASS SHARE A WELL-DEFINED COMMUNITY OF INTEREST

1. Commonality

To justify certification, the class proponent must show that questions of law or fact common to the class predominate over the questions affecting the individual members. (See *Arenas v. El Torito Restaurants, Inc.* (2010) 183 Cal.App.4th 723.) The commonality element is satisfied here because common legal and factual questions exist, such as **(a)** whether individuals working for Defendant were subject to unlawful wage-and-hour policies and/or practices under the California Labor Code; **(b)** whether these violations triggered derivative claims for penalties; and **(c)** whether Defendant's violations were knowing or willful.

2. Typicality

Typicality focuses on: **(1)** whether other members of the proposed class have the same or similar injury to the named plaintiff(s), **(2)** whether the action is based on conduct which is not unique to the named plaintiff(s), and **(3)** whether other class members have been injured by the same course of conduct. (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502; *Martinez v. Joe's Crab Shack Holdings* (2014) 231 Cal.App.4th 362, 375.) Here, Plaintiff's claims are typical of the Class Members because she was subject to Defendant's policies and practices described above in Plaintiff's analysis of the claims and defenses, which were consistently applied to class-wide to all Employees. (Declaration of Rosalba Brito in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Brito Decl."), ¶ 4.)

3. Adequacy of Representation

A proposed class representative must establish that they will adequately represent the proposed class. (See *Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540, 546.) Plaintiff is adequate as a class representative because she is a member of the Class, experienced the same wage and hour practices as the rest of the Class, is committed to representing the interests of the Class, has no interests that are adverse to members of the Class, and understands and accepts her duty to represent the best interests of the Class. Plaintiff is committed to the Class and is adequate to represent the interests of the Class in this litigation. (Brito Decl., ¶¶ 4–5.) Plaintiff also provided counsel with information that was crucial to initiating the action and preparing the mediation brief, discussed settlement strategy with counsel, and provided valuable information about the Class Members and their experiences working for Defendant. (Smith Decl., ¶ 60; Brito Decl., ¶¶ 6–8.)

Adequacy may be established by the fact that counsel are experienced practitioners. (See *Local Joint Executive Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001) 244 F.3d 1152, 1162.) Plaintiff is represented by counsel experienced in the litigation of wage and hour class actions, who have no interests adverse to Plaintiff or the Class, who vigorously prosecuted this action, and who have the financial resources to handle this case. (Smith Decl., ¶¶ 10–19.)

4. Superiority

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

5. Predominance

The common issues here, concerning the uniform deficiencies to Defendant's wage-and-hour policies and practices raise predominating factual and legal issues supporting certification of a settlement class.

VI. PRELIMINARY APPROVAL SHOULD BE GRANTED

A. THE SETTLEMENT IS THE FAIR RESULT OF SERIOUS, INFORMED, AND NON-COLLUSIVE NEGOTIATIONS

The Settlement Agreement was negotiated at arm's length between counsel using a professional and well-respected third-party neutral. (Smith Decl., ¶ 53.) Counsel for both parties were thoroughly familiar with the complex legal and factual questions at issue in this litigation. (Smith Decl., ¶ 53.) The Settlement Agreement is a product of intensive negotiations, supported by investigation and direct exchanges of information through informal discovery, during the course of settlement negotiations, including a full-day mediation and confirmatory discovery. (Smith Decl., ¶ 53.)

Although Plaintiff and her counsel believed the class claims had merit and there was a possibility of certifying the class and claims, they recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or on the damages awarded, and/or on an appeal that can take several more years to litigate. (Smith Decl., ¶ 54.) The resulting Settlement Agreement was based on calculations, risk assessment, and non-collusive negotiation. It takes the risks identified above and others into account in arriving at the non-reversionary Gross Settlement Amount. (Smith Decl., ¶ 54.)

The Settlement Agreement represents a fair compromise given the risks and uncertainties presented by continued litigation. It ensures timely relief and substantial recovery of the Defendant's realistic exposure. (Smith Decl., ¶ 55.) The view of the attorneys actively conducting the litigation is entitled to significant weight in deciding whether to approve the settlement. (*Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, aff'd (9th Cir. 1981) 661 F.2d 939 ["[T]he fact that experienced counsel involved in the case approved the settlement after hard-fought negotiations is entitled to considerable weight."]; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128 [court must take into account the experience and view of counsel].)

B. THE CLASS NOTICE PLAN CONFORMS TO ALL APPLICABLE STATUTES AND RULES

The proposed Class Notice—which the parties have already agreed to—should be approved, as it fully informs the Class Members of the nature of the lawsuit and each Class Member's rights under the terms of the Settlement Agreement and applicable law. (Settlement Agreement, Exh. A.) The way the Class Notice is to be disseminated, as outlined above, will ensure that all of the Class Members will be properly notified of the proposed settlement.

The Court has wide discretion in approving the means of providing notice, so long as the class representative "provide(s) meaningful notice in a form that should have a reasonable chance of reaching a substantial percentage of class members." (*Archibald v. Cinerama Hotels* (1976) 15 Cal.3d 853, 860, quotation marks omitted.) Here, the Parties' notice plan is that notice of the Settlement Agreement will be disseminated directly to the class members by first class mail with Spanish translation by the settlement administrator within 14 days after receiving the Class Data. (Settlement Agreement, at p. 13.)

The notice plan and the Class Notice satisfy the requirements of rule 3.766 of the California Rules of Court and afford the Class Members with all due process protections required by the United States Constitution. Moreover, the contents of the Class Notice are in compliance with rule 3.766, subdivision (d), of the California Rules of Court, because the Class Notice includes, among other things: **(1)** a detailed explanation of the case, including the basic contentions or denials of the parties; **(2)** a statement that the court will exclude the member from the class if the member so requests by a specified date; **(3)** a procedure for the member to follow in requesting exclusion from the class; **(4)** a statement that the judgment, whether favorable or not, will bind all members who do not request exclusion; and **(5)** a statement that any member who does not request exclusion may, if the member so desires, enter an appearance through counsel. (Settlement Agreement, Exh. A.) The 60-day deadline for Class Members to exclude themselves or challenge the number of workweeks worked during the Class Period is reasonable, as it provides Class Members with sufficient time to do so and, if they so choose, to seek independent legal advice in the interim. (Settlement Agreement, at pp. 14–17.)

VII. THE ATTORNEYS' FEE ALLOCATION UNDER THE SETTLEMENT AGREEMENT IS FAIR

In addition, at the time of final approval, Plaintiff's counsel will request attorneys' fees of up to one-third of the Gross Settlement Amount, (i.e., $326,666.67), plus reimbursement of litigation expenses and costs of up to $15,000.00.[1] (Settlement Agreement, at p. 6.) As the California Supreme Court has made clear, one-third of the common fund is a reasonable percentage for a trial court to award as attorneys' fees in a class action where a common fund was generated as a result of the case. (See *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 506 [finding no abuse of discretion where trial court approved a fee request of one-third of the common fund].) The requested fees of one-third of the Gross Settlement Amount are also consistent with awards obtained in similar wage and hour class action cases approved by various courts in California. (See *Stuart v. Radioshack Corp.* (N.D.

[1] Plaintiff's counsel estimates that their costs will not exceed $15,000 in this action.

Cal., Aug. 9, 2010, No. C-07-4499 EMC) 2010 WL 3155645 [approving fee award of one-third]; *Singer v. Becton Dickinson and Co.* (S.D. Cal., June 1, 2010, No. 08-CV-821-IEG (BLM)) 2010 WL 2196104, at *8 [approving fee award of 33.33%]; *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal., Nov. 14, 2007, No. 1:05CV0484 DLB) 2007 WL 3492841, at *4 [awarding fees of one-third]; *Martin v. FedEx Ground Package System, Inc.* (N.D. Cal., Dec. 31, 2008, No. C 06-6883 VRW) 2008 WL 5478576, at *8 [approving attorneys' fees of one-third].)

As part of the final approval motion, Plaintiff's counsel will request approval of the attorneys' fees and costs described in this motion and in the Settlement Agreement, which will be heard at the final approval hearing. Accordingly, the Court need not decide the fees and costs at this time, but only authorize the Class Notice to inform class members that counsel will seek fees and costs up to one third of the Gross Settlement Amount in fees, plus actual litigation costs.

VIII. THE CLASS REPRESENTATIVE SERVICE AWARD IS FAIR AND APPROPRIATE

Plaintiff will request payment of a service award from the Gross Settlement Amount of up to $10,000.00 in addition to whatever payment she is otherwise entitled to receive as a Class Member. (Smith Decl., ¶ 59; Settlement Agreement, at p. 6.) The proposed service award is reasonable compensation given the time and effort that Plaintiff devoted to this case, the valuable assistance she provided to counsel, and the fact that she entered into a general release of claims that is broader than the release of the Class. (Smith Decl., ¶ 59; Brito Decl., ¶¶ 9–10.)

Plaintiff provided invaluable assistance to Plaintiff's counsel and the Class Members in this case, including providing factual background for mediation and the operative complaint, reviewing the relevant documents, participating in phone calls with Plaintiff's counsel, gathering highly relevant documents, and reviewing the settlement documents. (Smith Decl., ¶ 60.) Plaintiff agreed to participate in this case with no guarantee of personal benefit. Further, Plaintiff agreed to undertake the financial risk of serving as a class representative and exposed herself to the risk of negative publicity by anyone who opposed this case. (Smith Decl., ¶ 60.)

Moreover, the requested service award for Plaintiff falls within the range of incentive payments typically awarded to class representatives in similar cases. (See, e.g., *Bond v. Ferguson Enterprises, Inc.* (E.D. Cal. June 30, 2011) No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879 [approving **$11,250** service awards]; *Ross v. US Bank National Association* (N.D. Cal. Sept. 29, 2010) No. C 07-02951 SI, 2010 WL 3833922, at *2 [approving **$20,000** service awards]; *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482, 493 [approving **$10,000** service awards]; *West v. Circle K Stores, Inc.* (E.D. Cal. Oct. 19, 2006) NO. CIV. S-04-0438 WBS GGH, 2006 U.S. Dist. LEXIS 76558, at *28 [approving **$15,000** service award]; *Glass v. UBS Fin. Servs.* (N.D. Cal. Jan. 26, 2007) No. C-06-4068 MMC, 2007 U.S. Dist. LEXIS 8476, at *52 [approving **$25,000** service awards]; *Louie v. Kaiser Found. Health Plan, Inc.* (S.D. Cal. Oct. 6, 2008) No. 08cv0795 IEG RBB, 2008 U.S. Dist. LEXIS 78314, at *18 [approving **$25,000** service award]; *Garner v. State Farm Mut. Auto. Ins. Co.* (N.D. Cal. Apr. 22, 2010) No. CV 08 1365 CW (EMC), 2010 WL 1687832, at *17 n.8.)

IX. SUBMISSION TO THE LWDA

The Settlement Agreement and this motion are concurrently being submitted to the LWDA in accordance with Labor Code section 2699, subdivision (l)(2). (Smith Decl., ¶ 61.) The proof of electronic submission is attached as **Exhibit C** to the Declaration of Kyle D. Smith.

Dated: June 9, 2026

MELMED LAW GROUP P.C.

KYLE D. SMITH
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