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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

ELENA MARTHA VARELA, on behalf of herself and all others similarly situated, and on behalf of the general public,

Plaintiff,

vs.

FLORENCE CRITTENTON SERVICES OF ORANGE COUNTY, INC., a California Corporation, and DOES 1 to 10, inclusive,

Defendant.

Case No. 30-2025-01462276-CU-OE-CXC

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF HER UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

Date: July 16, 2026
Time: 2:00 p.m.
Dept.: CX105
Judge: Hon. Melissa R. McCormick
Reservation No.: 74836400

I. INTRODUCTION

Plaintiff ELENA MARTHA VARELA ("Named Plaintiff" or "Plaintiff") seeks preliminary approval of a proposed wage and hour class and representative action settlement with Defendant FLORENCE CRITTENTON SERVICES OF ORANGE COUNTY, INC. ("Defendant"). Plaintiff further seeks conditional certification of the proposed class for purposes of settlement. Subject to final approval of this Court, the parties agreed to settle this action on all-inclusive basis for $500,000.00. The settlement is the result of an arms-length, non-collusive negotiations between the parties arrived at through the assistance of a mediator. **A unique feature to this class action settlement is that all currently employed and formerly employed settlement class members will recover a monetary benefit without having to submit a claim form.** The proposed resolution of this matter strikes a balance between the risks of continued litigation, fair compensation to the settlement Class Members, and Defendant's ability to pay. The Settlement is fair and reasonable, and provides compensation to current and former employees of Defendant.

It is well within the discretion of this Court to grant preliminary and conditional approval of the Class Action and PAGA Settlement Agreement ("Settlement Agreement") (attached as **Exhibit "B"** to the Declaration of Roman Otkupman submitted concurrently herewith), which satisfies all the criteria for preliminary settlement approval under California law. Accordingly, Named Plaintiff requests that the Court:

(1) provisionally and conditionally certify the proposed Settlement Class;

(2) preliminarily approve Plaintiff Elena Martha Varela as Class Representative;

(3) preliminarily approve Otkupman Law Firm, A Law Corporation, as Class Counsel;

(4) grant preliminary and conditional approval of the proposed Settlement;

(5) approve the form and content of the proposed Class Notice and Exclusion Form;

(6) approve ILYM Group, Inc. ("ILYM") as Settlement Administrator and approve settlement administration costs up to $7,850.00;

(7) approve a Service Payment to Named Plaintiff in the amount of $10,000.00;

(8) approve payment to Class Counsel of reasonable attorney's fees up to 33.33% of the Gross Settlement Amount, amounting to $166,650.00, and litigation costs up to $25,000.00;

(9) preliminarily approve PAGA penalties in the amount of $40,000.00;

(10) approve direct distribution to the Settlement Class of the proposed Class Notice and Exclusion Form (attached as **Exhibits "C"** and **"D"**, respectively, to the Declaration of Roman Otkupman); and

(11) schedule a final approval hearing.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Procedural History

Defendant is a California Corporation doing business in California. (Otkupman Decl., ¶ 11) This lawsuit arises from Defendant's alleged unlawful failure to provide meal and rest periods or compensation in lieu thereof, failure to pay all wages, knowing and intentional failure to comply with itemized employee wage statement provisions, failure to timely pay all wages due at termination, failure to timely pay employees, failure to reimburse employees for business expenses, failure to pay for all hours worked, including overtime hours worked, and unfair business practices. (Id.)

On February 21, 2025, Plaintiff filed the operative Class and Representative Action Complaint against Defendant alleging the following causes of action: (1) failure to provide meal periods in violation of Labor Code sections 226.7, 512, 558; (2) failure to provide rest periods in violation of Labor Code sections 226.7, 512, 558; (3) failure to pay all wages in violation of Labor Code sections 510, 1194, and 1194.2; (4) knowing and intentional failure to comply with itemized employee wage statement provisions in violation of Labor Code sections 226(a), (e); (5) failure to timely pay wages due at termination in violation of Labor Code sections 201-203; (6) failure to timely pay employees in violation of Labor Code section 204(a), (b); (7) failure to reimburse for business expenses in violation of Labor Code section 2802; (8) failure to pay all hours worked, including overtime hours worked, in violation of Labor Code sections 210, 218; (9) violation of Business and Professions Code section 17200; and (10) penalties pursuant to Labor Code section 2699(f) (the "Action"). (Otkupman Decl., ¶ 13)

Plaintiff sent a letter to the PAGA Administrator at the Labor and Workface Development Agency (LWDA) in compliance with the statutory exhaustion requirements of Labor Code § 2699.3 prior to filing the Action pursuant to Labor Code § 2699 et seq. (Otkupman Decl., ¶ 12, Exhibit A)

The Action alleges a failure on the part of Defendant to comply with wage and hour laws protecting its employees. (Otkupman Decl., ¶ 13) The Named Plaintiff seeks to represent the

following Class: all persons employed by Defendant in California as non-exempt employees at any time during the period from July 25, 2019 to the date of preliminary approval of the Settlement, or the Alternate End Date (as defined in Paragraph 8 of the Agreement), whichever is sooner ("Class Members"), and the following Aggrieved Employees: all persons employed by Defendant in California and classified as a non-exempt employee at any time during the period from December 17, 2023 to the date of preliminary approval of the Settlement, or the Alternate End Date (as defined in Paragraph 8 of the Agreement), whichever is sooner ("Aggrieved Employees"). (Settlement Agreement ¶¶ 1.4, 1.5, 1.12, 1.31)

Subsequent to the filing of Plaintiff's Complaint and prior to engaging in mediation, the Parties exchanged information and documentation, including: statistical data, which included wage statements, clock-in and clock-out times, times taken for meal breaks, wages earned during the relevant pay periods, as well as written policies and procedures on meal breaks, rest breaks, overtime compensation, and expense reimbursement, the number of Workweeks in the Class Period, the number of Pay Periods in the PAGA Period, the total number of Class Members and Aggrieved Employees, and the average rate of pay for Class Members in each year in question. (Otkupman Decl., ¶ 14, 15) The statistical data provided by Defendant was used to calculate a damage model and liability analysis. (Otkupman Decl., ¶ 15) Thereafter, the parties participated in a mediation session with mediator Todd Smith, which included lengthy and fully informed negotiations, which led to the Settlement. (Otkupman Decl., ¶¶ 16, 17)

B. <u>Parties</u>

Based on a review of its records November 20, 2025 (the date of mediation), Defendant estimates there are approximately 560 Class Members who collectively worked a total of approximately 56,000 workweeks. (Settlement Agreement, ¶ 4.1) Named Plaintiff was employed during the relevant time period. (Otkupman Decl., ¶ 12) Based on extensive documentation and data provided to Plaintiff's counsel, and through Plaintiff's investigation, Plaintiff believes that the Class Members were subject to similar policies and practices that were allegedly violative of California wage and hour laws, including Defendant's failure to provide meal and rest breaks or compensation in lieu thereof, failure to pay all wages, knowing and intentional failure to comply with itemized employee wage statement provisions, failure to timely pay all wages due at termination, failure to

timely pay employees during employment, failure to reimburse for business expenses, failure to pay for all hours worked, including overtime hours worked, and unfair business practices. (Otkupman Decl., ¶¶ 29, 30) Defendant, on the other hand, contends that the policies and practices governing the Class Members were compliant, and that any evidence of alleged wrongdoing identified by Plaintiff are purely individualized and isolated to certain employees, and all such allegations are adamantly disputed by Defendant. (Otkupman Decl., ¶ 21)

III. SUMMARY OF THE PROPOSED SETTLEMENT TERMS

A. Class Certification

The parties have agreed to certification of the following class, for settlement purposes only: all persons employed by Defendant in California as non-exempt employees at any time during the period from July 25, 2019 to the date of preliminary approval of the Settlement, or the Alternate End Date (as defined in Paragraph 8 of the Agreement), whichever is sooner. (Settlement Agreement ¶¶ 1.5, 1.12)

B. Settlement Relief

Pursuant to the terms of the Settlement Agreement, Defendant shall pay an aggregate sum of $500,000.00 (the "Gross Settlement Amount") to be allocated as follows (Settlement Agreement ¶ 3.1):

1. **Reasonable Expenses of the Settlement Administrator**: From the Gross Settlement Amount, the Settlement Administrator, ILYM, will be paid reasonable expenses of administering the settlement in an amount up to $7,850.00. (Settlement Agreement ¶ 3.2.3) The Parties have received a bid from ILYM for administration of this settlement for this amount, which is attached as **Exhibit "F"** to the Declaration of Roman Otkupman being filed herewith. (Otkupman Decl., ¶ 40, Exhibit F)

2. **Reasonable Service Payment to Named Plaintiff**: Class Counsel requests, and Defendant does not oppose, an award of up to $10,000.00 to Named Plaintiff as a service payment for her services as Class Representative. The Class Representative Service Payment will include the issuance of an IRS form 1099 in connection with this payment. (Settlement Agreement, ¶ 3.2.1)

3. **Reasonable Attorney's Fees and Litigation Expenses**: Class Counsel requests, and Defendant does not oppose, an award of attorneys' fees in the amount of $166,650.00 for all work previously performed with regards to the present case and all remaining work to be performed, and

litigation costs in an amount not to exceed $25,000.00. (Settlement Agreement ¶ 3.2.2)

4. **Private Attorney General Act ("PAGA") Penalties**: The parties have agreed to a PAGA Payment in the amount of $40,000.00 in consideration for a full and complete release of any claim of penalties that may be owed pursuant to PAGA for the alleged violations of the Labor Code that were or could have been asserted in the Complaint. 65% of this amount ($26,000.00) will be paid to California Labor & Workforce Development Agency ("LWDA") in satisfaction of any claim for penalties that may be owed to that agency under PAGA and 35% of this amount ($14,000.00) will be included in the amount to be distributed to all Aggrieved Employees. (Settlement Agreement ¶ 3.2.5)

5. **Allocations to the Class**: Each Class Member shall be entitled to receive a *pro rata* portion of the Net Settlement Amount (his/her "Individual Class Payment") calculated by dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and multiplying the result by each Participating Class Member's Workweeks. (Settlement Agreement, ¶ 3.2.4) The Settlement Administrator shall calculate the number of Workweeks worked by each Class Member, the amount to be paid per Workweek, and the Individual Class Payment of each Class Member. (Settlement Agreement ¶¶ 7.1, 7.8) Payments to Settlement Class Members will be allocated as follows: 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. 80% of each Participating class member's Individual Class Payment will be allocated to settlement of claims for interest and penalties. (Settlement Agreement ¶ 3.2.4.1) The payment for claims for interest and penalties will be issued through a Form 1099 and will not be subject to tax withholdings or deductions. (Id.)

C. Release of Claims

Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Aggrieved Employees will release claims against all Released Parties as follows:

Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs,

administrators, successors, and assigns, release the Released Parties from the Released Class Claims. for Plaintiff's Release by Plaintiff, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period. (Settlement Agreement, ¶ 5.2) The Released Class Claims are defined as "any and all claims, damages, or causes of action alleged in, or arising out of, the allegations in the Complaint (as defined below) in the Action that arose during the Class Period and which were alleged, or could have been alleged, by Plaintiff based on any of the factual allegations contained in the Complaint in the Action, including, but not limited to, claims under state, federal (i.e., Fair Labor Standards Act ("FLSA")) or local law including, but not limited to claims for unpaid minimum and overtime wages (including, inter alia, in connection with off-the-clock work and improper rounding of time), claims related to non-compliant meal and rest breaks or periods and nonpayment of premium pay for such, failure to comply with itemized employee wage statement provisions, failure to pay wages due at separation and associated waiting time penalties, failure to timely pay wages during employment, failure to maintain compliant time and payroll records, the failure to reimburse for business expenses, and unfair or unlawful business practices pursuant to California Business and Professions Code § 17200, et seq. based on the aforementioned. The Released Class Claims specifically include, but are not limited to, all claims arising under California Labor Code sections 201, 202, 203, 204, 210, 218.5, 226, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800 and 2802, California Industrial Welfare Commission Wage Order 5-2001, California Business and Profession Code sections 17200, et seq., California Code of Civil Procedure section 1021.5, and California common law of contract, interest and claims for attorney's fees relating in any way to those claims alleged and mentioned in the Operative Complaint in the Action." (Settlement Agreement, ¶ 1.39)

Release by Aggrieved Employees: All Aggrieved Employees (whether they are Participating Class Members or Non-Participating Class Members) are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from the Released PAGA Claims. (Settlement Agreement, ¶ 5.2) The Released PAGA Claims are defined as "any and all claims for civil penalties

under PAGA based on the allegations in the PAGA Notice that arose during the PAGA Period, including violations of California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802, 2698, et seq., and IWC Wage Order 5-2001 as well as all facts, theories, or claims for civil penalties that would be considered administratively exhausted under applicable law by the PAGA Notice submitted in the Action." (Settlement Agreement, ¶ 1.40)

Released Parties: The Released Parties are defined as "Florence Crittenton Services of Orange County, Inc., Florence Crittenton Community Support, and each of its former and present directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, assigns, and affiliates." (Settlement Agreement, ¶ 1.41)

D. Administration of Settlement

The parties have agreed that ILYM will manage administration of the settlement and payment, including the preparation and dissemination of the Class Notice to Class Members and Aggrieved Employees, requests for exclusion, and the determination and distribution of each Participating Class Members' and Aggrieved Employees' settlement payment. (Settlement Agreement, ¶¶ 7.1, 7.8)

IV. RELEVANT DATES AND DEADLINES

1. **Not later than 21 calendar days** after the Court grants Preliminary Approval of the Settlement, Defendant shall provide the Settlement Administrator with the Class Data. (Settlement Agreement, ¶ 4.2)

2. **Not later than 14 calendar days** after receiving the Class Data, the Settlement Administrator shall mail the Class Notice to all identified Class Members whose address information is known. (Settlement Agreement, ¶ 7.4.2)

3. **Not later than three (3) business days** after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. (Settlement Agreement, ¶ 7.4.3)

4. Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request

for Exclusion **not later than 60 calendar days** after the Administrator initially mails the Class Notice (plus an additional **14 calendar days** for Class Members whose Class Notice is re-mailed). The written Request for Exclusion must reasonably communicate the Class Member's election to be excluded from the Settlement and must include 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 Agreement ¶ 7.5.1) No Aggrieved Employee can seek exclusion from the PAGA portion of the Settlement.

5. Any Participating Class Member may send a written objection 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. Any Participating Class Member who elects to send a written objection to the Administrator, must do so **no later than 60 calendar days** after the Administrator's mailing of the Class Notice (plus an additional **14 calendar days** for Class Members whose Class Notice was re-mailed). (Settlement Agreement ¶ 7.7.2)

6. **Not later than 14 calendar days** before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement. The declaration shall be filed with the Court by Class Counsel together with the Motion for Final Approval. (Settlement Agreement ¶ 7.8.5)

7. **No later than 30 calendar days** after the Effective Date, Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Settlement Administrator. (Settlement Agreement ¶ 4.3)

8. **Within 14 calendar days** after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, 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. (Settlement Agreement ¶ 4.4)

9. Class Members must cash their Individual Payment checks **within 180 calendar days** after they are mailed. Any settlement checks that are not cashed within 180 calendar days after

distribution by the Settlement Administrator shall be void and cancelled. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to California Controller's Unclaimed Property Fund in the 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 Agreement ¶¶ 4.4.1, 4.4.3)

V. THE COURT SHOULD GRANT PRELIMINARY APPROVAL OF THE SETTLEMENT AS IT IS FAIR, REASONABLE AND ADEQUATE

A class action may not be dismissed, compromised or settled without approval of the Court. See Cal. Civ. Code § 1781(f); Cal. Rules of Court 3.769. The decision to approve or reject a proposed settlement is committed to the sound discretion of the court. *Wershba v. Apple Computer, Inc.*, 91 Cal. App.4th 224, 234-325 (2001). The law favors the settlement of lawsuits, particularly in class actions and other complex cases where substantial resources can be served by avoiding time, expense and rigors of protracted litigation. *Neary v. Regents of Univ. of California*, 3 Cal. 4th 273, 277-81 (1992); *Lealao v. Beneficial California, Inc.* 82 Cal. App. 4th 19, 53, (2000).

The purpose of preliminary evaluation of a proposed class action settlement is to determine only whether the settlement is within the range of possible approval, and thus whether notice to the class of the terms and conditions and the scheduling of a formal fairness hearing is warranted. *Wershba*, 91 Cal.App.4th at 234-235, 251. In determining whether a class settlement is fair, adequate, and reasonable the trial court should consider relevant factors, such as "the strength of plaintiffs' case, the risk, expenses, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in the settlement, the extent of discovery contemplated and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." *Officers of Justice v. Civil Service Com'n, Etc.*, supra 688 F.2d at p. 624. The list of factors is not exclusive and the court is free to engage in balancing and weighing of factors depending on the circumstances of case. *Wershba.* The burden is on the proponent of the settlement to show that it is fair and reasonable. However, "a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and

the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Dunk v. Ford Motor Co., (1996)* 48 Cal.App.4th at p. 1802, 56 Cal.Rptr.2d 483.

Here, the parties engaged in extensive discussions and comprehensive discovery in which Defendant provided Plaintiff with relevant information, including data pertaining to the Class. (Otkupman Decl., ¶¶ 14, 15) The parties further participated in an all-day mediation session with mediator Todd Smith, who is experienced in wage and hour litigation. (Otkupman Decl., ¶ 17)

A. <u>The Amount Offered in Settlement is Fair and Reasonable</u>

The total settlement amount is an all-inclusive amount of $500,000.00, which includes payment to Participating Class Members, the Class Representative Service Payment, the costs of administration of the settlement, attorneys' fees and costs, and payment for PAGA Penalties. As discussed more fully below, these amounts are entirely fair and reasonable under all of the relevant circumstances. The claims asserted in the complaint are typically subject to class certification. *Sav – On Drug Stores, Inc. v. Superior Court, 34 Cal. 4th 319, 340 (2004)* (explaining that California "has a public policy which encourages the use of class action device, "particularly in wage and hour cases").

B. <u>A Review of the Facts and Legal Contentions</u>

Defendant contends that its employment policies and practices did not violate applicable wage and hour laws. (Otkupman Decl., ¶ 21) It further contends that the evidence mustered by Plaintiff does not evince any common policy or practice that is violative of California wage and hour laws; in fact, according to Defendant, the evidence, merely demonstrates that any violations arose from individualized and isolated events that would not be susceptible to class-wide determination, and Defendant adamantly denies any and all alleged violations. (Id.) Defendant further contends that even if class certification was granted, there is no guarantee of a good outcome for Plaintiff at trial. (Id.) Specifically, Defendant alleges that it complied with wage and hour and Labor Code laws. (Id.) Defendant alleges its employees were entitled to and actually provided meal and rest breaks, all wages owed, timely payment of wages due at termination, timely payment of wages during employment, reimbursement for business expenses, payment for all hours worked, including overtime hours worked, and Labor Code compliant wage statements. (Id.)

Defendant claims that none of Plaintiff's claims are suitable for class certification because

individual issues predominate over common issues on these claims. (Id.) Individualized inquiries preclude class certification because a class action cannot be maintained where the existence of damage, the cause of damage and the extent of damage have to be determined on a case-by-case basis, even if there are some common questions. See *Brinker Restaurant Corp. v. Superior Ct., 54 Cal.4th 1004, 1021 (2012)*; (whether common issues predominate turns on whether the theory of recovery advanced by proponents of certification is, as an analytical matter, likely to prove amenable to class treatment). Here, the individualized inquiry could be focused on each individual who was not paid their requisite wages. (Id.)

Defendant is represented by competent and experienced counsel, and would undoubtedly have raised all of the above arguments, and more, in continued litigation. (Otkupman Decl., ¶ 22) Despite Plaintiff's confidence in her ability to prove all of her claims on a class wide basis, any one of the above defenses, if decided in favor of Defendant could reduce or even eliminate any potential damage award. (Id.) These defenses, if successful, would severely, if not completely, reduce the damages recoverable by Class Members. (Id.)

By virtue of this settlement, each Class Member shall receive a guaranteed settlement depending on the total number of Workweeks worked by the Class Members during the Class Period. While the amount is below the maximum penalty allowed by Labor Workforce and Development Agency, the law is clear in that the Commissioner imposes the penalty based on the willfulness of Defendant's conduct. Defendant strongly denies that there was any willfulness on its part. Furthermore, Defendant adamantly denies the existence of any liability on its part.

C. <u>Attorney's Estimate of Total Damages Recoverable:</u>

In evaluating the allegations in Plaintiff's Complaint, Plaintiff determined that the estimated maximum realistic potential recovery for a total victory in this case would be **$837,999.27**. The Parties settled for **$500,000.00**, which equates to approximately **60%** of the maximum realistic potential recovery. To assist the parties in coming to the settlement, the parties relied upon the following exposure calculations:

Overtime Violations: Plaintiff maintained that Plaintiff and Defendant's California employees were not properly compensated for all overtime hours worked. Based on Plaintiff's investigation, which included discussing the merits and reviewing the informal data provided by

Defendant, Plaintiff concluded that approximately 30 unpaid overtime minutes were worked without adequate compensation per Workweek. Defendant denies this allegation. There are a total of approximately 56,000 Workweeks in the Class and the average overtime rate is $41.51. If proven, the estimated exposure for this claim was calculated to be **$1,162,280.00**. Plaintiff estimated a 5% probability of prevailing on this claim based on the sample data provided by Defendant and based on the fact that Defendant had compliant policies and practices with respect to working overtime. As such, Plaintiff estimated the realistic exposure of this claim to be **$58,114.00.**

Rest Break Violations: Plaintiff's investigation from reviewing Defendant's policies and addressing the practices, determined that rest periods were seldom missed. Defendant has previously settled a lawsuit, and subsequently tightened up its practices with respect to rest breaks. Counsel's investigation revealed that approximately once per week, Plaintiff's and other Class Members' rest breaks were interrupted. Defendant denies this allegation. Based on Plaintiff's allegations and the investigation, it was estimated that there was 1 missed rest break per Workweek with no premium pay during the Class Period. Based on this estimate, Plaintiff alleges she and other Class Members missed a total of 56,000 rest periods at an average hourly rate of $27.67 for a total of **$1,549,520.00** in rest period exposure. Plaintiff estimated a 7% probability of prevailing on this claim based on Defendant's legally compliant policy. The law further does not require that Defendant keep the necessary records of the rest breaks taken and considering that Defendant had compliant policies, proving this claim on a class basis would be a challenge. Yet another challenge with this claim is that the failure to take the rest breaks may require an individualized inquiry, something that may have contributed to the class not being certified. This settlement avoided that risk. As such, Plaintiff estimated the realistic exposure for this claim to be approximately **$108,466.40.**

Meal Break Violations: According to Plaintiff, approximately once per week, her and other Class Members' meal breaks were interrupted. Based on the sample data provided, which included punch records, and according to Plaintiff, it was determined that Defendant's employees were provided the opportunity to take uninterrupted meal breaks, and the majority of deviations were voluntary on the part of the employees. Therefore, it was estimated that there was 1 missed meal break per Workweek with no premium pay during the Class Period. Based on this determination, Plaintiff alleges she and other Class Members missed a total of 56,000 meal breaks at an average

hourly rate of $27.67 for a total of **$1,549,520.00** in meal period exposure. Defendant denies this allegation. Plaintiff estimated a 5% probability of prevailing on this claim as several risk factors exist as follows: Defendant had a legally compliant meal period policy in place; Plaintiff and the rest of the Class would have to prove that their reason for failure to take a compliant meal break was not unique and that a similar practice applied to the rest of the Class. This can be especially difficult considering that Defendant had a compliant meal period policy. As such, the realistic exposure was approximately **$77,476.00.**

Reimbursement for Business Expenses Claim: According to Plaintiff, she and other employees of Defendant were not reimbursed for cell phone usage. Plaintiff estimated $5.00 per Workweek in reimbursements owed to Plaintiff and others. Plaintiff estimated a 20% probability of prevailing on this issue as Defendant had compliant policies and the use of the cell phone was not necessarily required for the job performance of certain Class Members. Defendant denies this allegation. The realistic exposure was estimated to be approximately **$56,000.00**

Derivative Wage Statement Claim: Based on Plaintiff's investigation and the extrapolation of data, it was calculated that there would have been a 5% violation rate if this case was taken to trial. Defendant issued approximately 28,000 wage statements during the relevant period. Plaintiff used a penalty of $50 for the initial violation and $100 for all subsequent violations to determine the potential penalty for wage statement violations if this case was taken to trial. As such the damages are as follows: 50 x 1 + 100 x 27,999 x 0.10 = **$279,995.00**. Defendant denies this allegation.

Derivative Waiting Time Penalty Claim: Based on Plaintiff's investigation and the extrapolation of data, it was calculated that there would have been a 7% violation rate if this case was taken to trial. Plaintiff used the number of former employees in the class (198 employees) and calculated their average rate of pay ($27.67) times 8 hours a day times 30 days to determine that potential penalty for waiting time penalties at a 7% violation rate was **$92,041.49**. Defendant denies this allegation.

PAGA Claim: Maximum exposure was based upon an analysis of a 100% violation rate. While this would be unlikely, even for the purposes of the maximum exposure, Plaintiff calculated the PAGA liability at 100%. Plaintiff used the data provided by Defendant and determined that there were 15,012 PAGA Pay Periods. Since the Labor Code allows for a maximum of $100 per pay

period and there were 15,012 Pay Periods in the PAGA Period, the maximum exposure was calculated to be **$1,501,200.00**. Defendant denies this allegation. PAGA claims are subject to a one-year statute of limitations, and penalties can be recovered for a period of one year prior to the date notice is sent to the LWDA. *Taylor v. Interstate Grp., LLC*, No. 15-CV-05462-YGR, 2016 WL 335226, at *1 (N.D. Cal. Jan. 28, 2016). Unless a Labor Code provision provides for a specific civil penalty, PAGA imposes a default civil penalty of "one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation." Cal. Lab. Code § 2699(f)(2). The court in *Bernstein v. Virgin Am., Inc.* (9th Cir. 2021) 3 F.4th 1127, 1144, held that the defendant was not liable for heightened penalties for any Labor Code violation that occurred before the defendant was notified by the Labor Commissioner or any court that it had violated the Labor Code provisions at issue. The California Court of Appeal in *Gunther v. Alaska Airlines, Inc.* (2021) 72 Cal.App.5th 334, 356 confirmed that "the increased $200 civil penalty for 'subsequent violation[s]' does not apply unless [plaintiff] presents evidence that the Labor Commission or a court notified [defendant] that it was in violation of the Labor Code"). Here, PAGA penalties were discounted by using only initial violation rates, based on Defendant's argument that heightened penalties would not apply for violations that occurred before Defendant was notified by the Labor Commissioner or any court that it had violated the Labor Code provisions at issue. Counsel believed that since the violations were not willful and Defendant had compliant policies, that the Court would award a smaller portion of the potential PAGA Claim. Plaintiff believed that it would be difficult to obtain penalties for wage statement violations and waiting time penalties in addition to the PAGA penalties. Plaintiff believed that the realistic exposure was 7% probability of success. As such, Plaintiff estimated its realistic value if prevailed at trial would be **$105,084.00**. Defendant denies this allegation.

Interest: Interest will accrue at a rate of seven percent (7%). As such, the interest was calculated in the amount of **$54,822.38**.

(Otkupman Decl., ¶ 38)

D. <u>The Payment to the Class Representative for her Services to the Class is Reasonable and Routinely Awarded by Courts</u>.

Plaintiff seeks an enhancement award up to $10,000.00. Plaintiff's lawyers believe that the

enhancement award is reasonable, proper and supported by the circumstances of this case and applicable law. Defendant does not oppose this request. (Settlement Agreement ¶ 3.2.1)

Courts have long acknowledged that active litigants are entitled to be compensated for bearing the risk and time to represent others. Where class representatives are provided with special compensation as part of class settlement, the Court should ensure that it is fair and reasonable. However, "it is the complete package, taken as a whole, rather than the individual component parts, that must be examined." *Officers of Justice v. Civil Service Commission of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982). Incentive awards are not uncommon and can serve an important function in promoting class action settlements." *Sheppard v. Consol. Edison Co. of N.Y. Inc.* U.S.D.C. Case No, 94-CV-0403 (JG). The service award sought here is justified by the Class Representative's level of involvement in the lawsuit. The Class Representative assisted in the investigation, provided counsel with relevant information and also provided counsel with wage statements pertaining to the relevant period Defendant allegedly did not comply with the pertinent labor laws. (Otkupman Decl., ¶ 31) Class Representative further helped investigate the documents provided by Defendant to Plaintiff in the course of Plaintiff's investigation. (Id.) Further, the Class Representative consulted extensively with Plaintiff's counsel in order to assist in various aspects of investigation and litigation. (Id.) In short, the Class Representative was extremely active and motivated to assist the attorneys in resolving this matter. Class Representative stuck her neck out for the benefit of her fellow employees. The participation of the Class Representative was crucial to the mediation resulting in a settlement as it did, which is the reason the enhancement amount up to $10,000.00 is reasonable in light of all of the circumstances. (Id.) Named Plaintiff has also signed a general release of all claims pursuant to California Civil Code section 1542 thereby giving up her rights to pursue any other remedies against Defendant. (Settlement Agreement, ¶ 5.1)

E. <u>The Attorneys' Fee Award Is Reasonable and Routinely Awarded</u>

California Rule of Court 3.769(b) states: "Any agreement, express or implied, that has been entered into with respect to the payment of attorney's fees or the submission of an application for the approval of attorney's fees must be set forth in full in any application for the approval of the dismissal or settlement of an action that has been certified as a class action." In the present case, Class Counsel requests up to 33.33% of the Gross Settlement Amount to include all work previously rendered by

Plaintiff's counsel and any work that will be rendered throughout the conclusion of this case. (Settlement Agreement ¶ 3.2.2) Class Counsel achieved a result whereby each Participating Class Member will receive a payment depending on the amount of Workweeks that person worked during the relevant time. The Class Members will not be obliged to submit a claim form or worry about sending it in. Moreover, Class Counsel's work is not yet complete, as they will spend a significant amount of time overseeing and participating in the settlement administration process and final approval proceedings. (Id.)

VI. THE PROPOSED SETTLEMENT CLASS SHOULD BE CONDITIONALLY CERTIFIED FOR SETTLEMENT PURPOSES

California courts are authorized to adjudicate class wide claims based on a common course of conduct. California law and policy favors the fullest and most flexible use of the class action procedure, so any doubt as to the appropriateness of certification should be resolved in favor of certification. *See Richmond v. Dart Industries, Inc.,* 29 Cal. 3d 462, 469, 473-474 (1981). Class certification is appropriate when (1) the class is ascertainable and (2) there is a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented." *Dunk*, supra, 48 Cal. App. 4th at 1806. The "community of interest" element embodies three factors: (1) predominant common 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." Finally, the court must determine that a class action proceeding is the superior means for the fair and efficient adjudication of the litigation. *Id*. For settlement purposes, each of these prerequisites must be met.

Plaintiff meets each of the requirements for class certification. First, the class is readily ascertainable from the payroll records of Defendant. *See Rose v. City of Hayward*, 126 Cal. App.3d 926, 932 (1981) (finding that "class members are ascertainable where they may be readily identified without unreasonable expense or time by reference to official records"). The class is also sufficiently numerous, as there are approximately 560 Class Members, making joinder impracticable. (Otkupman Decl., ¶ 28) See *Gay v. Waiters' & Dairy Lunchmen's Union* 489 F. Supp. 282 (N.D. Cal. 1980), aff'd 694 F.2d 531 (9th Cir. 1982; See *Hebbard v. Colgrove* 28 Cal. App. 3d 1017, 1030 (1972) **[**no set minimum to meet the numerosity prerequisite, but class as few as 28 members is acceptable].

Typicality is also met as Plaintiff's claims are the same as that of the Class (*See Classen v. Weller*, 145 Cal. App. 3d 27, 46 (1983) [the purported representative's claim need not be identical to the claims of other members of the class; it is sufficient that the representative is similarly situated, so that he or she will have the motive to litigate on behalf of all class members]).

The predominance factor is satisfied here as well. Plaintiff has alleged that each of the class members did not receive: meal and rest periods or compensation in lieu thereof, all wages owed, Labor Code compliant wage statements, timely payment of all wages due at termination, timely payment of wages during employment, and reimbursement for business expenses. *See Wershba v. Apple Computer*, supra, 91 Cal.App.4th at 238 (where all class members have suffered a common alleged wrong", class action is appropriate); *Employment Development Department v. Superior Court* 30 Cal. 3d 256, 265 (1981) [class action appropriate where a large number of applicants have been harmed on the basis of an invalid government administrative practice]. *Armstrong v. Davis* 275 F. Rd 849, 868 (9th Cir.2001)(commonality is generally satisfied where (as here) "the lawsuit challenges a system-wide practice or policy that affects all of the putative class members:]; *Laduke v. Nelson* 762 F.2d 1318, 1332 (9th Cir. 1985); *Kincaid v. City of Fresno* 244 F.R.D. 597, 602 (E.D. Cal. 2007); *Gasperoni v. Metabolife, International* 2000 WL 33365948 (E.D. Mich. 2000) [where all plaintiffs allege a common method of misrepresentation and the same legal claim, class action is appropriate]. The adequacy requirement is met here too since Plaintiff's counsel has been involved in numerous wage and hour actions throughout his career. (Otkupman Decl., ¶¶ 5,6) Furthermore, there is no indication of any actual (or potential) conflicts between Plaintiff and the Class. (Otkupman Decl., ¶ 31) It is sufficient to show that the representative stands in the same shoes as every other member of the class, and seeks the same relief. No more is required. *Bowles v. Superior Court* 44 Cal. 2d 574, 587 (1955); *McGhee v. Bank of America* 60 Cal. App. 3d 442, 450 (1976). Plaintiff is, therefore, an adequate representative.

Class resolution is superior to other available methods for the fair and efficient adjudication of the controversy. (See *Hanlon*, 150 F.3d at 1023; see *Dunk*, 48 Cal. App. 4th at 1807 n. 19). The superiority requirement involves a comparative evaluation of alternative mechanics of dispute resolution." *Hanlon*, 150 F.3d at 1023. Here, as in *Hanlon*, the alternative methods of resolution are individual claims for a very small amount of damages. *Id*. These claims "would prove uneconomic

for potential plaintiffs "because litigation costs would dwarf potential recovery." *Id*. For this reason, in this case, as in *Hanlon*, a class action is the preferred method of resolution.

VII. THE PROPOSED CLASS NOTICE IS APPROPRIATE

A. The Class Notice Satisfies Due Process

California statutory and case law vests the Court with broad discretion in fashioning an appropriate notice program. See C.C. Section 1781; *Cartt v. Superior Court*, 50 Cal. App. 3d 960, 973-74 (1975). The notice plan here entails mailing the notice to all known and reasonably ascertainable Class Members based on records maintained by Defendant. Defendant has agreed to provide the last known address for all Class Members to the Settlement Administrator. The Settlement Administrator shall have the responsibility of mailing the notice to all ascertainable parties. For notices returned undeliverable, it is agreed that the Settlement Administrator shall send an additional notice to any new address identified. Such notice more than satisfies due process. *Id*. at 962. Since the addresses of each of the Class Members are available from Defendant's records, the parties believe it would not be cost effective to employ other methods of notice, such as notice by publication.

B. The Proposed Class Notice is Accurate and Informative

A court order preliminarily approving a class settlement must contain the notice to be given to the class. Cal. R. Ct. 3.769 (e). According to California Rule of Court 3.766(d), the notice must include the following: (1) a brief explanation of the case, including the basic contentions or denials of the parties; (2) a statement that the court will exclude the member from the class if the member so requests by a specified date; (3) a procedure for the member to follow in requesting exclusion from the class; (4) a statement that the judgment, whether favorable or not, will bind all members who do not request exclusion; and (5) a statement that any member who does not request exclusion may, if the member so desires, enter an appearance through counsel.

The court has broad discretion in deciding whether to approve the proposed class notice. *Wershba*, 91 Cal.App.4th at 252. According to the California Rules of Court 3.766(d), the notice must include the following: The proposed Class Notice provides information on the meaning and nature of the proposed settlement Class; the terms and provision of the settlement; the relief the settlement will provide settlement Class Members; how Class Members will receive their portion of the settlement proceeds; the application by Plaintiff's counsel for reimbursement of costs and attorney's fees; the

date, time and place of the final settlement approval hearing; and the procedure and deadlines for opting out of the settlement or for submitting comments and objections. The Class Notice further fulfills the requirement of neutrality in class notices. It summarizes the proceedings to date, and the terms and conditions of the settlement, in an informative and coherent manner. The Class Notice clearly states that the settlement does not constitute an admission of liability by Defendant and recognizes that the Court has not ruled on the merits of the action. It also states that the final settlement approval decision has yet to be made. Accordingly, the Class Notice complies with the standards of fairness, completeness and neutrality required of a settlement class notice designated under authority of the Court.

VIII. A FINAL APPROVAL HEARING SHOULD BE SCHEDULED

The last step in the Settlement approval process is the formal hearing, at which the court may hear all evidence and arguments necessary to evaluate the proposed Settlement. At that hearing, proponents of the Settlement may explain and describe its terms and conditions and offer arguments in support of the Settlement approval; Participating Class Members, or their counsel, may be heard in support of or in opposition to the Settlement Agreement.

IX. CONCLUSION

For reasons set forth herein, Plaintiff respectfully requests that the Court grant her motion for preliminary approval of the proposed Class Action and PAGA Settlement and set a final approval hearing.

DATED: April 27, 2026

OTKUPMAN LAW FIRM, A LAW CORPORATION

By: 

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