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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

JEREMY HARTWELL, an individual; and on behalf of all others similarly situated,

Plaintiff(s),

vs.

KINETIC CONTENT, LLC, a Delaware limited liability company; NETFLIX US, LLC, a Delaware limited liability company; NETFLIX, INC., a Delaware Corporation; DELIRIUM TV, LLC, a Delaware limited liability company; DOES 1-10, business entities, forms unknown; DOES 11-20, individuals; and DOES 21-30, inclusive,

Defendants.

Case No.: 22STCV21223

MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND CERTIFICATION OF A SETTLEMENT CLASS; MEMORANDUM OF POINTS AND AUTHORITIES

Date: July 8, 2024
Time: 10:00 a.m.
Dept.: 7
Judge: Hon. Lawrence P. Riff

Action Filed: June 29, 2022
Trial Date: Not Set

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I. INTRODUCTION

A. Parties to the Action

Plaintiff Jeremy Hartwell ("Plaintiff"), on behalf of himself and all others similarly situated ("Class Members"), by and through his counsel, and pursuant to Civil Code § 1781(f), Code of Civil Procedure § 382, and Rules of Court, Rule 3.769, respectfully submits this Memorandum of Points and Authorities in Support of Plaintiff's Motion for Preliminary Approval of Class Action and Private Attorneys General Act ("PAGA") Settlement and Certification of a Settlement Class ("Motion") to settle Plaintiff's case against Defendants Kinetic Content, LLC ("Kinetic"), Delirium TV, LLC ("Delirium"), Netflix, Inc. ("Netflix"), and Netflix US, LLC (collectively, "Defendants").[1]

Plaintiff argues that he was employed with Defendants from April 24, 2021, through at least May 1, 2021, as a contestant on the Netflix reality TV show, *"Love Is Blind," Season 2* which Kinetic Content and Delirium produced and Netflix distributed through its streaming platform.

According to Plaintiff, Kinetic and Delirium are in the business of casting participants for and producing programs which are distributed by companies including Netflix. As Kinetic proclaims on its website, Netflix is one of its partners (See https://kineticcontent.com/#partners) and many of its productions are distributed through Netflix's streaming service.

B. Procedural History

On April 22, 2022, Plaintiff Jeremy Hartwell notified Defendants and the California Labor and Workforce Department Agency ("LWDA"), pursuant to the California Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq*. ("PAGA"), of alleged Labor Code violations committed by Defendants. Payton Decl. ¶ 7.

On June 29, 2022, Plaintiff Jeremy Hartwell filed a putative class action and PAGA Complaint, individually and as the Class Action Representative on behalf of all "similarly situated" individuals who purportedly worked for Defendants in California any time from four years prior to the filing of the Complaint on June 29, 2022, through the resolution of the action, filed in Los Angeles County Superior Court, Case No. 22STCV21223 ("Hartwell Action"). Declaration of Chantal Payton ("Payton Decl.")

[1] During the settlement discussions, Netflix US, LLC showed that it was not a proper party because it is not involved in producing or streaming television productions.

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¶ 8.

Sometime in or around September 2022, the Parties agreed to mediate. Payton Decl. ¶ 10. The mediation occurred on March 22, 2023, and was presided over by mediator Chris Barnes of Barnes Dispute Resolution. *Id*. After many hard-fought discussions, the Parties reached a settlement agreement in principle as to Hartwell's class and PAGA claims in October 2023. Payton Decl. ¶ 11. The long form class and PAGA action settlement agreement was fully-executed on May 6, 2024, and is attached to Payton Decl., **Exhibit 1A** (the "Settlement"). *Id*. Any capitalized terms used herein shall have the meaning ascribed to such terms in the Settlement. Plaintiff Hartwell then filed the First Amended Complaint ("Operative Complaint") as an Exhibit to the Stipulation to File a First Amended Complaint pursuant to the Settlement on May 6, 2024 along with a Proposed Order. Payton Decl. ¶ 9.

C. Claims Asserted in the Action and Defendants' Defenses

The Operative Complaint alleges nine causes of action: (1) Failure to Pay Overtime Wages; (2) Failure to Pay Minimum Wages; (3) Liquidated Damages for Failure to Pay Minimum Wages; (4) Failure to Provide Accurate and Itemized Wage Statements; (5) Failure to Provide Uninterrupted Meal Periods; (6) Failure to Provide Uninterrupted Rest Periods; (7) Failure to Pay Wages Promptly Upon Termination; (8) Unfair Business Practices; and (9) Private Attorneys General Act.

The putative class consists of all participants who participated in the production of any of the following reality television productions in the State of California: *Love is Blind* seasons 2, 3, 4 and 5 ("*LIB*"), and Ultimatum seasons 1A and 1B ("*Ultimatum*"). Payton Decl. ¶ 13. Plaintiff alleges that Defendants willfully misclassified these employees as independent contractors by requiring these individuals to purportedly contract out of basic labor code protections, meanwhile exercising substantial control over the manner, means, and timing of the work performed for Defendants. Payton Decl. ¶ 14.

Plaintiff alleges that Defendants exercised substantial control over every aspect of the Cast's lives during production, including the Cast's time, access to food and drinks, sleeping arrangements, how they performed their work, and contact with family and friends and other persons outside of production. Payton Decl. ¶ 15. Plaintiff further contends that Defendants did not allow the Cast to move or act of their own free will while the production took place. *Id.*

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1 Plaintiff alleges that, during the Class Period, Defendants failed to pay the Cast for all hours
2 worked during Defendants' various productions of non-scripted content on the Netflix reality TV
3 shows *LIB* and *Ultimatum*. Payton Decl. ¶ 16. Plaintiff contends that Defendants failed to compensate
4 the Cast for all hours worked, including minimum wage and overtime hours, as a result of maintaining
5 a practice of willfully misclassifying Class Members' employment status as independent contractors
6 even though Defendants exercised substantial control over the manner, means, and timing of their
7 work. Payton Decl. ¶ 17.

8 Defendants vehemently deny that Hartwell or anyone he seeks to represent were "employees"
9 or "worked" for Defendants on any television productions. Payton Decl. ¶ 18. Instead, according to
10 Defendants, Hartwell and others voluntarily participated in filmed dating social experiments and were
11 fully aware of the premise of those experiments and the terms of their participation. *Id.* As the
12 distributor of the filmed content, Netflix also argues that its role as a distributor further demonstrates
13 that it did not "employ" anyone on the productions at issue. *Id.* Defendants further argued that Hartwell
14 and all other participants agreed to arbitrate their claims on an individual basis only. *Id.*

15 **D. Standard for Preliminary Approval**

16 The settlement for which Plaintiff now seeks preliminary approval obtains for the class a
17 $1,395,000.00 settlement fund, a "checks mailed" payment to class members, and zero reversion to the
18 Defendants of any portion of the fund. Plaintiff asserts that the settlement is fair, adequate, and
19 reasonable, and presents the Court with a form and plan for notice to the class.

20 Counsel for Plaintiff and Defendants (collectively, the "Parties") have met and conferred, and
21 Defendants have reviewed and represented to Plaintiff's counsel that they have no objection to this
22 Motion. Payton Decl. ¶ 4. For the reasons set forth below, Plaintiff respectfully requests that the Court
23 enter an order: (1) provisionally certifying the Class under Code of Civil Procedure section 382 and
24 California Rule of Court 3.769(c) for settlement purposes; (2) preliminarily approving the Settlement;
25 (3) approving as to form the Notice of Settlement and ordering that the Notice of Settlement be
26 distributed to all Class Members; (4) appointing Named Plaintiff Jeremy Hartwell as the Class
27 Representative; (5) appointing Apex Class Actions LLC as the Settlement Administrator; (6)
28 appointing Payton Employment Law, P.C. as Class Counsel; and (7) setting this matter for a hearing

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on the issues of final approval of the proposed Settlement, approval of the Named Plaintiff enhancement award, approval of Class Counsel's attorneys' fees and costs, and approval of the administration fees and costs.

The settlement of a class action requires court approval. (Rules of Court, Rule 3.769; *see also Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) The law favors settlement, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding the time, cost and rigor of prolonged litigation. (*See Bell v. American Title Ins. Co.* (1991) 226 Cal.App.3d 1589, 1607 (noting a "strong public policy" in favor of class action settlements); *In re Executive Life Ins. Co.* (1995) 32 Cal.App.4th 344, 382.)

At the preliminary approval stage, the Court must "make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms and must direct the preparation of notice of the certification, proposed settlement, and date of the final fairness hearing." (Rules of Court, Rule 3.769(c), (g); *see also* Manual for Complex Litigation (Fourth) § 21.63.) The Court should grant preliminary approval if the Settlement has no obvious deficiencies and falls within the range of possible approval. (*See, generall*y, *Chavez v. Neoix, Inc.* (Cal. Sup. Oct. 27, 2005) 2005 WL 3048041; A. Conte & H. Newberg, 4 Newberg on Class Actions (4th ed. 2002) ("Newberg") § 11.25, at pp. 38, 39.) The preliminary approval determination is not an ultimate determination of whether the settlement is fair, reasonable and adequate. Rather, the court must determine whether "there is, in effect, 'probable cause' to submit the proposal to members of the class and hold a full scale hearing on its fairness." (*State of California v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 486 (quoting Manual for Complex Litigation § 1.46).)

In determining whether a settlement falls within the range of possible approval, courts have considered such factors as whether the negotiations occurred at arm's length, whether sufficient discovery or investigation took place, and whether the proponents of the settlement are experienced in similar litigation. (*See* 4 Newberg at § 11.41.) Moreover, courts may also consider the risk, expense, and complexity of continued litigation in determining whether a settlement falls within the range of possible approval. (*See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.)

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If the Court finds that the Settlement is the product of hard-fought arm's-length negotiations conducted by experienced counsel knowledgeable in complex class litigation, the Settlement will enjoy a presumption of fairness. (*See In re Microsoft IV Cases* (2006) 135 Cal.App.4th 706, 723; *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18 (court accorded "considerable weight" to settlement being reached after hard fought negotiations by experienced counsel); *see also Kullar v. Foot Locker Retail Inc.* (2008) 168 Cal.App.4th 116, 128.) Such a presumption exists here.

II. DUNK/KULLAR ANALYSIS

A. Factual Background

1. Defendants' Alleged Wrongdoing

Plaintiff alleges that once the Class Members agreed to participate in Defendants' production, Defendants exercised significant control over the Class Members from the moment of their arrival in the production's city (i.e., Los Angeles for California Class Members on *LIB* and San Diego for California Class Members on *Ultimatum*) until the Class Members left the production altogether. Plaintiff contends that Defendants further attempted to control the Class Members by requiring the Class Members to enter into contracts containing unlawful and unconscionable provisions under California law in order to participate in Defendants' productions. Payton Decl. ¶ 19. Plaintiff argues that the effect and goal of these provisions was to strip the Class Members of their Labor Code protections as employees and discourage Class Members from exercising their rights. *Id.*

Plaintiff contends that Class Members regularly actively worked on the production up to 20-hour shifts, well in excess of eight (8) or twelve (12) hours per day but that Defendants, as a matter of policy or practice, failed to pay applicable overtime or double-time compensation for all hours actually worked. Payton Decl. ¶ 20. Likewise, Plaintiff claims that Defendants failed to pay the Class Members for all compensable hours, including time spent working on set; traveling to, from, and between their hotel living quarters and the production set; and for time spent working during the purported meal breaks that were consistently on-duty and subject to interruption and delay at the Defendants' election. *Id*.

Plaintiff also argues that Defendants failed to pay Class Members their owed compensation due at termination in a timely fashion as required by Labor Code §§ 201-203. Payton Decl. ¶ 21.

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Additionally, Plaintiff contends that no wage statements were provided to Class Members to reflect their hours worked or total compensation due for all hours worked as required by Labor Code § 226(a). Payton Decl. ¶ 22

Plaintiff alleges that Defendants maintained a policy and practice of requiring Class Members to work on-duty meal and rest periods, including by requiring them to perform for the Defendants' television production, to remain on-call, and/or to remain on the premises during the brief periods they were allowed to eat or use the restroom. Payton Decl. ¶ 24. Plaintiff also claims that Defendants failed to provide timely meal periods as required by law, including regularly requiring Class Members to work approximately 6 to 10 hours without a meal break. *Id*. Plaintiff contends that Defendants also failed to provide all rest periods where required by law, such as on occasions when Class Members worked more than 10 hours. *Id*. Plaintiff maintains that Defendants did not maintain on-duty meal period agreements for Class Members and did not pay Class Members all premium compensation mandated by Labor Code § 226.7(b) for non-compliant and/or missed meal and rest periods. *Id*.

B. Summary of the Causes of Action

1. Failure to Pay Overtime Wages (L.C. §§ 204, 510, and 1194 and Wage Order 12)

Plaintiff alleges that Class Members regularly worked in excess of eight (8) hours in one workday, and in excess of forty (40) hours in any one workweek and were never paid one and one-half (1 ½) times their regular rate of pay. Payton Decl. ¶ 20. Plaintiff alleges that Class Members also worked significant double time hours (hours exceeding twelve (12) per day and over eight (8) per day on the seventh day of work during a workweek) and were never paid at a rate of two (2) times their regular rate of pay-calculated at $25 per hour for a regular rate (and higher during shorter workweeks). *Id*. Plaintiff claims that Defendants only paid Class Members a flat rate of $1,000.00 per week, and in doing so, violated Labor Code §§ 204, 1194, 510, and Wage Order 12 § 3(A). *Id*.

2. Failure to Pay Minimum Wages (L.C. §§ 204, 1194, 1197, 1197.1, and Wage Order 12)

Plaintiff alleges that Defendants required Plaintiff and Class Members to perform work off-the-clock, but did not pay wages, including minimum wages, for these hours spent performing work on

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behalf of Defendants. Payton Decl. ¶ 25. Plaintiff further contends that Defendants failed to accurately pay minimum wages to Class Members. *Id*. These policies and practices violate Labor Code §§ 204, 1194, 1197, 1197.1, and Wage Order 12. *Id*. Plaintiff and Class Members contend that they are entitled to recover unpaid minimum wages, interest thereon, and attorneys' fees and costs pursuant to Labor Code § 1194. *Id.*

3. Liquidated Damages for Failure to Pay Minimum Wages (L.C. § 1194.2)

As detailed above, Plaintiff alleges that Defendants failed to pay minimum wages and overtime wages for all hours worked. Pursuant to Labor Code § 1194.2, Plaintiff and members of the putative class are entitled to recover liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon, and attorneys' fees and costs.

4. Failure to Provide Accurate and Itemized Wage Statements (L.C. § 226 and Wage Order 12)

Plaintiff maintains that as a pattern and practice, in violation of Labor Code § 226(a), Defendants did not furnish Plaintiff and members of the putative class with accurate itemized statements. Payton Decl. ¶ 26. Plaintiff and the members of the putative class are, therefore, entitled to recover penalties pursuant to Labor Code § 226(e), along with attorneys' fees and costs. *Id*.

5. Failure to Pay Wages Promptly After Termination (L.C. §§ 201, 202, and 203)

Plaintiff alleges that Defendants violated Labor Code § 201 and 202 by willfully failing to compensate Plaintiff and Class Members for all hours worked and for premiums for on-duty meal and rest periods promptly upon discharge or resignation, as required by Sections 201 and 202, and are, thus, liable for waiting-time penalties pursuant to Labor Code § 203. Payton Decl. ¶ 27.

6. Failure to Provide Uninterrupted Meal Periods (L.C. §§ 226.7 and 512 and Wage Order 12)

Plaintiff maintains that Class Members were denied the right to leave the premises for meal periods, and that Class Members were entitled to compensation on each occasion that this occurred. Payton Decl. ¶ 28. Plaintiff argues that Class Members were not only not free to leave the workplace, they also were never fully relieved of their duties since they either were actively being filmed or needed

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to be readily available to be filmed whenever Defendants so desired. *Id*. Thus, under the applicable law, meals breaks were required to be paid. *Id*.

Defendants' alleged failure to permit Plaintiff and Class Members to take legally compliant meal periods violated Labor Code §§ 226.7 and 512, and Wage Order 12.

Pursuant to Labor Code §§ 226.7 and 512, Plaintiff and members of the putative class are alleged to be entitled to a penalty of one hour's pay at their regular rate of pay for each occasion upon which they were denied an uninterrupted, duty-free meal break of at least thirty minutes after five hours and ten hours of work. Payton Decl. ¶ 29.

7. Failure to Provide Uninterrupted Rest Periods (L.C. § 226.7 and Wage Order 12)

Plaintiff maintains that Defendants failed to permit Plaintiff and Class Members to take a ten-minute rest period for every four hours worked or major fraction thereof, in violation of Labor Code § 226.7 and Wage Order 12. Payton Decl. ¶ 30. Plaintiff alleges that the only time period somewhat akin to a rest period were bathroom breaks, when permitted. *Id*. Plaintiff further alleges that restroom breaks were not permitted often, and that Class Members were forced to wait until Defendants would allow them to use the restroom or the time period allotted would be extremely short. *Id*.

Pursuant to Labor Code § 226.7, Plaintiff and members of the putative class contend that they are entitled to a penalty of one hour's pay at their regular rate of pay for each workday during which they were denied an uninterrupted, duty-free rest period of at least 10 minutes for each four hours worked or major fraction thereof. Payton Decl. ¶ 31.

8. Unfair Business Practices (Bus. & Prof. Code §§ 17200, et seq.)

Based on the alleged conduct described by Plaintiff above, Plaintiff asserts that Defendants have committed unlawful, unfair, and/or fraudulent business acts and practices as defined by Business and Professions Code §§ 17200, et seq., entitling Plaintiff to equitable and other additional relief. Payton Decl. ¶ 32.

9. Private Attorneys General Act (L.C. §§ 2698, et seq.)

Based on the alleged conduct described by Plaintiff above, Plaintiff believes he and the putative class members are "aggrieved employees" under PAGA. Payton Decl. ¶ 33. As such, Plaintiff seeks on

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behalf of himself and all other current and former aggrieved employees of Defendants, the civil penalties recoverable under PAGA, plus attorneys' fees and costs incurred from April 22, 2021 (one year prior to the PAGA Notice Letter that Plaintiff lodged with the Labor and Workforce Development Agency ("LWDA")) to the present time. *Id.*; Exhibit "3.")

Plaintiff seeks to pursue remedies pursuant to PAGA for violations of the following: Labor Code §§ 203, 204, 210, 226.3, 226.7, 232, 432.5[2], 432.7, 432.8, 510, 512, 558, 980 1019.1, 1024.5, 1174, 1174.5, 1194, 1197, 1197.1, 2802, 3700, 3708, 6400, 6402. Payton Decl. ¶ 34.

C. Summary of Investigation and Discovery

Plaintiff's counsel diligently and extensively investigated the putative class and PAGA claims. Payton Decl. ¶ 35. This included extensive efforts interviewing witnesses prior to mediation about their experiences on *LIB* and *Ultimatum* in order to corroborate Plaintiff's claims. *Id.* Plaintiff's counsel spoke with approximately 12 putative class members that participated in Defendants' shows and obtained about 6 witness declarations. *Id.*

Plaintiff's counsel spent many months between the filing date in July 2022 up to the March 2023 mediation responding to witnesses that contacted Class Counsel, obtaining contact information for additional witnesses, and reaching out and setting times to speak with witnesses. *Id.* Plaintiff's counsel had to make themselves available to speak whenever the witnesses were available. *Id.* Given that the vast majority of witnesses did not live in California and had full-time employment, Plaintiff's Counsel had to be extremely flexible to accommodate the witnesses' schedules and made themselves available early mornings, evenings, and weekends for these preliminary and follow-up calls with witnesses wherever necessary. *Id*.

Plaintiff's counsel conducted detailed interviews with each witness in order to best understand their experience as cast members. Payton Decl. ¶ 36. Part of the interview process involved Plaintiff's counsel earning the trust of the witnesses and answering various questions that the witnesses had before witnesses were comfortable speaking openly and freely about their experiences in light of the fact that

[2] Plaintiff alleges that the participation agreement violated Labor Code § 432.5 by requiring Aggrieved Employees to agree to unlawful provisions that violated the following laws: (a) Government Code § 12940; (b) Government Code § 12964.5; (c) Civil Code § 1671; and (d) *Santa Barbara v. Superior Court* (Cal. 2007) 41 Cal.4th 747, 751. Payton Decl. ¶ 32.

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this matter had gained significant media attention. *Id.* Following these conversations, Plaintiff's counsel prepared numerous declarations for witnesses to sign, and of those drafted, ultimately secured signatures from six declarants prior to the mediation. *Id.* Plaintiff's counsel also worked to schedule certain witnesses who were available and willing to assist in that capacity, to be on standby for a confidential interview with Mediator Chris Barnes during the mediation. *Id.* The information that Class Counsel gathered through the witness declarations, conversations with a dozen participants, and live interviews during the mediation took a considerable amount of time, effort, and skill by Counsel to obtain, and ultimately assisted Counsel to evaluate and settle the matter on a classwide basis. *Id.*

Prior to mediation, the Parties engaged in an informal, voluntary exchange of information in the context of privileged settlement discussions. Defendants produced participant agreements from multiple seasons of *LIB* and *Ultimatum*, including Plaintiff Hartwell's participant agreement, Plaintiff Hartwell's participation records (which Plaintiff disputes the accuracy of), participation records for all Class Members (which several Class Members disputed the accuracy of), and payment records for all Class Members. Payton Decl. ¶ 37. Class Counsel analyzed these records and evaluated Defendants' legal positions in conjunction with the evidence that Plaintiff's Counsel secured, researched applicable law and defenses, retained an expert to analyze the documents and records produced by Defendants, and worked with that expert to provide documents, data, and calculate average numbers based on factual information obtained from the Plaintiff and witness during interviews. *Id.* Plaintiff's expert thereafter prepared a damages estimate calculating potential classwide damages that took into account multiple scenarios based on different average work hours estimates. *Id.*

D. Summary of Settlement Negotiations

On March 22, 2023, following informal discovery and the exchange of information, the Parties participated in a mediation session presided over by Mediator Chris Barnes, an experienced class action mediator. Payton Decl. ¶ 38. Mediation lasted late into the evening without an agreement being reached. *Id.* Mr. Barnes continued to engage the Parties in efforts to reach resolution over the course of the next several months. *Id.* After mediation, Class Counsel participated in extensive discussions with Mr. Barnes, as well as direct settlement discussions between counsel. *Id.* These discussions culminated with the Parties executing a Class Action and PAGA Settlement Agreement on May 6,

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2024.

E. Summary of Risks of Further Litigation if the Settlement is Not Approved and of Achieving and Maintaining Class Action Status

For settlement purposes, the theoretical trial recovery must be tempered by litigation risks and uncertainties, which are significant here. Defendants have asserted and continue to assert many defenses and have expressly denied any legal liability arising out of the conduct alleged in the litigation. Payton Decl. ¶ 39. While Plaintiff feels strongly that the claims alleged here are meritorious, the value of those claims in light of the evidence, coupled with the possibility that one or more of these defenses might be accepted, are important settlement considerations. *Id*.

Additional concern about the value of the Action was compounded by the fact that several large hurdles stand in the way of a jury verdict. *Id*. For instance, all of the Class Members signed arbitration agreements, and although Plaintiff believes that he has strong arguments to overcome a motion to compel arbitration, Plaintiff faced the risk that such motion would be granted and that such an order could dispose of all of the class claims and Plaintiff would be forced to arbitrate his claims on an individual basis. Payton Decl. ¶ 40. Also, the sufficiency of the evidence has not been tested by a summary judgment motion. Plaintiff faces the risk that Defendants could prevail on a pre-certification motion for summary judgment as to some or all of Plaintiff's claims. While Plaintiff believes there is sufficient evidence to support certification of the Class for settlement purposes, winning a motion for class certification is never certain. As such, Class Counsel gave serious consideration to the possibility that certification could be denied. *Id*.

In light of the significant risks of continued litigation, the settlement proposed herein represents the best and most practicable resolution for the Class.

F. Evaluation of the Settlement of Class Claims as Fair, Adequate and Reasonable

1. Legal Standard

Pursuant to Rule 3.769, the California Rules of Court, court approval of a class action settlement requires three steps: (1) Preliminary approval after submission of a written motion for preliminary approval, of the proposed class settlement, and the proposed class notice; (2) issuance of notice of settlement to class members; and (3) a final settlement approval hearing where class members may be

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heard regarding the settlement, and at which evidence and argument concerning the fairness, adequacy and reasonableness of the settlement is presented to the Court's broad discretion. *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.

2. The Settlement is Presumptively Fair

A court looks for fairness in the settlement process while it assesses preliminary approval. 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." *Kullar*, 168 Cal. App. 4th at 128.

Here, the instant class settlement satisfies all these factors. The settlement resulted from thorough and extensive arm's length negotiations between experienced counsel with the assistance of a well-respected mediator after sufficient discovery was exchanged to assess the relative strengths and weaknesses of their respective cases and Defendants' estimated exposure. Payton Decl. ¶ 42.

3. Monetary Relief

The Settlement Agreement provides that Defendants will pay $1,395,000.00 to fully resolve the claims in the Action (the "Gross Settlement Amount"). Assuming the following court-approved deductions, the remaining amount (the "Net Settlement Amount") will be distributed to the Class Members who do not opt out ("Participating Class Members"). Participating Class Members shall receive Settlement Payments in accordance with pages 5-7 of the Agreement. The employer portion of putative payroll taxes will be paid separately by Defendants and not from the Gross Settlement Amount, and there is no reversion of any funds to Defendants.

1. **Settlement Administration:** The Settlement Administrator shall be Apex Class Actions Inc. Payton Decl. ¶ 41. From the Gross Settlement Amount, settlement administration fees in a reasonable amount shall be paid to the Settlement Administrator. Settlement administration fees are estimated to be approximately $5,500.00. *Id.*

2. **Attorneys' Fees and Costs:** Subject to court approval, payment of $488,250.00 as a contingent fee and payment of $14,000.00 as actual costs. Payton Decl. ¶ 42.

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3. **Named Plaintiff Award:** The Settlement states that the Class Representative Service Payment to the Class Representative be no more than $10,000.00 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Payton Decl. ¶ 43. This amount is entirely reasonable given Plaintiff's extensive efforts in this Action for more than one year, and the risks he undertook on behalf of the Class Members. *Id.*

4. **Settlement of PAGA Claims:** The Parties have agreed to allocate $20,000.00 (the "PAGA Payment") from the Gross Settlement Amount towards a release of the PAGA claims. *Id.* Pursuant to the express requirements of Labor Code § 2699(i), the PAGA Payment shall be allocated as follows: The LWDA will receive $15,000.00 (75%) of the PAGA Payment for the enforcement of labor laws and education of employers. *Id.*

After deducting the above amounts from the Gross Settlement Amount, the Settlement Administrator will distribute the Net Settlement Fund to the Class Members. Payton Decl. ¶ 46. Class Counsel have reviewed the records provided by Defendants, and the Settlement Administrator will determine, based on this and other data, an amount each Class Member will be paid based on how long each individual participated on *LIB* and *Ultimatum*. *Id.*

The Settlement Administrator will calculate the individual settlement payments to Class Members who do not submit valid Opt-Outs. Payton Decl. ¶ 47. These payments will be calculated by assigning a certain dollar value to each week Class Members participated on either *LIB* and *Ultimatum* during the Class Period. *Id.* The dollar value of each week will be calculated by dividing the aggregate value of the Payout Fund by the total number of weeks participated by the Class Members who do not submit timely valid Opt-Outs. *Id.* Partial weeks will be rounded up to the nearest full week. *Id.* A Class Member who does not submit a valid Opt-Out will receive an individual settlement payment determined by multiplying the number of weeks that they participated during the Class Period by the dollar value of each week. *Id.*

This system is the best and most equitable way to account for the differences in value amongst the various Class Members' claims, as the value of each Class Member's claim is correlated to the duration of that Class Member's alleged employment with Defendants. *Id.* The determination of each

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Class Member's number of qualifying weeks of participation will be based on a good faith inquiry and review of Defendants' records. *Id*.

4. Quantification of Total Maximum Theoretical Recovery

Plaintiff analyzed the total maximum theoretical recovery for the class, including prejudgment interest and penalties and the risks of litigation recovery, as required by *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116. Payton Decl. ¶ 48. Calculating the total maximum theoretical trial recovery for the class is difficult given the allegations. However, Class Counsel has provided an estimate of the total maximum theoretical recovery for the Class based on an analysis conducted by an expert who calculated the maximum realistic recovery under the assumption that each Class Member was forced by Defendants to work an average of 18-hour workdays during the participating weeks. The analysis is included in the Declaration of Chantal Payton filed herewith, paragraphs 64 through 72. In the analysis, potential recovery for claims that can be inferred from the production records is evaluated and tallied, so the Court can evaluate and discern the potential cash value of the claims and how much the case was discounted for settlement purposes. Counsel's estimates are supported by sufficient explanation and provide the Court with "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." (*Munoz v. BCI Coca Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409.)

Based on the analysis of Plaintiff's alleged claims and their likely value, as set forth in Chantal Payton's Declaration filed herewith, the total maximum estimated potential recovery of this action is estimated to be about $12,550,904.54. Payton Decl. ¶ 49. The maximum realistic recovery of each claim asserted in the Operative Complaint is estimated as follows:

1. **Failure to Pay Overtime and Double time Wages:** $1,621,601.10
2. **Failure to Provide Accurate and Itemized Wage Statements:** $21,900.00
3. **Failure to Pay Wages Promptly After Termination:** $2,875,130.84
4. **Failure to Provide Uninterrupted Meal Periods:** $77,828.29
5. **Failure to Provide Uninterrupted Rest Periods:** $77,828.29
6. **Private Attorneys General Act:** $7,205,131.12

The settlement fund of $1,395,000.00 represents approximately 11.1% of this estimated total,

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which is more than reasonable considering the attendant circumstances of this litigation and the fact that the majority of estimated liability consists of penalties.

5. Benefits Provided to the Class by the Proposed Settlement Agreement

Even without the presumption, Plaintiff has clearly satisfied the standards for preliminary approval of the proposed settlement. The Settlement provides substantial benefits to the Class in the form of meaningful monetary recovery that is more than fair, given the particularities of the case. The $1,395,000.00 in monetary recovery provided for by the proposed settlement represents approximately 11.1% of the total estimated value of damages, inclusive of the maximum possible civil penalties, which is well within the benchmark of approved settlements. *See* Payton Decl. ¶ 50. (*See, e.g.*, *7-Eleven Owners For Fair Franchising v. Southland Corp.* (Cal. Ct. App. 2000) 85 Cal.App.4th 1135, 1150 ("The fact that a proposed settlement may only amount to a fraction of a potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved"); *In re Critical Path, Inc.* (N.D. Cal. June 18, 2002) C 01-00551 WHA, 2002 WL 32627559, *5 (approving settlement resulting in 8.75% recovery percentage). Here, the approximate $1,395,000.00 recovery achieved by the proposed settlement reflects a good balance of the strength of Plaintiff's case and risks associated with its weaknesses, is fair and reasonable, and is entitled to preliminary approval.

Each Participating Class Member will receive an Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Participation Weeks during the Class Period and (b) multiplying the result by each Participating Class Member's Participation Weeks. Settlement § 3.3.1. The monetary compensation provided for under the Settlement Agreement is a fair and useful form of remedy for the Class Members. Payton Decl. ¶ 51. Plaintiff and Class Counsel believe that these terms provide the maximum value to the Class based on the available evidence and in light of other litigation risks. *Id.*

6. Defenses Asserted by Defendants

Defendants vigorously dispute the validity of Plaintiff's claims. Defendants raise several factual and legal defenses that, if successful, would defeat or substantially impair the value of Plaintiff's claims. Payton Decl. ¶ 52. For example, Defendants claim that the Class Members were not employees in any sense of how that term is defined by the Labor Code or case law. As such, Defendants will argue

that the Class Members were not entitled to wages, meal or rest periods, or any other payments arising from the Labor Code. *Id.*

Moreover, Defendants have contended that they allowed time for Class Members to take breaks and that, by nature of the filmed dating experiment, Participants necessarily had down time. *Id*. Managing such claims at trial has become exceedingly difficult. *Forrester v. Roth's I.G.A. Foodliner, Inc.* (9th Cir. 1981) 646 F.2d 413; *Jong v. Kaiser Found. Health Plan, Inc.* (2014) 226 Cal.App.4th 39.- Plaintiff will depend on sample witness testimony and surveys to prove the claims. *Id.* While a victory with such evidence is certainly possible, relevant case law makes such claims risky from a trial management and due process perspective. *Id.*

Separately, Plaintiff's claim for untimely wages is predicated on Labor Code section 201 to 203. Payton Decl. ¶ 41. Like the claim under Labor Code section 226 where a Plaintiff must prove the Defendants knowingly and intentionally failed to provide legally compliant wage statements, under Labor Code 203 Plaintiff must establish that the late payments were willful. *Id.* Any evidence of good faith Defendants put forth would defeat this claim. *Id*. Defendants have alleged that the Class Members are not owed any wage payments and, thus, are not liable for waiting time penalties. *Id*.

a. Summary

While Defendants' arguments may or may not be well-taken, it is clear that continued litigation of Plaintiff's claims would involve extensive and expensive discovery that would not likely increase the value of the claims. That is, although the attorneys' fees and costs would increase substantially with the continuation of litigation, the damages recovered for the Class Members would not substantially increase.

Moreover, there are significant legal uncertainties associated with cases such as this as they can be factually complex and require protracted litigation to resolve. A settlement is not judged solely against what might have been recovered had plaintiff prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F. 3d 1234, 1242; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th at 246 & 250; *Rebney v. Wells Fargo Bank* (1990) 220 Cal. App. 3d 1117, 1139. Instead, "[c]ompromise is inherent and necessary in the settlement process ... even if the relief afforded by the proposed settlement

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is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation." *Wershba*, supra, 91 Cal.App.4th at page 250.

Plaintiff is also cognizant that the final resolution of the claims could be delayed by one or more appeals, the risk of which can arise at multiple points in the litigation, including with a motion to compel arbitration, during class certification proceedings, during class and merits discovery, and during and after trial. Payton Decl. ¶ 52.

G. Evaluation of the Settlement of PAGA Claims as Fair to Those Affected

The settlement of PAGA penalties in the sum of $20,000.00, of which 75% ($15,000.00) will be paid to the LWDA and 25% ($5,000.00) will be distributed to the Class, is reasonable and appropriate under the circumstances. Payton Decl. ¶ 53 . The Parties negotiated a good faith amount for PAGA penalties to be paid to the LWDA and to the Class. *Id*. The portion to be paid to the LWDA was not the result of self-interest at the expense of other Class Members. *Id*.

Where settlements "negotiated a good faith amount" for PAGA penalties and "there is no indication that this amount was the result of self-interest at the expense of other Class Members," such amounts are generally considered reasonable. *Id*. (*Hopson v. 7 Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) No. CV-08-0844 EDL, 2009 WL 928133, at *9 [approving payment of $1,500 or 0.3% of total settlement amount to the LWDA]; *Chu v. Wells Fargo Investments, LLC* (N.D. Cal. Feb. 16, 2011) Nos. C 05-4526 MHP, C 06-7924 MHP, 2011 WL 672645, at *1 [approving PAGA settlement payment of $7,500 to the LWDA out of $6.9 million common-fund settlement]; *Franco v. Ruiz Food Prods., Inc.* (E.D. Cal. Nov. 27, 2012) No. 1:10-cv-02354-SKO, 2012 WL 5941801, at *14 [approving PAGA penalties of $10,000 in $2.5 million common fund settlement and noting that amount was in line with settlement approval of PAGA awards in other cases]).

As required under Labor Code § 2699(1)(2), Plaintiff transmitted a copy of the Settlement and these motion papers to the LWDA at the same time they were filed with the Court. Payton Decl. ¶ 54.

III. CLASS CERTIFICATION

The class should be certified for the purposes of this Settlement because it meets all

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requirements for class certification under applicable law. (*Washington Mutual Bank v. Sup. Court* (2001) 24 Cal.4th 906, 919; *Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 819; *Clothesrigger, Inc. v. GTE Corp.* (1987) 191 Cal.App.3d 605, 612-13.) Code of Civil Procedure § 382 has been construed to require an ascertainable class and a well-defined community of interest resulting from common questions of law and fact. (*Sav On Drug Stores, Inc. v. Sup. Court* (2004) 34 Cal.4th 319, 326 (stating requirements for maintenance of class action).) "The 'community of interest' requirement 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." At the certification stage, the trial court also determines whether a class action would be superior to alternate means for adjudicating the litigation.

Plaintiff contends that a class action is superior to other means of adjudicating the issues in this Action. Payton Decl. ¶ 55. As discussed in greater detail below, the predominance of common legal and factual questions shows that this Court could fairly adjudicate the claims of Class Members through a single class action. *Id*. In light of the theoretical alternatives that proposed Class Members could utilize, such as, individual civil lawsuits or wage claims through the Division of Labor Standards Enforcement (where the claims would be time-consuming to litigate vis-à-vis the money at stake), a class action is plainly superior. *Id*. The monetary compensation provided for under the Settlement is a fair and useful form of remedy for the Class Members. *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 333 (California courts often consider a "wide variety of contexts" in order to evaluate whether common behavior towards similarly situated Plaintiffs makes class certification appropriate).

A. Numerosity

According to data provided to Class Counsel during settlement negotiations, the Parties believe there are approximately 144 Class Members. Payton Decl. ¶ 56. Because there are approximately 144 Class Members, Plaintiff contends that both the Class and the judicial system would be overburdened if these claims were litigated on an individual basis. (*See Valencia v. San Diego County Board of Supervisors* (1987) 196 Cal.App.3d 1263,1270). Resultantly, Plaintiff contends that the Class Members are, therefore, so numerous that joinder of all members would be impracticable. *Id*.

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1 Granting class certification in this case would be superior to litigating the myriad individual
2 cases that would remain in the absence of class certification. Because there are approximately 144
3 Class Members, many of whom have relatively small claims by virtue of the fact that the majority of
4 these individuals only participated within the State of California for one to two weeks during the Class
5 Period, both the Class and the judicial system would be overburdened if these claims were litigated on
6 an individual basis. (*See Valencia v. San Diego County Board of Supervisors* (1987) 196 Cal.App.3d
7 1263, 1270.) Accordingly, this case meets the superiority requirement for class certification. For all
8 of these reasons, it is appropriate to certify the settlement class for purposes of this Settlement.

9 **B. Ascertainability**

10 Ascertainability is required in order to give notice to putative class members as to whom the
11 judgment will be res judicata. (*See Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908,
12 914.) "The issue of ascertainability of the class is a relatively simple matter." (*Richmond v. Dart*
13 *Industries, Inc.* (1981) 29 Cal.3d 462, 478.) A class is ascertainable when it may be readily identified
14 without unreasonable expense by reference to official records. *Rose v. City of Hayward* (1981) 126
15 Cal.App.3d 926, 932 (citing *Hypolite v. Carlson* (1975) 52 Cal.App.3d 566, 579). Plaintiffs need only
16 identify evidence from which class members can be located and identified but need not specify specific
17 class members by name. (*Valencia v. San Diego County Board of Supervisors* (1987) 196 Cal.App.3d
18 1263, 1274 ("[I]t is firmly established [that] a plaintiff is not required at this stage of the proceedings
19 to establish the existence and identity of class members").)

20 Here, the Class consists of the readily ascertainable group of all persons who participated on
21 *LIB* or *Ultimatum* during the relevant period. Payton Decl. ¶ 57. Defendants maintain names and
22 contact information for the Class Members. *Id*. Defendants will provide this information to the
23 Settlement Administrator prior to issuance of class notice. *Id.*

24 **C. Community of Interest**

25 To justify certification, the class proponent "must show… that questions of law or fact common
26 to the class predominate over the questions affecting individual members…" *See Arenas v. El Torito*
27 *Rests., Inc.*, 183 Cal.App.4th 723, 732 (2010).

28 In this Action, Plaintiff contends that there are questions of law and fact common to the

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members of the Class that predominate over any questions affecting only individual members, including common issues of fact as to whether all members of the proposed Class: (1) performed work for which they were not compensated; (2) were denied duty-free meal breaks; (3) were denied duty-free rest breaks; (4) did not receive accurate and itemized wage statements, and; (5) did not promptly receive wages upon termination. Payton Decl. ¶ 58.

Evidence supports that commonality exists with respect to these issues. *Id*. According to Plaintiff's allegations, Class Members were subject to a uniform set of policies resulting in the violations of law alleged in this matter. *Id*.

Plaintiff contends that common issues of law predominate in this case, as well. *Id*. These issues include: (1) whether Class Members are entitled to unpaid minimum and overtime wages; (2) whether Defendants' meal and rest break policies violated the Labor Code; (3) whether Defendants' failure to provide accurate and itemized wage statements violated the Labor Code, and; (4) whether Defendants' failure to pay wages promptly upon termination violated the Labor Code. *Id*.

Based upon the facts and circumstances, Plaintiff believes this case presents an overwhelming number of common issues of law and fact, such that certification is warranted. *Id*.

Furthermore, Plaintiff's claims, as set forth in the Operative Complaint, are typical of the claims of the members of the Class. *Id*. These claims arise from the same general course of conduct that gives rise to the claims of the other Class Members and are based on the same legal theory. *Id*. Redress to Plaintiff and all Class Members will be provided under the same settlement procedures. (*See Classen v. Weller* (1983) 145 Cal.App.3d 27, 45; *Richmond v. Dart Industries* (1981) 29 Cal.3d 462, 470.) Class representatives' interests need not be identical to other class members; rather, the named Plaintiffs and class members need only be "similarly situated." (*B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347.)

Here, during the class period, Plaintiff was a participant on *Love is Blind*, Season 2, and asserts claims on behalf of all of all participants who participated in the production of any of the following reality television productions in the State of California: *Love is Blind* seasons 2, 3, 4 and 5, and Ultimatum seasons 1A and 1B based on the same allegedly illegal labor practices and policies and worked closely with other Class Members such that he could observe Defendants' practices and other

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Class Members' experiences in relation to the claims. *Id.* Plaintiff, like other Class Members, alleges he was misclassified as an independent contractor, and as a result of the misclassification, was not paid the minimum and/or overtime wage for all hours worked, and was not permitted legally compliant meal and rest breaks. *Id.* Plaintiff also alleges he was not provided with accurate and itemized wage statements during his employment with Defendants. *Id.* Thus, Plaintiff's claims are typical of the class as a whole. *Id.*

D. Adequacy of Class Counsel

The named Plaintiff must be represented by counsel qualified to conduct the pending litigation. (*See Richmond*, *supra*, 29 Cal.3d at 470.) Throughout the process that led to the settlement off this Matter, including analysis of liability, negotiation and mediation, and approval of stipulated settlement terms, Plaintiff was represented by Class Counsel with considerable experience in litigating wage and hour class actions and/or wage and hour matters generally. See Payton Decl. ¶ 59, 73-80; Mathews Decl. ¶ 5-9; Declaration of Rayne Brown ¶ 7-11.

1. Chantal Payton, Esq.

Ms. Payton of Payton Employment Law, P.C. has represented and/or advised several hundred individual clients and obtained millions of dollars in settlements and judgments throughout her career. Payton Decl. ¶ 77. She has been approved as Class Counsel between 2018 and the present in numerous wage and hour Class Action and/or PAGA actions that she has litigated during and prior to that time period. *Id.* Throughout her career, Ms. Payton has been awarded attorneys' fees by various courts within the state of California as Class Counsel in these Class Action and/or PAGA matters and employment trials (including wage and hour trials) where she represented the plaintiff and prevailed. *Id.* A representative list of several of the wage and hour class actions and PAGA actions where Ms. Payton was lead counsel and/or performed substantial work on representing the plaintiff is included in Ms. Payton's declaration. Payton Decl. ¶ 79. In addition to these matters, Ms. Payton has prior experience defending employers in several other class action matters. *Id.* Ms. Payton has also received numerous awards and accolades throughout her career as a result of her work and success as an employment attorney which are further detailed in her Declaration. Payton Decl. ¶ 73-80

As such, Ms. Payton is highly qualified to act as Class Counsel in this matter, having extensive

experience in wage and hour and class action employment matters well beyond what is required to serve as adequate class counsel. Ms. Payton will continue to represent the class members zealously and ethically in this case and protect the interests of the class.

2. Mack Mathews, Esq.

Mr. Mathews of Payton Employment Law, P.C. was admitted to the State Bar of California in May 2021. Mathews Decl. ¶ 5. Mr. Mathews has practiced exclusively in the area of California employment law since being admitted to the Bar, solely as a plaintiff's attorney. *Id*. He has represented employees across a range of industries in individual, multi-plaintiff, class and representative actions involving wage and hour, retaliation, harassment, and discrimination disputes, as well as in investigative hearings. *Id*.

Mr. Mathews has performed work on class action matters in his practice. *Id*. His attorney's fees were approved based on the hourly rate of $400 in *Cirillo v. All City Management Services, Inc. et al*, CIVSB2115237 (Hon. Thomas S. Garza) (Dec. 11, 2023). Mathews Decl. ¶ 7.

3. Rayne Brown, Esq.

Ms. Brown of Payton Employment Law, P.C. was admitted to the State Bar of California in December 2021. Brown Decl. ¶ 7. Ms. Brown has practiced exclusively in the area of California employment law since being admitted to the Bar, both as a plaintiff's attorney and a defense attorney. *Id*. She has represented employees and employers across a diverse range of industries in individual, class, and representative actions involving wage and hour, retaliation, harassment, and discrimination disputes. *Id*.

Ms. Brown has performed work on various class action matters throughout her practice, and her attorney's fees were approved based on the hourly rate of $400 in *Garcia v. STG International, Inc.*, U.S. Dist. Ct., S.D. Cal., No. 20-CV-1701-AJB (AHG) (Hon. Anthony J. Battaglia) (Apr. 14, 2023). Brown Decl. ¶ 8.

E. Adequacy of Class Representatives

The named Plaintiff's interests cannot be antagonistic to those of the class. (*See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450.) Plaintiff does not believe he has interests antagonistic to those of the Class or that he is subject to any unique defenses. Plaintiff and the Class

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Members have strong and co-extensive interests in this litigation because they all participated on *LIB* or *Ultimatum* during the relevant time period, suffered the same alleged injury from the same alleged source of conduct, and, resultantly, there is no evidence of any conflict of interest between Plaintiff and the Class Members. Payton Decl. ¶ 560; Declaration of Jeremy Hartwell ("Hartwell Decl.") ¶¶ 2-3, 12.

Plaintiff agreed to act as a class representative on his own volition and understands his responsibilities as such, including but not limited to adequately representing the class, protecting the interests of the class, participating in litigation, maintaining communication with and cooperating with class counsel, and providing and preserving all evidence that might be necessary to bringing the class claims. Hartwell Decl. ¶ 5.

Moreover, Plaintiff has demonstrated his commitment to the Class Members by, amongst other things, retaining experienced counsel, providing counsel with documents and extensively speaking with them to assist in identifying the claims asserted in this case, assisting them in identifying witnesses, providing counsel with information before, during, and after mediation, being available throughout mediation, as well as exposing himself to the risk of attorneys' fees and costs awards against himself if this lawsuit had been unsuccessful. Hartwell Decl. ¶ 8.

Plaintiff's claims arise from the same general set of facts alleged with respect to the Class. Moreover, Plaintiff has and will continue to fairly and adequately protect the interests of the Class. Hartwell Decl. ¶ 5. Accordingly, this Court should find that Plaintiff and Class Counsel are adequate to represent the Class Members as required under Code of Civil Procedure § 382. Payton Decl. ¶ 60.

IV. MISCELLANEOUS

A. Notice

The Parties agree that the notice sent to Class Members will be English-only. This is an appropriate notice to distribute given that both of Defendants' productions, *LIB* and *Ultimatum*, are English-speaking productions. Payton Decl. ¶ 61. An English-only notice is thus sufficient because all of the Class Members who participated in the productions are English speakers. *Id*.

B. Attorneys' Fees

The Settlement states Class Counsel may seek attorneys' fees of not more than $488,250.00

(35% of the Gross Settlement Amount) and not more than $14,000.00 for actual reasonable litigation costs and expenses incurred in prosecuting the Action. Payton Decl. ¶ 62. Settlement § 3.2.2. These amounts are reasonable under the circumstances present here.

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal. App. 4th 19, 41. Indeed, it is long settled that the "experienced trial judge is the best judge of the value of professional services rendered in his court." *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1132. California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Laffitte v. Robert Half Intl, Inc.* (2016) 1 Ca1. 5th 480, 503 (citing *Lealao*, supra, 82 Cal.App.4th at p. 48-49). The Supreme Court has recently approved fees equal to one-third (1/3) of the common fund. *Laffitte*, *supra*, 1 Ca1. 5th 480. Many courts have similarly approved fee awards equal to or greater than the percentage requested here. *See*, *e.g.*, *In re Pacific Enterprises* (9th Cir. 1995) 47 F.3d 373, 379 (award of 33% of the common fund); *In re Activision* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375 (32.8% of the common fund); *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494, 498 (45% of settlement fund).

As further detailed below, the amount of fees and costs requested are commensurate with (1) the risk Class Counsel took in bringing the case, (2) the extensive time, effort and expense dedicated to the case, (3) the skill and determination Class Counsel has shown, (4) the results Class Counsel achieved, (5) the value of the Class Counsel achieved for the class, and (6) the other cases Class Counsel turned down to devote time to this matter. Payton Decl. ¶ 62.

First, Class Counsel took on substantial risk in prosecuting this class action as they maintained various novel and creative theories on behalf of reality TV participants that have not been litigated. *Id*. Class Counsel was required to assess, evaluate, and combat Defendants' various novel and creative defenses that have not been tested in court prior to and throughout the resolution of this matter. *Id*. Litigating a matter with such novel theories and defenses being a primary point of contention in this matter made the ultimate outcome of the case uncertain, and thus heighted risk, in many respects as compared with a typically run of the mill wage and hour case. *Id*.

Second, Class Counsel also spent significant efforts in investigating the claims, and

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interviewing and securing witnesses during the early stages of this matter prior to mediation as described in further detail hereinabove. *Id*. It is these significant efforts and the substantial time that Class Counsel put into prosecuting this matter prior to, during, and after mediation that led Class Counsel to obtain this reasonable settlement for the Class pre-certification and before formal discovery. *Id*. Class Counsel will submit detailed time records should the court require them, that will demonstrate the substantial work that Class Counsel put into this matter as further support and justification for Class Counsel's fee request.

Third, it was also Class Counsel's skill and determination that led them to achieve this fair result. *Id*. Class Counsel was extremely diligent in interviewing witnesses, gathering evidence, and obtaining extremely useful information that was ultimately used during mediation and thereafter in negotiating a resolution. *Id*. Class Counsel then, over a period of several months, interviewed a dozen members of the putative class, several of whom Plaintiff's counsel held extensive meetings with on multiple occasions to obtain information. *Id*. In addition, Class Counsel also expended substantial efforts: meeting and conferring with Defendants' counsel on numerous occasions (including regarding management of the case, mediation, Class data and documents, and the settlement of this matter), engaging numerous internal strategy meetings, engaging in numerous conversations with the mediator following mediation regarding settlement and to negotiate other settlement terms, reviewing and analyzing data and documents provided by Defendants and obtained through other sources, researching applicable law, and providing estimates of damages for purposes of settlement discussions after spending considerable time working with an expert, among other tasks. *Id*.

Fourth, Class Counsel obtained a fair and reasonable settlement value for the class. The gross settlement amount of $1,395,000.00 achieved on behalf of a Class of 144 individuals averages out to a gross total of $9,687.50 per Class Member. *Id*. This is a fair and reasonable outcome in light of the fact that the period of time that the Class Members participated on the *LIB* and *Ultimatum* shows within the state of California during the Class Period was limited to a minimum of 5 to a maximum of 46 days. *Id.* Moreover, of this group of 144 Class Members, the majority of them participated in one of these shows in the state of California for a period of only one to two weeks. *Id.* Even after deductions for attorneys' fees, litigation and settlement administration costs, and payment to the LWDA, the Class

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Members will each receive a monetary payout that is reasonable relative to the length of time that they participated in these shows in California during the Class Period. *Id.* As further detailed above, the Gross Settlement Amount constitutes a significant percentage (approximately 11.1%) of the maximum theoretical liability calculated by Plaintiff's counsel's expert, which Class Counsel submits is an outstanding result for the Class Members. *Id.*

Fifth, the result is of significant value to the Class. The Gross Settlement Amount is not far below the actual unpaid wages that Class Counsel's expert calculated based on the average overtime estimates derived from information supplied during witness interviews. *Id*. Thus, the Settlement as a whole comes close to compensating the Class for all theoretical unpaid wages estimated to be incurred, with only small discounts being taken for risks associated with proving Plaintiff's theories and overcoming the potential hurdles (association with, for example, a motion to compel arbitration, class certification, etc.) in this case. *Id.* Because Class Counsel obtained this result early, before a Motion to Compel Arbitration or Motion for Class Certification was heard and before substantial litigation costs were incurred, Class Counsel also obviated the risk to the Class that the Class would be dismantled by a negative outcome on such a motion or that substantial additional costs would be incurred and then deducted from the Gross Settlement Amount had a settlement been reached at a later date, which would have lowered the net recovery for the Class as a result. *Id*.

Sixth, Class Counsel's Firm has turned down numerous other cases to devote time to this matter. *Id*. This was especially so during the periods that Class Counsel spent considerable time interviewing witnesses. *Id*. At that time, three of the five attorneys at the Firm were conducting interviews with these witnesses, and where possible, two attorneys would attend so that very thorough and detailed notes could be obtained for later use. *Id*. With substantial resources (over half of the Firm's attorneys) being allocated to these phone calls with witnesses during this period, there was little or no attorney time available to attend meetings with prospective clients during those weeks. *Id*. As a result, Class Counsel's Firm passed on taking on numerous matters that it may have otherwise been able to take. *Id*. The Firm also experienced a substantial downturn in new matters during the months leading up to mediation because Class Counsel spent considerable time preparing declarations and following up with witnesses to obtain further information and signed statements, evaluating and analyzing information

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provided by Defendants, working with Plaintiff's expert, and drafting a mediation brief and preparing for mediation. *Id.* Furthermore, in taking on this matter, Class Counsel has borne all the risks and costs of litigation and will receive no compensation until recovery is obtained. *Id.*

In sum, Class Counsel are well-experienced in wage-and-hour class action litigation and used that experience to obtain a fair and reasonable result for the Class. Considering the amount of the attorney fees requested, the substantial work performed, the result achieved, and the risks incurred, the requested fees and costs are reasonable and should be awarded.

C. Class Representative Enhancement

The Settlement states that the Class Representative Service Payment to the Class Representative be no more than $10,000.00 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Payton Decl. ¶ 63. Settlement § 3.2.1.

Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks incurred during class action litigation, often in much higher amounts than sought here. *See, e.g.*, *Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726 (upholding "service payments" to named plaintiff for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294 (approving $50,000 enhancement award).

The Settlement provides that Plaintiff may seek a Class Representative Service Payment of $10,000.00. This amount is entirely reasonable given Plaintiff's efforts in this Action and the risks he undertook on behalf of the Class Members. Hartwell Decl. ¶¶ 4, 13.. Plaintiff has devoted many hours advancing the interests of the Class over several years. *Id.* Plaintiff has done this by, among other things, spending considerable time on phone calls, in meetings and through email communications explaining the unique circumstances of this case to his attorneys, including the events that transpired that compelled him to seek restitution. Hartwell Decl. ¶ 5. Plaintiff further contributed to the litigation of this matter by communicating with potential class members of the case who could potentially serve as witnesses, assisting in his attorneys to conduct interviews of these witnesses, and generally assisting his attorneys in collecting the information they needed to determine the viability and strength of the case. *Id.*

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Plaintiff has remained actively involved in the case, providing documents to his attorneys, tracking the status of the case, assisting his attorneys in preparation for the mediation, attending the entire mediation with his attorneys, helping his attorneys to settle the case on a classwide/PAGA basis, assisting in contacting other witnesses for the purpose of obtaining declarations, reviewing the settlement agreement after mediation, and participating as much as possible to ensure a fair result for the Settlement Class as a whole. Hartwell Decl. ¶¶ 5-7.

In doing so, Plaintiff exposed himself to significant risks, including the risk being ordered to pay Defendants' attorneys' fees and costs if this action had been unsuccessful. (*See* Labor Code §§ 218.5-218.6). Hartwell Decl. ¶ 4. Plaintiff has also experienced reputational harm as a result of pursuing this lawsuit, including personal threats made to him on social media, due to the wide publicity this case has received in national and international media. Hartwell Decl. ¶ 11. Plaintiff risks being adversely affected when seeking to obtain future employment since employers who discover that Plaintiff sued Defendants in a class action will likely avoid hiring Plaintiff. *Id.* The tremendous efforts and risks that Plaintiff undertook on behalf of the Settlement Class shows that the proposed Class Representative Service Payment is fair, adequate, and reasonable, and thus warrants preliminary approval. *Id.*

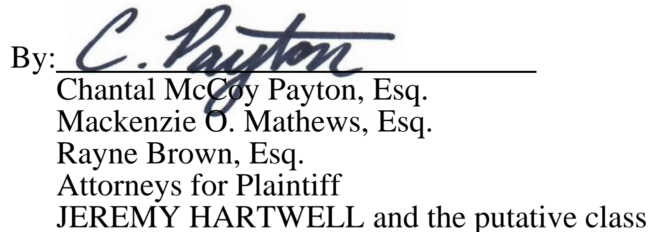
V. CONCLUSION

For all the reasons stated above, Plaintiff respectfully requests that the Court preliminarily approve the proposed Settlement, certify the settlement class for purposes of the Settlement, and approve the plan to provide notice to the settlement class.

Respectfully submitted,

Dated: May 8, 2024

PAYTON EMPLOYMENT LAW, PC

By: 
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