DAVID GLENN SPIVAK (SBN 179684)
david@spivaklaw.com
CAROLINE TAHMASSIAN (SBN 285680)
caroline@spivaklaw.com
THE SPIVAK LAW FIRM
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
Telephone: (213) 725-9094
Facsimile: (213) 634-2485

Attorneys for Plaintiff,
REBECCA KURKHILL, and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

(*UNLIMITED JURISDICTION*)

REBECCA KURKHILL, on behalf of herself and all others similarly situated, and the general public, and as "PAGA Members" on behalf of other "PAGA Members" and the State of California under the Labor Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

KENDO HOLDINGS INC., a Delaware corporation; and DOES 1-50, inclusive,

Defendant(s).

Case No. 24STCV32366

PLAINTIFF REBECCA KURKHILL'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Hearing Date: April 8, 2026
Hearing Time: 9:00 a.m.
Hearing Dept.: SSC-17, The Honorable Laura A. Seigle

Action filed: December 06, 2024

SPIVAK LAW
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Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
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Fl 7
Los Angeles, CA 90067

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SpivakLaw.com

Office:
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TABLE OF AUTHORITIES

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Fl 7
Los Angeles, CA 90067

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8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I. INTRODUCTION

Plaintiff Rebecca Kurkhill ("Plaintiff") submits this memorandum of points and authorities in support of her unopposed motion for preliminary approval of the Class Action and PAGA Settlement Agreement (the "Settlement")[2], which provides for a Gross Settlement Amount ("GSA") of $375,000.00 in compromise of all disputed claims on behalf of all current and former non-exempt employees who worked for Kendo Holdings Inc. in California during the Class Period of December 6, 2020 through December 18, 2025. Through this Motion, Plaintiff respectfully requests for this Court to (1) provisionally certify the below-defined Class for settlement purposes only under Code of Civil Procedure § 382; (2) preliminarily approve the Settlement; (3) preliminarily appoint Plaintiff as Class Representative; (4) appoint David Spivak and Caroline Tahmassian of The Spivak Law Firm as Class Counsel; (5) approve the proposed notice procedures and related forms; and (6) schedule a final approval hearing.

This Court should grant Plaintiff's motion because: (1) for settlement purposes, the Settlement Class meets the requirements for class certification under Code of Civil Procedure § 382; (2) the Settlement warrants preliminary approval based on all indicia for fairness, reasonableness, and adequacy; (3) for settlement purposes, Plaintiff is adequate to serve as a Class Representative; (4) Plaintiff's attorneys are adequate to serve as Class Counsel; (5) the proposed notice procedures, and related forms, fully comport with due process and adequately apprise Class Members of their rights; and (6) a final approval hearing must be scheduled to allow Settlement Class Members an opportunity to be heard regarding the Settlement and to give it finality. Accordingly, for the reasons detailed below, this Court should grant Plaintiff's Motion in its entirety and preliminarily approve the Settlement.

II. BACKGROUND

Defendant is a beauty products brand. DS, ¶ 4. Defendant employed Plaintiff in California as an hourly, non-exempt salesperson and keyholder from about March 24, 2023 until July 15, 2024. *Id.*

A. The Claims and Procedural History

On November 20, 2024, Plaintiff notified Defendant and the California Labor and

[2] The Settlement is attached as Exhibit ("Ex.") 1 to the Declaration of David Spivak ("DS"), which is submitted herewith under a separate cover.

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Fl 7
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Workforce Development Agency ("LWDA"), pursuant to the California Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* ("PAGA"), of alleged Labor Code violations committed by Defendant. DS, ¶ 5, Ex. 2.

On December 6, 2024, Plaintiff filed a Class Action Complaint in the Los Angeles County Superior Court, Case No. 24STCV32366, against Defendant on behalf of herself and others similarly situated, alleging causes of action on a class-wide basis for: (1) Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 221, 510, 1194, 1197, and 1198); (2) Failure to Provide Rest Breaks (Lab. Code §§226.7 and 1198); (3) Failure to Provide Meal Periods (Lab. Code §§226.7, 512 and 1198); (4) Failure to Indemnify (Lab. Code §§ 1198 and 2802); (5) Wage Statement Penalties (Lab. Code §§ 226 and 226.2); (6) Waiting Time Penalties (Lab. Code §§ 201-203); and (7) Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.). DS, ¶ 6, Ex. 3. On January 29, 2025, Plaintiff filed her First Amended Complaint adding a claim under PAGA. DS, ¶ 6, Ex. 4.

B. Sampling

On April 28, 2025, Plaintiff requested that Defendant informally disclose documents and data to enable Plaintiff to prepare for settlement discussions, including the number of putative class members and aggrieved employees, the number of paychecks and workweeks for the various limitations periods applicable to Plaintiff's claims. DS, ¶ 7. Plaintiff also requested a reasonable, randomly selected sample of Defendant's time, payroll, and expense records, and related personnel records. *Id.* Finally, Plaintiff requested Defendant's written policies applicable to the claims at hand and asked Defendant identify any and all comparable claims against Defendant.

The Parties thereafter engaged in an informal, voluntary exchange of information in the context of privileged settlement discussions to facilitate an early mediation. Defendant produced Plaintiff's personnel file and copies of its relevant company written policies. Defendant disclosed that there are no pending claims against it that will be impacted by this settlement. DS, ¶ 8.

Defendant contends that it employed 200 putative Class Members during the period of December 24, 2020 to June 21, 2025. Defendant produced the records of 20% of the putative class members for the period of December 24, 2020 to June 21, 2025. There were records for 40 employees in the sample. Plaintiff chose the sample. The sample was randomly selected. The sample consisted of time and payroll records in excel format. DS, ¶ 9.

Plaintiff retained Antonio Whitfield, a data analyst, to analyze the sample. Plaintiff also

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employed the Raosoft[3] Sample Size calculator (http://www.raosoft.com/samplesize.html) to determine if the sample size selected is statistically reliable. *Bell v. Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715 and *Duran v. U.S. Bank* (2014) 59 Cal.4th 1. The *Bell* court found a relative margin of error of 32.4 percent was unacceptable whereas the *Duran* court found a relative margin of error of 43.3 percent was unacceptable. Using a margin of error of 15%, a confidence level of 95%, and a population size of 200, the Raosoft Sample Size Calculator recommended a sample of 36. DS, ¶ 10, **Exhibit 5** (Raosoft Sample Size Calculator results print-out). Thus, the sample population that Plaintiff's data analyst evaluated is statistically reliable. *Id.*

C. Mediation

On September 5, 2025, following much of the foregoing informal discovery and exchange of information, the Parties participated in a mediation session presided over by Mediator Gail A. Glick, an experienced class action mediator. During the mediation, the Parties had a full day of productive negotiations and reached agreement on a class-wide settlement during the mediation session. During the mediation sessions, each side, represented by her / its respective counsel, recognized the risk of an adverse result in the Action and agreed to settle the Action and all other matters covered by this Agreement pursuant to the terms and conditions of this Agreement. DS, ¶ 11.

III. OVERVIEW OF THE SETTLEMENT

A. Settlement Class and PAGA Members Definition

The Settlement defines the Settlement Class as all current and former non-exempt employees who worked for Kendo in California during the Class Period. The Class Period is December 06, 2020 through December 18, 2025. Settlement, ¶¶ 1.4 and 1.12. The "PAGA Members" are non-exempt hourly employees who worked for Kendo in California at any time during the PAGA Period. "PAGA Period" means the period from November 20, 2023 through December 18, 2025. 1.32.

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[3] Raosoft advertises, "Raosoft, Inc. produces EZSurvey for the Internet, InterForm, SurveyWin, EZReport and Rapid Report innovative survey software programs for information gathering and analysis. The family of survey software supports data collection and reporting for any form-based data. Support is for web-surveys and forms, email distribution, diskette,PDA, laptop or pen-based: all types of distribution." The Raosoft webpage advertises that is it "database web survey software for gathering information." http://www.raosoft.com/ . It also advertises, "The parameters of the sample size calculation are something that you choose." http://www.raosoft.com/suggestreading.html.

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Fl 7
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B. Monetary Terms

Kendo promises to pay Three Hundred Seventy Five Thousand Dollars and Zero Cents ($375,000.00), and no more as the Gross Settlement Amount, and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or PAGA Members to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Kendo. Settlement, ¶ 3.1.

To Plaintiff: Class Representative Service Payment to the Class Representative of not more than $15,000 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member and PAGA Member). If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment. The Settlement will remain binding even if the Court approves a lesser amount of Class Representative Service Payment or if the Court denies the Class Representative Service Payment altogether. Settlement, ¶ 3.2.1.

To Class Counsel: A Class Counsel Fees Payment of not more than $125,000 (representing 33 and 1/3% of the Gross Settlement Amount), and a Class Counsel Litigation Expenses Payment of not more than $30,000. Kendo will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than sixteen (16) court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Settlement, ¶ 3.2.2.

To the Administrator: An Administrator Expenses Payment not to exceed $10,000 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less, or the Court approves payment of less than $10,000, the Administrator will retain the remainder in the Net Settlement Amount. Settlement, ¶ 3.2.3.

C. Timing of Payments

Kendo will fully fund the Gross Settlement Amount and also fund the amounts necessary to fully pay Kendo's share of payroll taxes by transmitting the funds to the Administrator no later

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PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
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SpivakLaw.com
Office:
1875 Century Park East
Fl 7
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than forty-five (45) days after the Effective Date. Settlement, ¶ 4.3.

Within fifteen (15) days after Kendo funds 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 will not precede disbursement of Individual Class Payments and Individual PAGA Payments. Settlement, ¶ 4.4.

D. Calculation of Settlement Shares

The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of pay periods worked by all Participating Class Members, and (b) multiplying the result by the number of pay periods worked by each individual Participating Class Member. Settlement Agreement, ¶ 3.2.4.

The Administrator will calculate Individual PAGA Payments by (a) dividing $3,500 (35% share of PAGA Penalties) by the total number of PAGA Pay Periods worked by all PAGA Members, and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual PAGA Member. Settlement, ¶ 3.2.6.

E. Apportionment of Settlement Shares

10% 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. 90% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for all interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment. Settlement, ¶ 3.2.4.1.

F. The Releases

Release by Plaintiff. In consideration of Plaintiff's awarded Class Representative Service Payment, Plaintiff's Individual Class Payment, and the other terms and conditions of the Settlement, as of the date the Settlement becomes Final and is fully funded, Plaintiff, on behalf of herself and her respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, releases any and all known and unknown claims that arose on or before the date she signs this agreement against Kendo and the Released Parties ("Plaintiff's

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Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

Released Claims"). Plaintiff's Released Claims will include but not be limited to any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses of any nature whatsoever from the beginning of time through the date Plaintiff signs this Agreement, known or unknown, suspected or unsuspected, including but not limited to all claims arising out of, based upon, or relating to Plaintiff's employment with any of the Released Parties, including those claims which could have been asserted in the Complaint, the Operative Complaint and/or LWDA letter, the compensation for that employment, and/or Plaintiff's relationship with the Released Parties before and during Plaintiff's employment with any of the Released Parties and through the date Plaintiff signs this Agreement. Expressly excluded from Plaintiff's release are any claims for workers' compensation benefits, unemployment insurance benefits, and any other claims that cannot be released by law. Settlement Agreement, ¶ 5.1.

Release by Participating Class Members. In consideration for their awarded Individual Class Payments, as of the date the Settlement becomes Final, all Participating Class Members release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, any and all claims against Kendo and the Released Parties that arise out of or reasonably relate to the claims, rights, demands, liabilities, and causes of action, whether known or unknown, arising from the same set of operative facts as those alleged in the Complaint, the Operative Complaint, and/or the applicable LWDA letter, including those claims which could have been asserted based on the facts alleged in the Complaint, the Operative Complaint, and/or LWDA letter, at any time during the Class Period. Such released claims include but are not limited to claims for failure to pay minimum wages, failure to pay overtime, failure to calculate any wages based on the regular rate of pay (including sick time or any other time off that must be paid based on the regular rate of pay), for meal period violations, for rest period violations, for wage statement violations, for failure to timely pay wages, for failure to reimburse business expenses, for failure to timely pay all final wages or waiting time penalties, statutory penalties, civil penalties, or other relief under the California Labor Code, relief from unfair competition under California Business and Professions Code section 17200 et seq.; attorneys' fees and costs; and interest (the "Participating Class Members' Released Claims"). Settlement Agreement, ¶ 5.2.

Release by PAGA Members. In consideration for their awarded Individual PAGA

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8605 Santa Monica Bl
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(213) 725-9094 Tel
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Office:
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Fl 7
Los Angeles, CA 90067

Payments, as of the date the Settlement becomes Final, all PAGA Members release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns any and all claims for civil penalties under PAGA against Kendo and the Released Parties that arise out of or reasonably relate to the claims, rights, demands, liabilities, and causes of action, whether known or unknown, arising from the same set of operative facts as those alleged in the Complaint, the Operative Complaint, and/or the applicable LWDA letter, including those claims which could have been asserted based on the facts alleged in the Complaint, the Operative Complaint, and/or LWDA letter, at any time during the PAGA Period. Such released claims include but are not limited to claims for failure to pay minimum wages, failure to pay overtime, failure to calculate any wages based on the regular rate of pay (including sick time or any other time off that must be paid based on the regular rate of pay), for meal period violations, for rest period violations, for wage statement violations, for failure to timely pay wages, for failure to reimburse business expenses, for failure to timely pay all final wages or waiting time penalties, statutory penalties, civil penalties, or other relief under the California Labor Code, relief from unfair competition under California Business and Professions Code section 17200 et seq.; attorneys' fees and costs; and interest (the "Released PAGA Claims"). All PAGA Members who worked for Kendo during the PAGA Period will release the PAGA claims described herein and will receive a portion of the amount set aside as PAGA penalties, regardless of whether they opt out of the release of the Class Claims. Settlement, ¶ 5.3.

G. Notice and Claims Process and Procedures

No later than three (3) business days after receipt of the Class Data, the Administrator will notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Class Pay Periods, and PAGA Pay Periods in the Class Data. Settlement, ¶ 7.4.1. Using best efforts to perform as soon as possible, and in no event later than fifteen (15) days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice will prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Class Pay Periods and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class

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Mail:
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(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com
Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

Notices, the Administrator will update Class Member addresses using the National Change of Address database. Settlement, ¶ 7.4.2.

No later than five (5) business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator will re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator will conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time. Settlement, ¶ 7.4.3.

The deadlines for Class Members' written objections, Challenges to Class Pay Periods, and Requests for Exclusion will be extended an additional fourteen (14) days beyond the forty-five (45) days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline when re-mailing the Class Notice. Settlement, ¶ 7.4.4.

If the Administrator, Kendo or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received the Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement no later than fourteen (14) days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later. If any persons are included as Class Members, the addition of these individuals and any pay periods they worked will have no effect on the Escalation Clause. Settlement, ¶ 7.4.5.

1. Disputes

Each Class Member will have forty-five (45) days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Pay Periods allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is

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8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
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Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

entitled to presume that the Class Pay Periods contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Class Pay Periods will be final and not appealable or otherwise susceptible to challenge. The Administrator will promptly provide copies of all challenges to calculation of Class Pay Periods to Defense Counsel only and the Administrator's determination of the challenges. Settlement, ¶ 7.6.

2. Opting Out

Class Members who wish to exclude themselves from (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion no later than forty-five (45) days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline. Settlement, ¶ 7.5.

3. Objecting

Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment. Settlement, ¶ 7.7.1. Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so no later than forty-five (45) days after the Administrator's mailing of the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice was re-mailed). Settlement, ¶ 7.7.2.

Non-Participating Class Members have no right to object to any of the class action components of the Settlement. Settlement, ¶ 7.7.3.

H. Uncashed Checks

For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator will transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the

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Office:
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Fl 7
Los Angeles, CA 90067

name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). Settlement, ¶ 4.4.3.

IV. CERTIFICATION OF THE CLASS IS APPROPRIATE

Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable and its members are too numerous for joinder to be practical; (2) the representative and absent class members share a community of interest and questions of law and fact common to the class predominate over questions unique to individual class members; (3) the representative's claims are typical of the class' claims; and (4) the representative will fairly and adequately represent the class' interests. *See*, *e.g.*, *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470. Moreover, in the settlement context, the Court can use a lesser standard to determine the appropriateness of a settlement class as opposed to a litigated class certification. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807. As explained below, all of these requirements are met in this case.

A. The Settlement Class Is Objectively Ascertainable

A class is ascertainable when it may be readily identified without unreasonable expense or time by reference to official records. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932 (citing *Hypolite v. Carlson* (1975) 52 Cal.App.3d 566, 579). Plaintiff maintains that the above-defined Class is ascertainable because its members may be identified by reference to Defendant's records and Defendant has agreed to share the relevant information from its records to facilitate the settlement process. DS, ¶ 13; Settlement, ¶ 4.2. Therefore, the Settlement Class is ascertainable.

B. The Membership of the Settlement Class Is Sufficiently Numerous

The Settlement Class has sufficiently numerous members to render joinder impractical. No set number is required as a matter of law to maintain a class action. *Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, 1030. Defendant estimates that there are approximately 200 Class Members. DS, ¶ 14. Plaintiff maintains that it would be impractical and economically inefficient to require each Class Member to separately maintain an individual action or be joined as a named plaintiff in this action. The California Supreme Court has upheld a class of as few as 10 individuals. *See Bowles v. Superior Court* (1955) 44 Cal.2d 574. In light of these considerations, the Settlement Class' membership is sufficiently numerous. DS, ¶ 14. *See Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695.

C. Class Members Share a Well-Defined Community of Interest

The community of interest requirement "embodies three factors: (1) predominant common

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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 Drug Stores, Inc. v. Superior Court* (2004) 34 Cal. 4th 319, 326. It "does not mandate that class members have uniform or identical claims." *Capitol People First v. Dept. of Developmental Servs.* (2007) 155 Cal. App. 4th 676, 692. Rather, courts focus on the defendant's internal policies and "pattern and practice . . . in order to assess whether that common behavior toward similarly situated plaintiffs renders class certification appropriate." *Id.* (citing *Sav-On*, 34 Cal. 4th at 333).

To justify certification, the class proponent "'must show ... that questions of law or fact common to the class predominate over the questions affecting the individual members ....'" *See, Arenas v. El Torito Rests., Inc.* (2010) 183 Cal. App. 4th 723, 732 (*citing Washington Mut. Bank, FA v. Superior Court* (2001) 248 Cal. 4th 906, 913). In light of the more lenient standard for certification of a settlement class, the Parties agree that for the purposes of the Settlement only, the claims of the Class Members all stem from the same sources. DS, ¶ 15.

In this case, Plaintiff asserts all Class Members were subject to the same or similar operations and employment policies, practices, and procedures. The claims arise from Defendant's alleged policy-driven failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, and related labor law violations, all of which Plaintiff claims constitute unfair business practices and give rise to PAGA penalties. Plaintiff asserts that common questions include, but are not limited to: (1) Whether Defendant failed to pay all wages earned to Class Members for all hours worked at the correct rates of pay; (2) Whether Defendant failed to provide the class with all meal and rest periods in compliance with California law; (3) Whether Defendant failed to pay the class one additional hour of pay on workdays it failed to provide the class with one or more meal or rest periods in compliance with California law; (4) Whether Defendant failed to indemnify the class for all necessary business expenditures incurred during the discharge of their duties; (5) Whether Defendant knowingly and intentionally failed to provide the class with accurate wage statements; (6) Whether Defendant willfully failed to provide the class with timely final wages; and (7) Whether Defendant engaged in unfair competition within the meaning of Business and Professions Code section 17200, *et seq.*, with respect to the class. DS, ¶ 15. Therefore, common questions predominate.

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8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

D. Plaintiff Is Typical of the Settlement Class

The class representative must be similarly situated to the rest of the purported class. *See Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46 (stating "it has never been the law in California that the class representative must have identical interests with the class members. The only requirements are ... that the class representative be *similarly* situated") (emphasis in original); *See also* Newberg, § 3:29 (typicality "focuses on whether there exists a relationship between the Plaintiff's claims and the claims alleged on behalf of the class"). Plaintiff contends that her claims are typical for the purposes of certifying the Settlement Class. Plaintiff asserts that she, like absent Class Members was subject to the same relevant policies and procedures governing her compensation, hours of work and meal and rest periods. Because Plaintiff contends that she was subject to the same general course of conduct as absent Class Members, resolving the common questions as they apply to Plaintiff will determine Defendant's *prima facie* liability to all Class Members. Moreover, Plaintiff's claims could potentially be subject to the same primary affirmative defenses as those of absent Class Members. Accordingly, Plaintiff's claims are typical of the Class. DS, ¶ 16.

E. Plaintiff Will Adequately Represent the Settlement Class

The adequacy requirement is met where the plaintiff is represented by counsel qualified to conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to the class' interests. *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451. In other words, where the plaintiff has adequate counsel, the plaintiff may represent the entire class absent any disabling conflicts of interest that might hinder the plaintiff's ability to represent the class. DS, ¶ 17.

First, Class Counsel have supplied the Court with declarations to show that they are adequate to represent the Settlement Class and that they have significant experience in employment litigation generally, and wage and hour and employment-related class action litigation specifically. *See* DS, ¶¶ 18-29. Thus, Plaintiff's counsel are adequate to serve as Class Counsel.

Second, Plaintiff contends that she is an adequate class representative. Plaintiff and the Class Members have strong and co-extensive interests in this litigation because they all worked for Defendant during the relevant time period, allegedly suffered the same alleged injuries from the same alleged course of conduct, and there is no evidence of any conflict of interest between Plaintiff and the Class Members. DS, ¶ 18; Kurkhill Decl., ¶ 7. Moreover, Plaintiff has demonstrated her commitment to the Settlement Class by, among other things, retaining

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(213) 725-9094 Tel
(213) 634-2485 Fax
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Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

experienced counsel, providing counsel with documents and extensively speaking with them to assist in identifying the claims asserted in this case, assisting them in identifying witnesses, as well as exposing herself to the risk of attorneys' fees and costs awards against her if this lawsuit had been unsuccessful. DS, ¶ 18; Kurkhill Decl., ¶ 7. Thus, Plaintiff is adequate to serve as settlement class representative. Accordingly, this Court should find that Plaintiff and her counsel are adequate to represent the Settlement Class as required under Code of Civil Procedure § 382.

F. Class Action Treatment Is the Superior Means For Resolving The Claims Of The Class Members

Plaintiff further contends that a class action is also superior to other means of adjudicating the issues in this action. The predominance of common legal and factual questions shows that this Court could fairly adjudicate the claims of Class Members through a single class action. In view of the *theoretical* alternatives that proposed class members could potentially utilize—representative PAGA action (where there is less relief available), individual civil lawsuits or wage claims through the Division of Labor Standards Enforcement (where there would be relatively little money at stake, but the claims would be time-consuming to litigate)—a class action is plainly superior to all of them. Thus, this consideration supports conditional class action treatment for purposes of this Settlement only. DS, ¶ 30.

V. THE COURT SHOULD GRANT PRELIMINARY APPROVAL BECAUSE THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE

A. Legal Standard

A class action settlement requires court approval. California Rules of Court ("CRC"), Rule 3.769 provides three steps for approval: (1) Preliminary approval after submission of a written motion for preliminary approval, the proposed class settlement, and the proposed class notice; (2) Issuance of notice of settlement to class members; and (3) A final settlement approval hearing where class members may be heard regarding the settlement, and at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement is presented. The decision to approve or reject a class settlement is committed to the Court's broad discretion. *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128. The decision to approve class settlement may be reversed only upon a showing of "clear abuse of discretion." *Id.*

B. The Settlement Is Presumptively Fair

In assessing preliminary approval, a court evaluates if the settlement process has certain indicia of fairness. 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

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(213) 725-9094 Tel
(213) 634-2485 Fax
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Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Kullar*, 168 Cal. App. 4th at 128, quoting *Dunk v. Ford Motor Co.*, (1996) 48 Cal.App.4th at 1794.

The class settlement here satisfies all of these factors. DS, ¶ 31. The Settlement resulted from thorough, arms' length, negotiations between experienced counsel with the assistance of a respected mediator after sufficient discovery was exchanged to assess the relative strengths and weaknesses of their respective cases and Defendant's estimated exposure. *Id*.

Plaintiff prepared "damages" estimates in advance of the mediation. DS, ¶ 32, Ex. 6. Plaintiff determined Defendant's maximum possible exposure for restitution and penalties to be approximately $4,575,477.46 (consisting of $2,81,993.87 in unpaid wages, $2,81,993.87 in liquidated damages, $512,716.13 in missed meal period premium wages, $1,025,432.25 in missed rest break premium wages, $434,319.60 in unreimbursed expenses, $220,950.00 for wage statement penalties, $720,346.75 for waiting time penalties, and $1,097,725.00 for civil penalties under PAGA). The estimates are in essence "home run" projections that omit data points that will undoubtedly reduce the maximum possible damages award and do not factor in any of the risks involved in litigating this Action. Plaintiff calculated the damages based on the number of workweeks and pay periods provided by Defendant, Plaintiff's reports, and the sample data. *Id*.

However, based on the difficulties of proof, the Defendant's defenses, and the other attendant risks Plaintiff identifies below, Plaintiff estimates the likely awards at trial should Plaintiff prevail to be the following amounts:

a. Unpaid wages and liquidated damages with interest in the amount of $169,196.32;

b. Meal period premium wages with interest in the amount of $153,814.84;

c. Rest period premium wages with interest in the amount of $307,629.68;

d. Unreimbursed expenses with interest in the amount of $130,295.88;

e. Statutory pay stub penalties in the amount of $66,285.00;

f. Waiting time penalties in the amount of $216,104.03; and

g. Civil penalties in the amount of $329,317.50.

The total of these amounts is $1,372,643.24. The Gross Settlement Amount of $375,000.00 is 27.32% of this amount. DS, ¶ 33.

Plaintiff's initial estimates do not realistically account for the risks outlined below or the

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8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com
Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

risk that a class will not be certified. *Id*. Therefore, Plaintiff believes a class settlement for $375,000.00 is fair and reasonable. DS, ¶ 33.

C. The Settlement Satisfies the *Kullar* Factors for Approval

The *Kullar* case sets forth several factors a court should consider in determining whether to approve a class settlement. These factors include: (1) the strength of plaintiff's case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement. 168 Cal.App.4th at 128. As demonstrated herein, the Settlement satisfies each of these factors.

1. Evaluation of Plaintiff's Case

a. Risks Associated With A Pick-Up Stix Campaign

Plaintiff first considered the possibility that Defendant could launch a *Pick Up Stix* campaign and pursue individual release agreements from the Class Members. An employer enjoys the right to settle a putative class member's disputed wage claims individually, without the consent or involvement of class counsel. See *Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal. App. 4th 796. *Id.* Defendant may launch a "pick off" settlement campaign to pursue individual release agreements from the Class Members, thereby potentially narrowing the size of the Settlement Class – 200 members - until it is no longer numerous enough for class certification. *Id.* Plaintiff, then, may not have sufficient number of employees to represent. This led to a significant reduction of claim value in settlement negotiations. Plaintiff's Counsel applied discounts to the maximum possible exposure to account for all other risks discussed below. While it is difficult to assign anything but crudely-determined percentages of risk to any of the claims, it is safe to say that the risk that a *Pick Up Stix* campaign would preclude recovery for such employees is substantial and alone justifies a significant discount because Defendant would likely by trial have gathered releases from the majority of the Class Members. A settlement for approximately 27.32% of the potential recovery is a proportion substantially in excess of recovery proportions sanctioned by existing case law.[4] DS, ¶ 35.

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[4] *See, e.g., In re Newbridge Networks Sec. Litig.*, 1998 WL 765724 at *2 (D.D.C. Oct. 23, 1998) ("[A]n agreement that secures roughly six to twelve percent of a total trial recovery . . . seems to be within the targeted range of reasonableness."); *Wise v. Ulta Salon, Cosmetics & Fragrance,*

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(213) 634-2485 Fax
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Office:
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Fl 7
Los Angeles, CA 90067

b. Risks Associated With the Arbitration Agreements

The arbitration agreements entered into between Defendant on the one hand, and the Class Members, on the other, present a significant risk to the success of Plaintiff's class action litigation. According to Defendant, of those Class Members who worked at a Lip Lab store (as opposed to Kendo corporate), approximately 40% signed an arbitration agreement with class action waivers. As the arbitration agreements in question restrict potential litigants from bringing class actions against Defendant, Plaintiff would be effectively barred from pursuing claims on behalf of the Class in Court. Thus, there is a significant risk the Court could determine that those Class Members who have not entered into arbitration agreements with Defendant do not constitute a sufficiently numerous class to justify class action treatment. As such, by continuing to trial on class-wide claims, Plaintiff would run the high risk of suffering defeat due to the existence of the arbitration agreement. Moreover, the arbitration agreements would pose danger to any class certification motion brought by Plaintiff. Because different defenses would apply to some Class Members and not others – i.e., the existence of signed arbitration agreements – there is a risk that the Court could determine that Plaintiff's claims present too many individualized inquiries to justify class certification. DS ¶ 36.

c. Risks Associated with the Unpaid Wages Claim

There is a risk that Plaintiff's recovery for unpaid wages would be extremely limited at best, largely because Defendant's written policies throughout the relevant time period prohibited off-the-clock work. Off-the-clock claims are difficult where a defendant requires in its written policies that all work must take place while clocked in. *See Jong v. Kaiser Foundation Hospital* (2014) 226 Cal.App.4th 391 (employer must have notice of off-the-clock work for it to be compensable). In its written employment policies, Defendant mandates that employees must record all time worked accurately on their time records and strictly prohibit employees from performing any work off-the-clock. Moreover, while Defendant disputes that off-the-clock work occurred, it contends that any time spent off the clock was *de minimis*. The California Supreme

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Inc. 2019 WL 3943859 at *8 (E.D. Cal. Aug. 21, 2019) (granting preliminary approval where the proposed allocation to settle class claims was at least 9.53 percent); *Bravo v. Gale Triangle, Inc.*, 2017 WL 708766 at * 10 (C.D. Cal. Feb 16, 2017) ("a settlement for fourteen percent recovery of Plaintiffs' maximum recovery is reasonable"); *In re Omnivision Techs., Inc.*, 559 F.Supp.2d 1036, 1042 (N.D. Cal. 2008) (approving settlement amount that "is just over 9% of the maximum potential recovery asserted by either party.").

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Office:
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Fl 7
Los Angeles, CA 90067

Court in *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 835 suggested that irregular and minute periods of time may still be subject to a *de minimis* defense even if compensable. (Stating that "We do not decide whether there are circumstances where compensable time is so minute or irregular that it is unreasonable to expect the time to be recorded."). Following *Troester*, Defendant contends that the *de minimis* doctrine may apply here because the time spent off the clock were minute and insignificant. Accordingly, a large award of penalties seems unlikely with respect to this claim. DS, ¶ 37.

The difficulty inherent in proving that off-the-clock work occurred poses a significant hurdle to Plaintiff. Plaintiff will rely on declarations and witness statements to prove this claim. Generally, a court will not certify a class unless it can determine an appropriate classwide methodology. *See, e.g., Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1. Here, Plaintiff may rely heavily on anecdotal evidence to prove the off-the-clock work claim, especially given the lack of records indicating when such off-the-clock work may have taken place. Individualized inquiries would need to be conducted person-by-person, day-by-day, to determine if an individual in fact worked "minutes" off-the-clock on a "regular" basis. Accordingly, there is a significant risk that the Court would consider this evidentiary showing insufficient as a classwide methodology. DS, ¶ 38.

d. Risks Associated with the Meal Period Claims

There are risks to Plaintiff's meal period claim. Defendant contends that, to establish a violation for missed meal periods, a plaintiff must do more than show that a meal break was not taken. *Brinker*, 53 Cal. 4th at 1004. So long as an employer provides employees with a "reasonable opportunity" to take a duty-free meal period, it has no further duty to "police meal breaks and ensure no work thereafter is performed." *Id.* at 1040-41. Instead, a plaintiff must show the employer impeded, discouraged, or prohibited the employee from taking a proper break, or otherwise failed to release the employee of all control. "Thus, the crucial issue with regard to the meal break claim is the reason that a particular employee may have failed to take a meal break." *Washington v. Joe's Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. DS, ¶ 39.

Defendant contends it did not impede or discourage Plaintiff, or any other employees, from taking their meal or rest periods. Defendant's policies mandate that employees take at least a 30-minute, uninterrupted meal periods and record the beginning and ending time of their meal breaks each day on their time records. The time records that comprise the random sample

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(213) 725-9094 Tel
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Office:
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Fl 7
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Defendant produced to Plaintiff for purposes of mediation show that meal periods were taken the vast majority of the time. Of the time records that show a late, short or no lunch, individualized evidence may be necessary to determine whether they occurred due to conduct of the Defendant or each of the employees concerned. Accordingly, there is a significant risk that the value of Plaintiff's meal period claim would be substantially reduced at trial. DS, ¶ 40.

e. Risks Associated with the Rest Break Claims

There are risks to Plaintiff's rest period claim. Employers are not required to record rest periods and such periods are paid. Defendant contends it provided non-exempt employees the opportunity to take rest periods in accordance with California law. Further, Defendant's written policies on meal and rest periods are consistent with the Wage Order. Thus, unlike meal periods, where there are often records showing whether an employee clocked out or not, there is no such evidence to prove a missed rest period or that the employer refused to authorize and permit one. Managing such claims at trial has become exceedingly difficult. Plaintiff will depend on sample witness testimony and surveys to prove the claims. While a victory with such evidence is certainly possible, relevant caselaw makes such claims risky from a trial management and due process perspective. *See Duran v. U.S. Bank National Assn.*, (2014) 59 Cal. 4th 1, 31 (explaining "[I]f sufficient common questions exist to support class certification, it may be possible to manage individual issues through the use of surveys and statistical sampling."); *Tyson Foods, Inc. v. Bouphakeo* (2015) 136 S.Ct. 382; *Comcast Corporation v. Behrend* (2013) 133 S.Ct. 1426. DS, ¶ 41.

f. Risks Associated with the Failure to Indemnify Claim

There is a risk that the Court may consider Plaintiff's claims as to Defendant's alleged failure to indemnify for business expenses to be individual in nature and thus decline to certify the class. Plaintiff alleges that Defendant required Plaintiff and the Class Members to use their personal items including cellular phones and vehicles and failed to indemnify them for these business expenses. Defendant denies this allegation. As such, there is a risk that the Court may consider Plaintiff's claims to be individual in nature and unfit for class wide resolution. DS, ¶ 42.

g. Risks Associated with the Statutory Wage Statement Penalty Claims

Plaintiff also asserts claims for wage statement violations, untimely wage violations, and PAGA penalties. Under Labor Code section 226, wage statements must include various information, including the applicable rates of pay, corresponding hours worked, and gross pay.

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(213) 634-2485 Fax
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Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

Here, Plaintiff's wage statement claim has the same underlying risks as the above claims, as it is derivative of them. On their face, the wage statements issued by Defendant comply with the requirements of Labor Code § 226. DS, ¶ 43.

h. Risks Associated with the Waiting Time Penalty Claims.

Without proof willful behavior, Plaintiff will be unable to recover these penalties. DS, ¶ 44.

i. Risks Associated With the PAGA Claim

As the Operative Complaint makes clear, Plaintiff predicates her PAGA claim on the same Labor Code violations as her other claims. As stated above in connection with Plaintiff's claims for statutory penalties with regard to proof of Defendant's intent, knowledge and willfulness, there are serious risks to proving Defendant acted intentionally, knowingly, and willfully in violating the rights of Class Members under the Labor Code. Plaintiff calculated the agreed-upon amount of civil penalties by considering the risks outlined above and that the Settlement already provides substantial payments for the Labor Code violations that the civil penalties claim is predicated on. Regarding PAGA, a court has discretion to award a lesser amount than the maximum penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). As set forth above, Defendant has posed valid defenses to the Labor Code claims underlying Plaintiff's PAGA allegations. Thus, the PAGA claims likewise face significant uncertainty. There is a risk that the Court would consider the maximum civil penalty available to be confiscatory. DS, ¶ 45.

This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and required a significant discount for settlement purposes. For mediation purposes, Plaintiff's counsel estimated a maximum possible exposure of approximately $1,097,725.00 in civil penalties. This estimate did not take into account any of the risks discussed above and assumed a violation for every single pay period. Plaintiff's counsel also assessed multiple penalties for the same pay period for the same alleged violations of different Labor Code provisions and derivative violations. Although two federal district court decisions held that "stacking" PAGA penalties in this fashion may be appropriate to determine the amount in controversy for purposes of removal jurisdiction, Plaintiff's counsel is not aware of any California state courts awarding plaintiffs multiple PAGA penalties for the same violation for the same pay period under different Labor Code provisions. This may be because the PAGA does not provide for what many employers characterize as claim splitting and not merely stacking. DS, ¶ 46.

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(213) 725-9094 Tel
(213) 634-2485 Fax
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Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

Plaintiff is aware of only two significant awards under the PAGA in a contested proceeding, both issued by federal district courts.[5] PAGA penalty awards are often small even for egregious, intentional violations of the Labor Code.[6] DS, ¶ 47. For instance, on October 24, 2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff, represented by very experienced counsel, civil penalties totaling only $50.00. *Shields v. Security Paving Company*, Inc., LA Superior Court case no. BC492828. Further, in *Carrington v. Starbucks Corp*. (2018) 30 Cal.App.5th 504, 529, the Court of Appeal affirmed judgment which provided for a PAGA penalty of only $5 per pay period for the defendant's meal period violations. A similar result could occur here. DS, ¶ 48.

While the evidence gathered through Plaintiff's discovery supports the merits of the claims asserted in this lawsuit, Plaintiff and her counsel recognize that continued litigation presents significant risks that support a downward departure from Defendant's estimated liability exposure. DS, ¶ 49. In view of the risks, the Settlement reflects Plaintiff's estimate of the total

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[5] In *Bernstein v. Virgin Am., Inc*, (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil penalties under the PAGA of $12,277,500.00 where total adjusted damages were $18,695,692.58. In this regard, the district court stated,

> The plain language of PAGA provides that "a court may award a lesser amount than the maximum civil penalty amount specified by this part if, *based on the facts and circumstances of the particular case*, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Cal. Lab. Code s 2699(e)(2) (emphasis added). The relationship between the amount of total damages and the amount of maximum PAGA penalties is certainly a "circumstance" of the case under the term's ordinary meaning. The weight given to that circumstance is greater in this case because Plaintiffs' PAGA penalties are based on PAGA claims that are all derivative of Plaintiffs' individual claims except for one. As a general matter, it would be excessively punitive for the penalty imposed as a consequence of a discrete injury or set of injuries to exceed the damages caused by that injury or set of injuries.

Id., ftnt. 9. The district court further stated, "Virgin "has not presented any evidence that the full penalty would be excessive in relation to its ability to pay," the weight of this factor is lessened." *Id.*

In *Robert Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F. Supp. 3d. 1058, the court awarded approximately $102 million in damages, primarily based on the Defendant's failures to comply with the requirements of California Labor Code section 226.

[6] In 2012, Plaintiff's Counsel tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court case number BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. The plaintiff sought in excess of $9 million in civil penalties under the PAGA. After a bench trial, the Honorable Judge Ronald M. Sohigian awarded approximately $325,000 in civil penalties under the PAGA.

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(213) 725-9094 Tel
(213) 634-2485 Fax
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Office:
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Fl 7
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amount of damages, monetary penalties or other relief that the Class could reasonably expect to be awarded at trial, taking into account the likelihood of prevailing and other attendant risks. *Id.* It also represents a fair, adequate, and reasonable compromise amount for these claims and warrants preliminary approval. *Id.*, *Torrisi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370, 1376 (the financial condition of defendant predominated in assessing the reasonableness of settlement); *Spann v. J.C. Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty concerning defendant's financial stability "strongly supports the reasonableness of the settlement"); *Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014 WL 2465049, * 3.

VI. THE SETTLEMENT FAIRLY, ADEQUATELY, AND REASONABLY COMPENSATES CLASS MEMBERS BECAUSE IT WILL PAY EACH CLASS MEMBER BASED ON THE POTENTIAL EXTENT OF HIS OR HER INJURY COMPARED TO OTHER CLASS MEMBERS

The Individual Settlement Payments will be paid to each Class Member based on his or her eligible Pay Periods compared to the total Pay Periods. Settlement, ¶ 3. Because this method compensates Class Members based on the extent of their potential injuries, in that Class Members who worked for Defendant longer would have been subject to more alleged violations, it is fair, adequate, and reasonable. *Id.*

Plaintiff estimates that there are 5,062 Pay Periods for the Class Period. So, each Pay Period has a value of approximately $36.55 ($185,000.00 Net Settlement Amount / 5,062 Pay Periods = $36.55). Plaintiff had 34 Pay Periods during the Class Period. Based on this, it is anticipated that Plaintiff Rebecca Kurkhill will receive an Individual Class Payment of approximately $1,247.00 as a Participating Class Member (34 Pay Periods x $36.55 = $1,247.00) while the average estimated Individual Class Payment to Participating Class Members will be approximately $925.00. Some Class Members – those who worked more Pay Periods during the Class Period - will receive more, and some less. The highest possible Individual Class Payment to a Participating Class Member (i.e., to those who qualify for all Pay Periods in the Class Period) will be approximately $4,784.93. The lowest possible Individual Class Payment to a Participating Class Member (i.e., to those who qualify for only one Pay Period in the Class Period) will be approximately $36.55. *See* DS Decl., ¶ 66.

It is anticipated that the average PAGA Member's Individual PAGA Payment will be $32.11. *Id.* Plaintiff's Individual PAGA Payment, her individual share of 35% of the PAGA Penalties, will be less than that of some absent PAGA Members. Under the Settlement, each

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(213) 725-9094 Tel
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Office:
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Los Angeles, CA 90067

PAGA Member will receive a *pro rata* distribution of 35% of the PAGA Penalties proportionate to the number of paychecks he or she had with Defendant during the PAGA Period, compared to the total of all paychecks of all PAGA Members during the PAGA Period, as reflected by Defendant's records. Plaintiff estimates that there are 2,311 PAGA Member paychecks for the PAGA Period. So, each PAGA Member paycheck from the PAGA Period has a value of approximately $1.51 (35% of $10,000.00 in PAGA Penalties / 2,311 PAGA Member paychecks = $1.51). It is anticipated that Plaintiff Rebecca Kurkhill will receive an Individual PAGA Payment of approximately $25.60 as a PAGA Member (17 paychecks during the PAGA Period x $1.51 paycheck value = $25.60) while the average estimated Individual PAGA Payment to an PAGA Member will be approximately $32.11 ($3,500.00, 35% of PAGA Penalties / PAGA Member paychecks during the PAGA Period = $32.11 Individual PAGA Payment). Some PAGA Members – those who had more paychecks during the PAGA Period - will receive more, and some less. The highest possible Individual PAGA Payment to an PAGA Member (i.e., to those who qualify for all paychecks in the PAGA Period) will be approximately $70.45. The lowest possible Individual PAGA Payment to an PAGA Member (i.e., to those who qualify for only one paycheck in the PAGA Period) will be approximately $1.51. *See* Decl., ¶ 67.

VII. ALLOCATION FOR CLASS COUNSEL'S FEE AWARD AND ATTORNEYS' FEES AND COSTS AWARD FOR LITIGATION EXPENSES IS APPROPRIATE

The Settlement states Class Counsel may seek attorneys' fees of $125,000.00 (one-third of the GSA) and up to $30,000.00 for actual reasonable litigation costs and expenses incurred in prosecuting the Action. Settlement, ¶ 3. These amounts are reasonable, given the facts and circumstances of the case. DS, ¶¶ 50-52.

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal. App. 4th 19, 41. Indeed, it is long settled that the "experienced trial judge is the best judge of the value of professional services rendered in his court." *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1132. California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Laffitte v. Robert Half Intl, Inc.* (2016) 1 Ca1. 5th 480, 503 (citing *Lealao, supra,* 82 Cal.App.4th at p. 48-49). The Supreme Court has recently approved fees equal to one-third (1/3) of the common fund. *Laffitte, supra*, 1 Ca1. 5th 480. Many courts have similarly approved fee awards equal to or greater than the percentage requested here. *See, e.g., In re Pacific Enterprises*

SPIVAK LAW
EMPLOYEE RIGHTS
Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com
Office:
1875 Century Park East
Fl 7
Los Angeles, CA 90067

(9th Cir. 1995) 47 F.3d 373, 379 (award of 33% of the common fund); *In re Activision* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375 (32.8% of the common fund); *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494, 498 (45% of settlement fund).

The amount of fees and costs requested are commensurate with (1) the risk Class Counsel took in bringing the case, (2) the extensive time, effort and expense dedicated to the case, (3) the skill and determination Class Counsel has shown, (4) the results Class Counsel achieved, (5) the value of the Class Counsel achieved for the class, and (6) the other cases Class Counsel turned down to devote time to this matter. DS, ¶ 51. Class Counsel interviewed and obtained information from putative class members, met and conferred with Defendant's counsel on numerous occasions, reviewed and analyzed hundreds of pages of data and documents provided by Defendant and obtained through other sources, researched applicable law, and provided estimates of "damages" for purposes of settlement discussions, among other tasks. *Id.*

Class Counsel have borne all the risks and costs of litigation and will receive no compensation until recovery is obtained. DS, ¶ 52. Class Counsel are well-experienced in wage-and-hour class action litigation and used that experience to obtain a fair result for the Class. *Id.* Considering the amount of the attorney fees requested, the work performed, and the risks incurred, the requested fees and costs are reasonable and should be awarded. *Id.*

VIII. THE CLASS REPRESENTATIVE SERVICE PAYMENT TO PLAINTIFF SHOULD BE PRELIMINARILY APPROVED BECASUSE IT IS FAIR, ADEQUATE, AND REASONABLE

Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation, often in much higher amounts than that sought here. *See, e.g.*, *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); *Van Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294 (approving $50,000 enhancement award). The Settlement provides that Plaintiff may seek a Class Representative Service Payment of $15,000.00. This amount is entirely reasonable given Plaintiff's efforts in this action and the risks she undertook on behalf of Class Members. DS, ¶ 53; Declaration of Rebecca Kurkhill ("Plaintiff decl."), generally. Plaintiff has devoted many hours advancing the interests of the Settlement Class. Plaintiff has done this by, among other things, retaining experienced counsel, providing them with information about her work history with Defendant and Defendant's policies and practices with respect to the wage and hour claims at issue, participating in mediation,

SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
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(213) 634-2485 Fax
SpivakLaw.com

Office:
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Fl 7
Los Angeles, CA 90067

and being actively involved in the settlement process to ensure a fair result for the Settlement Class as a whole. In doing this, Plaintiff has been exposed to significant risks, including the risk of an order to pay Defendant's attorneys' fees and costs if this action had been unsuccessful (*See* Labor Code §§ 218.5-218.6). The efforts and risks that Plaintiff undertook on behalf of the Settlement Class shows that the proposed Class Representative Service Payment is fair, adequate, and reasonable, and thus warrants preliminary approval. DS, ¶ 53-63; Plaintiff decl., generally.

IX. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS SHOULD BE PRELIMINARILY APPROVED BECAUSE THEY ARE FAIR, ADEQUATE, AND REASONABLE

With regard to the settlement administration costs ("Administration Expenses Payment") provision, it is reasonable. Before agreeing to ILYM Group, Inc. and its bid of $10,000.00, the Parties sought and reviewed bids from other reputable third-party administrators which provided higher bids. DS, ¶ 68-69, Exs. 15, 16, and 17. Thus, the settlement administration costs provision should be given preliminary approval.

X. THE PROPOSED NOTICE AND SETTLEMENT ADMINISTRATION PLAN SHOULD BE APPROVED BECAUSE IT IS REASONABLY CALCULATED TO GIVE ACTUAL NOTICE TO CLASS MEMBERS AND SUFFICIENT TIME TO EXERCISE THEIR RIGHTS

This Court should approve the proposed plans for giving notice to the Settlement Class and administering the Settlement. The standard for determining the adequacy of notice is whether the notice has "a reasonable chance of reaching a substantial percentage of the class members." *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974. The notice process includes multiple measures to ensure that as many Class Members as practicable receive actual notice of the Settlement and have enough time to exercise their rights. The Settlement requires distribution of the Notice by First Class U.S. mail only. Although there are current employee Class Members, it is uncertain whether Defendant's records of their contact information include email addresses and Class Members, who perform all of their work away from a desk, are not in a position to check their emails. As such, notice by mail alone is fair, adequate, and reasonable.

With respect to its content, "[The] notice given to the class must fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members." *Trotsky v. Los Angeles Fed. Sav. & Loan Assn*. (1975) 48 Cal.App.3d 134, 151-152. The purpose of the notice in class settlement context is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their

SPIVAK LAW
EMPLOYEE RIGHTS
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PMB 42554
West Hollywood, CA 90069
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Fl 7
Los Angeles, CA 90067

own remedies, or object to the settlement. *Id.* The Notice (Exhibit A to the Settlement) provides Class Members with all pertinent information that they need to fully evaluate their options and exercise their rights under the Settlement. Specifically, it clearly and concisely explains, among other things: (1) what the Settlement is about; (2) who is a Settlement Class Member; (3) how Class Counsel will be paid; (4) how to submit an exclusion request not to be bound by the Settlement; (5) how to object to the Settlement; (6) how the Settlement will be allocated; (7) how payments to Class Members will be calculated; (8) how the disputes will be resolved; and (9) the individual Settlement Class Member's estimated payment. Additionally, the Class Notice will include the number of Pay Periods a Class Member had during the Class Period. Accordingly, the Notice should be approved because it describes the Settlement with sufficient clarity and specificity to explain to Class Members what this action is about, their rights under the Settlement, and how to exercise those rights. DS, ¶ 68.

XI. CONCLUSION

For the reasons stated above, this Court should grant Plaintiff's Motion in its entirety and adopt the proposed order submitted concurrently herewith.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: February 23, 2026

By: ______________________

DAVID G. SPIVAK
CAROLINE TAHMASSIAN,
Attorneys for Plaintiff, REBECCA KURKHILL, and all others similarly situated

SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
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(213) 634-2485 Fax
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