Jerusalem F. Beligan, Bar No. 211258
jbeligan@beliganlawgroup.com
Leah M. Beligan, Bar No. 250834
lbeligan@beliganlawgroup.com
BELIGAN LAW GROUP, LLP
19800 MacArthur Blvd., Suite 333
Newport Beach, CA 92612
Telephone: (949)224-3881

Tyler D. Kring, Bar No. 325588
tkring@kringandassociates.com
Jeffrey T. Green, Bar No. 330065
jgreen@kringandassociates.com
KRING & ASSOCIATES, APC
38 Corporate Park
Irvine, CA 92606-5105
Telephone: (949) 393-1400
Facsimile: (949) 393-1430
E-Service: eserve@kringandassociates.com

Attorneys for Plaintiff and the Putative Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

Lisa Friedman, individually, and on behalf of all others similarly situated, Plaintiff, v. Fusion Care Group, A Psychological Professional Corp.; and Does 1 through 25, Defendant(s).	Case No. 24CU019053C Date: November 20, 2025 Time: 9:00 a.m. Dept: C-67 **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** Judge: Hon. Michael T. Smyth Dept: C-67 Action Filed: October 24, 2024

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

PLEASE TAKE NOTICE that on November 21, 2025, at 9:00 a.m. or as soon thereafter as this matter may be heard in Department C-67 of the Superior Court of California, County of San Diego, located at the San Diego Central Division Hall of Justice at 330 W. Broadway, San Diego, CA 92101, before the Honorable Michael T. Smyth, Plaintiff Lisa Friedman ("Plaintiff") will and hereby does move the Court for an Order: (1) granting preliminary approval of the Parties' settlement set forth in their Settlement Agreement for Class and Representative Action ("Settlement Agreement" or "Agreement"); (2) conditionally certifying the proposed Class for settlement purposes only; (3) appointing Plaintiff as the Class Representative and as the PAGA Representative; (4) appointing Jerusalem F. Beligan of Beligan Law Group, LLP and Tyler D. Kring and Jeffrey T. Green of Kring & Associates, APC as Class Counsel; (5) appointing Apex Class Action, LLC ("Apex") as the Settlement Administrator and authorizing Apex to send notice of the Settlement to the Class Members; and (6) setting a final approval hearing date (the "Motion").

Pursuant to California Rules of Court 3.769(d) and (e), the Motion is made on the grounds that the proposed Settlement Agreement satisfies all criteria for preliminary approval under California law and falls well within the range of reasonableness; the Agreement was reached through informed, arms-length bargaining between experienced attorneys, and Plaintiff and Class Counsel will fairly and adequately represent the Class Members.

The Motion consists of this Notice, the attached Memorandum of Points and Authorities, the Declarations of Jerusalem F. Beligan, Tyler D. Kring and Jeffrey T. Green, and the [Proposed] Order Granting Preliminary Approval, and any oral argument the Court may permit at the hearing on this Motion.

Dated: October 27, 2025

BELIGAN LAW GROUP, LLP

By: */s/ Jerusalem F. Beligan*
Jerusalem F. Beligan
Leah M. Beligan

Dated: October 27, 2025

KRING & ASSOCIATES, APC

By: ______________________
Tyler D. Kring Jeffrey T. Green
Attorneys for Plaintiff and the Putative Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff brought this action against Defendant on a proposed class basis and on a proposed representative basis under the Private Attorneys General Act (the "PAGA").1 The proposed class and PAGA claims arise from Defendant's alleged violations of multiple Labor Codes including, but not limited to, (1) Failure to Pay Earned Wages; (2) Failure to Pay the Minimum Wage; (3) Failure to Pay Overtime; (4) Failure to Provide Meal Breaks; (5) Failure to Provide Rest Breaks; (6) Failure to Provide Accurate Wage Statements; (7) Failure to Timely Pay Final Wages; (8) Failure to Reimburse all Reasonable and Necessary Business Expenses; (9) Violation of Business & Professions Code § 17200, *et seq*.; and (10) Violations of the Private Attorneys General Act of 2004. (See Green Decl., Exhibit ("Exh.") A, Settlement Agreement at §§ (2)(1); *see also* Class Notice, § 1.)

Class Counsel conducted informal discovery that yielded information and documentation concerning the claims set forth in the Action. (Green Decl. ¶ 6.) The Parties then attended a full day of mediation with a renowned class action mediator Lynn Frank, Esq. (*Id.*)

The terms of the Settlement provide that Defendant shall pay a gross Settlement Amount of Two Hundred and Fifty Thousand Dollars and Zero Cents ($250,000.00), which will be distributed to the Settlement Class on a **non-reversionary** basis without the need to submit claim forms. (See Settlement Agreement at §§ (3)(1); *see also* Class Notice, § (3)(1).) Thus, the entire Settlement Amount will be distributed and no remaining amounts, i.e. unclaimed funds, will revert back to Defendant. (*Id.*)

The Parties believe this Settlement is fair, adequate, and reasonable, especially given the substantial risks and uncertainty of class certification, liability, and Defendant's financial condition and ability to pay. Although Plaintiff and her counsel believe they can prevail on class certification

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1 Unless otherwise defined, all terms capitalized herein shall have the same meanings ascribed to those terms as defined in the CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE (separately referenced as the "Settlement Agreement" and "Class Notice" respectively), a copy of which is attached to the Declaration of Jeffrey T. Green ("Green Decl.") as Exh. A.

and on the merits, they recognize the inherent risk in drawn-out litigation and that a class might not be certified and/or that Plaintiff could fail to establish liability. Moreover, a large portion of the class allegedly were classified as exempt, permitting payment per appointment, which Defendant could have sought to enforce. Thus, a large portion of the Settlement Class Members may have been barred from recovering any unpaid wages/damages on a class basis. Accordingly, based on their own independent investigation and evaluation, the Parties and their counsel believe that 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 Settlement Class and Defendant in light of all known facts and circumstances and the expenses and risks inherent in litigation. The Parties, therefore, respectfully request the Court to grant this Motion for Preliminary Approval of Class Action and PAGA Settlement (the "Preliminary Approval Motion") and schedule a Final Approval Hearing.

II. **PROCEDURAL HISTORY**

On October 24, 2024, Plaintiff filed her wage-and-hour class action against Defendant entitled, *Lisa Friedman v. Fusion Care Group, A Psychological Professional Corp., et al.*, San Diego Superior Court, Case No. 24CU019053C (the "Action"). (See Settlement Agreement, § (1)(1).) On December 2, 2024, Defendant filed an Answer to Plaintiff's Complaint, and shortly after, the Parties agreed to mediate. After the Parties filed a joint stipulation giving Plaintiff leave to file a First Amended Complaint ("FAC") to add a claim under the PAGA, which the Court approved, Plaintiff filed the FAC on May 1, 2025. Defendant intends to file an Answer to the First Amended Complaint to put this case at issue for settlement purposes only.

Once the Parties agreed to mediate, Defendant produced Plaintiff's pay records, calendars and computer software activity data, in addition to simple class data, including workweeks and total class size for 184 class members (the Parties used Plaintiff's data as an exemplar for the class due to difficulty extracting and producing the relevant data). (Green Decl.,¶ 6; *see also* Settlement Agreement, §§ (2)(4), (4)(1).)2 Class Counsel then calculated damages and Defendant's potential

2 There are approximately 184 class members and 142 aggrieved employees who worked during the proposed Class Period. (See Settlement Agreement, § (4)(1).)

exposure. (Green Decl., ¶ 6.) Armed with this information, the Parties attended a full day of mediation with renowned class action mediator, Lynn Frank, Esq., and resolved that day after 14 hours of mediation. (See Green Decl., ¶¶ 6-7; *see also* Settlement Agreement, § (2)(3); *see also* Class Notice, § 2.)

III. <u>DISCUSSION</u>

Any settlement of a class action lawsuit must be reviewed and approved by the Court. This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after notice has been distributed to the class members for their comment or objections. The Manual for Complex Litigation (Third) § 30.41 states:

> Approval of class action settlements involves a two-step process. First, counsel submits the proposed terms of settlement and the court makes a preliminary fairness evaluation. If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of class representatives or of segments of the class, or excessive compensation for attorneys, and appears to fall within the range of possible approval, the court should direct that notice … be given to the class members of a formal fairness hearing, at which arguments and evidence may be presented in support of and in opposition to the settlement.

Thus, the preliminary approval by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. As Professor Newberg comments, "[t]he strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court may find that the settlement proposal contains some merit, is within the range of reasonableness required for a settlement offer, or is presumptively valid subject only to any objections that may be raised at a final hearing." *A. Conte & H. Newberg, Newberg on Class Actions*, § 11.26 (4th ed. 2002).

The procedures for the parties' submission of a proposed settlement for preliminary approval by the Court also are discussed in 4 *Newberg on Class Actions*:

> 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 of the agreement, including but not limited to, the amount of settlement, form of payment, manner of determining the effective date of settlement and any recapture clause.
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> *Id*. at § 11.24.

Here, the Parties have reached such an agreement and have submitted to this Court a copy of the Settlement Agreement setting forth all of the terms, including the method for calculating the Settlement Class Members' Allocation Amounts. (*See* Settlement Agreement, §§ (3)(2)(ii)-(vii); *see also* Green Decl., ¶ 8).

A. <u>The Class Should be Provisionally Certified</u>

The parties, at the preliminary approval stage, may also request the trial court provisionally approve certification of the class – conditioned upon final approval of the settlement. "[P]re-certification settlements are routinely approved if found to be fair and reasonable*." Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001). *Accord Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1803 (1996) (although the settlement was reached before any "adversary certification," the court was satisfied that it was "fair, adequate and reasonable"). As further explained by Professor Newberg:

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

In addition to such terms as class identification, settlement amount and payment procedures, the Settlement Agreement reached among the Parties contains a provision pursuant to which the Parties stipulate to the Court's provisional certification of the Settlement Class but do so for the purposes of settlement only. (*See* Settlement Agreement at §§ (2)(5), (12)(1).)

1. <u>Proposed Class Definition</u>

The current settlement is being settled on behalf of "all current and former non-exempt employees who worked for Fusion Care Group within the State of California at any time from October 24, 2023, and August 28, 2025." (*See* Settlement Agreement § (1)(5); *see also* Class Notice, generally). The settlement includes Aggrieved Employees, who include all non-exempt employees during the PAGA period, during the same time period, October 23, 2024 to August 28, 2025. (*See* Settlement Agreement, § (1)(4).)

2. <u>The Class is Sufficiently Numerous</u>

Courts generally find that numerosity is satisfied if the class includes 40 or more members. *Hendershot v. Ready to Roll Transp., Inc.*, 228 Cal. App. 4th 1213, 1222 (2014) (noting that there is no set number required for numerosity in case involving approximately 44 class members; only requirement is that class is so numerous that joinder would be impractical); *Villalpando v. Excel Direct Inc.*, 303 F.R.D. 588, 605-606 (N.D. Cal. 2014).

Here, there are approximately 184 class members as of June 27, 2025, with additional individuals who will likely become Settlement Class Members as the Class Period ended on August 28, 2025. (*See* Settlement Agreement at §§ (1)(31), (4)(1).) Joining 184 individuals or more in one case would be impractical and, thus, numerosity is satisfied.

3. <u>The Class is Ascertainable</u>

Class members are ascertainable where they may be "readily identified without unreasonable expense or time by reference to official records." *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1334 (2008); *Faulkinbury v. Boyd & Assocs., Inc.*, 216 Cal. App. 4th 220, 240 (2013). Here, the identity of Settlement Class Members is clearly ascertainable from Defendant's payroll records and have already been identified during the investigative process.

4. <u>Plaintiff's Claims are Typical and she is an Adequate Representative</u>

Commonality requires only that some common legal or factual questions exist; the plaintiffs need not show that all issues in the litigation are identical. *Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473 (1981). Defendant's conduct is central to the commonality inquiry. *City of San Jose v. Superior Court*, 12 Ca1. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13 (1971). Where the employer's conduct is uniformly directed at a class of employees, as Plaintiff alleges it is here, the class wide impact of the Defendant's policies satisfies the commonality requirement. See *Stephens v. Montgomery Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

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Here, the FAC alleges Defendant failed to pay all compensation owed to Plaintiff and the Settlement Class Members including, but not limited to, all minimum, regular and overtime wages, meal and rest period premiums for all noncompliant meal and rest breaks, reimbursements for all necessary business expenses, and any statutory penalties. The FAC also alleges that Plaintiff and other Settlement Class Members are entitled to civil penalties under the PAGA. In the FAC, Plaintiff alleges that she and other Settlement Class Members were subjected to the same alleged violations. Accordingly, Plaintiff's claims are typical and common to the other Settlement Class Members.

Moreover, Plaintiff does not have any interests adverse to the class, nor have any such issues been raised or presented. (Declaration of Lisa Friedman ("Friedman Decl."), ¶ 3). Plaintiff has taken all necessary steps to represent the interests of the Settlement Class, by providing information and documents, and reviewing the pleadings and discovery in this case. (Friedman Decl., ¶ 5). For these reasons, Plaintiff has adequately represented the Settlement Class Members and will continue to do so.

From the inception of this Action, Class Counsel have adequately represented the interest of the Settlement Class. For example, Class Counsel obtained class data and documents, including policies and activity data, as well as a sampling of time and payroll data from which Plaintiff's counsel calculated Defendant's potential exposure. (Green Decl., ¶ 6; *see also* Settlement Agreement, § (2)(4).) Class Counsel have also been approved as class counsel on a number of prior cases and are competent to represent the Settlement Class. (Green Decl., ¶¶ 3-5; Declaration of Jerusalem F. Beligan ("Beligan Decl."), ¶ 7, Exh. A.; Declaration of Tyler D. Kring ("Kring Decl."), ¶¶ 5-7.)

5. <u>Class-Wide Adjudication is Superior to Individual Claims</u>

Class treatment is clearly superior to any other method of resolving Plaintiff's claims. *Sav-on Drug Stores v. Sup. Ct.*, 34 Cal. 4th at 326; *Jaimez v. DAIOHS USA, Inc.*, 181 Cal. App. 4th 1286, 1308 (2010) ("[i]n light of the numerous common issues of fact and law that predominate in this lawsuit, we conclude that proceeding by way of class action is the superior method of adjudication. Doing so would further judicial economy by avoiding repetitious suits, would unify what would otherwise be a series of small claims so as to enhance the class members' access to redress").

Here, Plaintiff's claims are based on system-wide policies, procedures, and practices that apply to all Settlement Class Members and can be most efficiently litigated on a class-wide basis. The alternative would be the unrealistic filing of numerous individual claims. Since the Settlement Class Members are employees with relatively modest individual claims and limited resources, there is a strong likelihood that individual claims would never be brought.

6. <u>Common Questions of Fact and Law Exist</u>

The Settlement Class Members spent time performing job-related duties while off-the-clock and were not paid. These violations are a natural byproduct of Defendant's necessity for case notes to be recorded in the Simple Practice program within 24 hours of the appointments. Without updated clinical notes, the insurance carriers will not pay Defendant for the session. Pursuant to this policy, the Settlement Class Members were not paid for all hours worked. The time each Settlement Class Member spent off-the-clock varied widely, but the Simple Practice records indicate that time each day was spent entering clinical notes into the Simple Practice software while off-the-clock.

Plaintiff also alleges that Settlement Class Members were not provided with timely meal periods, free from employer control. While its written policy states that "[a]ll rest and meal periods shall… be in compliance with applicable Industrial Welfare Commission rules and regulations," Defendant's contravening policies and practice do not "relieve[] … [Class Members] of all duty, relinquishes control over their activities[,] [nor] permit[] them a reasonable opportunity to take … uninterrupted 30–minute break[s] …" *Brinker Rest. Corp. v. Sup. Ct.*, 53 Cal. 4th 1004, 1040 (2012); see also Alberts v. Aurora Behavioral Health Care, 241 Cal. App. 4th 388, 406 (2015) ("Even if we assume (as the trial court did) that [defendant]'s written meal and rest break policy is 'facially legal' and its facial legality is undisputed by plaintiffs, the mere existence of a lawful break policy will not defeat class certification in the face of actual contravening policies and practices that, as a practical matter, undermine the written policy and do not permit breaks."). Here, Defendant's policy entitles Class Members to one meal break during their regularly-scheduled shifts. Settlement Class Members were instructed to clock out for their meal breaks, but the necessity to continue clinical notes through the meal break kept Plaintiff and Settlement Class

Members from receiving uninterrupted 30-minute meal periods. Despite the regularly interrupted meal breaks, Plaintiff and Class Members did not receive meal period premiums for all times they failed to receive compliant meal breaks.

Moreover, Plaintiff alleges that these written rules and policies precluded Settlement Class Members from taking off-duty rest periods, free from employer control. *See Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257, 269 (2016) ("[d]uring required rest periods, employers must relieve their employees of all duties and relinquish any control over how employees spend their break time"). Plaintiff alleges that Defendant did not have a rest break policy or practice in place during the class period, so she and Settlement Class Members did not likely know that they were entitled to them. Further, with clients scheduled back-to-back throughout the day, Plaintiff and Settlement Class Members did not have the ability to regularly take rest breaks. Despite the inability to take rest breaks, Plaintiff alleges that she and the Settlement Class Members did not receive rest break premiums for the rest breaks that they did not have the opportunity to take.

Lastly, Plaintiff alleges that Defendant failed to reimburse her and the Settlement Class Members for reasonable and necessary business expenses incurred in the course of carrying out their job duties. Plaintiff alleges that she and Settlement Class Members were required to purchase office supplies: (1) a laptop capable of videoconferencing; (2) a standing desk chair; and (3) an ergonomic chair. Further Plaintiff alleges that she and Settlement Class Members were required to purchase faster internet speeds to maintain their workspaces and were required to incur expenses while using their personal cell phones to conduct business. Despite Defendant's policies permitting reimbursement employees could request reimbursement, there was no indication that Fusion Care Group paid for all of these expenses. Plaintiff, and presumably, Settlement Class Members, were not reimbursed for these reasonable and necessary expenses in violation of Labor Code § 2802.

B. <u>The Settlement Meets the Kullar Factors</u>

As explained by the Court of Appeal in *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 130, 133 (2008), a class action settlement should be approved when the plaintiff has conducted sufficient discovery and the settlement is reasonable in light of the strengths of the plaintiff's claims. As discussed herein, Class Counsel conducted sufficient discovery and investigation and, in light of the strength and weaknesses of Plaintiff's claims, Class Counsel submits that the Settlement is fair pursuant to Kullar. (Green Decl., ¶¶ 6-7*; see also* Settlement Agreement, § (2)(4).)

1. <u>Class Counsel Conducted Sufficient Discovery and Investigation</u>

To evaluate damages and Defendant's potential exposure, Defendant produced hundreds of pages of relevant company policies, employee handbooks, as well as timekeeping records, activity data, payroll and wage statements for Plaintiff, who the Parties agreed to use as an exemplar for the class for mediation purposes. (Green Decl., ¶ 6.) Relying on this sampling, Plaintiff's counsel conducted a damage analysis to evaluate Defendant's potential exposure if Plaintiff prevailed on each theory of liability. (*Id*.) Armed with this information, the Parties attended mediation, leading to the current Settlement. (*Id*.)

2. <u>Strengths and Weaknesses of Plaintiffs' Claims</u>

As an initial matter, Defendant maintained that Plaintiff and the Settlement Class Members were exempt from overtime compensation, meal periods and rest periods because they were licensed professionals. Unless Plaintiff overcame this threshold issue, she and the Settlement Class Members would have been limited in prosecuting the claims alleged at trial. Rather, Plaintiff would have been forced to seek only the reimbursement of necessary business expenses, penalties under Labor Code 203 and 226, and civil penalties under the PAGA, 65% of which goes to the State of California. Thus, the Settlement compensates Settlement Class Members for both unpaid wages and civil penalties.

Second, Defendant contends that it maintained and enforced lawful policies prohibiting off the clock work, requiring employees to take meal and rest periods, and reimbursed expenses as required by law. Given Defendant's contentions, Plaintiff and her counsel would have faced significant risks in seeking to certify this class action. Courts have repeatedly held that class certification is not appropriate where the employer allegedly maintains and enforces lawful policies. *See e.g., Morgan v. Wet Seal, Inc.*, 210 Cal. App. 4th 1341, 1346 (2012) (affirming denial of class certification where employer maintained lawful policies).

Again, Class Counsel has significant experience in obtaining class certification and litigating class actions, including appeals and trying cases to judgment. (Green Decl., ¶¶ 3-5; Beligan Decl., ¶ 7, Exh. A; Kring Decl., ¶¶ 5-7). However, given Defendant's contention it maintained and enforced lawful policies and practices, Plaintiff faced obstacles on their march towards a heavily contested class certification motion and trial on the merits.

Accordingly, Class Counsel believes that settling this case for a concrete $250,000.00 payment is fair, adequate and reasonable in light of the significant risks.

3. <u>The Potential Value of the Claims</u>

The Settlement provides fair and reasonable monetary recovery for the Settlement Class Members on disputed claims and a small employer who could be severely impacted by a full class recovery. Based on the initial filing of the complaint, the full class period would begin from October 24, 2020 to the present (roughly a 5-year liability period). However, because of Defendant's financial condition and ability to pay a full class period, the Parties agreed to settle a much narrower Class Period (from October 24, 2023 to August 28, 2025) to ensure Settlement Class Members receive some recovery, but at the same time, not release all of their claims against Defendant during the entire class period. Accordingly, the $250,000.00 settlement represents approximately 26.6% of the maximum potential recovery against Defendant. (Green Decl., ¶ 7).3 The result achieved in this Settlement is fair, adequate and reasonable when measured against the risks of losing class certification, losing on the merits, Defendant's financial condition, and ability to pay a judgment, if one is obtained. This Settlement provides concrete recovery for Settlement Class Members now, rather than having to wait months or years after contested class certification motions, summary judgments, trials, and potential appeals. Plaintiff conducted the following exposure analysis.

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3 There is also a potential Plaintiff might get defensed on all claims and recover nothing, but, for purposes on this Preliminary Approval Motion, Plaintiff will assume she prevails on class certification and the merits of her claims.

Meal Periods. Assuming a 100% violation rate, Plaintiff's counsel calculated a total potential exposure of $1,131,974.40. (Green Decl., ¶ 7(a).) However, again, Defendant contends it had lawful meal period policies in place. Moreover, while Plaintiff contends that Defendant maintained a policy based on the belief that Plaintiff and Class Members were exempt from meal period protections under the law, this does not necessarily establish whether Defendant failed to provide meal periods or whether Plaintiff or the Class Members actually took meal periods. For this reason, Class Counsel discounted this claim by 50% for class certification risk and 25% for liability, for a total of 75% discount. As such, Defendant's potential exposure is $282,993.60 after considering the risks of non-certification and losing on the merits. (Green Decl., ¶ 7(a).)

Rest Breaks. With respect to the rest period claim, Defendant also claims that it had a lawful rest period policy in place, while disputed by Plaintiff. (Green Decl., ¶ 7(b).) Moreover, given the authorize-and-permit standard (which does not require the employer to ensure rest breaks are taken), and that there are no time records for rest periods—as an employer is not obligated to maintain them and rest periods are on the clock—rest period claims are more difficult to certify when faced against a lawful policy. (*Id.*) While not impossible, proving employees were discouraged or prevented from taking duty-free rest periods could devolve into individualized issues which could preclude certification. (*Id.*) Nevertheless, assuming a 100% violation rate, the rest period claim is estimated at $1,131,974.40. (*Id.*) However, given Defendant's alleged lawful policies, the lack of time records for rest periods, and the risk that this claim will not be certified as a class action, Plaintiff discounted this maximum amount by 50% for risk of non-certification and 35% for risk of being unsuccessful on the merits, for a total of 85% discount. As such Defendant's total estimated exposure is $169,796.16 considering the risks of non-certification and losing on the merits. (*Id.*)

Off-the-Clock Work. With respect to the unpaid minimum and overtime wages due to off-the-clock work, again, Defendant's alleged policy is to prohibit off-the-clock work and to pay for all hours worked. (Green Decl., ¶ 7(c).) Nevertheless, assuming a 100% violation rate, Plaintiff calculated damages at $556,333.91. (*Id.*) However, Defendant contends that it maintained express written policies mandating that all work be on the clock and paid. Given the risk this claim may not be certified as a class action, Plaintiff discounted this maximum amount by 50% for risk of non-certification and 40% for risk of being unsuccessful on the merits, for a total discount of 90%. Therefore, Defendant's estimated exposure is $55,633.39. (*Id.*)

Unreimbursed Business Expenses. As for the business expense reimbursement claim, Defendant also contends that it maintained lawful policies. (Green Decl., ¶ 7(d).) Nevertheless, assuming a 100% violation rate, Plaintiff calculated damages at $256,329.00. (*Id.*) However, again, because of Defendant's alleged lawful policies and the risk this claim will not be certified as a class action, Plaintiff discounted this maximum amount by 50% for risk of non-certification and 25% for risk of being unsuccessful on the merits, totaling a discount of 75%. Therefore, Defendant's estimated exposure is $64,082.25. (*Id.*)

Wage Statement and Final Pay Penalties. To recover waiting time penalties, Plaintiff must show that Defendant willfully withheld wages. Cal. Lab. Code § 203. Likewise, to recover wage statement penalties, Plaintiff must show that Defendant acted knowingly and intentionally. Labor Code § 226(e). Assuming 100% exposure, the total damages for waiting time penalties were calculated at $432,288.00 and the total wage statement penalties were calculated at $278,160.00. (Green Decl., ¶ 7(e).) However, given that Plaintiff faces obstacles in proving willfulness or knowing and intentional violations, Plaintiff discounted these maximum amounts by 50% for risk of non-certification and 30% for risk of being unsuccessful on the merits, to arrive at a total discount of 80%. Therefore, Defendant's estimated exposure is $86,457.60 for 203 penalties and $55,632.00 for 226 penalties. (*Id.*).

PAGA Penalties. For purposes of this Settlement, the PAGA Period is the same as the Class Period (*i.e.*, from October 24, 2023 to August 28, 2025). As for the PAGA penalties, assuming a 100% violation rate, the total PAGA penalties are approximately $1,502,064.00. (Green Decl., ¶ 7(f).) This assumes stacking is permitted under the PAGA. Moreover, Plaintiff faces an uphill battle of recovering the full amount of civil penalties given Defendant's contention as discussed above. (*Id.*) Under the PAGA, the presiding court has the same "discretion" as the labor enforcement agencies to impose civil penalties upon an employer for the violation of the Labor Code § 2699(e). Here, the PAGA claims are derivative of the violations of the very same Labor

Code sections that are the basis of the class claims.

Moreover, under section 2699(e)(2), the presiding court—using its discretion—"may award a lesser amount than the maximum civil penalty amount . . . 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." Cal. Lab. Code § 2699(e)(2); *see also Amaral v. Cintas*, 163 Cal. App. 4th at 1211-1212 (2008) (recognizing the reviewing court has discretion to reduce civil penalties because of an employer's "good faith defense"); *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal. App. 4th 1112, 1136 (2012).

In this regard, the Court of Appeal's decision in *Carrington v. Starbucks Corp*., 30 Cal. App. 5th 504 (2018) is instructive. In Carrington, while the plaintiff prevailed on his PAGA claim at trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with the law. *Id*. at 517. Upon review, the Court of Appeal found such reduction to be proper. *Id*. at 539. Again, the *Carrington* decision was after the plaintiff actually prevailed at trial, and even then, the PAGA penalties were reduced by 90%.

As a result, most supervising courts' approval of settlements of combined statutory penalties to a class and civil penalties under PAGA allocate substantially smaller sums of the settlement to the satisfaction of PAGA civil penalties. *See, e.g., In re Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 579 (2010) ("the trial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims").

Based on these risks, Plaintiff discounted the maximum PAGA amount by 30% for risk of losing on the merits and by an additional 55% for risk of the Court reducing penalties, to arrive at a discount of 85%. Therefore, Defendant's estimated exposure with regard to PAGA penalties is $225,309.60. (Green Decl., ¶ 7(f).) Thus, Plaintiff's predicted potential total recovery for the Settlement Class if the matter proceeded through trial is approximately $939,904.60, which includes PAGA penalties. (Green Decl., ¶ 7.) The proposed settlement of $250,000.00 therefore represents 26.6% of Defendant's reasonable exposure for the alleged class and representative action claims. (*Id*.)

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Numerous courts have held that gross settlements approximating between only 8% and 25% of the defendant's potential exposure are fair and reasonable. See, e.g., *In re Mego Fin. Corp. Secs. Litig*., 213 F.3d 454, 459 (9th Cir.2000) (holding that class action settlement recovering 16% of potential exposure was fair and reasonable); *Wershba*, 91 Cal.App.4th at 250. In the present case, the total amount of the Settlement is within the acceptable range when compared to the risks of continued litigation.

C. <u>The Settlement was Negotiated at Arms' Length and is Not Collusive</u>

Courts presume the absence of fraud or collusion in the negotiation of settlement unless evidence to the contrary is offered. In re Nordstrom Com. Cases, 186 Cal. App. 4th at 581. While the recommendations of Class Counsel are not conclusive, the Court can properly take them into account, particularly where, as here, they have been involved in informal discovery, are competent, and have significant experience. See *Newberg on Class Actions, supra*, at § 11.47; *Nat'l Rural Telecomms. Coop*., 221 F.R.D. at 528.

Here, Plaintiff's attorneys have a great deal of experience in wage and hour class action litigation. (*See* Green Decl., ¶¶ 3-5; Beligan Decl., ¶ 7, Exh. A; Kring Decl., ¶¶ 5-7.) Moreover, as discussed above, Plaintiff's counsel conducted investigation of the allegations involved in this case since inception. (Green Decl., ¶ 7.) Each side has apprised the other of their respective factual contentions, legal theories and defenses, resulting in extensive arms' length negotiations taking place among the Parties. (Green Decl., ¶¶ 6-7; Settlement Agreement, § (2)(4).) The Settlement for each participating Settlement Class Member is fair, reasonable and adequate, given the inherent risks of litigation, including the substantial risks relative to class certification, and the costs of pursuing such litigation. The Settlement is the result of extensive arms' length negotiations between the Parties and their counsel, which was achieved only after 14 hours of mediation and weeks of prior exchange of information and negotiations. (Green Decl., ¶ 6.)

Despite the asserted fairness of the settlement terms, as set forth in the Class Notice, should Settlement Class Members wish to pursue their own case for the claims being released herein, they have the right to submit a request for exclusion (i.e., opt-out) from the Settlement. (*See* Settlement Agreement, §§ (7)(5)-(7)(7); *see also* Class Notice, §§ 6-7.) Moreover, as set forth in the Class

Notice, Settlement Class Members are advised of their right to attend the final approval hearing and object to any of the terms contained in the Settlement Agreement. (See Settlement Agreement, § (7)(7)(ii); see also Class Notice, § 8.)

D. Settlement Terms and Evaluation

1. Proposed Terms of the Settlement

Defendant shall pay a gross Settlement Amount of $250,000.00, which will be distributed to the Settlement Class on a **non-reversionary** basis without the need to submit claim forms. (*See* Settlement Agreement, § (3)(1); *see also* Class Notice, §§ (3)(1)-(3).) The Agreement further provides attorneys' fees up to 33% for a total of $82,500.00 and an award of actual costs in an amount not to exceed $15,000.00. (*See* Settlement Agreement, § (3)(2)(ii); *see also* Class Notice, §§ (3)(2)(a).) The Class Representative Enhancement Fee is $1,000.00 for Plaintiff. (*See* Settlement Agreement, § (3)(2)(i); *see also* Class Notice, § (3)(2)(b).) The Claims Administrator will be paid up to $10,000.00 for costs of administering the Settlement. (*See* Settlement Agreement, § (3)(2)(iii); *see also* Class Notice, § (3)(2)(c).) The PAGA payment is allocated as $10,000.00 of which 65% will be paid to the LWDA ($6,500.00) and 35% ($3,500.00) will be paid to the Remainder for distribution to Settlement Class Members. (*See* Settlement Agreement, § (3)(2)(vii); *see also* Class Notice, § (3)(2)(d).) After deduction of the foregoing, the Remainder will be distributed to Settlement Class Members who do not opt-out of the Settlement based on the number of "workweeks" worked during the Class Period. (*See* Settlement Agreement, § (3)(2)(iv); *see also* Class Notice, § (3)(3).) On a pure raw average, each class member will receive approximately $714.67. (Green Decl., ¶ 8.) Such amounts for each person could increase or decrease depending on a number of factors, including the days worked by each Settlement Class Member, as well as the number of exclusions received. The approximate amount each person will be entitled to will not be known until the class data is transferred to the Claims Administrator for processing.

2. Nature of any Injunctive Relief

The Settlement does not provide for any injunctive relief.

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3. This is a Non-Reversionary Settlement and There is no Cy Pres, Such That Section 384 Does Not Apply

Funds represented by Class Member Allocation Amounts returned as undeliverable and checks remaining un-cashed for more than 180 days will be sent to the State Controller's Unclaimed Property Fund to be held in the name of the Settlement Class Member. (*See* Settlement Agreement, § (4)(4)(i)-(iii); *see also* Class Notice, § (3)(5).) As there is no cy pres, the Parties submit that Code of Civil Procedure § 384 does not apply. Nevertheless, the Parties will provide an accounting upon completion of administration of the Settlement.

4. Scope of Release of Class Members' Claims

The scope of the release is identified in the Settlement Agreement at section 5, as well as in the Class Notice (section (3)(9)) that will be sent to Settlement Class Members. The scope of the Class Period, PAGA Period, and release are narrow and are limited by to the claims asserted in the FAC. Further, the scope of the release does not waive Civil Code § 1542 for Settlement Class Members.

5. Tax Treatment of Settlement Amounts

All Class Member Allocation Amounts are allocated as follows: 80% as interest and non-wage income or penalties and 20% as wages. (*See* Settlement Agreement, § (3)(2)(i); *see also* Class Notice, § (3)(4).) Settlement Class Members will be issued IRS Forms W2s and 1099s for the Class Member Allocation Amounts. (*See* Settlement Agreement, § (3)(2)(i); *see also* Class Notice, § (3)(4).) In addition, Defendant will separately pay for the employer's share of payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions, which shall not be paid from the Settlement Amount. (*See* Settlement Agreement, § (3)(2)(i); *see also* Class Notice, § (3)(4).)

6. Affirmative Obligations to be Undertaken by Class Members or Class Counsel and the Reasons for any Such Obligations

As stated above, Settlement Class Members do not need to do anything should they wish to receive their share of the Settlement Amount. (*See* Settlement Agreement, § (5)(2); *see also* Class Notice, "Summary of Your Legal Rights and Options in this Settlement".) Thus, this substantially decreases the burden on Settlement Class Member to receive their settlement share. If Settlement Class Members do not wish to take part in this Settlement and be bound by the release, they must submit an exclusion request. (*See* Settlement Agreement, § (7)(5); *see also* Class Notice, § (3)(6).)

E. Procedures for Participating, Opting-Out and Objecting

Settlement Class Members will be provided 60 calendar days to opt out or object to the settlement. (*See* Settlement Agreement, § (7)(5)(i); *see also* Class Notice, § (3)(6).) Settlement Class Members who do not opt-out of the settlement will be automatically issued their share of the settlement proceeds. (*See* Class Notice, "Summary of Your Legal Rights and Options in this Settlement".) Given that this is a non-reversionary settlement, the Parties believe that 60 calendar days is sufficient time for Settlement Class Members to object or opt-out of the Settlement. Further, Settlement Class Members will be notified of the Fairness/Final Approval hearing and will have an opportunity to appear and object at the Fairness hearing even if they do not submit written objections. (See Settlement Agreement, § (10)(1); *see also* Class Notice, § (8).)

F. Notice of Settlement to be Distributed to Class Settlement Members

The Class Notice will be sent in English, as Defendant's workforce speaks English. (Green Decl., ¶ 9.) Within 5 business days of Preliminary Approval, Defendant will provide the Claims Administrator with the name, last known address, and Social Security number of each Settlement Class Member, along with the information needed to calculate Class Member Allocation Amounts. (*See* Settlement Agreement § (4)(2).) Within 14 business days of Preliminary Approval, the Claims Administrator will mail the Class Notice to all Settlement Class Members via regular First-Class U.S. Mail, using the most current, known mailing addresses. (*See* Settlement Agreement, § (7)(4)(ii).) If the mailing of class information for any Settlement Class Member is returned as undeliverable, the Claims Administrator shall take appropriate steps to identify a current proper address for that Settlement Class Member, including conducting a "standard search," also known as a "skip trace" or "credit header" search. (*See* Settlement Agreement, § (7)(4)(iii).) Each Class Notice will provide: (i) information regarding the nature of the Action; (ii) a summary of the Settlement's principal terms; (iii) the Settlement Class definition; (iv) the total number of Workweeks each respective Settlement Class Member worked for Defendant during the Class

Period; (v) each Settlement Class Member's estimated Class Member Allocation Amount and the formula for calculating said payment; (vi) the dates which comprise the Class Period and PAGA Period; (vii) instructions on how to submit Requests for Exclusion or object to the settlement; (viii) the deadlines by which Settlement Class Members must postmark any requests for exclusions/opt-outs; and (ix) the claims to be released. (*See* Settlement Agreement, § (7)(4)(ii); *see also* Class Notice, generally.) Notice of the final judgment will be posted on Plaintiff's counsel's website if requested by the Court. (Green Decl., ¶ 9.) Based on the foregoing, the notice procedures fully comply with California Rules of Court Rule 3.766 (d) & (e).

G. Deductions to the Settlement for the Parties, their Counsel and the Administrator

1. Attorneys' Fees and Costs

California state and federal courts have recognized that an appropriate method for determining award of attorneys' fees is based on a percentage of the total value of benefits to Settlement Class Members by the settlement. *Wershba*, 91 Cal.App.4th at 254; *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) ("Serrano III").

Under California law, the award of attorneys' fees in common fund wage and hour class action settlements should start with the percentage method. See *Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (Aug. 11, 2016) ("We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created.").

The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3% of the fund. *Laffitte*, 1 Cal. 5th at 506. And this was based on a lodestar amount that required a multiplier of 2.13. *Id*. at 487. As the Court held, only when the multiplier is "extraordinarily high or low [should] the trial court [] consider whether the percentage method should be adjusted so as to bring the imputed multiplier within a justifiable range." *Id*. at 505.

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Moreover, in the *Laffitte* intermediate court decision, the court observed that "33 1/3 percent of the common fund is consistent with, and in the range of, awards in other class action lawsuits." *Laffitte v. Robert Half Int'l*, 231 Cal. App. 4th 860, 871 (2014). Here, the fee award representing 33% of the fund clearly falls within that range, and is consistent with other comprehensive surveys of class action settlements and fee awards. See Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Award*, 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that "[m]ost fee awards were between 25 percent and 35 percent, with almost no awards more than 35 percent."); Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*: 1993-2008, 7 J. of Empirical Leg. Stud. 248, 262, fn.16 (2010) (independent studies of class action litigation nationwide conclude that fees representing one-third of the total recovery is consistent with market rates).

The result achieved by Class Counsel also supports the requested percentage of the fund. Here, the Parties agreed to a payment of a maximum of 33% of the settlement ($82,500.00) for payment to Class Counsel as attorneys' fees. (*See* Settlement Agreement, § (3)(2)(ii); *see also* Class Notice, § (3)(2)(a).) The Parties have agreed to a payment of the foregoing attorney's fees and, thus, this payment should be presumed to be fair. Class Counsel will be splitting the approved fees as follows: 50% to Kring & Associates, APC and 50% to Beligan Law Group, LLP, which the Plaintiff has authorized in writing. (Green Decl., ¶ 10.)

Further, the Parties agreed to reimbursement of Class Counsel's litigation costs of up to $15,000.00. (*See* Settlement Agreement, § (3)(2)(ii); *see also* Class Notice, § (3)(2)(a).) Class Counsel have expended costs at their own risk including, but not limited to, filing the complaints in the Action, service of process, payment of mediation fees, and other litigation related costs. Class Counsel will submit detailed cost sheets for their respective costs incurred prior to the Motion for Final Approval. Based on the foregoing, the Court should preliminarily approve the attorney's fees and costs agreed upon by the Parties.

2. <u>Proposed Award to Plaintiff as Class Representative</u>

Plaintiff requests an enhancement award of $1,000.00. (*See* Settlement Agreement, § (3)(2)(i); *see also* Class Notice, § (3)(2)(b).) Plaintiff spoke with Class Counsel on various occasions to discuss the case, provided documents and information to Class Counsel, reviewed the complaint, provided declarations, appeared at mediation and reviewed the Settlement Agreement. (Friedman Decl., ¶ 5.) Moreover, as part of her duties as the representative, Plaintiff provided invaluable information, evidence, and documents that resulted in this Settlement. (*Id*.) Further, Plaintiff executed a general release, including a Civil Code § 1542 waiver, which was not required of Settlement Class Members. (*See* Settlement Agreement, § (5)(1).)

Given that future employers are much less likely to hire individuals who have filed suit against their prior employer, particularly cases of this nature, Plaintiff may face prejudice in the future from other potential employers. Plaintiff assumed these risks, while the whole class benefited from these risks. Settlement Class Members did not have to file individual lawsuits and bear the risks of payment of fees and costs if they did not prevail, nor did they have to face the potential for retaliation and denial of future employment because they were named plaintiffs in a class action lawsuit.

Notably, courts have routinely granted approval of representative enhancements for far greater amounts than the $1,000.00 sought by Plaintiff in this case. (*See* Settlement Agreement, § (3)(2)(i); *see also* Class Notice, § (3)(2)(b)); See, e.g., *Van Vranken v. Atlantic Richfield Co*., 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of $50,000).) Here, Plaintiff requests a modest enhancement of $1,000.00, which is "presumptively reasonable" and consistent with case law.

3. <u>Class Administration Fees</u>

The Parties agreed to use Apex Class Action, LLC ("Apex") to serve as the Claims Administrator and to pay its costs from the Settlement Amount. (*See* Settlement Agreement, § (7)(1).) Apex agreed to a capped fee of $10,000.00. (*See* Settlement Agreement, § (3)(2)(iii); *see also* Class Notice, § (3)(2)(c).) Apex is a well-recognized class action settlement administrator. The Parties believe the administration fee is reasonable and should be preliminarily approved.

IV. <u>LWDA HAS BEEN PROVIDED WITH NOTICE OF THIS MOTION</u>

On October 27, 2025, Plaintiff provided notice of this Preliminary Approval Motion to the LWDA. (Green Decl., ¶ 11, Exh. B.)

V. PROPOSED SCHEDULE FOR CLASS NOTICE, OBJECTION, OPT OUT AND MOTION FOR APPROVAL, ATTORNEY'S FEES AND FINAL ACCOUNTING

Description	Date	Details	Settlement Agreement
Preliminary Approval Date	11/21/2025		
Class List to Claims Administrator	12/2/2025	5 business days of preliminary approval	§ (4)(2)
Class Notice Distribution	12/23/2025	14 business days of preliminary approval	§ (7)(4)(ii)
Opt Out/Objection Deadline	2/21/2026	60 calendar days from mailing of Class Notice	§ (7)(4)(iv)
Final Approval	TBD		
Settlement Payment 1 of 3	TBD	50% of Gross Settlement Fund owed at Final Approval or June 27, 2026, whichever is earlier.	§ (4)(3)
Settlement Payment 2 of 3	TBD	25% of Gross Settlement Fund owed 6 months after payment 1 of 3.	§ (4)(3)
Settlement Payment 3 of 3	TBD	25% of Gross Settlement Fund owed 6 months after payment 2 of 3.	§ (4)(3)
Compliance Hearing	12 months after Final Approval		

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VI. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR PRELIMINARY APPROVAL

The proposed Settlement reached here is fair, adequate, and reasonable. It will result in monetary benefits to Settlement Class Members and it was achieved as the result of informed, extensive, and arms' length negotiations conducted by counsel who are experienced in wage and hour class action litigation. For the foregoing reasons, Plaintiff respectfully requests the Court to grant preliminary approval of the proposed Settlement, sign the proposed Preliminary Approval Order, approve and authorize mailing of the proposed Class Notice, and set a date for a final approval hearing in or around March of 2026.

Dated: October 27, 2025 BELIGAN LAW GROUP, LLP

By: */s/ Jerusalem F. Beligan*
Jerusalem F. Beligan
Leah M. Beligan

Dated: October 27, 2025 KRING & ASSOCIATES, APC

By: ______________________
Tyler D. Kring
Jeffrey T. Green
Attorneys for Plaintiff and the Putative Class