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on behalf of herself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF YOLO

ANNA ZAPUSKALOVA, on behalf of herself and others similarly situated, Plaintiff, vs. YOLO COUNTY CHILDREN'S ALLIANCE; and DOES 1 to 100, inclusive, Defendant.	Case No.: CV2024-1877 **CLASS ACTION** *[Assigned for all purposes to Judge Hon. Timothy L. Fall, Department 6]* **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** [*Filed concurrently with the Declaration of Eve Howe in Support; and [Proposed] Order*] Hearing Information: Date: October 23, 2025 Time: 9:00 a.m. Dept.: 6

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

NOTICE IS HEREBY GIVEN that on October 23, 2025, at 9:00 a.m., or as soon thereafter as the matter can be heard in Department 6 of the Yolo County Superior Court located at 1000 Main Street, Woodland, CA 95695, Plaintiff Anna Zapuskalova ("Plaintiff") will move for an order granting preliminary approval of the proposed class action settlement on the terms and conditions set forth in the Class Action and PAGA Settlement Agreement and Class Notice ("Settlement" or "Settlement Agreement") between Plaintiff and Defendant Yolo County Children's Alliance ("Defendant"), a copy of which is attached to the Declaration of Eve Howe ("Howe Dec.") as **Exhibit "1."** Plaintiff will further move that the Order specifically encompass the following:

1. Certify a class for settlement purposes only;
2. Appoint the Plaintiff as Class Representative for settlement purposes only;
3. Appoint Lavi & Ebrahimian, LLP as Class Counsel;
4. Approve the Class Notice in the form attached as **Exhibit "A"** to the Settlement;
5. Set a Final Approval and Settlement Fairness Hearing on a date that is approximately 150 days after the Court grants preliminary approval of the Settlement.

Dated: September 24, 2025

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

By: *__/s/ Eve Howe__*
Joseph Lavi, Esq.
Vincent C. Granberry, Esq.
Eve Howe, Esq.
Attorneys for Plaintiff Anna Zapuskalova, and Others Similarly Situated

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Anna Zapuskalova ("Plaintiff") respectfully submits this memorandum of points and authorities in support of his motion for preliminary approval of the proposed class action settlement with Defendant Yolo County Children's Alliance ("Defendant") (Plaintiff and Defendant are collectively hereinafter referred to as "the Parties"). Plaintiff seeks entry of a proposed order granting preliminary approval of the class settlement which: (1) preliminarily approves the proposed settlement of the class action; (2) approves the form and method for providing notice and directs that notice be given to members of the settlement class; (3) preliminarily certifies the settlement class for settlement purpose; and (4) schedules a final approval hearing date.

As consideration for this Settlement, Defendant shall pay a sum equal to Two Hundred Ten Thousand Dollars and Zero Cents ($210,000.00) (the "Gross Settlement Amount") to fund the non-reversionary, no claims made settlement of this class action. (Class Action and PAGA Settlement Agreement and Class Notice ("Settlement" or "Settlement Agreement")), § 1.22 attached as **Exhibit "1"** to Declaration of Eve Howe ("Howe Dec."). The Gross Settlement Amount is inclusive of Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment, and the Administrator's Expenses as provided by this Settlement. (*Id.*)

II. SUMMARY OF LITIGATION

A. The Parties

The named Plaintiff worked as an hourly-paid, non-exempt employee for Defendant and seeks to represent approximately 97 current and former employees of Defendant who worked in California as hourly-paid, non-exempt employees at any time during the Class Period (hereinafter "Class" or "Class Members"). (Howe Dec. ¶3.)

B. The Complaint and Allegations

This is a proposed employee wage and hour class action case. On July 25, 2024, Plaintiff filed a wage and hour class action, Case No. CV2024-1877, in the Yolo County Superior Court, alleging causes of action against Defendant for (1) Failure to Pay Wages for All Hours Worked at Minimum

Wage in Violation of Labor Code sections 1194 and 1197; (2) Failure to Pay Overtime Wages for Daily Overtime Worked in Violation of Labor Code sections 510 and 1194; (3) Failure to Authorize or Permit Meal Periods in Violation of Labor Code sections 512 and 226.7; (4) Failure to Provide Complete and Accurate Wage Statements in Violation of Labor Code section 226; (5) Failure to Timely Pay All Earned Wages and Final Paychecks Due at Time of Separation of Employment in Violation of Labor Code sections 201, 202, and 203; and (6) Unfair Business Practices, in Violation of Business and Professions Code sections 17200, et seq. ("Class Action"). (Howe Dec. ¶4.)

On October 10, 2024, Plaintiff filed Yolo County Superior Court Case No. CV2024-2636 against Defendant seeking civil penalties pursuant to PAGA arising from the same claims ("PAGA Action"). (Howe Dec. ¶5.)

On January 22, 2025, Plaintiff and Defendant participated in an all-day mediation presided over by the Hon. Lisa Cole (Ret.), which led to this Settlement to settle the Action. (Howe Dec. ¶6.)

Pursuant to the Settlement, on August 28, 2025, Plaintiff filed a First Amended Complaint in the Class Action, which added all allegations brought in Plaintiff's PAGA Action, and alleging additional causes of action against Defendant for violations under the Labor Code. The First Amended Complaint includes the following claims: (1) Failure to Pay Minimum and Straight Time Wages in Violation of Labor Code sections 204, 119, 1194.2, and 1197; (2) Failure to Pay Overtime Wages in Violation of Labor Code sections 510, 1194, 1194.2, and 1198; (3) Failure to Provide Meal Periods in Violation of Labor Code sections 226.7 and 512; (4) Failure to Authorize and Permit Rest Breaks in Violation of Labor Code section 226.7; (5) Failure to Provide Accurate Itemized Wage Statements in Violation of Labor Code section 226; (6) Illegal Paycheck Deductions in Violation of Labor Code section 221; (7) Failure to Timely Pay Wages at Termination in Violation of Labor Code sections 201-203; (8) Failure to Maintain Records Required in Violation of Labor Code sections 1174 and 1174.5; (9) Failure to Reimburse Necessary Business Expenses in Violation of Labor Code section 2802; (10) Failure to Pay Vested Vacation Time in Violation of Labor Code section 227.3; (11) Failure to Provide Paid Sick Leave in Violation of Labor Code section 246 *et seq.*; (12) Violation of Business & Professions Code section 17200, *et seq.*, and (13)

Civil Penalties Pursuant to PAGA, Labor Code sections 2698, *et seq.*. The First Amended Complaint is the operative complaint in the Action (the "Operative Complaint"). (Howe Dec. ¶7.)

Defendant has at all times denied the claims and maintained that it enforced its meal break and payroll policies and procedures in compliance with California law; provided the class members their required meal and rest breaks; paid all wages due to Plaintiff and the class members; and any use of personal cell phones was not required or necessary for the employees to conduct their work-related activities. Defendant has produced evidence of facially compliant written policies related to employees being required to take their meal and rest breaks and are required to inform their supervisor or managers of any inability to take meal or rest breaks. Defendant has also produced evidence showing that any rounding that may have taken place was fair, neutral on its face, and did not result in systematic under-compensation of employees over time. Moreover, Defendant strongly contends the case cannot be maintained as any kind of class or representative action, arguing that to the extent class members missed breaks, worked "off the clock," or used their personal cell phones for work purposes, said non-compliant meal breaks, off-the-clock work or cell phone was against company policy, and intermittent or infrequent evidence of such violations would be purely anecdotal. Thus, Defendant contends that individual issues predominate and class certification would be inappropriate.

C. The Exchange of Detailed Informal Discovery and Legal Analysis by the Parties' Counsel

As a critical part of settlement negotiations, the Parties engaged in extensive informal discovery exchange where Plaintiff's counsel reviewed and analyzed the following: time records, pay records, and information relating to the size and scope of the Class, as well as data permitting Plaintiff to fully understand the nature and scope of the allegations in the Complaint, including approximately 18.5% of time and wage records which were analyzed by Plaintiff's counsel. (Howe Dec. ¶8.)

Counsel for the Parties have investigated the law as applied to the facts discovered regarding the alleged claims of Plaintiff and potential defenses thereto, and the potential damages claimed by Plaintiff, and have had multiple conference calls and email exchanges between Plaintiff's counsel and Defendant's counsel. (Howe Dec. ¶9.)

Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to litigate their disputes through trial and through any possible appeals. Plaintiff has also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel are also aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, both generally and in response to Defendant's compelling defenses thereto, and the difficulties in establishing damages for the Class Members. Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement set forth in this Agreement is a fair, adequate and reasonable settlement, and is in the best interests of the Class Members. (Howe Dec. ¶10.)

III. THE SETTLEMENT

The settlement contemplates (i) entry of an Order preliminarily approving the settlement and approving certification of a provisional settlement class, contingent upon final approval of the settlement; and (ii) entry of an Order granting final approval of the settlement and judgment.

Subject to Court approval pursuant to Section 382 of the California Code of Civil Procedure and Rule 3.769 et seq. of the California Rules of Court, the Parties have agreed to settle the Lawsuit by agreement upon the terms and conditions and for the consideration set forth in the Settlement, a copy of which is attached to the Declaration of Eve Howe as **Exhibit "1**." A summary of the key terms of the Settlement is as follows:

1. "Class" means all individuals employed by Defendant in California and classified as an hourly, non-exempt employee who worked for Defendant during the Class Period. (Settlement, §1.5.)

2. "Class Period" means the period commencing on July 25, 2020 and continuing through the date of preliminary approval of the Settlement, or an earlier date that Defendant selects pursuant to the escalation option. (Settlement, §1.12.)

3. "Aggrieved Employee" means a person employed by Defendant in California and classified as an hourly, non-exempt employee who worked for Defendant during the PAGA Period. (Settlement, §1.4.)

4. "PAGA Period" means the period from July 25, 2023, and continuing through the date of preliminary approval of the Settlement. (Settlement, §1.31.)

5. “Gross Settlement Amount” means $210,000, which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 8 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administration Expenses Payment. (Settlement, §1.22.)

6. Escalator Clause: Based on its records, Defendant estimates that, as of the date of this Settlement Agreement, (1) there are 97 Class Members and 8,787 Total Workweeks during the Class Period and (2) there were 66 Aggrieved Employees who worked 1,741 PAGA Pay Periods during the PAGA Period. If the total number of Workweeks as of the end of the Class Period exceeds the above figure by greater than 10%, then Defendant at its sole discretion shall either: (1) establish the end date of the Settlement Period as the 9,666th workweek; or (2) pay additional money for the additional release commensurate with the number of workweeks that will exceed 9,666 at the same Workweek rate as before (i.e., $23.90 per workweek). (Settlement, §8.)

7. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than Fifteen Thousand Dollars and Zero Cents ($15,000.00) (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendant will not oppose Plaintiff’s request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment. (Settlement, §3.2.1.)

8. To Class Counsel: A Class Counsel Fees Payment of not more than One-Third of the Gross Settlement Amount, which is currently estimated to be Seventy Thousand Dollars and Zero Cents ($70,000.00), and a Class Counsel Litigation Expenses Payment of not more than Twenty Thousand Dollars and Zero Cents ($20,000.00). Defendant will not oppose requests for these payments provided that do not exceed these amounts. (Settlement, §3.3.2.)

9. “Administrator” means “Administrator” means Apex Class Action Administration, the neutral entity the Parties have agreed to appoint to administer the Settlement. (Settlement, §1.2.)

10. To the Administrator: An Administration Expenses Payment not to exceed $10,000.00 except for a showing of good cause and as approved by the Court. To the

extent the Administrator's expenses are less or the Court approves payment less than $10,000, the Administrator will retain the remainder in the Net Settlement Amount. (Settlement, §3.2.3)

11. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of Ten Thousand Dollars and Zero Cents ($10,000.00) to be paid from the Gross Settlement Amount, with 65% ($6,500.00) allocated to the LWDA PAGA Payment and 35% ($3,500.00) allocated to the Individual PAGA Payments. (Settlement, §3.3.5)

12. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments. (Settlement, §1.28.)

13. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. (Settlement, §3.2.4)

14. Tax Allocation of Individual Class Payments: 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The Parties agree that the Employee's Taxes and Required Withholdings with respect to the Wage Portion of the Individual Class Payment will be withheld from the Individual Class Payment. The other 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment. (Settlement §3.2.4.1)

15. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses

using the National Change of Address Database. (Settlement, §4.4.1)

16. Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint, including the following claims: (1) Failure to Pay Minimum and Straight Time Wages Under Labor Code §§ 204, 1194, 1194.2, and 1197; (2) Failure to Pay Overtime Wages Under Labor Code §§ 510, 1194, 1194.2, and 1198; (3) Failure to Provide Meal Periods Under Labor Code §§ 226.7 and 512; (4) Failure to Authorize and Permit Rest Breaks Under Labor Code § 226.7; (5) Failure to Provide Accurate Itemized Wage Statements Under Labor Code § 226; (6) Violation of Labor Code § 221; (7) Failure to Timely Pay Wages at Termination Under Labor Code §§ 201-203; (8) Failure to Maintain Records Required Under Labor Code §§ 1174 and 1174.5; (9) Failure to Reimburse Necessary Business Expenses Under Labor Code § 2802; (10) Violation of Business & Professions Code § 17200, et seq.; (11) Violation of Labor Code Section 246 et seq. and related laws for Paid Sick Leave violations; (12) all claims under the California Industrial Welfare Commission Wage Orders (collectively "Released Class Claims"). Except as set forth in Section 5.3 of the Settlement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period. (Settlement, §5.2.)

17. "Response Deadline" means sixty (60) calendar days after the Administrator mails Notice to Class Members and Aggrieved Employees and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional fourteen (14) calendar days beyond the Response Deadline has expired. (Settlement, § 1.43.)

18. Request for Exclusion (Opt-Outs): Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline. (Settlement, 7.5.1.)

19. Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written

objection to the Administrator must do so not later than 60 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed). (Settlement, §7.7.2.)

IV. ANALYSIS

A. Class Action Settlements Are Subject To Review And Approval Under The California Rules of Court

Rule 3.769 of the California Rules of Court requires court approval for class action settlements. "Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement." (Cal. Rules of Court, rule 3.769(g).) Courts act within their discretion in approving settlements which are fair, not collusive, and take into account "all the normal perils of litigation as well as the additional uncertainties inherent in complex class actions." (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179, *cert. den. sub nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass'n* (1981) 452 U.S. 905.)

B. This Settlement Is Fair, Reasonable, And Adequate

The purpose of the preliminary evaluation of class action settlements is to determine only whether the proposed settlement is within the *range of reasonableness* and, therefore, whether notice to the class and the scheduling of a formal fairness hearing are warranted. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35; Newberg on Class Actions (4^{th} Ed.) §11:25.) Courts have broad powers to determine whether a proposed settlement is fair under the circumstances of the case. (*Wershba, supra,* 91 Cal.App.4th at 234-35; *Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438.) In evaluating preliminary approval, courts must consider several relevant factors, including "the strength of the Plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and views of counsel...." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) "The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." (*Wershba, supra,* 91 Cal.App.4th at 245.) Furthermore, courts must give "proper deference to the private consensual decision of the parties" because "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027.)

A proposed class action settlement is presumed fair under the following circumstances: (1) the parties reached settlement after arms-length negotiations; (2) investigation and discovery were sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation, and (4) the percentage of objections is small. (*Dunk v. Ford Motor Co., supra*, 48 Cal.App.4th at 1802.) The Declaration of Class Counsel Eve Howe demonstrates that the proposed settlement was the product of serious, informed, and non-collusive negotiations and demonstrates counsel's extensive experience in both employment law as well as class action litigation.

1. The Settlement is the result of serious, informed, and non-collusive negotiations.

The Settlement was reached as a result of arm's-length negotiations facilitated by a highly regarded and experienced wage and hour mediator, The Honorable Lisa Hart Cole (Ret.) and analysis by Plaintiff's counsel and expert witness. (Howe Dec. ¶¶8-29.) While Plaintiff believes in the merits of her case, she also recognizes the inherent risks of litigation and understands the benefit of the Class receiving settlement funds immediately as opposed to risking an unfavorable decision on class certification, summary judgment, at trial and/or the damages awarded, and/or on an appeal that can take several more years to litigate. (*Id.*)

2. The extent of the information provided through formal and informal discovery and the stage of the proceedings support the Settlement.

As described herein, the Parties investigated and evaluated the factual strengths and weaknesses of this case before reaching the proposed Settlement and engaged in sufficient investigation and discovery, as referenced above, to support the Settlement. (*Id.*) Accordingly, the proposed Settlement was reached following probative factual evaluation of Defendant's relevant policies and procedures and review, compilation, and analysis by Plaintiff's counsel and Plaintiff's counsel's expert of the following: (1) the total number of current and former putative class members and aggrieved employees who worked during the relevant time periods; (2) the total number of workweeks at issue during the relevant time periods; (3) the total number of pay periods at issue during the relevant time periods; (4) the average hourly rate for the putative class members; (5) Safe Practices and Employee Handbook documents; and (6) other relevant information. Further, the Plaintiff's counsel had multiple discussions, calls, and emails with the Defendant's counsel about the disputed factual and legal issues involved in this case, the risks attending further prosecution, including risks related to a contested motion for class certification, and the substantial benefits to be received pursuant to a compromise and settlement of the case as set forth in the Agreement. As such, settlement on the terms agreed to is in the best interest of Plaintiff and the settlement class. (*Id*.)

Thus, the Settlement came only after the case was fully investigated by counsel, as set forth above. This litigation, therefore, has reached the stage where "the Parties certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support the Settlement. (*Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.)

3. Plaintiff's counsel are experienced in similar litigation.

Experienced counsel, operating at arms-length, have weighed the strengths of the case and examined all of the issues and risks of litigation and endorse the proposed settlement. The view of the attorneys actively conducting the litigation "is entitled to significant weight" in deciding whether to approve the settlement. (*Fisher Bros. v. Cambridge Lee Industries, Inc.* (E.D. Pa. 1985) 630 F.Supp. 482, 488; *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *affd.* 661 F.2d 939 (9th Cir. 1981); *Boyd v. Bechtel Corp., supra,* 485 F.Supp. at 617.)

Both Plaintiff's and Defendant's counsel are experienced in employment, wage and hour and class action matters. Lavi & Ebrahimian LLP is a well-regarded firm that handles employment matters almost exclusively. (Howe Dec. ¶30.) Joseph Lavi, of Lavi & Ebrahimian, LLP, has been approved in class counsel in numerous actions and has been named a Southern California Super Lawyer the area of Plaintiff's employment litigation - class action from 2011-2025. (*Id*.)

Defendant's counsel, Terry A. Wills and Karina Sandoval Martinez of Cook Brown LLP are extremely well-regarded and respected as employment defense counsel. Counsel on both sides share the view – endorsed by an experienced wage and hour class action mediator – that this is a fair and reasonable settlement in light of the complexities of the case, the state of the law and uncertainties of class certification and litigation, and the benefit the settlement confers on the class. (Howe Dec. ¶¶8-29.) Given the risks inherent in litigation, in class certification proceedings, and in the defenses asserted, this settlement is fair, adequate, and reasonable and in the best interests of the class. (*Id.*)

4. The Settlement is fair and reasonable based on the strengths of Plaintiff's case and the risks and costs of further litigation

Plaintiff and her counsel have concluded it was reasonable to enter into the proposed Settlement. Defendant has vigorously contested and continues to contest liability for the claims asserted in the action. Although Defendant believes that class certification would be unlikely on such claims, it nevertheless agreed to attempt resolution of the case through extensive informal discovery and mediation to avoid the expense, distraction and uncertainty of protracted litigation.

There are significant legal uncertainties associated with cases such as this as they can be factually complex and require protracted litigation to resolve. A settlement is not judged solely against what might have been recovered had plaintiff prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. (*Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F. 3d 1234, 1242; *Wershba*, 91 Cal.App.4th at 246 & 250; *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App. 3d 1117, 1139.) Instead, "[c]ompromise is inherent and necessary in the settlement process...even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation" (*Wershba*, 91 Cal.App.4th at 250.)

5. The Proposed Settlement is a Reasonable Compromise of Claims

To evaluate a settlement, the trial court must receive "basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) However, the record need not contain an explicit statement of the maximum theoretical recovery:

> "Greenwell misunderstands *Kullar*, apparently interpreting it to require the record in all cases to contain evidence in the form of an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims—a number which appears nowhere in the record of this case. But *Kullar* does not, as Greenwell claims, require any such explicit statement of value; it requires a record which allows "an understanding of the amount that is in controversy and the realistic ranges of outcomes of the litigation."

(*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409.)

Based on the information informally produced by Defendant, Defendant estimates there are approximately 97 Class Members who collectively worked a total of 8,787 Workweeks, and 66 Aggrieved Employees who worked a total of 1,741 PAGA Pay Periods. These workers received an average rate of pay of $22.07/hour. (Howe Dec. ¶11, Settlement § 4.1.) Based on Class Counsel's and Plaintiff's analysis of the data, the maximum exposure for Plaintiff's claims were as follows:

With regard to failure to pay wages for all hours worked at minimum wage and overtime, Plaintiff alleges that employees did not receive all minimum wages due to Defendant's policies, practices, and/or procedures including, but not limited to: Rounding down or shaving down Plaintiff's and similarly situated employees' total daily hours at the time of their clock-ins and clock-outs, including clock-ins and clock outs for meal breaks, to the nearest quarter of an hour. Defendant also failed to pay overtimes wages on days employees worked more than 8 hours due to Defendant using a "Flex Time" System, wherein Plaintiff and similarly situated employees would be credited on days not worked and Defendant would clock in and out hours for Plaintiff and similarly situated employees as if they worked on those days. However, Plaintiff's expert found that Defendant's rounding tended to result in minimal to no net unpaid time, on average less than one minute per shift. Assuming approximately one minute per shift unpaid due to rounding and 5 minutes unpaid due to the "Flex Time" system, Plaintiff estimated there were approximately **$48,482.27** in damages for unpaid minimum and overtime wages. [Calculated as follows: 8,787 workweeks x .1 hours off unpaid x $22.07 avg. hourly rate x 5 days x 0.5 overtime multiplier[1] = $48,482.27]. (Howe Dec. ¶12.)

With regard to failure to authorize or permit meal periods, Plaintiff alleges that employees were not provided legally compliant meal periods due to Defendant's policies, practices, and/or procedures including, but not limited to: Rounding down or shaving down Plaintiff's and similarly situated employees' total daily hours at the time of their clock-ins and clock-outs, including clock-ins and clock outs for meal breaks, to the nearest quarter of an hour. Plaintiff's expert found that approximately 15.5% of shifts included a meal break violation. Thus, Plaintiff estimated there was a maximum of approximately **$150,295.04** in damages for meal break violations. [Calculated as follows: 8,787 workweeks x 5 days per week x $22.07 average rate of pay x 0.155 = $150,295.04]. (Howe Dec. ¶13.)

With regard to failure to authorize or permit rest periods, Plaintiff alleges that employees were not provided legally compliant rest periods due to Defendant's policies, practices, and/or procedures including, but not limited to: requiring employees to work on weekends for special events where they were not provided rest breaks. However, due to the infrequency of these weekend shifts, Plaintiff assumes at most one violation per four workweeks. Thus, Plaintiff estimated there was a maximum of approximately **$48,482.27** in damages for rest break violations. [Calculated as follows: 8,787 workweeks x $22.07 average rate of pay / 4 = $48,482.27]. (Howe Dec. ¶14.)

With regard to failure to reimburse employees for business-related expenses, Plaintiff alleges that employees were required to use their personal cellphones during occasional weekend shifts and were not compensated for this use by Defendant. Assuming at most a cost of $5 per workweek, Plaintiff estimated there was a maximum of approximately **$43,935.00** in damages for reimbursement of business expenses. [Calculated as follows: 8,787 workweeks x $5 per workweek = $43,935.00]. (Howe Dec. ¶15.)

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[1] Plaintiff assumes a 0.5 multiplier here to account for the fact that employees were still paid for "Flex Time" but were not paid the appropriate overtime rate.

With regard to failure to provide complete and accurate wage statements in violation of Labor Code Section 226, with 97 employees, and a maximum penalty of $4,000 per employee, the total amount would be **$388,000.00**. [Calculated as follows: 97 employees X $4,000 maximum penalty = $388,000.00]. (Howe Dec. ¶16.)

With regard to failure to provide employees a continuation of their wages from the day their unpaid wages were due, until paid, up to a maximum of 30 days, with 49 former employees times an average hourly rate of pay of $22.07, Plaintiff estimates there was a maximum of approximately **$259,543.20** in damages. [Calculated as follows: 49 former employees X $22.07 average rate of pay X 8 hours per day X 30 days = $259,543.20]. (Howe Dec. ¶17.)

As such, Plaintiff's maximum potential recovery in this matter, excluding PAGA penalties, would amount to approximately $938,737.78. The settlement reached in this matter was $210,000.00 or approximately 22.4% of potential exposure.[2] (Howe Dec. ¶18.)

Regarding the PAGA penalty exposure analysis, according to the data informally produced by Defendant in this case, during the relevant PAGA period (from July 25, 2023, and continuing through the date of preliminary approval of the Settlement) there are approximately 1,741 pay periods for approximately 66 aggrieved employees. (Howe Dec. ¶19.)

Regarding the PAGA penalty exposure analysis, as an initial matter, in wage and hour class action cases that settle, which are the overwhelming majority of such cases, very little of the total settlement is paid to PAGA penalties in order to maximize payments to class members. *See, e.g., Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 589 (2010) (no abuse of discretion to approve class action settlement allocating $0 to PAGA claims); *Ceja-Corona v. CVS Pharm., Inc*., 2015 U.S. Dist. LEXIS 5118, 2015 WL 222500, at *2-3 (E.D. Cal. Jan. 14, 2015) (preliminarily approving $10,000 in PAGA penalties out of a total settlement amount of $900,000), report and recommendation adopted, 2015 U.S. Dist. LEXIS 25730, 2015 WL 925598 (E.D. Cal. Mar. 3, 2015); *Nen Thio v. Genji, LLC*, 14 F. Supp. 3d 1324, 1330 (N.D. Cal. 2014) (preliminarily

[2] Prior to mediation, Plaintiff's counsel also analyzed potential violations for Defendant's failure to properly maintain records, failure to pay vested vacation pay, failure to provide paid sick leave, and illegal paycheck deductions. However, Plaintiff's counsel found that these claims had de minimis value. As a condition of the Settlement, these claims were amended to the Operative Complaint and included in Defendant's Released Claims but are not given any value in this exposure analysis.

approving $10,000 in PAGA penalties out of a total settlement amount of $1,250,000); *Franco v. Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, 2012 WL 5941801, at *14 (E.D. Cal. Nov. 27, 2012) (granting final approval of $10,000 in PAGA penalties out of a total settlement amount of $2,500,000); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, 2012 WL 5364575, at *3 (E.D. Cal. Oct. 31, 2012) (granting final approval of $10,000 in PAGA penalties out of a total settlement amount of $3,700,000); *Chu v. Wells Fargo Invs., LLC*, 2011 U.S. Dist. LEXIS 15821, 2011 WL 672645, at *1 al. Feb. 16, 2011) (granting final approval of $10,000 in PAGA penalties out of a total settlement amount of $6,900,000). In these settlements, the parties generally maximize statutory penalties and minimize PAGA penalties. *See, e.g., Franco*, 2012 U.S. Dist. LEXIS 169057, 2012 WL 5941801, at *2, *14 (approving a $10,000 PAGA award out of a total settlement amount of $2,500,000). (Howe Dec. ¶20.)

Plaintiff recognizes that PAGA claims generally settle for a mere fraction of multiple "stacked" PAGA penalties as is described above, but more typically resolve for a reasonable fraction of the unstacked PAGA exposure. Here, since the claims for minimum wages, overtime wages, meal periods, timely wages, wage statements, and failure to timely pay all unpaid wages following separation of employment are all premised at least partially on the same factual basis (i.e. hourly non-exempt employees who were not paid due to Defendant's rounding and "flex time" policies), stacking these penalties could arguably be overly punitive. Instead, seeking only penalties for minimum wages to account for the off the clock work results in far more reasonable and less punitive penalties that eliminate the "stacked" penalties for each Labor Code section violated as a result of the same conduct. As a result, Defendant could argue Plaintiff and the aggrieved employees may only be able to recover penalties under Plaintiff's minimum wage claim. Thus, if Defendant is correct on the "stacking" issue, the maximum theoretical penalties would be substantially less under Defendant's view of the law. (Howe Dec. ¶21.)

Second, Plaintiff's calculation also assumes that Plaintiff's PAGA claims could be tried in a manageable manner that comports with due process, which Defendant vigorously disputes. (Howe Dec. ¶22.)

Third, the Court has discretion under PAGA to reduce the amount of any penalties awarded for equitable reasons. (Howe Dec. ¶23.)

Fourth, Defendant would argue that PAGA penalties would be limited in any event. As discussed in detail above, Defendant denies any liability. Moreover, Defendant would argue that even if Plaintiff prevailed, the recoverable penalties under PAGA are minimal. Indeed, courts that have considered the issue have refused to "stack" PAGA penalties. *See Carrington v. Starbucks Corporation* (Cal. Ct. App. Nov. 27, 2018) No. D072392 (published Dec. 19, 2018) (approving PAGA penalty reduction to $5 per pay period); *accord Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809. Moreover, Defendant would argue that Plaintiff is not entitled to recover PAGA penalties at the subsequent violation rate of $100 per pay period. California's appellate courts have held that "[u]ntil the employer has been notified that it is violating a Labor Code provision (whether or not the commissioner or court chooses to impose penalties), the employer cannot be presumed to be aware [of the violation]" and therefore, until a Court or the Commissioner issues a finding of a violation, the initial $50 violation rate applies for each pay period in which the alleged violation occurred. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209; *accord Amalgamated Transit Union Local 1309 v. Laidlaw Transit Service, Inc*. (S.D. Cal. Aug. 10, 2009) 2009 WL 2448430, at *9 ("[u]nder California law, courts have held that employers are not subject to heightened penalties for subsequent violations unless and until a court or commissioner notifies the employer that it is in violation of the Labor Code"). Thus, Defendant would argue that even if the Plaintiff was able to establish any violation of the Labor Code, the PAGA penalties assessed for these violations will be computed at the $50 rate, as opposed to the $100 per pay period rate at maximum, and there is a likelihood that a further reduction of the penalty to $5 per pay period as approved in *Carrington* would apply given Defendant's compliance with the Labor Code as discussed above. (Howe Dec. ¶24.)

Finally, Plaintiff anticipates that Defendant would argue that the Court might follow the logic in *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209 and assess only the initial $50 violation rate for each pay period (i.e. at $50 per pay period x 1,741 pay periods at issue), therefore it is likely Defendant's maximum exposure is actually only $87,050.00.

Defendant likely would have argued that this Court would use the *Carrington* valuation as a ceiling for assessing PAGA penalties (i.e., at $5 per pay period x 1,741 pay periods at issue) and that $8,705.00 was its true "worst case scenario" exposure. (Howe Dec. ¶25.)

In sum, the settlement in the instant case provides for a gross fund value of $210,000.00 with a PAGA allocation of $10,000 with 65% ($6,500.00) payable to the LWDA and 35% ($3,500.00) distributed to the Aggrieved Employees which falls squarely within the range of reasonableness for PAGA allocations outlined in the case law above. (Howe Dec. ¶26.)

Defendant has however maintained significant defenses to the above claims as follows: Regarding Plaintiff's claims for unpaid minimum and overtime wages, Defendant would likely argue that properly paid all minimum wages and overtime wages owed at the proper rate. With respect to Plaintiff's claims regarding meal and rest breaks, Defendant would likely contend that the Defendant afforded the opportunity to take required meal and rest breaks to Plaintiff and the putative class members and that any failure to take the required meal and rest breaks was due to the individual choices of employees. Defendant would likely argue that it had compliant meal and rest period policies and issued those to all Class Members. Defendant would likely also argue that all employee business-related expenses were properly reimbursed. Additionally, Defendant could contend any alleged wage statement violations could not be shown to be "knowing and intentional" given its good-faith defenses, and that Plaintiff cannot show she or other employees "suffer[ed] injury," as required by Labor Code § 226(e). Defendant would likely argue that wage statements always accurately reflected hours worked and amounts paid to employees. Defendant could also argue that wage statement penalties are not recoverable at all for alleged meal and rest period violations, that no violations occurred, that Class Members suffered no "injury," and that any alleged violations were not "knowing and intentional." Based on the foregoing, Defendant could argue that Plaintiff and Class Members were paid out upon separation of employment for all wages owed, and that Defendant believed, in good faith, that it was properly paying all wages to separating employees. For these reasons, Defendant could conclude that Plaintiff would not likely prevail on their claims. (Howe Dec. ¶27.)

If Plaintiff continued litigating this matter, the class members could potentially receive **nothing** if the court agreed with Defendant's position or if Defendant was able to defeat certification based on the individual inquiries that would be required regarding Plaintiff's off the clock claims and meal and rest break claims. Furthermore, even if the Court agreed with Plaintiff, Plaintiff still had to prove Defendant faced exposure under Plaintiff's derivative claims and acted intentionally and *willfully* in order to receive the additional penalties under Labor Code Sections 203, 204, and 226. As such, Plaintiff's decision to settle this matter was in the best interest of the Class Members. (Howe Dec. ¶28.)

This is a fair and reasonable result. Other substantial benefits also include that it is a non-reversionary, non-claims made settlement, which distributes the Net Settlement Amount on a pro rata basis based on the number of Workweeks each Participating Class Member worked for Defendant during the Class Period. (Settlement, §3.2.4.) The 35% portion of the PAGA Settlement Amount allocated to Aggrieved Employees will be distributed to each Aggrieved Employee who worked during the PAGA Period based on their individual number of PAGA Period Pay Periods during the PAGA Period. (Settlement, §3.2.5.1.) Settlement Class Members will have no less than one hundred twenty (180) days to cash their checks. Any funds not distributed after the expiration of the Individual Class Payment checks shall escheat to the California Controller's Unclaimed Property Fund to in the name of the Class Member. (Settlement, § 4.4.1.) (Howe Dec. ¶29.)

The Gross Settlement Amount is reasonable in light of the risks involved in this case—including the prospect of a potential adverse summary judgment ruling, the uncertainty of class certification, defenses to the case, potential appeal, and the elements of willfulness and/or injury required for certain penalties.

Plaintiff's Counsel is convinced that the proposed Settlement is in the best interest of the class based on the negotiations and a detailed knowledge of the issues present in this action. The affirmative defenses asserted by Defendant, the prospect of a potential adverse summary judgment ruling, preemption issues, class certification issues, the difficulties of complex litigation, the lengthy process of establishing specific damages and various possible delays and appeals were also carefully considered by Class Counsel in agreeing to the proposed Settlement. In light of the above, the proposed Settlement is well within the "ballpark" of reasonableness and should be granted preliminary approval.

V. THE COURT SHOULD CERTIFY THE CLASS FOR SETTLEMENT PURPOSES

The court may make an order approving certification of a provisional settlement class after the preliminary settlement hearing. (California Rules of Court, Rule 3.769(d).) For settlement purposes, courts use a less stringent standard for certification of classes. (*Global Minerals & Metals Corp. v. Superior Court* (2003) 113 Cal.App.4th 836, 859.) "The reason for this is that no trial is anticipated in a settlement class case, so the case management issues inherent in the ascertainable class determination need not be confronted." (*Id.;* see also *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1161-1162 [affirming certification of class action for settlement purposes only].) Accordingly, this Court has discretion to certify Plaintiff's class for settlement purposes only.

The requirements under California Code of Civil Procedure Section 382 are all met for the purposes of certifying this case for settlement purposes:

- <u>Numerosity</u>: The settlement class consists of approximately 97 Class Members. Thus, the requirement of numerosity is easily met because joinder of 97 individual plaintiffs into a single case is otherwise impracticable in light of the circumstances of this case.
- <u>Typicality</u>: The claims of the class representative are typical of the claims of the class members as a whole. The named Plaintiff suffered the same alleged violations (e.g. failure to pay minimum and overtime wages, failure to pay meal and rest period premium wages for non-compliant meal and rest periods, failure to provide complete and accurate wage statements, and failure to pay all wages due upon separation of employment) as the class as a whole did and, thus, the claims of the named Plaintiff fairly represents the claims of the class as a whole.
- <u>Ascertainability</u>: The proposed "Class" is easily ascertainable based on Defendant's own payroll records.
- <u>Adequacy</u>: Plaintiff has proven to be an adequate class representative. She has conducted herself diligently and responsibly in representing the class in this litigation, she

understands her fiduciary obligations, and she has actively participated in the prosecution of this case. (Howe Dec. ¶34; See concurrently filed Declaration of Anna Zapuskalova.) Plaintiff has spent hours in meetings and conferences with counsel to get a better understanding of her work environment and requirements. Plaintiff continues to be actively engaged in the ongoing settlement negotiations following mediation that were ultimately required to finalize settlement. (*Id.*) Further, Plaintiff does not have any interest that is adverse to the interests of the other class members. (*Id.*) Moreover, proposed class counsel is adequate to represent the class for settlement purposes and has been appointed as class counsel before by this Court as well as both State and Federal Courts. (Howe Dec. ¶30.)

- <u>Commonality</u>: Many common issues of law and fact unite the class. The common questions of law and fact include, but are not limited to:

  1) Whether Defendant failed to pay minimum and overtime wages;
  2) Whether Defendant failed to provide the Class Members meal periods and premium wages for missed meal periods;
  3) Whether Defendant failed to provide the Class Members complete and accurate wage statements;
  4) Whether Class Members are entitled to waiting time penalties for Defendant's failure to pay all wages upon separation of employment; and
  5) Whether Defendant violated Business and Professions Code section 17200.

- <u>Superiority</u>: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Joinder of all members of the proposed class is impractical. Class treatment will permit a large number of similarly-situated persons to prosecute their common claims in a single forum simultaneously for settlement purposes without the unnecessary duplication of effort and expense that numerous individual actions would engender.

VI. THE PROPOSED CLASS NOTICE OF SETTLEMENT SHOULD BE APPROVED

The proposed Class Notice in the form attached to the Settlement as **<u>Exhibit A</u>**, should be approved for dissemination to the Class Members. This document informs the Class of the terms of the Settlement, of their right to receive their proportional share of the Settlement and the manner in which to do so, of their right to request exclusion or to comment upon or object to the Settlement, and of their right to appear in person or by counsel at the final approval hearing and to be heard regarding approval of the Settlement. Adequate periods of time are provided by each of these procedures. Furthermore, the date and time of the Final Approval hearing will be inserted in the Notice will identify the information upon which the Class Member's share will be calculated as well as the estimated amount he or she can expect to receive if he or she chooses to participate in the settlement.

VII. THE PROPOSED ATTORNEY FEES AND COSTS ARE REASONABLE

Plaintiff's Counsel seeks attorneys' fees and costs award of one-third (1/3) of the Settlement Amount or Seventy Thousand Dollars and Zero Cents ($70,000.00) and Class Counsel's costs not to exceed Twenty Thousand Dollars and Zero Cents ($20,000.00) for the time spent litigating this matter as well as expenses incurred in the prosecution of the action thus far. Defendant will not object to an award of attorneys' fees and costs in these amounts. The requested fee falls well within the historical range of attorneys' fee awards under the common fund theory, which is generally from 20% to 50%. The requested fee is a fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent fee basis, especially in light of the substantial benefits achieved by Plaintiff's counsel for the Class Members. Plaintiff's counsel diligently litigated and investigated this case.

California courts have recognized that an appropriate method for awarding attorney's fees in class actions is to award a percentage of the "common fund" created as a result of the settlement. (*City & County of San Francisco v. Sweet* (1995) 12 Cal. 4th 105, 110-11; *Quinn v. State* (1975) 15 Cal. 3d 162, 168; *see also Apple Computer, Inc. v. Superior Court* (2005) 126 Cal. App. 4th 1253, 1270; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal. App. 4th 19, 26.) The basis of the common fund is fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to others who are entitled to share in the fund and who should bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant, who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly and directly compensated should his efforts be successful. (*City & County of San Francisco v. Sweet*, *supra,* 12 Cal. 4th at 111.) In *Quinn*, the California Supreme

Court stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs." (*Quinn v. State, supra,* 15 Cal. 3d at 167.) Similarly, in *Sweet*, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." (*City & County of San Francisco v. Sweet, supra,* 12 Cal. 4th at 110.)

Several courts have expressed frustration with the alternative "lodestar" approach for deciding fee awards, which usually involves wading through voluminous and often indecipherable time records. (*Lealao, supra*, 82 Cal. App. 4th at 31 n.5 [citing *In re Activision Sec. Litig.* (N.D. Cal 1989)] 723 F. Supp. 1373, 1375].) The percentage approach is preferable to the lodestar because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources. (*In re Activision Sec. Litig.*, 723 F. Supp. at 1378-79.) The Ninth Circuit now routinely uses the percentage of the common fund approach to determine the award of attorney's fees. (*Lealao*, 82 Cal. App. 4th at 30-31; *see e.g., In re Pacific Enters. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 378-79 [approving attorney's fee of 33%].)

Plaintiff's counsel's request for fees equal to one-third 1/3 of the Gross Settlement Amount is within the range of reasonableness. Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. (*See In re Activision Sec. Litig.*, *supra*, 723 F. Supp. at 1378.) According to Professor Newberg: "No general rule can be articulated on what is a reasonable percentage of a common fund…Usually 50 per cent of the fund is the upper limit on a reasonable fee award from a common fund, in order to assure that fees do not consume a disproportionate part of the recovery obtained for the class, though somewhat larger percentages are not unprecedented." (Newberg, *supra*, §14.6.)

Class Counsel have borne, and continue to bear, the entire risk and cost of litigation associated with this class action on a pure contingency basis. The factual and legal issues posed in this case were highly disputed, and there were also risks as to whether or not a class would be certified, leaving a large number of putative class members unlikely to receive any recovery.

Based on Class Counsel's past experience in class action wage and hour litigation, it is safe to state that Class Counsel is very likely to be called upon, after the Class Notice has been sent, to expend substantial amounts of additional time to help Class Members understand the terms of the proposed Settlement. It is also likely that, even after final approval of the Settlement has been granted, Class Counsel will be called upon to expend additional amounts of time in the presentation and resolution of contests and questions relating to Class Members' allocation under the terms of the proposed Settlement, as to the amounts of individual claims and perhaps other individual issues.

The Court should preliminarily approve the requested attorney's fees and costs, which are justified by the results achieved, the complexity of the issues, the difficulty of the case, and the great risk undertaken by Class Counsel. The requested attorneys' fees and costs will not be opposed by Defendant and are well within established guidelines. The Class Members will also be notified of the requested amount and have an opportunity to object to the requested fees.

VIII. THE REQUESTED SERVICE AWARD IS REASONABLE

The named Plaintiff is entitled to a Service Payment for her service as class representative and the risks associated with her role as Class Representative and named Plaintiff in this action. Plaintiff understood and continues to understand her role as Class Representative, she has protected the interests of Class Members during the pending of this matter and will continue to do so. (Howe Dec. ¶34.) Plaintiff has spent hours in meetings and conferences with counsel to get a better understanding of her work environment. (*Id*.) Even after mediation, she continued to be engaged with counsel for the months of the continued negotiations that it took to ultimately finalize a settlement as well as understanding and discussing the settlement agreement with the attorneys. (*Id*.) Further, Plaintiff does not have any interest that is adverse to the interests of the other class members. (*Id*.) Defendant will not oppose the application for an enhancement of $15,000 to Plaintiff as the Class Representative from the Gross Settlement Amount for her services to the Class in this action. Class Counsel can attest that Plaintiff devoted a proportionate amount of time and work assisting counsel in the case, communicating with counsel frequently, providing documents and information regarding their employer and employment, which led to increase in the value and ultimate success of the Settlement. (*Id.*)

IX. PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS

The Parties propose the following schedule for the fairness hearing and final proceedings:

- Not later than fifteen (15) calendar days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. (Settlement, § 4.2.)
- Using best efforts to perform as soon as possible, and in no event later than fourteen (14) days after the Court grants Preliminary Approval of the Settlement, the Administrator will send the Class Notice to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail. (Settlement, § 7.4.2.)
- If a Class Member wishes to submit a Request for Exclusion or Objection they may do so within sixty (60) calendar days from the date the Class Notice is mailed to them (plus an additional 14 days for Class Members whose Class Notice is re-mailed) ("Response Deadline"). (Settlement, § 7.5.1.)
- The filing date for the Motion for Final Approval of the Class Action Settlement, and Motion for Final Approval of Plaintiff's Attorneys' Fees and Costs and Service Payment to the Class Representative will be determined by the Court.
- The Final Fairness and Approval Hearing date will be determined by Court. The parties request that the Final Fairness and Approval Hearing be set approximately one hundred twenty (120) days following the Court's granting of preliminary approval of the proposed Class Action Settlement.

X. CONCLUSION

The proposed class action settlement is fair, adequate, and reasonable. It will result in fair and immediate payment to Class Members; it is non-collusive; and it was achieved as the result of informed, extensive, and arms' length negotiations conducted by counsel for respective parties who are experienced in wage and hour class action litigation. For the foregoing reasons, the parties respectfully request that the Court grant preliminary approval of the proposed Settlement, sign the proposed Order, approve and authorize mailing of the proposed Class Notice of Settlement and set a date for a final approval hearing.

Dated: September 24, 2025,

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

By: *__/s/ Eve Howe__*
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