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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR LOS ANGELES COUNTY

HANNAH GUNIO, an individual, on behalf of herself, all others similarly situated, and all other aggrieved employees, and the State of California,

Plaintiff,

v.

11 PIER AVE. LLC, a California limited liability company; JUSTIN SAFIER, an individual; and DOES 1-100 inclusive,

Defendants.

Case No.: 24SCTV25139

[Assigned for All Purposes to the Hon. Theresa M. Traber]

CLASS ACTION

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES

Date: June 23, 2026
Time: 8:30 a.m.
Dept.: 1

Action Filed: September 30, 2024
Trial Date: Not Set

TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on June 23, 2026 at 8:30 a.m., or as soon thereafter as the matter may be heard, in Department 1 of the above-captioned Court, located at 312 North Spring Street, Los Angeles, CA 90012, Plaintiff HANNAH GUNIO ("Plaintiff") will and hereby does move this Court for preliminary approval of the proposed Class and PAGA Action Settlement reached in the above case with Defendants 11 Pier Ave. LLC and Justin Safier (collectively "Defendants") Plaintiff specifically requests the Court:

1. Grant class certification of the Class, solely for settlement purposes pursuant to Code of Civil Procedure ("CCP") § 382 and California Rules of Court, Rule ("CRC") 3.769;

2. Preliminarily approve the CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE ("Settlement" or "Agreement") and approve the PAGA component of the Settlement;

3. Appoint counsel for Plaintiff, the Law Office of Steven Elster, as Class Counsel;

4. Appoint Plaintiff as Class Representative;

5. Approve the use of the proposed notice procedure and related class notice form;

6. Approve ILYM Group, Inc. as the third-party administrator;

7. Direct that notice be mailed to the Class and Aggrieved Employees; and

8. Schedule a hearing date for motions for final approval of class action settlement and award of attorney's fees and costs.

Good cause exists to grant this Motion because: (1) the Class meets all of the requirements for class certification for settlement purposes under CCP § 382 and all of the requirements for a PAGA settlement; (2) the Settlement is a fair, adequate, and reasonable compromise of the disputed wage and hour claims asserted by Plaintiff; (3) Plaintiff and Class Counsel are adequate to represent the Class; (4) the proposed notice procedures and related forms comply with CRC 3.766, adequately apprise Class Members of their rights, and fully comport with due process; and (5) based on the foregoing, notice should be directed to the Class Members and Aggrieved Employees and a final fairness hearing should be scheduled (Plaintiff suggests 160 days after preliminary approval is granted).

This Motion is made pursuant to CRC 3.769 and 3.1113(e), which require approval by the Court of a class action settlement and permit the Court to extend the page limit for memoranda, necessary here to address the requirements for the Court's preliminary approval of the Settlement

This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the Declarations of Steven Elster, Plaintiff Hannah Gunio, and the Settlement Administrator in support thereof, the proposed class notice, the proposed order, all papers and pleadings on file with the Court in this action, all matters judicially noticeable, and on such oral and documentary evidence as may be presented in connection with the hearing on the Motion.

Respectfully submitted,

Dated: June 1, 2026 LAW OFFICE OF STEVEN ELSTER

Steve Elster

Steven Elster
Attorney for Plaintiff Hannah Gunio

I. INTRODUCTION

Pursuant to CCP § 382 and CRC 3.769, Plaintiff Hannah Gunio requests that this Court preliminarily approve the class action and PAGA action settlement set forth in the CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE with Defendants 11 Pier Ave. LLC and Justin Safier. After the exchange of documents and data, and an arm's-length mediation session Plaintiff and Defendants (collectively the "Parties") reached a proposed settlement with a Gross Settlement Amount of $120,000.00 in compromise of disputed claims asserted on behalf of approximately 33 Class Members and 33 Aggrieved Employees.

Plaintiff now submits this Motion for Preliminary Approval of Class Action Settlement ("Motion"). This Motion relies on the Definitions in Section 1, pages 1-4 of the CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE, attached to the Declaration of Steven Elster ("Elster Decl."), ¶ 2, Exh. 1 ("Agreement"). The Class Notice is Exhibit A to the Agreement [Elster Decl., ¶ 2, Exh. A] This Motion and the Agreement were provided to the LWDA prior to the filing of this Motion. [Elster Decl., ¶ 2]

Plaintiff and Class Counsel believe this settlement is a fair, adequate, and reasonable compromise of disputed claims for the wage and hour violations and penalties asserted. Solely for the purpose of settling the Action, the Parties agree that the requirements for class action certification with respect to this Class are met. If this Settlement is not approved by the Court for any reason, Defendants reserve the right to contest class certification. [Agreement ¶12.1] This Settlement, if approved, will result in the termination of the litigation through the entry of the Judgment and the release of all Released Class Claims and Released PAGA Claims, including all within the Class definition who have not elected to exclude themselves from the Class. [Agreement, ¶¶ 1.39, 1.40, 5.2, 5.3]

II. RELEVANT ALLEGATIONS AND PROCEDURAL HISTORY

A. Relevant Allegations

Defendants operate a restaurant and bar in California employing non-exempt hourly employees, including bartenders and servers. Defendants employed Plaintiff and other non-exempt hourly-paid employees, including bartenders and servers, during the Class Period. Plaintiff alleges that Defendants maintained unlawful wage and hour policies and practices affecting these employees.

Plaintiff alleges meal period violations, wage statement violations, willful failure to pay final wages, conversion of tips, failure to pay minimum wages, unfair business practices, and PAGA violations.

B. Procedural History

On September 30, 2024, Plaintiff filed a class action complaint against Defendants for: (1) meal break violations; (2) wage statement violations, (3) willful failure to pay final wages; (4) conversion; and (5) unfair business practices. The original complaint was asserted on behalf of a class of all non-exempt hour employees of Defendants. [Elster Decl., ¶ 3]

Also on September 30, 2024, Plaintiff gave written notice to Defendants and the Labor Workforce Development Agency ("LWDA") (LWDA-CM-1053466-24) of the above violations alleged and the facts and theories in support of liability. [Elster Decl., ¶ 4, Exh. 2; Agreement, ¶ 1.33] The LWDA did not indicate that it intended to investigate the alleged violations referenced in the PAGA Notice, and the 65-day time period permitted for the LWDA to provide such a notification expired. On December 19, 2024, Plaintiff filed a First Amended Complaint adding a cause of action asserting Private Attorneys General Act ("PAGA") violations. [Elster Decl., ¶ 4]

On January 1, 2025, Plaintiff filed a Second Amended Complaint adding a cause of action for failure to pay minimum wage. [Elster Decl., ¶ 5]

On March 20, 2026, pursuant to the Court's order of that date and the Settlement, Plaintiff filed a Third Amended Complaint ("TAC"). The TAC narrowed the class to all current and former non-exempt employees of Defendants who were compensated, at least in part, with tips from February 1, 2022 until November 30, 2022. [Agreement, ¶1.5] Per the Court's order, the claims of the employees who were no longer encompassed by the class were dismissed without prejudice. [Elster Decl., ¶ 6]

C. Pre-Mediation Evaluation of Claims

The Parties agreed to mediation with Craig Ackermann, Esq. of Employment Mediation Corp. Prior to mediation, the Parties conducted informal discovery and investigation of the facts and law regarding a sample of putative class members. The investigation included Defendants' provision of extensive data and discoverable information in preparation for the mediation, including:

--time records

--payroll records

--wage statements

--purported meal break waivers

--Vista Employee Handbook

--anonymous identification of 33 non-exempt employees between February to October 2022

--information regarding Vista's financial circumstances. [Elster Decl., ¶ 7]

Using the documents and data Defendants provided, Class Counsel estimated the maximum damages from October 2021 to August 2025 for unpaid minimum wage, split shifts, meal break violations, wage statement violations, waiting time penalties, converted tips, and PAGA penalties. Prior to the mediation, Defendants also expressed financial constraints on their ability to pay a settlement. [Elster Decl., ¶ 8]

D. Mediations on May 14 and July 14, 2025—Settlement in Light of Defendants' Financial Constraints

On May 14, 2025, the Parties engaged in an all-day mediation with Craig Ackermann, Esq. of Employment Mediation Corp. Defendants expressed financial limitations on their ability to pay a settlement and the mediation did not result in a resolution. At Mr. Ackermann's suggestion, the Parties scheduled a second mediation and in the interim, Defendants provided Plaintiff with some documents corroborating their financial status and data regarding a subset of the original putative class, based on tipped employees who worked from February to November 2022, a period when Plaintiff alleged that Defendants failed to pay the full minimum wage. [Elster Decl., ¶ 9]

On July 14, 2025, the Parties engaged in a second mediation with Mr. Ackermann. At that mediation, Defendants provided some additional information regarding their financial status. With the help of Mr. Ackermann, the Parties were able to reach agreement of a settlement of both class and PAGA claims at that second mediation. The settlement was the result of arm's length negotiations and in light of all known facts and circumstances and the uncertainty associated with litigation, including Defendants' limited financial circumstances. However as part of the settlement, Plaintiff required that Defendants provide additional documentation regarding their financial status. [Agreement, ¶ 12.20] Key to reaching a settlement was Mr. Ackermann's suggestion for settlement on behalf of a narrowed class of non-exempt employees who worked from February to November 2022, a period when Plaintiff alleged that Defendants failed to pay the full minimum wage. [Elster Decl., ¶ 10]

III. SETTLEMENT TERMS

A. The Settlement Class and Aggrieved Employees

The proposed Class consists of 33 Class Members and no more than 33 Aggrieved Employees who were non-exempt tipped employees who worked during at least some part of the period from February 1 to November 30, 2022. [Agreement, ¶¶ 1.4, 1.5] The Class Members collectively worked a total of 958 Class Member Pay Periods, and the Aggrieved Employees worked a total 241 PAGA Pay Periods. [*Id*., ¶ 4.1]

B. Settlement Terms and Payments

The Settlement provides for the Defendants' funding obligation and disposition of the Gross Settlement Amount of $120,000.00. [*Id.*, ¶¶ 1.22, 4.3] The Gross Settlement Amount is intended for payments of: (1) Individual Class Payments to Participating Class Members; (2) Individual PAGA Payments totaling $1,750.00; (3) LWDA PAGA Payment of $3,250.00; (4) Class Counsel Fees Payment not to exceed $40,000.00 (one-third of the Gross Settlement Amount) and Class Counsel Litigation Expenses Payment not to exceed $15,000.00; (5) Administration Expenses Payment not to exceed $5,00.00; and (6) Class Representative Service Payment not to exceed $7,500.00 to Plaintiff. [*Id.*, ¶¶ 1.3, 1.7, 1.14, 1.23, 1.24, 1.27, 1.34, 3.2.1, 3.2.2, 3.2.3]

Subject to court approval, the Gross Settlement Amount of $120,000.00 will be paid out with no claim form requirement and no reversion to Defendants. [Id., ¶ 3.1] The Class Members will have 60 calendar days following the date the Settlement Administrator mails the Class Notice out to Class Members to submit a Request for Exclusion from the Settlement, written objection, or a dispute regarding the individual Class Member Pay Periods or Aggrieved Employees PAGA Pay Periods. [Id., ¶¶ 1.30, 1.42, 1.43, 1.45, 7.51, 7.6, 7.7.2] If re-mailing of the Class Notice is required to any particular Class Member, additional time is provided to that individual for response. [Id., ¶7.4.4] Participating Class Members may also assert any objections to the Settlement in person at the Final Approval hearing. [Id., ¶ 7.7.2]

Class Members who do not timely and validly exclude themselves from the Class Settlement will become Participating Class Members bound by the terms of the Settlement. Class Members who are bartenders and servers will be mailed a settlement check in an amount equal to their pro rata share of the Net Settlement Amount based on a ratio calculation arrived at by (a) dividing the Net Settlement Amount by the total number of Class Member Pay Periods by all Participating Class Members and (b) multiplying the result by each individual Participating Class Member's number of Class Member Pay Periods. [Id., ¶¶ 1.35, 1.45, 3.2.4] A process exists for Participating Class Members to dispute their total number Class Member Pay Periods by submitting supporting documentation or information. [Id., ¶ 7.6]

For tax purposes, all Individual Class Payments to Participating Class Members shall be allocated as follows: 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 80% of each Participating Class Member's Individual Class Payment and 100% of the Individual PAGA Payments 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. [*Id.*, ¶¶ 1.24, 3.2.4.1]

A Participating Class Member must cash his or her settlement checks within 180 calendar days after it is issued to them. [*Id.*, ¶ 4.4.1] Any uncashed settlement checks after 180 calendar days will be paid by the Settlement Administrator to Legal Aid at Work, a Court-approved nonprofit organization or foundation consistent with Code of Civil Procedure section 384, subdivision (b) ("Cy Pres Recipient"), thereby leaving no "unpaid residue" under Code of Civil Procedure section 384. [*Id.*, ¶ 4.4.3] In such event, the Participating Class Member shall nevertheless remain bound by the Settlement. [*Id.*, ¶ 7.5.3] Therefore, no portion of the Gross Settlement Amount will revert to

Defendants under any circumstance, except that if any Class Members opt out of the Settlement, Defendants have the right to retain the opt-out's Individual Class Payment. [*Id.*, ¶ 3.1] Participating Class Members may receive combined checks for both class and PAGA payments, while Non-Participating Class Members who are still "Aggrieved Employees" remain eligible for PAGA payments. [*Id.*, ¶ 4.4.1]

The Court shall retain jurisdiction following final approval to implement and enforce the Settlement terms pursuant to Code of Civil Procedure section 664.6 and other applicable laws, which will allow the Court to receive and consider a funds distribution report following the expiration of the check cashing deadline. [*Id.*, ¶ 10.3]

As of the Effective Date, Plaintiff and all Participating Class Members will be deemed to have released all of the Released Parties of all Released Class Claims. [*Id.*, ¶¶ 1.18, 1.39, 1.41, 5.2] As of the Effective Date, Plaintiff will also generally release all rights and benefits of rights, including a waiver of California Civil Code section 1542. [*Id.*, ¶¶ 1.18, 1.41, 5.1, 5.1.1] All Aggrieved Employees will also be deemed to have released all of the Released Parties of all Released PAGA Claims. [*Id.*, ¶¶ 1.40, 1.41, 5.3]

Funding of the Gross Settlement Amount. Defendants shall fully fund the Gross Settlement Amount to the Settlement Administrator by the later of 65 days after the Effective Date or July 1, 2026. [*Id.*, ¶¶ 1.18, 4.3]

Distribution Timing of Payment to Settlement Administrator. Within 14 business days after Defendants fully fund the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments. [*Id.*, ¶ 4.4]

Plaintiff is submitting all settlement and notice documents as follows: (1) Class Action and PAGA Settlement Agreement and Class Notice—the Agreement; (2) Class Notice (Exhibit A to the

Agreement); and (3) the [Proposed] Order Granting Plaintiff's Motion for Preliminary Approval of Class Action Settlement, filed concurrently herewith.

Plaintiff respectfully requests that this Court approve the Class Notice to be disseminated to the Class Members consistent with the manner and timing as set forth in the Settlement Agreement. Plaintiff respectfully requests that this Court appoint third party ILYM Group, Inc. to handle the notice and settlement administration procedures. [*Id.*, ¶¶ 1.2, 7.1] The cost of settlement administration for the disbursement of funds, provision of notice, required tax reporting, the handling of Class Member questions and disputes and the calculation of employee withholding taxes and employer payroll taxes to be remitted to the tax authorities by ILYM Group, Inc. will not exceed $5,000.00 and is estimated to be $3,950.00. [*Id.*, ¶¶ 1.3, 3.2.3]

For additional details of the proposed Settlement, see the Class Action and PAGA Settlement Agreement and Class Notice ("Agreement"), attached to the Elster Declaration as Exhibit 1. [Elster Decl., ¶ 2, Exh. 1]

IV. ARGUMENT

A. The Court Should Conditionally Certify the Class for Settlement Purposes

Class certification is appropriate "when the question in a case is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court." CCP § 382; *Brinker Restaurant Corp. v. Superior Ct.* (2012) 53 Cal.4th 1004, 1021; *Linder v. Thrifty Oil Co*. (2000) 23 Cal.4th 429, 435; *Sav-on Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. California "has a public policy which encourages the use of the class action device," where numerous smaller claims can be resolved collectively. *Sav-On*, 34 Cal.4th at 340. For purposes of this Settlement *only*, Defendants will not oppose conditional certification. [Agreement ¶ 12.6.]

The question of class certification is "essentially a procedural one that does not ask whether an action is legally or factually meritorious. [Instead, a] trial court ruling on a certification motion determines whether the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants." *Sav-On*, 34 Cal.4th at 326. "[I]t is well established that trial courts should use different standards to determine the propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases." *Global Minerals & Metals Corp. v. Superior Court* (2003) 113 Cal.App.4th 836, 859, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 fn. 19. In view of these standards, the Class should be certified for purposes of settlement. CCP § 382; CRC 3.769(c).

Under CCP 382, the "party advocating class treatment must demonstrate the existence of an ascertainable and sufficiently numerous class, a well-defined community of interest, and substantial benefits from certification that render proceeding as a class superior to the alternatives. … [I]f the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages." *Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 968. Also, "[w]hen appropriate, an action may be maintained as a class action limited to particular issues [and/or] [a] class may be divided into subclasses." CRC 3.765(b).

1. Ascertainable Class and Sufficiently Numerous

The ascertainability of a class calls for "an examination into (1) the class definition, (2) the size of the class and (3) the means of identifying class members." *Noel*, 7 Cal.5th at 974. "An ascertainable class is one defined in objective terms that make the eventual identification of class members possible." *Id.* at 980. A class is ascertainable when "it is defined in terms of objective characteristics and common transactional facts that make the ultimate identification of class members possible when that identification becomes necessary." *Id*. The Class definition here is sufficiently specific to determine the parameters of the Class. The numerosity element is satisfied when a class is large enough that "it is impracticable to bring [all class members] before the court." *Hendershot v. Ready to Roll Transportation, Inc.* (2014) 228 Cal.App.4th 1213, 1222. Classes of ten members have been found to be sufficiently numerous to warrant class certification. *Ibid.* Here, 33 Class Members have been identified under the Class definition. [Agreement, ¶4.1] The Class is ascertainable and sufficiently numerous.

2. Community of Interest

"The 'community of interest' requirement embodies three factors: (1) predominant questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." *Sav-On*, 34 Cal.4th at 326; *Noel*, 7.Cal.5th at 968; *Dunk,* 48 Cal.App. 4th at 1806; *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.

a. Common questions of law and fact predominate

A question of law or fact is common to the members of a class if it may be resolved through common proof. *See*, *Jaimez v. Daiohs USA, Inc.* (2010) 181 Cal.App.4th 1286, 1305. "Predominance is a comparative concept, and the necessity for class members to individually establish eligibility and damages does not mean individual fact questions predominate." *Sav-on*, 34 Cal. 4th at 334. "[E]ach member must not be required to individually litigate numerous and substantial questions to determine his or her right to recover following the class judgment; and the issues which may be jointly tried, when compared with those requiring separate adjudication, must be sufficiently numerous and substantial to make the class action advantageous to the judicial process and to the litigants." *Washington Mutual Bank v. Superior Court* (2001) 24 Cal.4th 906, 913-914.

In this case, common questions include: i. Whether Defendants converted tips intended for Class Members; ii. Whether Defendants provided meal breaks to the Class; iii. Whether Defendants paid the full minimum wage to the Class; iv. Whether Defendants provided accurate itemized wage statements to the Class; v. Whether Defendants paid all wages due at the end of Class Members' employment; vi. Whether Defendants engaged in unlawful or unfair business practices affecting the Class in violation of the UCL.

Plaintiff's claims present sufficient common issues of law and fact that predominate over individual issues and warrant class certification. Class Members were subject to the same practices and Class Counsel's review of documents indicates Class Members experienced a common set of Labor Code violations. These circumstances raise the same questions of liability to all Class Members. Because Class Members would have to prove the same issues of law and fact to prevail, and because their potential legal remedies are identical, it would be preferable to resolve all Class Members' claims by means of the Settlement than to require each Class Member to litigate his or her individual claims. Therefore, common questions predominate over questions that may be unique to individual Class Members, and class-wide settlement is superior to any other resolution.

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b. Plaintiff's Claims Are Typical

"The typicality requirement's purpose is to assure that the interest of the named representative aligns with the interests of the class. Typicality refers to the nature of the claim or defense of the class representative, and not to the specific facts from which it arose or the relief sought. The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Martinez v. Joe's Crab Shack Holdings* (2014) 231 Cal.App.4th 362, 375 (quoting *Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502). Under these standards, Plaintiff is typical of Class Members. Like other Class Members, Defendants employed Plaintiff as a non-exempt tipped employee during the period of February to November 2022 and she was subject to the same practices. Plaintiff was also subject to the same practices as all Class Members regarding meal breaks and the requirement to pay the full minimum wage. Plaintiff alleges that she shares the same claims as other Class Members arising out of the same alleged violations of the Labor Code. Defendants' defenses would also apply equally to the claims of all Class Members.

c. Plaintiff is an adequate class representative

"Adequacy of representation depends on whether the plaintiff's attorney is qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the class." *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450. "A party's claim of representative status will only be defeated by a conflict that goes to the very subject matter of the litigation." *Martinez,* 231 Cal.App.4th at 375-376 (quoting *Richmond*, 29 Cal.3d at 470). If the plaintiff has adequate counsel, she may represent the entire class absent any disabling conflicts of interest that might hinder the plaintiff's ability to represent the class. *Martinez*, 231 Cal.App.4th at 375 ("A party's claim of representative status will only be defeated by a conflict that goes to the very subject matter of the litigation."). Here, Plaintiff has no conflicts of interest with other Class Members and has agreed to place Class interests above Plaintiff's own. [Declaration of Hannah Gunio ("Gunio Decl."), ¶ 6] Moreover, Class Counsel is experienced in wage and hour class litigation and has no conflicts of interest with absent Class Members. [Elster Decl., ¶¶ 12, 22-26]

Thus, this Court should appoint Plaintiff as Class Representative and appoint her counsel as Class Counsel.

3. Class Action Is Superior to Individual Claims

The "class action device … whereby the claims of many individuals can resolved at the same time … eliminat[ing] the possibility of repetitious litigation and provides small claimants with a method of obtaining redress." *Richmond*, 29 Cal.3d at 469. This avoids "a multiplicity of trials" where "each individual plaintiff would present in separate, duplicative proceedings the same or essentially the same arguments and evidence….". *Sav-On Drug*, 34 Cal.4th at 340. Class certification serves as a means "to deter and redress alleged wrongdoing." *Linder*, 23 Cal.4th at 435. It would burden the courts to require Class Members to obtain redress for the same alleged Labor Code violations. Class certification is clearly superior and justified.

4. Proposed Class Notice Is Adequate

In order to protect the rights of absent class members CRC 3.769(f) requires that class members be provided with notice of the final approval hearing as well as an explanation of the proposed settlement and objection procedures. Procedural due process does not require any particular procedure but rather requires only notice reasonably calculated to apprise interested parties of the pendency of the action affecting their interests and an opportunity to present their objections. *Ryan v. California Interscholastic Fed'n - San Diego Section* (2001) 94 Cal.App.4th 1048, 1072. A class notice that meets this standard and provides information about how to opt out of the class satisfies due process. *Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 812.

a. Class Notice is accurate and informative

The proposed Class Notice will be sent by First-Class U.S. Mail to Class Members in a timely fashion, within 14 days of the Settlement Administrator's receipt of the Class Data, which itself must be provided within 15 days of the Court's order granting Preliminary Approval, following a skip trace, and provides all the information a reasonable person would need to make a fully informed decision about the settlement as required by CRC 3.766(d). [Class Notice; Agreement, ¶¶ 1.11, 4.2, 7.4.2] The Class Notice summarizes the lawsuit, including the contentions and denials of the parties, the proceedings to date, and explains the terms and conditions of the Settlement in plain language in an informative and coherent manner. *See* Class Notice. It also fully informs Class Members of their rights and options as Class Members (*i.e.*, rights to enter an appearance through counsel, to object, to exclude oneself from the Class Settlement, or to do nothing to receive their *pro rata* share of the Net Settlement Amount). The Class Notice makes clear that each Participating Class Member will receive an Individual Class Payment consisting of payment for Released Class Claims, unless they opt out of the Class Settlement and explains the process for doing so. The Class Notice also states that Participating Class Members who wish to object to the Settlement may mail to the Settlement Administrator a written statement of objection by the Response Deadline, or, may appear in person at the Final Approval hearing to assert their objection. [Class Notice]

b. Notice plan satisfies due process

There is no statutory or due process requirement that all class members receive actual notice. "[I]ndividual notice may not always be required even for absent class members whose whereabouts are *known*, explaining, "the representative plaintiff in a California class action is not required to notify individually every readily ascertainable member of his class without regard to the feasibility of such notice; he need only provide meaningful notice in a form that 'should have a reasonable chance of reaching a substantial percentage of the class members." *Noel*, 7 Cal.5th at 983. Here, the proposed direct mail notice plan is consistent with class notices approved in state and federal courts, and is the best notice practicable, and the method of dissemination is likely to give the best actual notice to the greatest number of Class Members. The Settlement Administrator will send each Class Member a Class Notice via United States First Class mail. [Agreement, ¶ 7.4.2]

The Response Deadline for Class Members to whom the Notice of Settlement is mailed is 60 days after the Settlement Administrator mails the Notice. [*Id.*, ¶ 1.43] It shall be the last date on which Class Members may: (a) email, or mail Requests for Exclusion from the Class portion of the Settlement, or (b) 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 14 calendar days beyond the Response Deadline has expired. [*Ibid.*]

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B. The Court Should Preliminarily Approve the Proposed Class Action Settlement and Approve the PAGA Settlement

1. Courts Review Class Action Settlements to Ensure That the Terms Are Fair, Adequate, and Reasonable

Litigants must obtain court approval of class action settlements. Approval occurs in two steps: (1) an early "preliminary" review by the trial court; and (2) a subsequent "final" review after notice of the settlement has been distributed to class members for their comments and objections. CRC 3.769(c)-(g); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 (the court first "preliminarily approves the settlement" and later "conducts a final approval hearing to inquire into the fairness of the proposed settlement"). The motion for preliminary approval must be accompanied by (1) the settlement agreement, (2) proposed notice to the class, and (3) the proposed order. CRC 3.769(c). The motion must also identify any agreement concerning payment of attorney's fees. CRC 3.769(b).

If the trial court grants preliminary approval of a settlement, CRC 3.769(f) requires the court to (1) schedule a final approval hearing and (2) approve the method by which the parties are to provide notice to the class of the hearing and "an explanation of the proposed settlement." The court must also approve a procedure for class members to file objections to the settlement. *Ibid*. At the final approval hearing, the court must conduct an inquiry into the fairness of the proposed settlement. *Id.* at 3.769(g).

Although Rule 3.769 does not provide detail as to the scope of review of the proposed settlement, the "purpose of preliminary evaluation of proposed class action settlements is to determine whether the settlement is within the 'range of reasonableness.'" *Mishra v. Cognizant Tech. Sols. U.S. Corp.* (E.D. Cal. June 1, 2020) 2020 U.S. Dist. LEXIS 95828, at *22. A "presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Dunk*, 48 Cal.App.4th at 1802. The presumption of fairness is consistent with California's public policy goal of favoring settlements. *Stambaugh v. Superior Ct.* (1976) 62 Cal.App.3d 231, 236 ("the law wisely favors settlements"); *Cellphone Termination Fee Cases,* 180 Cal. App.4th at 1118 ("Public policy generally favors the compromise of complex class action litigation"); *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 ("voluntary conciliation and settlement are the preferred means of dispute resolution. This is especially true in complex class action litigation"); *Skulnick v. Roberts Express Inc.* (2002) 2 Cal.App.4th 884, 891 ("Public policy strongly discourages litigation and encourages settlement. Settlements can produce peace and goodwill in the community while reducing the expense and persistency of litigation").

In reviewing the fairness of a class action settlement, "due regard should be given to what is otherwise a private consensual agreement between the parties. The inquiry "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." *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1389.

Of the many factors that courts consider in deciding whether to approve a class action settlement, "[t]he most important factor is the strength of the case for plaintiff on the merits, balanced against the amount offered in settlement." *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130; *see also Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 407-8. Class Counsel investigated the applicable law regarding the claims of Plaintiff, Class Members and Aggrieved Employees, the alleged defenses thereto, and the damages at issue. Based thereon, Plaintiff's counsel was able to evaluate the strength of and value of the Class Members' claims. Class Counsel also obtained numerous financial documents and information regarding Defendants' financial constraints, which show limitations on their ability to pay a settlement. [Elster Decl., ¶¶ 7-8, 11]

By engaging in a thorough investigation and evaluation of the claims, Class Counsel states with confidence that the Settlement, for the consideration and on the terms set forth in the Settlement Agreement, is fair, reasonable, and adequate, and is in the best interests of the Class Members in light of all known facts and circumstances, including limitations on Defendants' ability to pay a higher settlement, the risk of significant delay and uncertainty associated with litigation, a further reduction on Defendants' ability to pay a settlement if litigation continued, the various defenses asserted by Defendant, the prospect of an adverse judgment on liability by the jury, and potential appellate issues. [Elster Decl. ¶ 12]

2. Settlement Was Reached Through Arms-Length Bargaining

"[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed settlement's fairness." *State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482. Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered. Thus, there is a presumption that settlement negotiations were conducted in good faith. Newberg on Class Actions (4th Ed.), § 11.51.

The Parties participated in mediation with Craig Ackermann of Employment Mediation Corp. [Elster Decl., ¶¶ 9-10] Mr. Ackermann helped to manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. At all times, the Parties' negotiations were adversarial and non-collusive. Through Mr. Ackermann's efforts and guidance, the Parties reached this Settlement. The Parties were represented by experienced class action counsel throughout the negotiations resulting in this Settlement. Plaintiff's counsel regularly litigates wage and hour class actions and has reached numerous class action and representative settlements. [Elster Decl., ¶¶ 22-26] Defendant's lawyers are also sophisticated, experienced class action lawyers.

3. Settlement Represents a Fair, Adequate and Reasonable Compromise of Class Members' Claims Based on Estimated Liability

A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial and does not have to provide 100% of damages sought to be fair and reasonable. "In the context of a settlement agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances." *Wershba Apple Computer, Inc.* (2001) 91 Cal.App.4th, 224, 250. Because settlements involve compromise, "even if the relief afforded by the proposed settlement is substantially lower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation." *Ibid.*

With respect to the claims asserted on behalf of the Class, there are serious risks that support this compromise Gross Settlement Amount. These risks include, but are not limited to:

- the risk that continued litigation would further impair Defendants' ability to fund a settlement;
- the risk that Plaintiff would be unable to establish liability for converted tips, meal break violations, unpaid minimum wage, wage statement damages, or waiting time penalties;
- the risk that Plaintiff would be unable to obtain class certification;
- the risk that lengthy trial or appellate litigation could ensue; and
- the risk that violation rates could prove lower than expected.

These risks are non-exhaustive.

In light of the uncertainties of litigation, the settlement amount reflects a fair and reasonable recovery. The settlement amount is, of course, a compromise figure. By necessity it took into account risks related to liability, damages, the defenses asserted by Defendants, and financial constraints on Defendants. Moreover, each Class Member will be given the opportunity to opt-out of the Settlement, allowing those who feel they have claims that are greater than the benefits they can receive under this Settlement to pursue their own claims. The approximate Net Settlement Amount is $48,550 (Gross Settlement Amount of $120,000, less $5,000 for PAGA Penalties, $3,950 for Administration Expenses Payment, $7,500 for Class Representative Service Payment, $40,000 for Class Counsel Fees Payment and $15,000 for Class Counsel Litigation Expenses Payment). The Individual Class Payment for the 33 Class Members will average of $1,471 ($48,550 / 33), based on the number of Class Member Pay Periods worked by each Class Member. Given that Defendants could challenge certification and liability, Class Counsel regards this as an excellent result in settlement. Moreover, a Class Member who worked a greater number of Class Member Pay Periods will receive a larger Settlement share than a Class Member who worked fewer Class Member Pay Periods. After analyzing the claims in this matter and Defendants' responses and defenses, Plaintiff has concluded that the Gross Settlement Amount of $120,000 is a reasonable, risk-adjusted recovery at this stage in the litigation. [Elster Decl., ¶ 12]

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a. Maximum estimated potential damages of $354,712

Based on the following breakdown, Class Counsel estimates the maximum damages available at trial, not including interest and attorney's fees and costs, to be approximately **$354,712** ($114,002 + $95,800 + $76,500 + $43,000 + $25,410). A Gross Settlement Amount of $120,000 is 33.8% of this maximum estimate ($120,000 / $354,712).

Meal Break Violations

Class Members worked a total of 958 Class Member Pay Periods. [Agreement, ¶ 4.1] Because Class Members were paid every two weeks, 958 Class Member Pay Periods equates to 1,916 weeks worked by Class Members. Based on the sampled data provided by Defendants, Class Counsel estimates Class Members worked 3.5 days per week and that their hourly rate was approximately $17 per hour over the Class Period. If the meal break violation rate were 100% for all shifts worked by Class Members, under Labor Code sections 226.7 and 512 and Wage Order 5 (one hour of pay for each shift when a meal break violation occurs), that would equate to approximately **$114,002** (1,916 workweeks X 3.5 days per workweek X $17 per hour) in meal break premium wages owed to Class Members. [Elster Decl., ¶ 14.]

Wage Statement Violations

If wage statement violations occurred for each of the 958 Class Member Pay Periods, under Labor Code section 226 ($100 in statutory damages for each inaccurate wage statement after the initial pay period), that would equate to approximately **$95,800** (958 pay periods X $100) in statutory wage statement damages. [Elster Decl., ¶15]

Waiting Time Penalties

Based on the sampled data, Class Counsel estimated that Class Members' shifts averaged just under 5 hours per workday. If all 33 Class Members are no longer employed by Defendants, under Labor Code sections 201, 202 and 203, that would equate to approximately **$76,500** (33 Class Members X 30 days X 5 hours per shift X $17 per hour) in waiting time penalties. [Elster Decl., ¶ 16]

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Converted Tips

Defendants provided W-2s for what they asserted was the only exempt employee to receive customer tips (the allegedly converted tips). These amounts totaled approximately **$43,000**. [Elster Decl., ¶ 17]

Failure to Pay Minimum Wage

The period from February to November 2022 is when Defendants employed more than 26 employees and failed to pay the extra one dollar per hour for the minimum wage. This period of time equates to approximately 44 workweeks. All Class Members worked at least partly during this period. If all Class Members worked the entirety of this period, under Labor Code section 1182.12, that would equate to **$25,410** (33 Class Members X 44 workweeks X 3.5 shifts per week X 5 hours per shift X $1) in unpaid minimum wage. [Elster Decl., ¶ 18]

4. The Proposed Method for Allocating Settlement Funds Is Fair

The proposed method of allocating the Settlement Fund to Class Members is fair and reasonable. The Settlement Fund is to be allocated between all Class Members, based each Participating Class Member's Class Member Pay Periods. This proposed method is fair and reasonable because each Participating Class Member's actual potential damages vary based on the number of Class Member Pay Periods he or she worked, resulting in a higher potential damage depending on a greater number Class Member Pay Periods. A Participating Class Member who worked a greater number of Class Member Pay Periods will receive a larger payment under the Settlement than a Participating Class Member who worked a fewer number of Class Member Pay Periods. [Agreement, ¶ 3.2.4]

5. The Proposed Class Representative Service Payment Is Reasonable

The named Plaintiff is eligible for payment that reasonably compensates her for undertaking and fulfilling a fiduciary duty to represent absent class members. *Cellphone Termination Fee Cases*, 186 Cal.App.4th at 1393; *Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726 (upholding "service payments" to named plaintiffs for their efforts in bringing the case). "Incentive awards are fairly typical in class action cases. …. Such awards are discretionary and are intended to compensate class representatives for work done on behalf of the class, to make up for their financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.""" *Rodriguez v. West Publ'g Corp.* (9th Cir. 2009) 563 F.3d 948, 958-959.

The Parties have negotiated a service award for Plaintiff Hannah Gunio, the proposed Class Representative, in an amount not to exceed $7,500.00, for her efforts in bringing the action, recounting her work experience, regularly conferring with counsel on the status of the case and the strategies for prosecuting the claims, providing updating information regarding Defendants as she learned of it, assisting in the pre-mediation evaluation of damages, attending two full days of mediation, and reviewing the proposed Settlement to ensure that its terms are fair and that it provides adequate relief for the Class. [Elster Decl. ¶ 20; Gunio Decl. ¶¶ 3-5] The proposed service award is fair and reasonable compensation for Plaintiff's services to the class and for the reputational risks she undertook for the benefit of the Class.

Payments to the named plaintiff for their services as class representative are customary and generally approved. *See Cellphone Termination Fee Cases*, 186 Cal.App.4th at 1394-1395. Courts have recognized that employees face a particular set of challenges when bringing class action suits. Current employees risk retaliation or, less explicitly, greater difficulties in the workplace as a result of bringing suit. *See Guippone v. BH S&B Holdings, LLC* (S.D.N.Y. Oct. 28, 2011) 2011 U.S. Dist. LEXIS 126026, at *19-20 ("Even where there is not a record of actual retaliation, notoriety, or personal difficulties, class representatives merit recognition for assuming the risk of such for the sake of absent class members."). Both employees also place their future employment prospects in peril by becoming class representatives, as "the fact that a plaintiff has filed a federal lawsuit is searchable on the internet and may become known to prospective employers when evaluating the person." *Id.* at *20. It is common for employers to screen employee candidates to determine whether they have ever filed suit, and that employee candidates who might be branded "litigious" are likely to be screened out of the process. In fact, an entire industry has developed for providing employers with background information on employee candidates.[1] By bringing this action against her employers, Plaintiff has

[1] Some companies that provide these background check services actually promote themselves by touting their ability to identify and weed out potentially litigious employee candidates. *See.,* e.g.:

assumed considerable reputational risk that may impact her ability to find employment in the near and distant future. Long after this action is forgotten by Class Members, Plaintiff as a Class Representative will endure the risk of being branded "litigious" by prospective employers, and may have employment applications rejected on that basis alone.

Finally, Plaintiff released her personal damages as part of the Civil Code section 1542 general release, which is considerably broader than the separate, narrower release required of the Settlement Class. [Gunio Decl., ¶ 7; Agreement, ¶¶ 5.1, 5.1.1, 5.2] A class representative's execution of a general release—entailing an additional detriment for class representatives that does not apply to other class members—further supports their request for a service award. *See Schaffer v. Litton Loan Servicing, LP* (C.D. Cal. Nov. 13, 2012) 2012 U.S. Dist. LEXIS 189830, at *64 ("[C]lass representatives released their actual damages claims as part of the settlement. This factor, therefore, weighs in favor of approving the incentive awards."). For all these reasons, the request for a Class Representative Service Payment to Plaintiff is reasonable and should be granted.

6. Proposed Attorney's Fees and Costs Are Reasonable

The purpose of an attorney's fee award in class action litigation is to compensate class counsel, who took on the significant risk of non-payment and invested in a case that achieved a substantial positive result for a class of persons. California courts routinely award attorneys' fees equaling one-third or more of the potential value of the common fund. *See Martin v. AmeriPride Servs.* (S.D. Cal. June 9, 2011) 2011 U.S. Dist. LEXIS 61796, *23 ("[C]ourts may award attorneys fees in the 30-40% range in wage and hour class actions that result in recovery of a common fund under $10 million."). At final approval, Plaintiff's counsel will request payment of attorneys' fees of 35 percent of the Gross Settlement Amount, or $40,000.00, and reimbursement of up to $15,000.00 in reasonable case costs, an amount that includes $6,000 for Plaintiff's share of the mediator's fee of $12,000. [Agreement, ¶¶ 1.7, 3.2.2]

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● "In today's litigious culture, employers simply cannot afford to hire employees who will put their company at risk." *Back Track Screening*, https://www.btscreening.com/wp-content/uploads/2019/01/Screening-101.pdf (last accessed May 24, 2025).

7. Proposed Administration Expenses Payment Is Reasonable

ILYM Group, Inc., which has been selected due to its competitive bid, states that administration can be performed for approximately $3,950.00. In counsel's experience, based on similar wage-and-hour actions, an estimated cost of $3,950.00 is a fair and reasonable amount for administration fees and should be preliminarily approved. [Elster Decl., ¶ 21] ILYM Group has also confirmed its capabilities and security protocols in the accompanying declaration. [ILYM Decl.]

C. The PAGA Settlement Should Be Approved

The Settlement also accomplishes PAGA's objectives by imposing sufficient civil penalties "to punish and deter" employers from committing any of the Labor Code violations alleged, while ensuring that the penalties are not "unjust, arbitrary and oppressive, or confiscatory." Labor Code § 2699(e)(2); *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 384.

1. Standard for Approval of PAGA Settlements

PAGA was enacted to allow enforcement of the Labor Code and recovery of penalties by the State and by private individuals who have been aggrieved by their employers. An aggrieved employee must first provide written notice to the LWDA and to the employer(s) of the particular Labor Code provisions alleged to have been violated. Labor Code § 2699.3. If the LWDA does not respond within the statutory time period, the aggrieved employee may proceed in a civil action, and may enforce civil penalties against the employer on behalf of the LWDA and all other similarly aggrieved employees. *Ibid.* The statute requires that 65% of any penalties recovered be paid to the LWDA and the remaining 35% to the aggrieved employees. *Id.* § 2699(m).

When an aggrieved employee seeks to settle PAGA claims asserted in a PAGA action, the court "shall review and approve" the settlement. *Id.* § 2699(s)(2). Although PAGA does not define the standard against which a PAGA settlement should be evaluated, California courts have interpreted PAGA as "requiring the trial court to determine independently whether a PAGA settlement" is "fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 76-77. A PAGA settlement should be approved when "a PAGA plaintiff has adequately represented the state's interests, and hence the public interest." *Id.* at 89.

These broad criteria give the Court wide latitude in determining whether to approve the penalties proposed as part of a PAGA settlement. Notably, the criteria focus on the effect the penalties may have on the defendant/employer rather than the LWDA or the aggrieved employees who will receive the penalties. This is different than the analysis of a class action settlement, which typically focuses on the amount received by the class and compares that to the reasonable range of potential outcomes in the case. *See, e.g., Kullar v. Foot Locker Retail, Inc.* 168 Cal.App.4th 116, 130; *Munoz v. BCI Coca-Cola Bottling Co. of L.A.* 186 Cal.App.4th at 407. As the California Supreme Court held in *Arias v. Superior Court* (2009) 46 Cal.4th 969, 975, a plaintiff can seek civil penalties under PAGA on behalf of the State of California and other similarly aggrieved employees without meeting class action certification or settlement requirements (i.e. numerosity, typicality, commonality and adequacy). As such, a one-step approval process is typically appropriate.[2]

2. PAGA Settlement Is Reasonable and Meets the Standard for Approval

To determine whether the settlement is fair, reasonable, and adequate, the Court may consider several factors, including: "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, . . . the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and views of counsel . . . ." *Kullar*, 168 Cal.App.4th at 128 (quoting *Dunk*, 48 Cal.App.4th at 1801). A "presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; [and]

[2] In *Arias*, the Court held that an aggrieved employee's representative action brought on behalf of other aggrieved employees against an employer for PAGA violations does not need to meet the requirements for class certification. 46 Cal.4th at 975. However, PAGA distinguishes and preserves the right of employees to separately or concurrently pursue their own causes of action against their employers and to recover other available federal and state remedies. Labor Code § 2699(k)(1).

(3) counsel is experienced in similar litigation…." *Dunk*, 48 Cal.App.4th at 1802. As discussed above, those factors are all present here. This case is likely to deter future labor code violations. *Moniz*, 72 Cal.App.5th at 76-77.

a. Settlement Is the Result of Non-Collusive, Arm's Length Negotiation Between the Informed Parties with Experienced Counsel, Reached at Mediation

"The court undoubtedly should give considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arm's-length transaction entered without self-dealing or other potential misconduct." *Kullar*, 168 Cal.App.4th at 129. Here, the proposed Settlement was reached through vigorous, arm's-length negotiations between lawyers with significant experience before a neutral mediator. Class Counsel had sufficient discovery from Defendants for a thorough understanding of the relevant facts and the litigation risks for both sides. This information was more than sufficient for "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." *Kullar*, 168 Cal.App.4th at 120. Class Counsel has considerable experience in PAGA and other complex litigation and is qualified to evaluate the PAGA claims, the value of the settlement versus moving forward with litigation, and the viability of Defendants' defenses to Plaintiff's PAGA allegations. Class Counsel believes that the Settlement is fair, reasonable, and adequate in light of the risks associated with the merits of Plaintiff's claims, the uncertainties of complex litigation, the Court's discretion to lower the amount of penalties ultimately awarded, the secured benefit to the LWDA and Aggrieved Employees, and the deterrence of future Labor Code violations. [Elster Decl., ¶ 12]

b. **Settlement Is Fair and Reasonable**

The $5,000.00 in PAGA Penalties is reasonable and meets the standards for approval of a PAGA settlement. For a group of approximately 33 Aggrieved Employees, a penalty of $5,000 is large enough to address the alleged past violations and deter future violations. The Aggrieved Employees collectively worked a total of 241 PAGA Pay Periods. [Agreement, ¶ 4.1] Plaintiff calculates the maximum potential exposure at the initial violation rate of $100 per pay period, (assuming a 100% violation rate in every pay period) as follows: 241 PAGA Pay Periods x $100 per pay period = $24,100.00. [Elster Decl., ¶ 19] Thus, PAGA Penalties of $5,000 equates to approximately 21% of the maximum potential penalties.

In addition, although Plaintiff's PAGA claims are meritorious, there are risks to continued litigation, including: (i) the strength of Defendants' defenses on the merits; (ii) the risk of losing at trial; (iii) the chances of any favorable verdict being reversed on appeal; and (iv) the difficulties attendant to collecting on a judgment. Taking these risks into account, $5,000 for PAGA Penalties is warranted by the circumstances of the case and provides the State of California and the Aggrieved Employees with a meaningful recovery.

Plaintiff also recognizes that, were this matter to go to trial, any award of civil penalties would be at the discretion of the Court. Even if Plaintiff prevailed, the Court can reduce the PAGA penalties "if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Labor Code § 2699(e)(2). Although Plaintiff believes there would be no persuasive grounds to reduce the penalties, the Court could determine otherwise and significantly reduce the PAGA penalties. The wide range of potential recovery (including the risk of small recovery), the potential for significant additional delays, costs and risks of proceeding to trial, and the release of only PAGA penalties but not individual claims for the Aggrieved Employees who are not Participating Class Members, are all factors supporting the proposed settlement. For example, in *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, the plaintiff prevailed at trial but the trial court reduced the maximum PAGA penalties by 90%, based on the employer's good faith attempt at complying with the law. *Id.* at 517. The Court of Appeal found this 90% reduction of the PAGA penalties to be proper. *Id.* at 529. Given the Court's discretion to award lower penalties even if Plaintiff were to win at trial, PAGA Penalties of $5,000 are reasonable.

The Plan of allocation is also fair because it distributes funds to Aggrieved Employees on a pro rata basis based on the number of each Aggrieved Employee's PAGA Pay Periods. [Agreement, ¶¶ 1.30, 3.2.5.1]

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V. COURT SHOULD SCHEDULE A FAIRNESS HEARING

The last step in the settlement approval process is the fairness hearing, where the Court makes a final determination about the propriety of settlement. Plaintiff requests that the fairness hearing in this case be scheduled for about 160 days after issuance of the Court's Order granting preliminary approval of the Settlement. Under the Settlement, the Defendants will have 15 days to provide the Class Data to the Administrator, which will then have 14 calendar days to mail out Class Notice. [*Id.*, ¶¶ 4.2, 7.4.2] Class Members have 60 days after mailing of the notice to submit exclusions or objections (with a 14-day extension available for re-mailed notices). [*Id.*, ¶ 1.43] Therefore, Plaintiff proposes a final approval hearing scheduled for the first available hearing date that is about 160 days after preliminary approval is granted.

VI. CONCLUSION

The Parties have negotiated a fair and reasonable settlement of the claims at issue herein. Having appropriately presented the materials and information necessary for preliminarily approval, Plaintiff requests that the Court preliminarily approve the Class Action Settlement, approve the PAGA Settlement and enter the requisite orders to permit notice to be disseminated.

Dated: June 1, 2026 LAW OFFICE OF STEVEN ELSTER

Steve Elster

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