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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

LARONDA RASMUSSEN, et al.,

Plaintiffs,

vs.

THE WALT DISNEY COMPANY, et al.,

Defendants.

Civil Case No.: 19STCV10974

CLASS ACTION

ASSIGNED FOR ALL PURPOSES TO:
Hon. Elihu M. Berle

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

Date: January 10, 2025
Time: 10:00 a.m.
Location: Dept. 6

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I. INTRODUCTION

Plaintiffs LaRonda Rasmussen, Karen Moore, Virginia Eady-Marshall, Enny Joo, Rebecca Train, Nancy Dolan, Anabel Pareja Sinn, Dawn Johnson, and Chelsea Buckley, f.k.a. Hanke (collectively "Plaintiffs") seek preliminary approval of a class action and representative action settlement covering allegations of class pay discrimination and derivative claims, including under the Private Attorneys General Act ("PAGA") against Defendants the Walt Disney Company, *et al*. (collectively "Defendants").[1]

The proposed Settlement resolves the claims in the case by: (1) creating a non-reversionary, checks-mailed monetary fund of $43.25 million; and (2) providing non-monetary relief, including the retention of an Industrial/Organizational psychologist to provide training on best practices for organizing jobs within Defendants' job architecture as well as an outside labor economist to perform pay equity analysis of the class positions for the next three years.

This Court has already certified Plaintiffs' Equal Pay Act ("EPA") class claims. Mirroring the certified EPA class, Plaintiffs propose a Fair Employment & Housing Act ("FEHA") settlement class defined as "Women who have been or will be employed by a Disney-Related Company in California, between April 1, 2015 and December 28, 2024, below the level of Vice President, and in a salaried, full-time, non-union position with a Job Level of B1-B4, T1-T4, TL, P1-P6, P2L-P5L, M1-M3, A1-5, E0, E1, or E1X," with the same exclusions as the EPA class.

Plaintiffs' operative Complaint alleges that Defendants discriminated against women employed in class positions by paying them less than comparable men in violation of the EPA, California Labor Code section 1197.5 *et seq*., and FEHA, California Government Code section 12900, *et seq*. Plaintiffs also bring a claim under the Unfair Competition Law, California Business and Professions Code section 17200 *et seq.* ("UCL"), as well as representative claims under the Private Attorneys General Act, California Labor Code section 2698 *et seq.* ("PAGA"), and California Labor Code sections 201-203 and 210. Defendants contend that their employment policies and practices are lawful and appropriate.

[1] The proposed settlement is attached to the Declaration of James Kan in Supp. of Pl. Mot. for Preliminary Approval of Class and Representative Action Settlement ("Kan Decl."), submitted herewith, at Ex. 1 ("Settlement Agreement" or "Settlement").

After more than five years of hard-fought litigation, including certification of the EPA class following four years of intense class discovery, distribution of notice of class certification, and conducting nearly eight months of merits discovery, the parties participated in an all-day and in-person mediation session with respected mediator Hunter Hughes. Following the mediation, the parties accepted a mediator's proposal, and negotiated for many months over the details of the Settlement, including non-monetary relief, which is now presented to the Court for preliminary approval. Under the Settlement, Defendants agree to pay $43.25 million dollars into a non-reversionary settlement fund and to enact meaningful non-monetary relief that benefits current and future employees.

In this Motion, Plaintiffs request the Court to (1) grant preliminary approval of the proposed Settlement, including the Settlement amount and the plan for allocation and distribution of Settlement funds, (2) approve the proposed notice plan and the dates by which Settlement Class Members must opt out or object to the Settlement, (3) appoint CPT Group as Settlement Administrator, (4) conditionally certify the proposed FEHA Settlement Class, (5) conditionally appoint Plaintiffs as Class Representatives and Class Counsel, Andrus Anderson, Cohen Milstein Sellers & Toll, and Goldstein, Borgen, Dardarian & Ho, as Class Counsel for the Settlement Class, and (6) schedule a hearing and filing date for Plaintiffs' Motion for Final Approval and Motion for Attorneys' Fees and Costs, and Service Awards. Defendants do not oppose this motion.

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Defendants are The Walt Disney Company, Walt Disney Pictures, Hollywood Records, Inc., Walt Disney Direct-to-Consumer & International, Disney Content Sales, LLC, Buena Vista Home Entertainment, Inc., Walt Disney Parks and Resorts U.S., Inc., Walt Disney Imagineering Research & Development, Inc., American Broadcasting Companies, Inc., and TWDC Enterprises 18 Corp.

Plaintiffs and the certified and Settlement classes are current and former female employees of Defendants, who worked in California and in certain salaried, full-time, non-union positions below the level of Vice-President since April 1, 2015. Plaintiffs filed the initial Complaint on April 2, 2019 and the operative Corrected Fourth Amended Complaint ("Amended Complaint") on April 15, 2021. The Amended Complaint alleges class claims for: (1) violations of the California EPA, Cal. Lab. Code § 1197.5, *et seq*.; (2) failure to pay all wages due to discharged and quitting employes in violation of

Cal. Lab. Code §§ 201-203, *et seq*.; (3) sex/gender discrimination in violation of the California FEHA, Cal. Gov. Code § 12900, *et seq*.; (4) violation of California Labor Code § 232; (5) violation of California's UCL, Bus. & Prof. Code § 17200, *et seq*.; (6) penalties under the Labor Code Private PAGA, Cal. Lab. Code § 2698, *et seq.*; and (7) waiting time penalties under Cal. Lab. Code § 210, *et seq*. The Amended Complaint also alleges individual promotion denial claims on behalf of Named Plaintiffs.[2]

On December 8, 2023, the Court certified the following EPA class:

> Women who have been or will be employed by a Disney-related-company in California, between April 1, 2015 and three months before trial, below the level of Vice President, and in a salaried, full-time, non-union position with a Job Level of B1-B4, Tl-T4, TL, Pl-P6, P2L-P5L, Ml-M3, Al-5, E0, El, or ElX assigned to a full job family that is not "other." This proposed class excludes (a) individuals working in Hulu, ESPN, Pixar, 21st Century (Fox), FX, National Geographic, Bamtech, and ILM; (b) employees in the HR_Compensation job family; (c) in-house employment counsel; (d) any paralegals and legal assistants involved in assisting with respect to this case; and (e) any judge to whom the case is assigned and immediate family members of such judge.

Statement of Decision Granting in Part and Denying in Part Pls.' Mot. for Class Cert. ("Class Cert. Order") at 2, 14, Jan. 30, 2024. The Court also certified Plaintiffs' derivative claims under the UCL and Labor Code section 203, but declined to certify Plaintiffs' FEHA class claims. *Id*.

Over the past five years, the Parties have engaged in extensive litigation, including completing pre-certification discovery, fully briefing class certification, obtaining an order certifying the EPA class along with derivative claims, distributing class notice of the certification order, and commencing merits discovery and preparing trial expert witness work. Class discovery included four experts and related reports and depositions, depositions of Defendants' Persons Most Qualified (a total of 22 individual witnesses, including one witness who was both a named and PMQ witness) and depositions of the nine Named Plaintiffs. The Parties each served and responded to multiple sets of interrogatories (both form and special). Defendants made 84 document productions, totaling 44,051 pages, and produced voluminous payroll and human resources data. Following class certification, the Parties engaged in additional substantial discovery on the merits on the certified claims. Plaintiffs deposed

[2] The Plaintiffs have negotiated separate agreements to settle their individual promotion denial claims. The Class Settlement Fund does not include the separate Plaintiffs' settlements for their non-class claims. Settlement ¶ 3; Kan Decl. ¶ 20.

four witnesses and served additional document requests and interrogatories. Defendants made 27 additional document productions containing 38,878 pages, and provided updated payroll and human resources data. Declaration of Lori E. Andrus in Supp. of Pl. Mot. for Preliminary Approval of Class and Representative Action Settlement ("Andrus Decl.") ¶¶ 5-9, filed herewith.

The Parties previously attempted to resolve this case by engaging in three mediation sessions on August 18, 2022, September, 27, 2022, and October 4, 2023, but were unable to reach a resolution at those times. Following partial class certification and additional merits discovery, the Parties agreed to engage in a fourth mediation session with experienced mediator Hunter Hughes. In advance of the mediation, the Parties submitted pre-mediation statements, separately consulted with the mediator, and had a joint session with the mediator by zoom. The Parties then held an in-person mediation session with the mediator on July 12, 2024. After that full-day, in-person mediation session facilitated by a skilled class discrimination mediator, the Parties did not yet agree upon the material terms to a settlement and instead, necessitated a mediator's proposal that the Parties eventually accepted. The mediation was followed by continued discussions between the Parties over the following four months, and the Parties were able to reach a formal, written settlement. Andrus Decl. ¶¶ 10-14.

A. The Terms of the Settlement

This Settlement resolves the Settlement Class's claims against Defendants. The basic terms of the Settlement are:

1. Monetary Relief

Defendants have agreed to pay a Total Settlement Amount of $43.25 million which includes all settlement payments to the over 14,000 eligible Class Members, class administration costs, attorneys' fees and costs, service awards, and a PAGA fund. Settlement ¶ 50. Defendants will separately pay for their share of payroll taxes. *Id.* ¶ 98. None of the funds shall revert back to Defendants. *Id.* ¶ 50.

The Net Settlement Fund – *i.e.*, the amount remaining of the Total Settlement Amount after deductions for court-approved attorneys' fees and costs, PAGA payment, settlement administration expenses, and service awards —will be allocated and distributed to each Settlement Class Member who does not opt out of the Settlement Classes based on the Plan of Allocation. *Id.* ¶¶ 35, 88 & Ex. B. Under this Plan of Allocation, Plaintiffs' labor economist will use substantially the same statistical

model he presented at class certification,[3] subject to the application of appropriate discounts, to calculate proportional shares for Participating Class Members with a minimum payment of $200. *Id*., Ex. B.

The PAGA Payment, after deduction of approved attorneys' fees and costs, shall be allocated as follows: 75% of the net PAGA Payment to be paid to the LWDA and 25% of the remainder to be paid to all PAGA Group Members on a per person basis, whether or not they opt out of the Settlement. *Id*. ¶ 92.

Subject to Court approval, the Settlement allocates the following amounts to be deducted from the Gross Settlement Amount: $250,000 for distribution to resolve the PAGA Claims;[4] requested Service Awards of $10,000 for each of the nine Named Plaintiffs as proposed or confirmed Class Representatives, totaling $90,000 (for LaRonda Rasmussen, Karen Moore, Virginia Eady-Marshall, Enny Joo, Rebecca Train, Nancy Dolan, Anabel Pareja Sinn, Dawn Johnson, and Chelsea Buckley f.k.a. Hanke); and Class Counsel will apply for attorneys' fees of up to one-third of the Total Settlement Amount[5] and reimbursement of litigation costs and expenses advanced by Class Counsel not to exceed $1.8 million; and Settlement Administrator costs (estimated at $74,5000). *Id*. ¶¶ 35, 88, 92, 93, 103; Kan Decl. ¶ 31.

Settlement Payments will be mailed to all participating Settlement Class Members (unless they submit a valid request for exclusion). Settlement Class Members will have 180 days from the initial mailing of payments to negotiate their checks. Settlement ¶ 100. Any funds that remain uncashed after the 180 day void date will be transferred the California State Controller's Office and held in the respective Class Members' names in the Unclaimed Property Fund. *Id*. ¶ 102.

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[3] This model calculated a 0.58% EPA Class pay shortfall and a 2.01% FEHA settlement class pay shortfall, which Defendants dispute. Settlement Ex. B.

[4] Class Counsel have provided notice to the LWDA of the Settlement at the same time the Settlement has been provided to the Court, as well as notice of the date, time, and location of the preliminary approval hearing prior to the date set for the preliminary approval hearing. Kan Decl., ¶ 8. Class Counsel also will notify the LWDA of the date, time, and location of the final approval hearing. *Id.*

[5] These fees will be inclusive of attorneys' fees for the PAGA Payment. In other words, the allocation for PAGA claims will be a gross amount of $375,000 or net $250,000 after deducting 1/3 for proposed attorneys' fees. The PAGA Payments will be made from $250,000 net amount. Settlement ¶ 92; Kan Decl. ¶ 8.

2. Non-Monetary Relief

Defendants have agreed to implement several meaningful components of non-monetary relief. First, Defendants have agreed to retain or continue to retain an outside labor economist to conduct privileged pay equity analyses over the next three years to identify whether any potentially statistically significant pay differences exist. If they do, Defendants will take appropriate steps to address the pay differential and report to Class Counsel regarding the completion of annual pay equity analyses and action taken to address any pay differential found. Second, Defendants will work with an Industrial-Organizational psychologist to provide training to Defendants' Compensation personnel involved in organizing jobs within Defendants' job architecture on best practices for benchmarking jobs to external market data and organizing jobs within Defendants' job architecture. And finally, if Defendants begin using performance ratings in annual evaluation processes in either 2025 or 2026 and plan to use ratings as a control in their annual pay equity analyses above, Defendants will conduct a privileged analysis of the ratings to ensure there are no statistically significant gender disparities for the relevant population. *Id*. ¶¶ 79-81.

3. Class Definition and Class Period

The Class Period is April 1, 2015 through December 28, 2024. This Settlement includes the already certified EPA Class and a proposed FEHA Settlement Class. Settlement ¶¶ 48, 27, 30.

The EPA Class is defined as:

> Women who have been or will be employed by a Disney-Related Company in California, between April 1, 2015 and December 28, 2024, below the level of Vice President, and in a salaried, full-time, non-union position with a Job Level of B1-B4, T1-T4, TL, P1-P6, P2L-P5L, M1-M3, A1-5, E0, E1, or E1X assigned to a full job family that is not "other."

Id. ¶ 27. The FEHA Settlement Class is defined same as the EPA class but does not have the requirement of being assigned to a full job family that is not "other." *Id*. ¶ 30. Both Classes exclude: (a) individuals working in Hulu, ESPN, Pixar, 21st Century (Fox), FX, National Geographic, Bamtech, and ILM; (b) employees in the HR Compensation job family; (c) in-house employment counsel; (d) any paralegals and legal assistants involved in assisting with respect to this case; and (e) any judge to whom the case is assigned and immediate family members of such judge. *Id*. ¶¶ 27, 30.

4. Settlement Administration and Administration Costs

Pursuant to the Settlement (*id*. ¶ 47), the Parties propose the appointment of CPT Group as Settlement Administrator and propose allocating up to $74,500 for payment of estimated administration expenses. Kan Decl. ¶¶ 14, 31. Class Counsel sought bids from different administrators and selected what they viewed as the best option for the Class. *Id*. ¶ 31.

The Settlement Administrator will, among other tasks, distribute a Notice Packet to each Class Member, maintain a Settlement website that provides access to the full notice and other important case information, and use skip-tracing and remailing when necessary for delivery; disclose Class Member estimated payout amounts; draw and distribute checks to Settlement Class Members who do not opt-out; administer the Settlement Fund; mail any necessary tax reporting forms to Settlement Class Members, the Parties, and the Settlement Fund; and report to the Court on the notice/opt out process and payment of the Settlement Fund. Settlement ¶¶ 57-68, 82. Within 35 days of the preliminary approval order, Defendants will provide the Settlement Administrator with the contact information of the Settlement Class Members, their names, last known home addresses, social security numbers, last known personal emails (if known). *Id.* ¶ 57. Within 21 days of the preliminary approval order, Defendants will provide Class Counsel class data necessary to calculate Settlement Payments. Individual notice will be mailed (and e-mailed if a valid email address is known) to all Settlement Class Members within ten (10) days after the Settlement Administrator receives the Class list information and estimated Settlement Payments from counsel. *Id.* ¶ 88. The Settlement Administrator shall maintain a settlement website with information about the case and a copy of the Class Notice. *Id*. ¶¶ 58, 62.

5. Class Notice

The proposed Class Notice explains the terms of the Settlement and how to receive a Settlement Payment, object, or opt out. *Id.* ¶ 36, Ex. A. All requests for exclusion must be submitted by mail to the Settlement Administrator no later than 45 days after the Class Administrator's mailing of the Class Notice or 55 days after the initial mailing if a re-mailed Notice was sent more than 30 days after the initial mailing date. *Id.* ¶¶ 61, 66. Class Members will be able to submit objections in writing no later than 45 days after the initial mailing of Class Notice, no later than 55 days after the initial

mailing if a re-mailed Notice was sent more than 30 days after the initial mailing date or orally at the Fairness Hearing. *Id.* ¶¶ 61, 65.

6. Tax Treatment of Settlement Payments

The Parties agree that 40% of each Class Member Award shall be allocated to Form W-2 wages, and 60% to penalties, interest, and other non-wages subject to Form 1099 reporting. *Id.* ¶ 89. Each PAGA Award shall be allocated as 100% penalties subject to Form 1099 reporting. *Id.* ¶ 92. The Settlement Administrator will report or calculate from the Net Settlement Fund each Eligible Class Member's share of the settlement, employee taxes, deductions, contributions and other amounts required to be paid to government agencies and/or tax authorities, which amounts then shall be paid by the Class Administrator from the Settlement Fund. *Id.* ¶ 89. Defendants are responsible for payment of all employer payroll taxes. *Id.* ¶ 98.

7. Scope of Release and Final Judgment

The release contemplated by the proposed Settlement corresponds to the claims that were or could have been raised arising from or based on facts alleged in the Amended Complaint or the PAGA notices dated July 5, 2019, September 18, 2019, and November 21, 2024. *Id.* ¶¶ 75, 76; Kan Decl. ¶ 19 & Ex. 3 (copy of Plaintiffs' November 21, 2024 amended LDWA Notice Letter).

Specifically the Settlement Class Release provides:

> In consideration for their awarded Settlement Shares, as of the date the settlement becomes Effective, all Class Members who do not timely opt out will release all claims asserted or that could have been asserted on behalf of the Classes under the provisions of the Amended Complaint, including without limitation claims under the California EPA, gender-based FEHA pay discrimination claims, waiting time claims, PAGA claims, California Labor Code section 232 claims, California Labor Code section 210 claims, and UCL claims, based on the facts alleged in the Amended Complaint that occurred between April 1, 2015 and the date of Preliminary Approval. Such claims include claims for wages, statutory penalties, civil penalties, attorneys' fees and costs, interest, (the "Class Members' Released Claims").

Settlement ¶ 75. All PAGA Group Members will release the PAGA Claims described herein and receive a portion of the PAGA Payment, regardless of whether they opt out of the Class. *Id.* ¶ 76.

III. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT BECAUSE IT IS FAIR, REASONABLE, AND ADEQUATE

A. The Two-Step Settlement Approval Process

A class action settlement requires "approval of the court after [a] hearing." Cal. Rule of Court 3.769(a). Court approval is a two-step process: (1) the court undertakes a preliminary review of the fairness, reasonableness, and adequacy of the settlement, and (2) the court conducts a detailed review after notice has been distributed to Class Members for their comments or objections. *Id.* at 3.769(c)-(g); *Cellphone Term. Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2009).

After notice of settlement has been distributed, then the court considers the extent of opt-outs, evaluates any objections, and makes a final determination whether to approve the settlement. Cal. Rule of Court 3.769(f), (g); *Cellphone Term. Fee Cases*¸ 180 Cal. App. 4th at 1118. In deciding whether a settlement is reasonable at the final fairness stage courts consider: (1) "the risk, expense, complexity and likely duration of further litigation, including the risk of maintaining class action status through trial;" (2) the strength of the plaintiff's case balanced against the settlement amount; (3) "the extent of discovery completed and the stage of the proceedings;" (4) "the experience and view of counsel" and (5) "the reaction of the class members to the proposed settlement." *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008) (quoting *Dunk v. Ford Motor Co*., 48 Cal. App. 4th 1794, 1801 (1996)).

The trial court has broad discretion in determining whether a settlement is fair. *See In re Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 504-05 (2009). A "presumption of fairness" exists when: (1) a 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.[6] *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 245 (2001) (internal citation omitted) (disapproved of on another ground by *Hernandez v. Restoration Hardware, Inc.*, 4 Cal. 5th 260, 269 (2018)).

[6] The factor regarding percentage of objectors is not pertinent at the preliminary approval stage since notice has not yet been distributed.

B. The Settlement Merits a Preliminary Finding of Reasonableness.

Preliminary approval is appropriate because the Settlement is within the range of reasonableness for each factor that the Court will consider at the final approval hearing.

1. The Settlement Is the Result of Arm's-Length, Informed Negotiation.

This Settlement was negotiated with the assistance of experienced mediator, Hunter Hughes. In determining that a settlement represents an arm's-length transaction, courts give "considerable weight" to the "involvement of a neutral mediator." *Kullar*, 168 Cal. App. 4th at 129; *see also In re Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th at 504. This Settlement was reached after a fourth attempt at mediation with the help of a neutral mediator with extensive experience resolving complex discrimination class actions, who made a mediator's proposal that was accepted by both Parties. Andrus Decl. ¶¶ 10-14.

Prior to mediation, the Parties were fully informed about the facts, merits, and risks associated with Plaintiffs' claims and Defendants' defenses. Extensive class certification discovery had already been completed, which resulted in a detailed order granting in part and denying in part Plaintiffs' motion for class certification. The Parties also had the benefit of significant merits focused discovery. At the time of mediation, the Parties had completed approximately 35 depositions, exchanged 4 expert reports and completed related depositions, made over 100 document productions, and exchanged nearly 100,000 pages of discovery in addition to gigabytes of payroll and human resources data for the class. The Parties were also fully informed about the potential value of the claims and defenses based on the detailed statistically analyses of the class data conducted by their respective labor economist experts. *Id*. ¶¶ 15-17.

Plaintiffs have obtained substantial and adequate information to arrive at a reliable estimate of the risk facing Plaintiffs' claims and the exposure Defendants face. *Id*. ¶ 18; Kan Decl. ¶ 24.

2. The Settlement Is Reasonable in Light of the Strength of the Claims and Defenses and Anticipated Litigation Risks.

This Settlement is within the range of reasonableness when the strengths of Plaintiffs' claims and Defendants' defenses are weighed against the risks of continued litigation. While Plaintiffs are

confident they would ultimately prevail at trial, they also acknowledge that the outcome of trial is uncertain and real risks remain if litigation continues.

For Plaintiffs' EPA claims, the Court's order certifying these claims indicates their greater relative strength compared to Plaintiffs' other claims. Yet proceeding to trial on the EPA claims presents several risks. Defendants, at class certification, argued that the EPA class was unmanageable and that Plaintiffs' submitted trial plan was inadequate. The Court "acknowledge[d] some of Defendant' concerns" and ordered Plaintiffs to submit a detailed trial plan following the conclusion of merits discovery. Class Cert. Order, 14; Minute Order, Feb. 9, 2024 (setting deadline of November 15, 2024 for Plaintiffs to submit a trial plan). Plaintiffs expect that Defendants would challenge any trial plan presented by Plaintiffs based on their contention that the EPA claims are unmanageable. It is uncertain whether the Court would decertify the EPA claims on that basis. Notably, another California trial court reversed a grant of class certification of EPA pay discrimination claims based on concerns around trial plan unmanageability.[7] In addition, prevailing on the merits is not a forgone conclusion as this Court recognized that "[a]lthough Defendants have addressed some potential legal and factual shortcomings, most, if not all, can be resolved on a classwide basis." Class Cert. Order, 11. As an example, the Court explained that "[u]ltimately, the question of whether job family or job code will carry the day is a question for the trier of fact to decide" while noting Defendants were free to present their "competing theory" at trial. Hr'g Tr. 50:22-24, 51:6-11, Nov. 15, 2023 (Ex. 1 to Pls.' Notice of Ruling, Nov. 21, 2023). At trial, the factfinder could credit the opinions of Defendants' experts over those of Plaintiffs' experts, which could prevent Plaintiffs from establishing their prima facie case or significantly reduce damages owed. Even if Plaintiffs win at trial, Class Members could have to wait years for any payment while Defendants pursue lengthy appeals. Kan Decl. ¶ 26(a).

For Plaintiffs' waiting time penalties and UCL claims, the Court certified them based on their derivative status to the certified EPA claims. Class Cert. Order, 11. It did not, however, address the merits of these derivative claims. Plaintiffs anticipate that Defendants will challenge Plaintiffs' claim

[7] Order Granting Oracle America, Inc's Second Motion for Decertification, *Jewett v. Oracle Am., Inc.*, No. 17-CIV-02669 (San Mateo Super. Ct. July 12, 2022), Request for Judicial Notice in Supp. of Pl. Mot. for Preliminary Approval of Class and Representative Action Settlement ("RJN") Ex. 6, filed herewith.

for waiting time penalties on the basis that Defendants did not willfully fail to pay wages when class members separated because they have a good faith dispute about whether unpaid wages were owed. *Diaz v. Grill Concepts Servs., Inc*., 23 Cal. App. 5th 859, 868 (2018) (noting that "A good faith dispute can exist even if the employer's proffered defense is 'ultimately unsuccessful,' but not if the defense is also 'unsupported by any evidence, [is] unreasonable, or [is] presented in bad faith.'") quoting Cal. Code Regs., tit. 8, § 13520(a). If this good faith dispute is credited, Plaintiffs and the Class could recover no waiting penalties. Kan Decl. ¶ 26(b). For Plaintiffs' UCL claims, any restitution is derivative of the unpaid wages recovered under the EPA and FEHA; though that claim does extend the statute of limitations. *Id*.

For Plaintiffs' class FEHA claims, the Court denied certification which significantly undermines the strength of this claim. Prevailing on these claims would first require an appellate reversal of the Court's order denying certification. Despite Plaintiffs' confidence of such an appeal, they recognize the possibility that they may lose the appeal and recover nothing for these claims. Even if Plaintiffs prevail on appeal, the resolution of the FEHA claims would be significantly delayed due to the pending appeal(s) (including the possibility that Defendants appeal an adverse appellate decision), issuance of the remittitur, the need to distribute notice to the FEHA class, time and resources to conduct merits discovery, motion practice regarding summary judgment or decertification, and finally conducting a trial on the FEHA class claims. Furthermore, the outcome of remanded class FEHA claims would not be without risk. As discussed above with the class EPA claims, Defendants would seek to decertify those claims based on alleged deficiencies in the trial plan Plaintiffs eventually propose and the factfinder at trial could credit Defendants' experts or witnesses on the ultimate merits of the claim. If either of these scenarios occurred, Plaintiffs would recover nothing for their FEHA claims. Kan Decl. ¶ 26(c).[8]

For Plaintiffs' representative PAGA claims, they face the same risks as Plaintiffs' EPA and waiting time claims as they are derivative of those Labor Code claims. The PAGA claims have the additional risks that penalties could be reduced for a variety of factors, which makes a sizeable award

[8] For Plaintiffs' Labor Code section 232 (pay secrecy) claim, Plaintiffs did not seek to certify this claim because they did not uncover classwide evidence to support it. Defendants will likely prevail in defending this claim if it were pursued at trial. Kan Decl. ¶ 26(d).

of penalties even more uncertain. *See* Cal. Lab. Code § 2699(e)(2); Kan Decl. ¶¶ 26(e), 27(g); *see supra* Section III.B.7.

3. The Settlement Provides Significant Relief to the Class

The amount of the settlement in light of the strength of the plaintiff's case and relevant defenses is the most important "reasonableness" factor. *See Kullar,* 168 Cal. App. 4th at 130. "In the context of a settlement agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances." *Wershba*, 91 Cal. App. 4th at 250.

This $43.25 million, non-reversionary Settlement will provide Class Members with a substantial payment for their claims, as well as meaningful non-monetary relief for current and future employees, without the risks of continued litigation. The estimated average award per class member is nearly $3,000 based on the Total Settlement Amount or $1,800 based on the Net Settlement Fund (after deduction of settlement administrator costs, PAGA payment and proposed service awards and attorneys' fees and costs). Focusing on the later, the highest estimated award is approximately $15,000 while all Settlement Class Members are guaranteed a minimum pay of at least $200. Kan Decl. ¶ 25.

The Settlement's monetary relief compares favorably with Class Counsel's calculations of the realistic exposure to Defendants on the class claims. *Id.* ¶ 27. Plaintiffs' labor economist expert, Dr. Neumark, has calculated a class average pay shortfall of 0.58% for women in the EPA Class and 2.01% for women in the FEHA Settlement Class. *Id*. ¶ 27(a). Using these shortfalls, Dr. Neumark's statistical model results in a maximum lost wages exposure of $153 million, including $24 million for the EPA claim and $128 million for the FEHA claim. These figures increase to a maximum exposure of $275 million (inclusive of interest at 10%, statutory penalties, and liquidated damages) with $61 million for the EPA claim and $179 million for the FEHA claim. *Id*. ¶ 27(b).[9]

Here, the $43.25 million Total Settlement Amount is roughly 15% of Plaintiffs' maximum

[9] The Parties agree that for taxation purposes, 40% of the settlement payment will be considered wages, and 60% will be considered non-wage income. Settlement ¶ 89. This estimate is reasonable, because it mirrors Plaintiffs' EPA total damages exposure analysis for proportion of W-2 wages versus 1099 compensation (such as liquidated damages and 10% interest applicable under California law). Kan Decl. ¶ 17; *see Bell v. Farmers Ins. Exch.*, 135 Cal. App. 4th 1138, 1150 (2006) (Affirming 10 percent prejudgment interest rate on unpaid wages).

assessment of recovery or 28% percent of alleged wage loss (without interest, liquidated damages, and statutory penalties).[10] However, when the FEHA exposure is appropriately reduced to 25% given its unique and substantial appellate and litigation risks, this Settlement represents roughly 31% percent of Plaintiffs' realistic maximum exposure or 76% of realistically recoverable alleged lost wages (excluding interest, liquidated damages, and statutory penalties). The $43.25 million Total Settlement Amount compares favorably against the potential recovery of Plaintiffs' main certified EPA claim – representing a recovery that is 177% of the calculated class alleged EPA lost wages and 70% of the total EPA claim exposure (including liquidated damages and interest).[11] Kan Decl. ¶¶ 27(c)-(d).

This percentage recovery is consistent with recently approved class settlements alleging similar California Equal Pay Act or pay discrimination claims. *See, e.g., Jewett v. Oracle Am. Inc*., No. 17-CIV-02669 (San Mateo Cnty. Super. Ct. Oct. 16, 2024), RJN Ex. 8 (approving California Equal Pay Act class settlement where class recovery represented 7-8% of the Class EPA claim exposure or 19-21% of the EPA wage damages);[12] *Ellis v. Google, LLC*, No. CGC-17-561299 (San Francisco Cnty. Super. Ct. Oct. 25, 2022), RJN Ex. 5 (approving of class California Equal Pay Act settlement where recovery represented 14% of maximum damages exposure or 21% of maximum exposure without interest or penalties).[13]

4. <u>The Settlement's Non-Monetary Terms Will Benefit the Class.</u>

In addition to substantial monetary relief, the Settlement also provides several non-monetary terms that will benefit current and future employees. *See* Settlement ¶¶ 79-81; *supra* Section II.A.2. While the non-monetary terms of the Settlement cannot be easily monetized, they will support Defendants' ongoing work related to classifying jobs and benchmarking to market, which underlie the

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[10] Plaintiffs' valuation of their PAGA claims are discussed below. *See supra* Section III.B.4.

[11] In addition, all EPA Class Members are also members of the FEHA Settlement Class. This means that virtually all monies allocated to the discounted FEHA Class claims will directly benefit the already certified EPA class. Kan Decl. ¶ 26(d).

[12] *Jewett*, No. 17CIV02669 (San Mateo Cnty. Super. Ct. Aug. 23, 2024) , RJN Ex. 7 at p. 9 (final approval MPA confirming Total Settlement Amount as percentage of maximum and wage damages exposure).

[13] *Ellis*, No. CGC-17-561299 (San Francisco Cnty. Super. Ct. June 10, 2022), RJN Ex. 4 at p. 21 (preliminary approval MPA confirming Total Settlement Amount as percentage of maximum and wage damages exposure).

pay processes raised in this lawsuit. This forward-looking relief is designed to help further promote pay equity within Defendants' job architecture. Kan Decl. ¶ 27(i).[14]

5. The Class Would Face Considerable Risks and Delays Absent Settlement.

As the preceding section describes, Plaintiffs and the Settlement Class face significant risks on the merits and on appeal, particularly for their largest-value claims.

Without the Settlement, Plaintiffs and the Class would experience a lengthy delay before receiving any recovery. Plaintiffs would have to complete merits discovery, defeat a likely motion for summary adjudication, defeat a likely motion for decertification, and prepare for and prevail at trial. If Plaintiffs prevail on any claims, Defendants are likely to appeal some or all of them. Notably, the Court did not certify Plaintiffs' FEHA claims, which would require Plaintiffs to prevail on appeal to revive those claims. A delay in resolving this case would also likely mean delayed implementation of the Settlement's non-monetary terms. Continued litigation will also result in additional expenses, including attorneys' fees, merits discovery-related costs, and expert fees. Thus, this Settlement provides substantial benefits to Class Members by ensuring timely and meaningful monetary and non-monetary relief. Kan Decl. ¶ 26(f).

6. The Views of Experienced Counsel Support the Reasonableness of the Settlement.

Class Counsel has extensive experience in class action litigation as reflected by their appointment as Class Counsel by this Court. Class Cert. Order 12-13. Drawing on their experience, Class Counsel believes that the Settlement is reasonable considering the litigation risks described above. Kan Decl. ¶¶ 2, 24; Andrus Decl. ¶ 4; Declaration of Christine E. Webber in Supp. of Pl. Mot. for Preliminary Approval of Class and Representative Action Settlement ("Webber Decl.") ¶ 2, filed herewith.

7. Settlement of Penalties under the Private Attorneys General Act of 2004 Is Reasonable.

The estimated PAGA penalties in this case stem from Plaintiffs' EPA claims and alleged failure to pay all wages owed at separation. Plaintiffs estimate the maximum exposure on their PAGA claims

[14] Defendants will enact the non-monetary relief terms for three years, through 2027. Settlement ¶ 80. This 3-year term is appropriate because Plaintiffs' statistical expert found that the class pay disparity decreased for each year of data analyzed and Plaintiffs expect that the non-monetary terms will further promote pay equity. Kan Decl. ¶ 11.

is over $190 million. Kan Decl. ¶ 27(f).

Plaintiffs acknowledge that the likelihood of recovering that full penalty amount is low. Courts have discretion to reduce the amount of PAGA penalties if the full award would be "unjust, arbitrary and oppressive, or confiscatory" under California Labor Code section 2699(e)(2). Courts have, for example, reduced PAGA penalties where the class is otherwise being compensated for their Labor Code claims on the same facts and theories underlying PAGA violations, as is the case here, where the Class's Labor Code damages are significant. *See Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 529 (2018).[15] Courts will also reduce PAGA penalties where there is evidence that a defendant made a "good faith effort" to comply with the underlying Labor Code requirements. *See id.* (affirming trial court's reduction of PAGA penalties from the $50 maximum per initial violation to $5 per initial violation due to Defendant's good faith attempts to comply with Labor Code).

The Court might also decide that no penalties for "subsequent" violations may be awarded absent evidence that another trier of fact or the Labor Commissioner decided against Defendants on the same facts. *See Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008) (applying PAGA penalties to initial violations but not to subsequent violations where the employer was not yet notified that they were violating the Labor Code).

The Court may also decline to impose multiple PAGA penalties for the same pay period when a statute is violated under different theories of liability (i.e. "stacking"). *See, e.g.*, *Snow v. United Parcel Serv., Inc.*, No. 5:20-cv-00025-PSG-AFM, 2020 WL 1638250, at *3 (C.D. Cal. Apr. 1, 2020) (suggesting that plaintiffs may recover only a single penalty for each type of violation, regardless of how many provisions are being cited as having been violated).

The PAGA allocation in this case is appropriate given all of the merits risks on the claims as discussed above, the open legal questions about the calculation of PAGA penalties, and the likelihood that a court would exercise its discretion to reduce PAGA penalties after trial. Kan Decl. ¶ 27(g). The PAGA allocation from the settlement fund is $375,000 gross or $250,000 net (after the 1/3 deduction of proposed attorney's fees), which represents 0.87% or 0.58%, respectively. *Id.* ¶ 27(h). Of the

[15] This is consistent with the recent 2024 amendments to PAGA that increased the percentage allocated to aggrieved employees.

PAGA allocation after deduction of associated attorney's fees, 75% will be distributed to the LWDA and 25% will be distributed to Class Members who worked during the PAGA period. Class Counsel has notified the LWDA of the Settlement as well as the preliminary approval hearing prior to the hearing date. Kan Decl. ¶ 8 & Ex. 2.

This allocation also falls within the approved settlement amounts and ranges of other cases involving both damages and PAGA penalties, including similar allocations approved by this Court. *See, e.g.*, *Alonzo v. First Transit*, No. BC433932 (L.A. Cnty. Super. Ct., June 10, 2016) (E. Berle), RJN Ex. 1 (approving $13,333.33 payment to LWDA out of $2,000,000 settlement fund or 0.67%); *Dela Cruz v. Addison Lee Inc.*, No. RG19021433, 2020 WL 9456675 (Alameda Cnty. Super. Ct. Dec. 16, 2020), RJN Ex. 3 (approving $7,125 payment to LWDA out of $950,000 settlement fund or 0.75%); *Rodriguez v. Swissport N. Am.*, No. BC441173 (L.A. Cnty. Super. Ct. Apr. 11, 2017), RJN Ex. 9 (approving $22,500 payment to LWDA in the out of $4,9000,000 Total Settlement Amount or 0.45%); *Bartoni v. Am. Med. Response W.*, No. RG08382130, 2019 WL 12265864 (Alameda Cnty. Super. Ct. Sept. 13, 2019), RJN Ex. 2 (approving $100,000 LWDA payment out of $17,000,000 settlement fund or 0.58%); *Tam v. Q Tech Corp.*, No. 21STCV18635 (L.A. Cnty. Super. Ct. June 28, 2023) (E. Berle), RJN Ex. 11 (approving $56,250 LWDA payment out of $650,000 settlement fund or 0.86%).

8. <u>The Settlement Is Presumptively Fair Because It Is the Result of Non-Collusive, Arm's-Length, and Informed Negotiations by Experienced Counsel.</u>

A settlement is presumptively fair where it was reached through arm's-length bargaining, was informed by sufficient investigation and discovery, and conducted by experienced counsel. *Munoz v. BCI Coca-Cola Bottling Co. of L.A.*, 186 Cal. App. 4th 399, 408 (2010) (citing *Dunk*, 48 Cal. App. 4th at 1802).

As described above, the parties here negotiated the Settlement Agreement in good faith after years of class discovery, an order certifying Plaintiffs' EPA and derivative claims, several months of merits focused discovery, and extensive legal briefing, including mediation brief exchanges. The parties attempted mediation three times before and were unsuccessful due to their vigorous advocacy for their respective positions. After a full-day, in-person mediation session facilitated by a skilled

mediator with extensive experience settling class discrimination cases, the Parties did not yet agree upon the material terms to a settlement and instead, necessitated a mediator's proposal that the Parties eventually accepted. Andrus Decl. ¶¶ 5-14.

Class Counsel are experienced and qualified to evaluate the class claims, the risks and benefits of continued litigation and settlement, and the strength of defenses asserted. All three firms have significant experience litigating discrimination and complex cases, such as this. Kan Decl. ¶¶ 43-50; Andrus Decl. ¶¶ 19-28; Webber Decl. ¶¶ 3-13.

The Settlement is the result of non-collusive, arms-length, and informed negotiation between the parties, which supports the presumption that it is fair and should be approved.

C. The Proposed Class Notice Content and Procedures Are Appropriate.

The proposed Notice and Class Administration Procedures satisfy due process because they provide the best practicable notice of the Settlement to the Class and that notice contains all the required information.

To guard the rights of absent Class Members, the Class must be provided with the best notice practicable of the potential settlement. *Wershba*, 91 Cal. App. 4th at 251-52. The Court has discretion to fashion an appropriate notice program. Cal. Civ. Code § 1781. In addition, Rule 3.766(d) of the California Rules of Court states that a class notice must contain: (1) a brief explanation of the case; (2) a statement about requests for exclusion by a specific date; (3) a procedure for requesting exclusion from the class; (4) a statement that the judgment will bind all members who do not request exclusion; and (5) a statement that any member who does not request exclusion may enter an appearance through counsel.

Plaintiffs' comprehensive Notice satisfies all of these requirements. The proposed Class Notice will notify all Settlement Class Members of the terms of the settlement, that their rights may be affected by the settlement, that they may participate, opt out of, or object to the settlement. The Notice is in English, which is appropriate for this class because Defendants reasonably believe that all Settlement Class Members have the ability to read and write in English, given their job duties and responsibilities. Settlement ¶ 36. The Notice will describe the procedure for opting out and will explain that if they choose to participate, they may appear through their own counsel. The proposed

Notice will provide each Settlement Class Member with their estimated award along with an explanation of how the allocation was calculated. *Id*., Ex. A.

Notice will have a "reasonable chance of reaching a substantial percentage of the class members." *Cartt v. Superior Court*, 50 Cal. App. 3d 960, 974 (1975). Here, the Settlement Administrator will receive contact information from Defendants and send notice by first class U.S.P.S. mail to each Settlement Class Member as well as by email if known for the Settlement Class Member. If any mailed notices are returned as undeliverable, the Settlement Administrator will use skip tracing or other comparable methods to resend the notice. Settlement ¶ 61. Consequently, notice is likely to reach most Settlement Class Members.

The Parties have selected settlement administrator CPT Group to distribute Notice, process opt-outs, and otherwise handle the administration of the Settlement. CPT Group is a well-regarded administrator that Class Counsel have retained in the past with good results, including its successful dissemination of class notice after the Court's partial grant of class certification. In Class Counsel's experience, CPT Group's bid, one of several obtained, was reasonable. Kan Decl. ¶ 31.

D. <u>The Service Awards to the Class Representatives Are Preliminarily Reasonable.</u>

Although this Court does not the decide the amount of any service award until the final approval hearing, notice should be provided to the Class of the requested service payments of $10,000 to the nine named plaintiffs. Named Plaintiffs are eligible to receive service awards that reasonably compensate them for undertaking and fulfilling a fiduciary duty to represent the absent class members. *See Cellphone Term. Fee Cases*, 186 Cal. App. 4th 1380, 1393-94 (2010); *Bell v. Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 725-26 (2004) (affirming service payments to class representatives); Manual for Complex Litigation § 21.62 (4th ed. 2004) (service awards are warranted).

Here, the Plaintiffs have expended significant amounts of time on this case.[16] Kan Decl. ¶¶ 29-30. All nine of the Plaintiffs prepared for and sat for day-long depositions. *Id*. ¶ 30. The Plaintiffs also provided responses to multiple sets of interrogatories and requests for production, and made

[16] Each of the nine Named Plaintiffs submit a declaration attesting to their efforts made to further this case and its resolution, as well as their support for the settlement agreement. *See* Compendium of Pl. Decl. in Supp. of Mot. for Preliminary Approval of Class and Representative Action Settlement, filed herewith.

themselves available for meetings and questions from Class Counsel. *Id*. Several Plaintiffs were employed by Defendants at the time their respective complaints were filed, and they feared the possibility of retaliation for participating in active litigation against Defendants. *Id.* All Plaintiffs placed themselves in the spotlight and risked that future employers would learn of their role in the litigation and look unfavorably on it. *Id*.; Andrus Decl. ¶ 29; Webber Decl. ¶14. Notably, the Court has already appointed three of the Plaintiffs as class representatives for the certified EPA claims after determining they raised typical claims of the EPA Class, would act as responsible fiduciaries for the EPA Class, and had no conflicts of interest. Class Cert. Order, 12-13. As Plaintiffs will brief in further detail prior to final approval, this Court and others have found the requested award amount is reasonable. *See, e.g. Jewett*, No. 17CIV02669 (San Mateo Super. Ct. Oct. 16, 2024), RJN Ex. 8 (approving $50,000 service award to three named plaintiffs in similar California Equal Pay Act class settlement); *Alonzo*, No. BC433932 (L.A. Cnty. Super. Ct. Jun. 10, 2016) (E. Berle), RJN Ex. 1 (approving $10,000 service award to six named plaintiffs); *Vaquero v. Stoneledge Furniture LLC*, No. BC522676, 2018 WL 3519352 (L.A. Cnty. Super. Ct. May 25, 2018) (E. Berle), RJN Ex. 13 (approving service awards of $15,000 and $10,000 for two named plaintiffs); *Ruiz v. Jack in the Box, Inc.*, No. RG16807477, 2020 WL 9456673 (Alameda Cnty. Super. Ct. Jan. 10, 2020), RJN Ex. 10 (approving a $16,500 service award to named plaintiff); *Bartoni v. Am. Med. Response W.*, No. RG08382130, 2019 WL 12265864 (Alameda Cnty. Super. Ct. Sept. 13, 2019), RJN Ex. 2 (approving service awards of $15,000 to each of the four named plaintiffs).

E. Plaintiffs' Request for Attorneys' Fees and Reimbursement of Litigation Costs Is Preliminarily Reasonable.

Plaintiffs, having reached a favorable settlement of this discrimination class action, are "prevailing parties" entitled to recover reasonable attorneys' fees and costs. *See* Cal. Lab. Code §§ 1197.5, 218.5 & 2699(g)(1); Cal. Gov't Code § 12965(c)(6); Cal. Civ. Proc. Code § 1021.5(a) (awarding reasonable attorneys' fees and costs where plaintiff's action resulted in the enforcement of an important right, conferred a significant benefit to a large class of persons, and private enforcement was necessary); *Maria P. v. Riles*, 43 Cal. 3d 1281, 1290-91 (1987) (fee award justified when legal action produced its benefits through voluntary settlement).

The Settlement authorizes Class Counsel to request up to one-third of the gross settlement amount and up to $1.8 million for reimbursement of advanced litigation costs and expenses. Plaintiffs estimate their current combined lodestar exceeds $8 million, resulting in a current multiplier of roughly 1.8 if the Court approves the percentage award and conducts a lodestar/multiplier cross-check. Kan Decl. ¶ 34; Andrus Decl. ¶ 31; Webber Decl. ¶ 16. Plaintiffs will fully brief these requests when moving for final approval. At this stage, Plaintiffs asks that the Court authorize notice of the maximum requested award of the fees and requested costs to the Settlement Class. Kan Decl. ¶¶ 32, 36.[17]

1. The Class Should be Informed of the Requested Attorneys' Fee Award.

Courts may award attorneys' fees from a common fund in a class action using either the "percentage" method or the "lodestar-multiplier" method. *Lafitte v. Robert Half Int'l, Inc.*, 1 Cal. 5th 480, 489 (2016). "The percentage method calculates the fee as a percentage share of a recovered common fund or the monetary value of plaintiffs' recovery." *Id*. The common fund method provides both "[f]airness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses" and "encouragement of the attorney for the successful litigant, who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund." *Bank of Am. v. Cory*, 164 Cal. App. 3d 66, 90 (1985) (citation omitted). The lodestar method, on the other hand, "is calculated by multiplying the reasonable hours expended by a reasonable hourly rate." *Wershba*, 91 Cal. App. 4th at 254. "The court may then enhance the loadstar with a multiplier, if appropriate." *Id*. (citations omitted). "Multipliers can range from 2 to 4 or even higher." *Id.* at 255. Courts often apply a positive multiplier for contingent fee risk and other factors. *Amaral*, 163 Cal. App. 4th at 1216.

The Court need not decide, at this stage, what amount of attorneys' fees and expenses should be awarded. Rather, the Court need only satisfy itself that the overall settlement is within a range that could justify final approval. The standard is met here. Considering the extensive monetary relief and valuable non-monetary relief in this case and the contingent fee risk, Class Counsel's request of up to

[17] As per this Court's preliminary approval guidelines, Class Counsel have notified all nine Plaintiffs of their fee split arrangement and obtained their written approval of it. Kan Decl. ¶ 51; *see also* Compendium of Pl. Decls..

one-third of the gross settlement amount, which equals 1.8 times their current lodestar, is reasonable and routinely rewarded. *See Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008) ("Empirical studies show that, regardless of whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."), *see also*, *Parker v. City of Los Angeles*, 44 Cal. App. 3d 556, 567-68 (1974) (affirming fee award to counsel of one-third recovery achieved); *Tam*, No. 21STCV19805 (L.A. Cnty. Super. Ct. June 22, 2023) (E. Berle), RJN Ex. 11 (approving fee award of one-third recovery); *Vaquero*, 2018 WL 3519352 (E. Berle), RJN Ex. 13 (approving fee award of one-third of the total recovery);[18] *Jewett*, No. 17CIV02669 (San Mateo Cnty. Super. Ct. Oct. 16, 2024) (in California EPA class settlement, approving fee of one-third of Total Settlement Amount).

2. The Requested Litigation Costs Are Preliminarily Reasonable.

Class Counsel have already incurred and expect to incur to complete this settlement approximately $1.8 million in litigation costs and expenses over the roughly five years of intensely litigating this class case. Kan Decl. ¶ 35; Andrus Decl. ¶ 31, Webber Decl. ¶ 16. These costs include court-filing and process-serving fees, e-discovery fees, extensive expert costs, mediation costs for four mediation sessions, court reporter costs associated with hearings and depositions, online research costs, costs to send out class notice regarding the Court's certification order, postage costs, and copying costs. A significant portion of these out of pocket costs relate to expert costs that were necessarily incurred to obtain class certification and will be incurred in the future so that estimated and final Settlement shares can be calculated for the participating Settlement Class Members. This amount reflects efficient litigation of the case and constitute the type of costs awarded by this Court and others. Kan Decl. ¶ 35. Class Counsel will provide the Court with updated costs information and additional briefing in the final approval motion. *Id.* ¶ 36; Andrus Decl. ¶ 31; Webber Decl. ¶ 15.

IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS APPROPRIATE.

The Court has already certified Plaintiffs' class EPA, UCL, and waiting time penalty claims. Class Cert. Order, 14. Plaintiffs seek provisional certification of a class for their FEHA claim for

[18] *See also Vaquero v. Stoneledge Furniture LLC*, No. BC522676, 2018 WL 3519353 (L.A. Cnty. Super. Ct., Jan. 24, 2018) (E. Berle), RJN Ex. 12 (preliminary approval order confirming that the later approved fee of $1.3 million was one-third of the total class recovery of $3.9 million).

settlement purposes only.[19] Kan Decl. ¶ 37. A court may certify a provisional settlement class after the preliminary settlement hearing. *See* Cal. Rule of Court 3.769(d). Manageability and due process concerns for absent class members are eliminated or mitigated in the context of settlement. *Dunk,* 48 Cal. App. 4th at 1807 n.19. In California, a class is certifiable if (1) it is ascertainable and sufficiently numerous; (2) there is a well-defined community of interest, and (3) a class action is superior to other methods of adjudication. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004, 1021 (2012). Plaintiffs contend, and Defendants do not dispute for settlement purposes only, that all of the elements are met here.

A. <u>The Class Is Ascertainable and Sufficiently Numerous.</u>

A class is ascertainable if it "identifies a group of unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description." *Aguirre v. Amscan Holdings, Inc.*, 234 Cal. App. 4th 1290, 1299-1300 (2015) (quoting *Bartold v. Glendale Fed. Bank*, 81 Cal. App. 4th 816, 828 (2000)). Here, the Court has confirmed that Class Members are ascertainable from Defendants' payroll records, which provide information about the employee's name, dates of employment, and compensation history. Class Cert. Order, 2 ("The class and subclass definitions are clear and objective. Moreover there is no reasonable dispute that Defendants' records contain all the information necessary to identify the potential class members.").

A class is sufficiently numerous if joinder of all class members would be impracticable. *See Hendershot v. Ready to Roll Transp., Inc.*, 228 Cal. App. 4th 1213, 1222 n.5 (2014). Defendants' payroll records show that there are over 14,000 members of the proposed class. Kan Dec. ¶ 38. Joinder of so many parties would be impracticable. Class Cert. Order, 2.

B. <u>A "Community of Interest" Exists Among Settlement Class Members.</u>

The "community of interest" requirement includes three elements: (1) predominant common questions of law or fact; (2) a class representative whose claims are typical of those of the class; and (3) a class representative who can adequately represent the class. *See Brinker*, 53 Cal. 4th at 1021.

[19] Plaintiffs' representative PAGA claims are not subject to the certification requirements of Plaintiffs' other claims.

The proposed Settlement Class meets each element.

1. Common Questions of Law and Fact Predominate.

Predominance turns on "whether the theory of recovery advanced by the proponents of certification is, as an analytical matter, likely to prove amenable to class treatment." *Sav-On Drug Stores, Inc. v. Super. Ct.*, 34 Cal. 4th 319, 327 (2004) (citations omitted); Class Cert. Order, 3.

Here, common questions predominate with respect to the Class's pay discrimination claims under the EPA and FEHA. This Court has already concluded that the class EPA claims meet the predominance requirements because most, if not all the elements and defenses related to that claim "can be resolved on a classwide basis." Class Cert. Order, 11. For settlement purposes, Plaintiffs seek provisional certification of their FEHA claim emphasizing a different theory of recovery than addressed by the Court's certification order – namely, that Defendants have a common mode of exercising discretion arising from a small number of Compensation partners who have responsibility for implementing compensation policies or practices challenged by Plaintiffs. Whether the Compensation partners' actions, in fact, resulted in a common mode of exercising discretion presents a common question that will have the same answer for the entire proposed class. Kan Decl. ¶ 41(a). Conditional certification of the FEHA claims is further supported by the fact that manageability or due process concerns are eliminated or mitigated in the settlement context. *Dunk,* 48 Cal. App. 4th at 1807 n.19. Finally, this Court already has found common questions predominate with respect to the Class's derivative claims under the UCL and waiting time penalties. Class Cert. Order, 11.

2. Plaintiffs' Claims Are Typical of the Class Claims.

"The test of typicality is whether other [class] members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Seastrom v. Neways, Inc.*, 149 Cal. App. 4th 1496, 1502 (2007) (internal citation omitted). Here, all nine Named Plaintiffs are former or current employees who allege that they were injured by pay discrimination in the same or similar way that other Class Members were injured. Kan Decl. ¶ 39. This Court has confirmed the typicality of Plaintiffs Rasmussen, Train, and Joo as to the Class EPA and derivative claims. Class Cert. Order, 12. Similarly, all nine Named Plaintiffs seek the same FEHA relief as the rest of the Settlement Class.

Kan Decl. ¶ 39. Thus, all nine Named Plaintiffs are typical of the Settlement Class.

3. Plaintiffs and Their Attorneys Will Adequately Represent the Class.

"Adequacy of representation depends on whether the plaintiff's attorney is qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the class." *Caro v. Proctor & Gamble Co*., 18 Cal. App. 4th 644, 669 n.21 (1993) (quoting *McGhee v. Bank of Am*., 60 Cal. App. 3d 442, 450 (1976)). Here, the Court has confirmed Class Counsel's qualifications to conduct this class action litigation. Class Cert. Order, 12-13; *see also* Kan Decl. ¶¶ 40, 43-50, Andrus Decl. ¶¶ 19-28, Webber Decl. ¶¶ 3-13. It has also found that Plaintiffs have committed to represent the interests of the Class and do not have conflicts with the interests of the Class. Class Cert. Order, 12-13 (finding Plaintiffs Rasmussen, Train, and Joo adequate to represent the EPA Class because they do not have interests antagonistic to the class); Kan Decl. ¶ 40 (identifying Plaintiffs' declaration testimony affirming their qualifications to serve as class representatives); Andrus Decl. ¶ 29; Webber Decl. ¶ 14.

C. This Class Action Is a Superior Method of Adjudication.

For settlement purposes, Plaintiffs' and Settlement Class Members' claims are based on Defendants' common policies and practices that implicate classwide evidence. Kan Decl. ¶ 42. It would be inefficient to resolve these claims at separate trials. *See Bufil v. Dollar Fin. Grp., Inc.*, 162 Cal. App. 4th 1193, 1208 (2008) (*disapproved of on other grounds by Noel v. Thrifty Payless, Inc.*, 7 Cal. 5th 955, 985-86 (2019)). The EPA and FEHA Classes meet all of the requirements for provisional certification in California for settlement purposes.

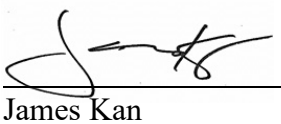
V. CONCLUSION

The Settlement is well within the range of acceptable settlements, and provides substantial monetary and non-monetary relief. Plaintiffs respectfully requests that the Court certify the classes for settlement purposes, conditionally appoint Class Counsel as Settlement Class Counsel and the nine Named Plaintiffs as Class Representatives, appoint CPT Group as Settlement Administrator, grant preliminary approval of the settlement terms and notice process, order the issuance of notice, and set a date for the final fairness hearing and briefing deadline, as set forth in the accompanying proposed order.

Dated: November 25, 2024

Respectfully submitted,

GOLDSTEIN, BORGEN, DARDARIAN & HO



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