Kevin A. Lipeles (Bar No. 244275)
kevin@kallaw.com
Thomas H. Schelly (Bar No. 217285)
thomas@kallaw.com
Jasmine Badawi, Esq. (Bar No. 335433)
Jasmine@kallaw.com
LIPELES LAW GROUP, APC
880 Apollo Street, Suite 336
El Segundo, CA 90245
Telephone: (310) 322-2211
Facsimile: (310) 322-2252

Attorneys for Plaintiff
Tara Denise Michael

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

TARA DENISE MICHAEL, an individual, on her own behalf and on behalf of all others similarly situated, Plaintiffs, vs. POINT QUEST INC., a California corporation; and DOES 1 through 100, inclusive, Defendants.	**CASE NO.: 24CV016886** **NOTICE OF MOTION AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL** Judge: Hon. Lauri Damrell Date: February 6, 2026 Time: 9:00 AM Dept.: 22 Complaint Filed: August 26, 2024 Reservation ID: A-16886-001

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NOTICE IS HEREBY GIVEN that, on February 6, 2026 at 9:00 AM in Department 22 of the Sacramento Superior Court before the Honorable Lauri Damrell, pursuant to California Code of Civil Procedure §382, Plaintiff Tara Denise Michael ("Plaintiff"), on behalf of herself and all others similarly situated, will and does hereby move this Court for entry of an Order:

1. Preliminarily certifying the class for purposes of settlement only;

2. Preliminarily appointing Plaintiff as Class Representative for purposes of settlement only;

3. Preliminarily appointing Kevin Lipeles, Esq., Thomas Schelly, Esq., and Jasmine Badawi, Esq. of Lipeles Law Group, APC, as Class Counsel for purposes of settlement only;

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 ("Settlement Agreement"), including payment by Point Quest Inc., ("PQ" or "Defendant") of the Gross Settlement Amount of $395,000.00;

5. Preliminarily approving a Class Representative Service Payment of $10,000 to Plaintiff in recognition of her service to the Settlement Class;

6. Preliminarily approving Plaintiff's Counsel's request for up to $131,666.67 (one-third) of the Gross Settlement Amount as attorneys' fees;

7. Preliminarily approving Plaintiff's Counsel's request for actual costs from the Gross Settlement Amount in an amount up to $22,000.00;

8. Appointing Phoenix Class Action Administration Solutions ("Phoenix") as the third-party Settlement Administrator for mailing notices and for claims administration, approving that a maximum of $7,250.00 be deducted from the Gross Settlement Amount for the costs of administration, and approving that the fees and costs of the Settlement Administrator will be paid from the Gross Settlement Amount; and

9. Approving the proposed Class Notice and ordering it be disseminated to the Class as provided in the Settlement Agreement.

This motion is based upon this Notice of Motion and Motion; the Memorandum of Points and Authorities in Support thereof; the declarations of Thomas Schelly, Esq., Tara Denise Michael and the Declaration of Shauna Correia in Support thereof; the Settlement Agreement; the proposed

Order; the other records, pleadings, and papers filed in this action; and upon such other documentary and verbal evidence or argument as may be presented to the Court at the hearing of this motion.

Dated: November 19, 2025

Respectfully submitted,

LIPELES LAW GROUP, APC

By: ______________________________

Kevin Lipeles, Esq.
Thomas Schelly, Esq.
Jasmine Badawi, Esq.
Attorneys for Plaintiff and the Settlement Class

I. INTRODUCTION

Plaintiff Tara Denise Michael ("Plaintiff"), on behalf of herself and the putative Settlement Class[1] requests that this Court preliminarily approve the parties' proposed Settlement Agreement,[2] entered into by Plaintiff and Point Quest Inc., ("Defendant" or "PQ") in October 2025. Defendant does not oppose Plaintiff's instant Motion.[3] The proposed Settlement Agreement satisfies all of the criteria for preliminary settlement approval under California Code of Civil Procedure §382, and falls well within the range of reasonableness. Accordingly, Plaintiff requests that the Court grant preliminary approval of the proposed Settlement, approve the proposed notice plan, and schedule a final approval hearing, all of which is described in detail below.

The Settlement Agreement seeks to fully release and discharge Defendant from the claims brought against it in the above-captioned matter (the "Action"[4]) and all related penalties. In exchange, Defendant will pay the Settlement Class up to $395,000.00 ("Gross Settlement Amount") with no reversion to Defendant.

The Settlement Agreement and Notice distribution plan were the products of non-collusive, arm's-length negotiations by informed counsel and parties. The settlement is fair, reasonable and adequate to all. Accordingly, Plaintiff seeks: (1) preliminary approval of the Settlement Agreement; (2) provisional certification of the Settlement Class; (3) appointment of

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[1] The proposed Settlement Class is defined as: all individuals who were employed by Defendant in California in the Pediatric Therapy Division ("PEDS") in a non-exempt, hourly-paid position at any time during the Class Period and who received a "tier stipend" in addition to their hourly base rate of pay. The Class Period is November 20, 2021 to the date of preliminary approval. November 20, 2021, is the day after the end date of the release period covered by the prior *Nichole Veronie v. Point Quest Inc.* class settlement.

[2] The Settlement Agreement is attached as Exhibit A to the Declaration of Thomas Schelly ("Schelly Decl." filed herewith). The proposed Class Notice is attached as Exhibit A to the Settlement Agreement.

[3] PQ vigorously denies liability or wrongdoing with respect to its wage and hour policies and practices. PQ reserves its right to assert any and all defenses to the claims asserted by Plaintiff and the putative class. Further, PQ joins in this motion to preliminarily approve of the settlement of a lawsuit that was filed as a class action, but specifically denies that a settlement was necessary as a result of any action or inaction by PQ. PQ agrees to resolve the claims asserted by Plaintiff on a class basis to avoid incurring additional substantial costs beyond those which have already been incurred as well as the delay and risks that would be presented by further prosecution of the litigation. The proposed settlement includes a non-admissions clause and PQ has at all times maintained that its wage and hour policies and practices are fully lawful. Hence, PQ does not join in the substance of the representations made by Plaintiff in this motion and specifically denies the negative characterizations of PQ's conduct as well as Plaintiff's interpretation of certain legal authorities. PQ, therefore, also reserves its right to clarify any aspect of the motion that it believes needs to be addressed.

[4] All capitalized terms have the same meaning as in the Settlement Agreement.

Plaintiff as Class Representative; (4) appointment of Kevin Lipeles, Esq., Thomas Schelly, Esq. and Jasmine Badawi, Esq. as Class Counsel; (5) approval of the parties' proposed form and method of notifying Class Members of the Settlement Agreement; (6) an order scheduling the hearing date for Final Approval of the Class Settlement; and (7) entry of a preliminary approval Order.

II. FACTUAL SUMMARY

A. Claims

Plaintiff alleges claims for failing to pay minimum wages and failing to authorize and permit meal and rest breaks. These extensive alleged Labor Code violations also resulted in PQ issuing inaccurate itemized wage statements to Class Members and failing to pay wages due upon termination of employment to Class Members who are former employees. Additionally, Plaintiff alleges claims for failing to reimburse business expenses and failing to allow inspection of employment records.

Plaintiff contends that the foregoing also violated Cal. Bus. & Prof. Code §17200, *et seq*. Plaintiff also alleged that Defendant was liable for PAGA penalties pursuant to California Labor Code §2699.

Defendant vigorously denies each of Plaintiff's allegations, and contends that they maintained compliant wage and hour practices and policies.

B. Procedural History

On August 26, 2024, Plaintiff Tara Denise Michael filed her Original Class Action Complaint in the Superior Court of California, Sacramento County, on behalf of herself and others similarly situated for certain present and former employees of Defendant PQ for: (1) failure to pay minimum wages (Cal. Labor Code §§ 1194, 1194.2, 1197, 1197.1, 1198); (2) failure to pay for meal periods not provided (Cal. Labor Code §226.7, 512); (3) failure to pay for rest periods not provided (Cal. Labor Code §226.7, 512); (4) failure to maintain records and provide accurate itemized wage statements (Cal. Labor Code §§ 226); (5) failure to reimburse business expenses (Cal. Labor Code § 2802); (6) failure to allow inspection of employment records (Cal. Labor Code § 1198.5); and (7) unfair/unlawful business practices (Cal. Bus. and Prof. Code §§ 17200 *et seq*.)

On October 25, 2024, Plaintiff filed her First Amended Class Action Complaint in the

Sacramento Superior Court, adding a claim pursuant to the Private Attorney General Act of 2004, Cal. Lab. Code §§2699, *et seq*.

C. Marshalling of Evidence

Through informal discovery, Plaintiff's counsel has diligently pursued an investigation of the putative Class Members' claims, including: (1) detailed examination and analysis of a 25% sample of timekeeping data relating to putative Class members; (2) review of relevant data regarding the size of the putative class; (3) detailed examination of data related to PQ's PAGA exposure; and (4) research with respect to the applicable law and the potential defenses thereto. Schelly Decl., ¶ 8.

1. Documents

The parties engaged in informal discovery in preparation for a private mediation. Schelly Decl., ¶ 8. Defendant provided information concerning the total number of Class Members (246), number of workweeks, shifts and pay periods, data relating to the size and scope of the putative class, the average hourly rate, wage and hour policies and procedures and a sampling of timekeeping data, payroll data and time punches, among other documents. *Id*. Plaintiff contends that Defendant's internal documents and computerized records showed that Defendant paid minimum wages, but failed to include a "tier stipend" in the regular rate of pay calculations for pay periods in which a "tier stipend" was earned and on some occasions did not afford putative class members with timely, 30-minute meal periods for each shift. Further, although Defendant reimbursed Class members' cell phone expenses at $10 per month, Plaintiff contends Defendant did not adequately reimburse business expenses. *Id.*

2. Data and Damages Model

As part of informal discovery prior to mediation, PQ culled its documents relating to its wage and hour policies and practices. To estimate the class-wide damages associated with Plaintiff's and the Class's claims, Plaintiff's counsel examined and analyzed the above-described voluminous documents. Certain calculations are extrapolated to the Class since the analysis data was based on a 25% sample. As a result, the calculations are multiplied by 4. Schelly Decl., ¶ 15.

From the data received from Defendant, Plaintiff constructed a damages model based on

PQ's exposure. Schelly Decl., ¶ 15.

a. Minimum Wage Claim

Plaintiff assumed 10-minutes of off the clock work per shift. Defendant maintained that their policies did not allow off the clock work, however, Plaintiff and Class members claimed they worked off the clock. The average wage rate for all employees during the Class Period was $20.72 per hour.

The total estimated amount of alleged unpaid off the clock time based on the 25% sample is 790 regular hours and 601 overtime hours. Thus, the total estimated amount of minimum wages owed equaled $35,047.88 as of July 14, 2025, calculated as follows: 790 regular hours * $20.72 + 601 overtime hours * 20.72 * 1.5 = $35,047.88. The total damages extrapolated to the Class, excluding interest and penalties, are $140,191.52 ($35,047.88 * 4). Schelly Decl., ¶ 15A.

b. Meal Break Claim

Meal break violations (missed, shortened and/or late), were calculated and quantified based on the actual observed violations contained in the 25% sample. The data was converted and both shift durations and break durations were calculated. Employing the "5/10 rule[5]", each shift was analyzed to determine whether a meal break was taken and whether that break was short, missed or late. The 25% sample data revealed a violation rate of 14.66% and 1,223 violations. Thus, there were 1,223 shifts with violations in the 25% sample. The total amount of damages based on the number of shifts with violations in the 25% sample was $25,340.56 (1,223 * $20.72).

Further, Plaintiff assumed that 30% of meal breaks were interrupted. The average wage rate for all employees during the Class Period was $20.72 per hour. The total number of meal break interruptions was 6,699. Meal break interruptions were calculated as follows: 6,699 * 30% = 2,010 interruptions. Thus, the total damages for interrupted meal breaks based on the 25% sample was $41,647.00 (2,010 * $20.72).

Defendant contended that they have a valid meal break policy, that they authorized and permitted meal breaks and paid for missed meal breaks. In addition, Defendant contended that the

[5]The "5/10 rule" refers to the assumption of no meal break waiver, meaning a shift is eligible for a first meal break at 5 hours and a second meal break at 10 hours.

putative Class signed valid “on duty meal agreements” for occasions in which they were unable to take a full, off-duty, meal periods due to their need to remain on site to supervise, on a one-to-one basis, children with behavioral and emotional disorders. Schelly Decl., ¶ 15B.

Sample data reflected that Defendant paid meal premiums to Class members, but Plaintiff contends that Defendant failed to pay premiums for all noncompliant meal periods. According to Plaintiff’s damages model, Defendant’s exposure for meal period violations extrapolated to the Class, amounted to approximately $35,075.24 [$25,340.56 – $16,572 (meal premiums paid) = $8,768.56 * 4]. Defendant’s exposure for meal period interruptions extrapolated to the Class, excluding interest and penalties, amounted to approximately $166,588.00 ($41,647 * 4). The total amount of damages for both meal break violations and interruptions, excluding interest and penalties, amounted to approximately $201,663.24. *Id.*

c. <u>Rest Break Claim</u>

Regarding rest break violations, Plaintiff assumed a violation rate of 100% and one missed rest break per shift greater than 3.5 hours. The average wage rate for all employees during the Class Period was $20.72 per hour. The total estimated number of rest break violations in the 25% sample was 7,667 shifts. Defendant contended that it has a valid rest break policy and that it authorized and permitted rest breaks. Schelly Decl., ¶ 15C.

According to Plaintiff’s damages model, PQ’s exposure for non-complaint rest periods on the shifts, excluding interest, amounted to approximately $158,860.24 (7,667 * $20.72). *Id.* When extrapolated to the Class, Defendant’s exposure for non-complaint rest periods during the statutory period, excluding interest and penalties, amounted to approximately $635,440.96 ($158,860.24 x 4).

d. <u>Failure to Provide Accurate Wage Statements Claim</u>

Concerning the wage statement claim,[6] the putative class was comprised of approximately

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[6] Labor Code §226(e) provides that an employee is entitled to recover $50 for the initial pay period in which a violation of Labor Code §226 occurs and $100 for each subsequent pay period, not to exceed $4,000, as well as an award of costs and reasonable attorneys’ fees, for all pay periods in which the employer knowingly and intentionally fails to provide accurate itemized statements to the employee causing the employee to suffer injury. There are 24 pay periods per year. The wage statement violation claim is derivative of Plaintiff’s other claims and depends on the actual number of violations found to exist.

90 current employees during the one-year statutory period. There were 24 pay periods per year. Defendant maintained that it provided accurate wage statements to its employees. The value of Plaintiff's wage statement claim was $211,500, calculated as follows: Current employees (90, at the time of mediation) * $2,350 ($50.00 (initial violation) + $100 (subsequent violations) = $211,500. Schelly Decl., ¶ 15D.

e. Expense Reimbursement Claim

Plaintiff assumed there was $10.00[7] of unreimbursed cell phone business expenses per Workweek. There were 13,408 Workweeks in the Class Period through July 14, 2025.

According to Plaintiff's damages model, Defendant's exposure for unreimbursed cell phone business expenses, excluding interest, amounted to approximately $134,080 (13,408 * $10.00). Schelly Decl., ¶ 15E.

f. Damages Model

The Damages Model manifested the following conclusions concerning Defendant's exposure, excluding interest:

ALLEGATION	**LIABILITY RISK**
Minimum Wage Claim	$140,191.52
Rest Break Claim	$635,440.96
Meal Break Claim (including meal break violations and interruptions)	$201,663.24
Failure to Issue Accurate Itemized Wage Statement Claim	$211,500.00
Failure to Reimburse Business Expenses Claim	$134,080
Total, excluding interest	**$1,322,875.72**

Schelly Decl., ¶¶ 15-16.

The following chart shows the amount of PAGA penalties on the minimum wage claim only since based on Labor Code 2699(h)(3)(i) PAGA penalties cannot be stacked:

[7] Cell phone reimbursement cost: http:www.//insights.samsung.com/2022/05/16/how-much-should-you-compensate-byod-employees-for-mobile-expenses-3/

Number of Pay Periods in PAGA Period	3,636	
Number of Pay Periods in PAGA Period – Minimum Wage	3,636	
PAGA for Minimum Wage	$363,600	$100/$100
Total PAGA penalties	**$363,600**	

Since PAGA penalties cannot be stacked the maximum recoverable PAGA penalties is $363,600.00. Schelly Decl., ¶ 16.

D. Settlement Negotiations

On July 14, 2025, the parties virtually attended via Zoom an all-day mediation with mediator Jill R. Sperber, Esq. Schelly Decl., ¶ 18. Thomas Schelly, Esq., and Jasmine Badawi, Esq. of Lipeles Law Group, APC, attended on behalf of Plaintiff. Plaintiff also remotely attended the mediation. *Id.* Shauna Correia, Esq. of Weintraub Tobin Chediak Coleman Grodin attended on behalf of Defendant. *Id.*

After a full day of negotiations, the parties agreed to settle for $395,000.00 with no claims process and **no reversion** to Defendant of any settlement monies remaining after all Settlement Class Members are paid.[8] Schelly Decl., ¶¶ 17, 21; Exhibit A thereto (the parties' Settlement Agreement), §3.1.

E. Summary of Settlement Terms

Under the terms of the Settlement Agreement, Defendant is discharged of all claims asserted in the Action[9] in exchange for paying the Gross Settlement Amount of $395,000.00.[10] The following amounts will be subtracted, subject to court approval: Plaintiff's Class Representative Service Payment of up to $10,000, Class Counsel Fees Payment up to $131,666.67, Class Counsel Litigation Expenses Payment to Plaintiff's Counsel in an amount up to $22,000, PAGA payment to the LWDA in the amount of $25,675 and the Administration Expenses Payment up to $7,250.00. The employer's portion of the payroll taxes attributed to the wage portion of Individual Class Payments to Class Members will be paid by Defendant outside of and in addition to the Gross

[8] The parties continued to negotiate until their finalized Settlement Agreement was fully executed in October 2025. Schelly Decl., ¶ 21.
[9] Settlement Agreement, §5.
[10] Settlement Agreement, §3.1.

Settlement Amount.[11] The Net Settlement Amount ("NSA") is the remainder, *i.e.*, approximately $198,408.33, which shall be available for distribution to Class Members in its entirety.[12]

The average Estimated Amount per class member is $806.53.[13] The estimated amount each Class Member will receive per Workweek is $29.46 and the estimated amount each Aggrieved Employee will receive per PAGA Pay Period is $2.67.[14] Settlement Class Members are not required to submit a claim form in order to receive an Individual Class Payment.[15]

To calculate Individual Class Payments, the Settlement Administrator, using the Class Data, will calculate the total workweeks for all Participating Class Members. An Individual Class Payment will be calculated as follows: the "Total Workweeks" will be calculated by summing the total workweeks for each Settlement Class Member during the Class Period. The Net Settlement Amount shall be divided by the Total Workweeks to arrive at the "Workweek Payment Amount." Each Participating Class Member's share of the Settlement shall thereafter be calculated by multiplying that Participating Class Member's total workweeks during the Class Period by the Workweek Payment Amount.[16]

The Parties agree that the number of Total Workweeks worked by the Settlement Class Members through the mediation was approximately 13,408 and the total workweeks in the PAGA period was approximately 5,182. The Workweek Value shall be calculated by dividing the originally agreed-upon Maximum Settlement Amount by the number of Total Workweeks. The Parties agree that the Workweek Value amounts to $29.46 per Workweek.[17]

Because Aggrieved Employees cannot opt out of the PAGA claims, each Aggrieved Employee, whether or not a Participating Class Member, shall also receive his or her Individual PAGA Payment. The Settlement Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 35% share of the PAGA Settlement Amount in the amount of $13,825 by the total number of PAGA Pay Periods worked by all Aggrieved

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[11] Settlement Agreement, §3.1.
[12] Settlement Agreement, §1.29.
[13] $198,408.33 (NSA)/246 (putative class members) =$806.53 (average award per class member).
[14] $13,825/5,182= 2.67.
[15] Settlement Agreement, §3.1.
[16] Settlement Agreement, §3.2.4.
[17] Settlement Agreement, §3.2.4.1.

Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods.[18]

For tax purposes, Individual Class Payments shall be allocated and treated as follows: twenty-five percent (25%) of each Individual Class Payment will be allocated to settlement of wage claims and subject to withholdings and taxes, seventy-five percent (75%) will be allocated to penalties and interest, and not subject to withholding. Each Individual PAGA Payment shall be treated as 100% penalties.[19]

Individual Class Payment checks issued to Participating Class Members and Aggrieved Employees shall remain valid and negotiable for one hundred and eighty (180) calendar days from the date of issuance. In the event an Individual Class Payment check has not been cashed within one hundred and eighty (180) days, all such checks shall be cancelled and funds associated with such cancelled checks, shall be donated to Project Purple, a Connecticut 501(c) (3) non-profit corporation dedicated to supporting patients, raising awareness, and educating the world about pancreatic cancer. PQ's founder, Greg Jaggers, recently passed away due to pancreatic cancer. As a result, PQ's leadership desires that Project Purple be designated as the *cy pres* (or, should the Court reject this *cy pres* recipient, then the designated *cy pres* should be Legal Aid at Work, a California 501(c)(3) non-profit corporation).[20] *See* Declaration of Shauna Correia filed concurrently herewith. Plaintiff does not have an interest in the *cy pres* recipient, including its governance. Schelly Decl., ¶ 33.

F. Administration of Notice, Objections, and Claims

The actual costs of administration, estimated at up to $7,250.00, will be deducted from the Settlement Amount (Settlement Agreement §3.2.3). The Parties have agreed that Phoenix Class Action Administration Solutions ("Phoenix") shall serve as the Settlement Administrator. Within twenty (20) calendar days after the entry of the Preliminary Approval Order, PQ will provide the Settlement Administrator with the Class Data.[21] Within fourteen (14) calendar days after receiving the Class Data from PQ, Phoenix will mail all Class Members the Class Notice.[22] The Class Notice

[18] Settlement Agreement, §3.2.5.1.
[19] Settlement Agreement, § 3.2.4.2.
[20] Settlement Agreement, §4.4.3.
[21] Settlement Agreement, §4.2.
[22] Settlement Agreement, §7.4.2.

(Exhibit A to the Settlement Agreement) shall contain, *inter alia*, the employee ending dates of employment, the number of Workweeks/PAGA Pay Periods during the Class Period/PAGA Period, and the estimated amount of his or her Individual Class Payment if he or she does not request to be excluded from the Settlement, and the estimated amount of his or her Individual PAGA Payment. The Settlement Administrator shall use the Class Data to determine the dates of employment, calculate the number of Workweeks/PAGA Pay Periods and calculate the estimated Individual Class Payment/Individual PAGA Payment for each Settlement Class Member.

Settlement Class Members will not be required to submit a claim form and shall automatically receive an Individual Class Payment unless they submit a valid Request for Exclusion.[23] Plaintiff negotiated this term to eliminate any potential fear of retaliation from Class Members, for participating in the settlement.[24] The proposed Class Notice is attached to the Settlement Agreement as Exhibit A.

The Class Notice informs each Settlement Class Member of his or her right to object to the settlement. Settlement Class Members who wish to object to the Settlement must object in writing, stating the grounds of objection, signed by the objecting Class Member or his or her attorney, along with all supporting papers, sent to the Administrator no later than sixty (60) calendar days after the initial mailing of the Class Notice.[25]

G. Procedure for Requesting Exclusion or Opting Out of Settlement

Class Members who wish to exclude themselves from the Settlement Agreement must sign and mail a written Request for Exclusion opting out of the Settlement Class postmarked no later than sixty (60) calendar days after the Class Notice is first mailed out.[26] (Settlement Agreement § 7.5). All Class Members who do not submit a valid Request for Exclusion shall be bound by all the terms of the Settlement Agreement and any Final Judgment entered by the Court if the Court grants final approval of the settlement.

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[23] Settlement Agreement, §3.1.

[24] Neither Plaintiff nor her counsel believe that Defendant will retaliate against Class Members for participating in the lawsuit. However, Plaintiff's counsel has found the fear of retaliation to be a common, albeit often unfounded, fear among Class Members in virtually every case.

[25] Settlement Agreement, § 7.7.

[26] However, those Settlement Class Members who receive a re-mailed Class Notice shall have their response period extended fourteen (14) calendar days from the original response period. Settlement Agreement, § 7.5.1.

H. Mailing of Individual Class Payments

Settlement Class Members will automatically receive an Individual Class Payment unless they submit a valid Request for Exclusion. Within thirty (30) days of the Court's grant of final approval, Defendant shall transfer the Gross Settlement Amount (including any increase to the Gross Settlement Amount pursuant to the Escalator Clause) plus Defendant's share of employer-side payroll taxes (provided that the administrator must provide at least ten days of advance notice of the amount of payroll taxes due), into a QSF established by the Settlement Administrator either directly or by sending the funds to the Settlement Administer to be deposited and distributed.[27] Distribution to Settlement Class Members shall be within thirty (30) calendar days of the Defendant's funding of the Gross Settlement Amount.[28] Defendant will pay Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment within thirty (30) calendar days of Defendant's funding of the Gross Settlement Amount.[29] Additionally, within thirty (30) calendar days of Defendant's funding of the Gross Settlement Amount, the Settlement Administrator will pay the Class Representative Service Payment to the Named Plaintiff.[30]

III. CLASS ACTION SETTLEMENT APPROVAL PROCEDURE

Any settlement of class litigation must be reviewed and approved by the presiding court, Cal. R. Ct. 3.769(a). Approval occurs in two steps: (1) an early (preliminary) review by the trial court; and (2) a subsequent (final) review after the notice has been distributed to the Class Members for their comments and/or objections. The Preliminary Approval Hearing and Final Approval Hearing coincide with these two required steps. The present motion seeks preliminary approval and the setting of a Final Approval Hearing.

The first step, preliminary approval, proceeds as follows:

> When the parties to an action reach a monetary settlement, they will usually prepare and execute a joint stipulation of settlement, which is submitted to the court for preliminary approval. The stipulation should set forth the central terms

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[27] Settlement Agreement, §§ 4.3, 7.3.
[28] Settlement Agreement, § 4.4.
[29] Settlement Agreement, § 4.4. Additionally, any portion of the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment not awarded to Plaintiff's Counsel will be available for distribution to Settlement Class Members as part of the NSA. *Id.*
[30] Settlement Agreement, §4.4. Additionally, any portion of the Class Representative Service Payment not awarded to the Class Representative will be available for distribution to Settlement Class Members as part of the NSA. *Id.*

of the agreement, including but not limited to, the amount of the settlement, form of payment, manner of determining the effective date of settlement and any recapture clause.

Rubinstein, Conte & Newberg, *Newberg on Class Actions*, §§ 11.24-11.26 (4th Ed. 2002) ("*Newberg*").

California courts favor settlement. *Stambaugh v. Superior Court* (*Pacific Gas and Electric Company*), 62 Cal. App. 3d 231, 236 (1976). Courts have broad powers to determine whether a proposed settlement is fair under the circumstances of the case. *Mallick v. Superior Court* (*County of Marin*), 89 Cal. App. 3d 434, 438 (1979).

Here, the parties have executed and hereby submit the Settlement Agreement, which sets forth all material terms. "Where the settlement terms are fair and reasonable, the settlement is presumptively valid, subject only to objections that may be raised at a final hearing." *Newberg*, § 11.26. California courts have certified classes in cases similar to the present Class in which Plaintiff's Counsel was appointed Class Counsel.[31]

The schedule setting forth a proposed sequence for the relevant dates and deadlines is outlined in the Proposed Order filed herewith. Having appropriately presented the materials and information necessary for preliminary approval, the parties request that the Final Approval Hearing be conducted in or about June 2026, or as soon thereafter as the Court's calendar may accommodate.

IV. PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE

The law favors settlement, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. *See Newberg* § 11:41 (and cases cited therein); *Class Plaintiff v. City of Seattle*, 955 F.2d 1268, 1276 (1992); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976); *see also Potter v. Pac. Coast Lumber Co.*, 37 Cal. 2d 592, 602 (1951). In evaluating class action settlements, the court has broad powers to determine whether a proposed settlement is fair under the circumstances of the case. *Wershba v. Apple Computers, Inc.*, 91 Cal. App. 4th 224, 234-35 (2001); *Mallick v. Superior Court* (*County of Marin*), 89 Cal. App. 3d 434, 438 (1979). The purpose of the preliminary evaluation of class action settlements is to determine only whether the proposed

[31] *See* Schelly Decl., ¶ 45.

settlement is within the range of possible approval, also described as the "range of reasonableness," and thus whether notice to the class of the settlement's terms and conditions and the scheduling of a formal fairness hearing are worthwhile. *See Wershba*, 91 Cal. App. 4th at 234-235; *North County Contractor's Ass'n, Inc. v. Touchstone Ins. Servs*., 27 Cal. App. 4th 1085, 1089-1090 (1994); I*n re Traffic Exec Ass'n*, 627 F.2d 631, 633-634 (2nd Cir. 1980); *Newberg*, § 11:25-26.

The *Manual for Complex Litigation*, Fourth (Fed. Judicial Center 2004 ("*Manual*"), § 21.632 characterizes the preliminary approval stage as an "initial evaluation" of the fairness of the proposed settlement made by the court on the basis of written submissions and informal presentation from the settling parties. To make a fairness determination, courts must consider several factors, including "the strength of the Plaintiff's case, the risk, expense and complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of the discovery completed and the stage of the proceedings, [and] the experience and views of counsel. ..." *Dunk v. Ford Motor Co*., 48 Cal. App. 4th 1794, 1801 (1996) "The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." *See Wershba*, 91 Cal. App. 4th at 245.

Furthermore, courts must give "proper deference to the private consensual agreement of the parties," since "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*., 150 F.3d 1027 (9th Cir. 1998) (internal quotes and citation omitted). Once the judge is satisfied with the results of the initial inquiry into the fairness, reasonableness, and adequacy of the settlement, the court should direct that the Class Members be given notice of a formal fairness hearing, at which arguments and evidence may be presented in support of, and in opposition to, the settlement. *See Manual*, § 21.633.

A. The Proposed Settlement Is Fair to the Class

The terms of the settlement recognize the strength of the case. The proposed settlement is reasonable, in light of the strength of Plaintiff's case and the risks of litigation. *Clark v. American*

Residential Services, LLC, (2009), 175 Cal. App. 4th 785, 799. Under *Clark* "the trial court is obliged, at a minimum, to determine whether a legitimate controversy exists on a legal point, if that legal point significantly affects the valuation of the case for settlement purposes." *Id.* at 803. However, the trial court is not required to reach any ultimate legal or factual conclusions. *Id.* A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. *Wershba*, 91 Cal. App. 4th at 224 (holding that "[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"). Settlement agreements are realistically assessed. *Stambaugh*, 62 Cal. App. 3d at 236; *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989) ("The fact that a plaintiff might have received more if the case had been fully litigated is no reason not to approve the settlement.").

The Settlement Agreement in this case confers a substantial benefit on the Settlement Class. Pursuant to the terms of the Settlement Agreement, Defendant will pay $395,000 in exchange for a full discharge of Plaintiff's and Settlement Class Members' releases of claims.[32] Once all the adequate deductions have been made from the Settlement Amount, the amount available for distribution to Plaintiff and the Settlement Class is approximately $199,408.33.

Plaintiff has evaluated the strengths of the class claims, and assessed the range of potential outcomes of the litigation. In addition to disputing the merits of Plaintiff's claims, Defendant would strongly challenge any request for class certification. Plaintiff believed that this case was suitable for class certification. However, Plaintiff also realized that there is always a significant risk associated with class certification proceedings. In light of the uncertainties of protracted litigation, the Gross Settlement Amount reflects an excellent recovery for the Class Members. Schelly Decl., ¶ 27.

1. Plaintiff Faced Significant Risk

Pursuit of the Action through trial would impose significant risks on the outcome of

[32] Settlement Agreement §5.

Plaintiff's claims.

a. Defendant's Liability For Violation of California's Minimum Wage Claim Was Far From Certain.

Plaintiff claims that that Defendant's internal documents and computerized records showed that Defendant paid minimum wages, but failed to include a "tier stipend" in the regular rate of pay calculations for pay periods in which a "tier stipend" was earned. Thus, Class Members were not paid all minimum wages owed. Defendant contended that it is their policy and practice to pay all wages for all time worked, and that they do not allow employees to perform off the clock work. Thus, not getting certified was a risk which Plaintiff considered during the negotiations. Schelly Decl., ¶¶ 11, 23-24. Thus, there was a high risk that the Court would deny certification of the minimum wage claim.

b. Defendant's Liability For Failure to Afford Meal/Rest Breaks Was Fraught With Risk.

Plaintiff also claims that Class Members were not afforded meal/rest breaks. Defendant adamantly contends that it implemented a policy for when nonexempt employees were to take meal/rest breaks. Defendant maintains that it provided its non-exempt employees with legally-compliant meal/rest periods. Defendant asserted that Plaintiff and the majority of employees signed "on duty meal period agreements". Further, Defendant implemented as "rest break log" policy beginning in August 2019, requiring employees to confirm whether they took or missed their rest breaks each week. Defendant argued that individual issues predominated and that the claims would, therefore, not be manageable. Defendant's time records showed instances of missed, short and/or delayed meal periods where premiums were paid, and instances of missed, short and/or delayed meal periods where premiums were not paid. Thus, there was a high risk that the Court would deny certification of the meal/rest break claims. Schelly Decl., ¶¶ 23-24.

c. Plaintiff Faced Significant Challenges to Liability for Failure to Reimburse Business Expense.

Plaintiff claims that Class Members were not reimbursed for their business expenses such as cell phone expenses. Defendant maintained that employees were not required to use their personal cell phones. As a result, those expenses are not recoverable. Further, Defendant reimbursed all Class members $10 per month as a cell phone stipend, and had a policy stating that if employees believed the standard stipend was inadequate, they could request an increased cell phone stipend by providing a copy of their cell phone bill. Defendant also has an expense reimbursement policy and employees can submit requests for reimbursement for expenses over and above the stipend. However, Plaintiff contended that she and Class Members used their cell phones and were not adequately reimbursed. Thus, there was a significant risk that the Court would deny the expense reimbursement claim. Schelly Decl., ¶ 24.

e. Plaintiff's Potential PAGA Damages Were Far From Certain.

Uncertainty relating to Plaintiff's potential PAGA damages played a role in the negotiation considerations. Questions were raised about whether and to what extent a court may award such penalties, especially in light of the caps on punitive damages by the both U.S. Supreme Court and California Supreme Court. Thus, Defendant would argue that penalties greatly in excess of actual damages would be confiscatory and possibly unconstitutional. Further, the actual amount of PAGA penalties awarded by the Court is completely discretionary and the penalties are not subject to stacking under Labor Code § 2699(h)(3)(i), as amended.[33] As a result, Plaintiff considered that PAGA penalties may not be awarded in amounts that are disproportionate to the actual amount of wages owed. Lastly, since only 35% of any PAGA recovery reaches the PAGA claimants (with the balance going to the state), the strength of Plaintiff's potential PAGA claims and the potentially limited recovery was a factor considered during settlement negotiations. Here, the amount allocated to PAGA penalties is fair, reasonable and adequate in view of PAGA's purposes to remediate labor law violations and deter future ones in accordance with *Moniz v. Adecco USA, Inc.* (2021) 72 Cal. App. 5th 56. Schelly Decl., ¶ 25.

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[33] In granting final approval of the class action settlement in *Stuart v. RadioShack*, 641 F. Supp. 2d 901 (N.D. Cal. 2009) Judge Chen noted the following:

> Plaintiffs could arguably get more . . . because they are entitled to penalties under the PAGA, [but] it is not clear that they could get a significant additional amount because the PAGA provides that,
> [i]n an action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do so otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.

Where, as here, the settlement affords the Class Members prompt, substantial relief, while avoiding legal and factual hurdles that otherwise may have prevented the Class from obtaining any recovery at all, or at least after a very significant delay, the reasonableness of the settlement is clear. Because the Settlement Agreement provides immediate and substantial relief, without the attendant risks and delay of continued litigation, it warrants the Court's preliminary approval.

B. The Proposed Settlement Is the Result of Arm's-Length Negotiation

Plaintiff's counsel conducted an extensive investigation, including reviewing voluminous documentary evidence and obtaining employee sworn statements. The parties negotiated in good faith and at arm's-length on several occasions over many months before reaching an agreement. Thus, Class Counsel negotiated the proposed Settlement with ample knowledge of the strengths and weaknesses of this case, the amounts necessary to compensate Settlement Class Members for their damages, and the benefits of the proposed Settlement under the circumstances of this case. In addition, Class Counsel and Defense Counsel, are experienced class action litigation and employment attorneys, and have used their experience and expertise in fashioning a proposed Settlement that is acceptable to both parties. *See* Schelly Decl., ¶¶ 40-45.

The settlement terms also indicate that the Settlement is fair to the Class. Defendant has legal and factual grounds for defending this action. Among other things, Defendant denies the allegations asserted in the Action and continues to assert defenses to such claims. Defendant further contends that at all relevant times it had valid wage and hour policies and that they properly paid Plaintiff and Class Members. Notwithstanding these arguments, the Settlement commits Defendant to pay a total of $395,000.00, of which approximately $199,408.33 will go to compensate the Settlement Class Members for their damages, which Class Counsel believes is a fair and adequate amount given the litigation risks and delays inherent in further litigation and appeals. *See* Schelly Decl., ¶¶ 29-30.

Accordingly, preliminary approval of the Settlement is appropriate, and Plaintiff requests that the Court order that Class Notice be disseminated to the Class, and that a final approval hearing be scheduled.

C. Provisional Certification of the Settlement Class Under the Lesser Standard of Scrutiny for Settlement-Only Certification Is Appropriate

"[P]re-certification settlements are routinely approved if found to be fair and reasonable." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App 4th 224, 240; *accord Dunk*, 48 Cal. App. 4th at 1803 (although the settlement was reached before any "adversary certification," the court was satisfied that it was "fair, adequate and reasonable."); *see also*, *In re Baldwin-United Corp.* 105 F.R.D. 475, 478 (S.D.N.Y. 1984) ("many courts have employed this practice in the name of judicial efficiency in order to facilitate apparently beneficial settlement proposals.").

> The strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal . . . may be set out in conditional orders granting tentative approval to the various items submitted to the court. Three basic rulings are often conditionally entered at this preliminary hearing. These conditional rulings may approve a temporary settlement class, the proposed settlement, and the class counsel's application for fees and expenses.

4 *Newberg on Class Actions*, at §11.26.

The standard for class certification in the settlement context is a significantly lower threshold than in a contested proceeding or a trial context:

> The two basic purposes for the Rule 23 certification requirements, as they relate to questions of a nationwide class are: (1) to keep the lawsuit manageable for trial; and (2) to protect the interests of the nonrepresentative members. The first purpose is inapposite in the settlement context, and the second, as it relates to commonality of issues, *only makes a difference if the nonrepresentative class members would do much better by litigating on their own or in their own jurisdiction*. The second category concerns are protected by the trial court's fairness review of the settlement.

Dunk, 48 Cal. App. 4th at 1807, n. 19, (emphasis added). The reason for this is that no trial is anticipated in the settlement context, so any case management issues inherent in determining if the class should be certified need not be confronted. *Amchem Products, Inc. v. Windsor* 521 U.S. 591 (1987)

The very liberal standard expressed in *Dunk* is plainly satisfied here. The requirements for class certification in the settlement context – ascertainability, numerosity, predominance of common questions of law and fact, typicality, and adequacy – are all met. It certainly cannot be said that the Settlement Class members would do "much better by litigating on their own". *Dunk*, 48 Cal. App. 4th at 1807, n. 19. The proposed Settlement Class should be conditionally certified as requested.

1. Numerosity and Ascertainability.

Numerosity is met if a proposed class is so large that joinder of all members would be impracticable. *See* Code Civ. Proc. § 382. No set number of class members is required to maintain a class action. *Hebbard v. Colgrove* (1972) 28 Cal. App. 3d 1017, 1030. The California Supreme Court has upheld a class of as few as ten members. *Bowles v. Super. Ct.* (*Nickel, Jr.*) (1955) 44 Cal.2d 574, 577-81. 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. *Medrazo v. Honda of N. Hollywood*, 166 Cal. App. 4th 89, 101 (2008). Here, the settlement class consists of 246 current and former employees of PQ in California from November 20, 2021 through the date of preliminary approval, who have already been identified. Schelly Decl., ¶ 32.

2. Well-Defined Community of Interest.

a. 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 Rests., Inc.*, 183 Cal. App. 4th 723, 732 (2010). While the parties dispute whether a class would be appropriate if the litigation were to continue, they agree, for the purposes of this settlement only, that the Class is subject to common compensation policies and challenges to those policies that are certifiable for settlement purposes. *See e.g., Bluford*, 216 Cal. App. 4th at 872-73 (certifiable issues were raised by claim that the employer's per mile piece-rate system did not compensate drivers for their statutory rest break time).

b. Typicality.

Typicality means merely that the class representative is similarly situated to the members of the class, not that her claims are identical. *Classen v. Weller* 145 Cal. App. 3d 27, 45-46 (1983). It suffices if the class representative's claims arise from the same event or course of conduct that gives rise to the class claims, and are premised upon the same legal theories. *Id.* Here, for purposes of settlement, the parties agree that Plaintiff asserts claims regarding PQ's wage and hour compensation practices that are at the core of the action. Schelly Decl., ¶ 5.

c. Adequacy of representation.

The proposed class representative must establish that he or she will adequately represent the proposed class. *See Barboza v. West Coast Digital GSM, Inc.*, 179 Cal. App. 4th 540, 546 (2009). Adequacy may be established by the fact that counsel are experienced. *See Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001). Here, Plaintiff alleges, and PQ does not dispute for purposes of settlement, that Plaintiff and the Class are represented by counsel with extensive experience in wage-and-hour litigation and that Plaintiff is an adequate class representative. Schelly Decl., ¶¶ 40-45.

D. An Award of Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment from the Settlement Fund Are Justified in this Case.

The proposed Settlement provides that Plaintiff will request, and PQ will not oppose, an award to Class Counsel in an amount not to exceed $131,666.67 in attorneys' fees (one-third of the Gross Settlement Amount), actual costs up to $22,000, Class Representative Service Payment of $10,000 to the Named Plaintiff in recognition of her time, effort, and risk as Class Representative, PAGA penalty payment to the LWDA in the amount of $25,675, and up to $7,250 in claims administration costs. The foregoing awards amount to $196,591.67 and Plaintiff therefore requests that the Court approve a total deduction of $196,591.67 from the $395,000.00 Gross Settlement Amount. Viewing the participation, service and risk payment as an additional cost of litigation, in combination with the allocation for attorneys' fees, expenses and costs, this total deduction of $196,591.67 is within the range of attorneys' fees, expenses and costs awarded in similar cases. *See* Schelly Decl., at ¶ 35. The participation payment to Plaintiff is also justified as a Class Representative Service Payment, which courts regularly award in class action litigation.

1. The Proposed Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment Requested Are Reasonable, Fair and Appropriate Under the Common Fund Doctrine and Should be Preliminarily Approved.

Plaintiff seeks preliminary approval of her request for reasonable attorneys' fees in an amount up to $131,666.67 and actual expenses and costs up to $22,000.00.[34] To date Plaintiff has incurred approximately $20,326 in costs in connection with this case. Schelly Decl., ¶ 52, ex. D. Plaintiff's Counsel's costs of $20,326 through preliminary approval are documented, necessarily incurred and eminently reasonable.

As discussed in more detail below, this fee award is reasonable under the common fund approach in determining reasonable attorneys' fees.

An attorneys' fees award is justified where the legal action has produced its benefits by way of a voluntary settlement. *See, e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987). California law provides that when a party is entitled to statutory fees, he must be compensated for all time reasonably spent seeking to accomplish the desired litigation result. *See Serrano v. Unruh*, 32 Cal.3d 621, 624 (1982). Courts in and out of California have long recognized the equitable "common fund" doctrine under which attorneys that create a common fund or benefit for a group of persons may be awarded their fees and costs out of the fund. "[W]hen a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorneys' fees out of the fund." *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977), *see also Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("[A] lawyer who recovers a common fund… is entitled to reasonable attorneys' fees from the fund as a whole").

In addition to spreading the litigation costs among all beneficiaries, awards of common fund fees are essential to furthering the important societal goal of attracting competent counsel to handle these often complex contingency cases, "who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if assured that [they] will be promptly and directly compensated should [their] efforts be successful." *Melendres v. City of Los*

[34] Prior to the expiration of the period of time allotted for class members to make objections to the settlement, Plaintiff will file a motion and brief for fees and costs (to be heard at the same time as the Final Fairness Hearing) so that class members will be able, if they elect to do so, to review the fees motion prior to making objections or filing a claim. The motion and brief for fees and costs will include, *inter alia*, an itemized listing of all costs incurred in litigating this case. *See* Schelly Decl., ¶ 47.

Angeles, 45 Cal. App. 3d 267, 273 (1975) (quoting *Estate of Stauffer*, 53 Cal.2d 124, 132 (1959). In California, trial courts have inherent equitable power to award attorneys' fees on a common fund basis when counsel's efforts "have resulted in the preservation or recovery of a certain or easily calculable sum of money." *Serrano*, 20 Cal.3d 25 at 35; *see also Bank of America Nat'l Trust & Sav. Ass'n v. Cory*, 164 Cal. App. 3d 66, 89 (1985); *Melendres*, 45 Cal. App. 3d 267, 277 (trial courts' "broad discretion" in awarding common fund fees is well-established).

The traditional method for calculating a common fund fee is to award a percentage of the total fund. *See, e.g., Blum v. Stenson*, 465 U.S. 886, 900 and 916 (1984); *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990); *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 26 (2000); *Melendres*, 45 Cal. App. 3d at 278. Indeed, California courts have regularly approved payments of attorneys' fees amounting to one-third or more of the common fund in similar class actions.

California state and federal courts have regularly approved payments of attorneys' fees amounting to as much as one-third or more of the common fund in similar wage and hour class actions alleging missed meal and/or rest periods. *See, e.g., Chavez v. Netflix, Inc*. (2008) 162 Cal. App. 4th 43, 66 n. 11 ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."); 4 *Newberg on Class Actions*, § 14:6 at 551 (same); *see also Chalmers v. Elecs. Boutique*, No. BC306571 (L.A. Super. Ct.) (33% award); *Boncore v. Four Points Hotel ITT Sheraton*, No. GIC807456 (San Diego Super. Ct.) (33% award); *Albrecht v. Rite Aid Corp.*, No. 729219 (San Diego Super. Ct.) (35% award); *Marroquin v. Bed Bath & Beyond*, No. RG04145918 (Alameda Super. Ct.) (33% award); *In re Milk Antitrust Litig.*, No. BC070061 (L.A. Super. Ct.) (33% award); *Sandoval v. Nissho of California, Inc.*, No. 37-2009-00097861 (San Diego Super. Ct.) (33% award); *In re Liquid Carbon Dioxide Cases*, No. J.C.C.P. 3012 (San Diego Super. Ct.) (33% award).

Finally, several other factors support the requested attorneys' fees. Plaintiff and her counsel brought this class action to prevent PQ from continuing to commit the alleged violations of California law regarding wage and hour violations alleged in the First Amended Complaint.

Plaintiff's Counsel handled this case on a contingency basis and the case involved significant risks of non-payment of attorneys' fees and non-recovery of litigation expenses if class certification was not granted and/or if Plaintiff's Counsel did not settle or prevail. For these reasons, a costs award and common fund fee of one-third of the settlement fund (*i.e.*, a total of up to $153,666.67 is fair, reasonable and appropriate. Furthermore, because Plaintiff's requested attorneys' fees of one-third of the common fund is reasonable and falls within the range of approved percentages in similar common fund class action cases, Plaintiff's request for fees of one-third of the common fund should be granted.

2. The Proposed Payment to the Class Representative for Her Service to the Class Is Reasonable, Routinely Awarded, and Should be Preliminarily Approved.

The proposed payment of $10,000 to the Named Plaintiff[35] is intended to recognize the critical role she played in this case and the time, effort and risk undertaken in helping secure the result obtained on behalf of the Class. *See Bell v. Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004) (upholding "service payments" to named plaintiffs for their efforts in bringing class case); Manual §21.62 n. 973 (noting service awards are warranted).

"Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incurred during the course of the class action litigation." *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001) (quoting *In re S. Ohio Correctional Facility*, 175 F.R.D. 270, 272 (S.D. Ohio 1997) (approving $303,000 payment to each class representative plaintiff in employment case settling before class certification); *Martens v. Smith Barney*, No. 96 Civ. 3779, 1998 W.L. 1661385, *4 (S.D.N.Y. 1998) and 181 F.R.D. 243, 262 (S.D.N.Y. 1998) (approving payments of up to $150,000 for named plaintiffs, for a total of $1.9 million in incentive payments for employment cases settling prior to class certification); *Roberts v. Texaco*, 979 F. Supp. 185 (S.D.N.Y. 1997) (approving incentive payments up to $85,000 for named plaintiffs in employment case settling prior to class certification).

The factors courts use in determining the amount of incentive payments include (1) a comparison between the incentive awards and the range of monetary recovery available to the class; *see, e.g., Ingram*, 200 F.R.D. at 694; *Roberts v. Texaco, Inc.* 979 F. Supp. 185, 204

[35] Any portion of the Class Representative Service Award not awarded to Plaintiff will be made available for distribution to Settlement Class Members as part of the NSA. Settlement Agreement, §3.2.1.

(S.D.N.Y. 1997); (2) time and effort put into the litigation; *see, e.g., Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (1995); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998); (3) whether the litigation will further the public policy underlying the statutory scheme; *see, e.g., Roberts*, 979 F. Supp. at 201; (4) risks of retaliation*; see Roberts*, 979 F. Supp. at 202; *Cook*, 142 F.3d 1004, at 1016; (5) compromise of unique individual claims; *see, e.g. Women's Comm. For Equal Employment Opportunity v. Nat'l Broad. Co.*, 76 F.R.D. 173, 180 (S.D.N.Y. 1977); and (6) risks of an adverse attorneys' fees award; *see, e.g., Rodriguez v. West Publishing*, 563 F.3d 948, 958 (9th Cir. 2009) ("Incentive awards are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.").

These factors support the approval of the incentive payments requested here for the Class Representative. First, the requested payment of $10,000 to the Named Plaintiff constitutes only 2.5% of the Gross Settlement Amount. Second, the Named Plaintiff spent time providing invaluable assistance to Class Counsel and the Class in this case, including providing factual background for the Class Complaint; providing and explaining documents corroborating her allegations to Class Counsel; reviewing the Complaint and other pleadings filed with the Court by Plaintiff and Defendant; participating in multiple conference calls and phone calls to discuss litigation and settlement strategy, and remotely attending the all-day mediation. *See* Declaration of Tara Denise Michael ("Michael Decl."), ¶6. The Named Plaintiff has been actively involved in this case, and has proven herself to be an invaluable resource of information throughout the settlement discussions. Schelly Decl., ¶ 35; Michael Decl., ¶6. Third, by bringing this action, the Named Plaintiff furthered the public policy goal of encouraging compliance with the wage and hour provisions of the Labor Code. Finally, the requested Class Representative Service Payment of $10,000 to the Plaintiff falls well within the range of incentive payments typically awarded to Class Representatives in such class actions. Schelly Decl., ¶ 35; *see e.g., Ross v. US Bank Nat'l Ass'n*, No. C 07–02951 SI, 2010 WL 3833922, at *2 (N.D. Cal. Sept. 29, 2010) (approving $20,000 enhancement awards to each of four class representatives in the wage and hour class action); *Garner v. State Farm Mut. Auto. Ins. Co.*, No. CV 08 1365 CW (EMC), 2010 WL 1687832, at *17 n.8 (N.D. Cal. Apr. 22, 2010) ("Numerous courts in the Ninth Circuit and elsewhere have approved incentive awards of $20,000 or more where, as here, the class representative has demonstrated a strong commitment to the class").

Accordingly, the requested Incentive Award of $10,000 to the Named Plaintiff is fully deserved and justified and thus should be preliminarily approved.

V. THE PROPOSED CLASS NOTICE IS APPROPRIATE

A. The Proposed Notice of Class Action Settlement Satisfies Due Process

California statutory and case law vests the Court with broad discretion in fashioning an appropriate notice program. *See Cal. Rules of Court* 1859(f); *Cartt v. Superior Court*, 50 Cal. App. 3d 960, 973-74 (1975). The notice plan here entails mailing, and if necessary, re-mailing, the notice to all identified participating Settlement Class Members based on Defendant's employment records. Defendant will provide the last known addresses for all identified Class Members. Plaintiff has proposed the services of an experienced class action settlement administration firm (after soliciting bids from other administrators), Phoenix, to implement the proposed Class Notice procedures. Schelly Decl., ¶ 28. The Class Notice is consistent with class certification notices approved by numerous state and federal courts, and is, under the circumstances of this case, the best notice practicable. Such notice satisfies all due process requirements. *See Cartt*, 50 Cal. App. 3d at 966-975.

B. The Proposed Notice of Class Action Settlement is Accurate and Informative

The proposed Class Notice in English, since all putative Class Members speak English[36], attached as Exhibit A to the proposed Settlement Agreement, provides among other things: (1) information regarding the nature of the Action; (2) a summary of the substance of the settlement; (3) the class definition; (4) the formulae for calculating Individual Class Payments/Individual PAGA Payments; (5) the dates the Settlement Class Member was employed by Defendant during the Class Period; (6) the number of Workweeks/PAGA Pay Periods based on Defendant's business records; (7) instructions on how Settlement Class Members may submit a valid Request for Exclusion; (8) the procedure for objecting to the settlement; (9) the deadline by which Settlement Class Members must postmark an objection to the settlement; (10) notice that the Settlement Class Members will permanently forego their right to pursue any and all of their released claims against

[36] The language of the Class Notice has been agreed to by counsel for the Parties. Schelly Decl., ¶ 21, fn. 1.

Defendant, unless they elect not to participate in the Action; and (11) notice that Settlement Class Members will automatically receive an Individual Class Payment unless they submit a valid request for exclusion.

The best practicable means of providing notice to all Class Members will be used. Notice will be mailed to all known and reasonably ascertainable Class Members, using Defendant's records. The information in those records will be updated prior to mailing, using the National Change of Address Database or its equivalent. If any Class Notices are returned as undeliverable, the Settlement Administrator will take appropriate steps, such as skip-tracing, to maximize the probability that the Class Notice will be received by all Class Members. (Settlement Agreement §4.4.2).

The Class Notice also fulfills the requirement of neutrality in Class Notices. *See Newberg* § 8:39 at pp. 284, 285. The Class Notice summarizes the proceedings to date, the significant legal developments since the date of the settlement, and the terms and conditions of the settlement, in a coherent and informative manner. The Class Notice clearly states that the Settlement does not constitute an admission of liability by PQ and recognizes that the Court has not ruled on the merits of the Action. The Class Notice also states that the final settlement approval decision has yet to be made. Accordingly, the Class Notice complies with the standards of fairness, completeness and neutrality required of a settlement notice disseminated under authority of the Court. *Newberg* §8:21, §8:39; *Manual* § 21.312.

VI. A FINAL APPROVAL HEARING SHOULD BE SCHEDULED

The last step in the settlement approval process is the formal final approval hearing, at which the Court may hear all evidence and argument necessary to evaluate the proposed Settlement. *See Cal. Rules of Court* 1859(b). At that hearing, proponents of the Settlement may explain and describe its terms and conditions and offer argument in support of the Settlement approval. Furthermore, members of the Settlement Class, or their counsel, may be heard in support of or in opposition to the proposed Settlement. Class Counsel requests that the hearing be held in June 2026.

VII. CONCLUSION

For the reasons discussed above, Plaintiff requests that the Court enter an order of preliminary approval of the class action settlement, approve the form of the proposed notice, and approve the proposed schedule, including setting a date for a final approval hearing.

Dated: November 19, 2025

Respectfully submitted,

LIPELES LAW GROUP, APC

By: ______________________________
Kevin Lipeles, Esq.
Thomas Schelly, Esq.
Attorneys for Plaintiff and the Class