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6 Attorneys for Plaintiff
7 Elizabeth To and the Putative Class

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SANTA CLARA**

11
12 ELIZABETH TO, individually, and on behalf
of other members of the general public
13 similarly situated,

14 Plaintiff,

15 v.

16 INTUITIVE SURGICAL, INC., a Delaware
corporation, and DOES 1 through 10,
17 inclusive,

18 Defendants.

Case No. 24CV449420
Assigned to: Hon. Theodore C. Zayner

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT AND PROVISIONAL
CLASS CERTIFICATION FOR
SETTLEMENT PURPOSES ONLY;
MEMORANDUM OF POINTS AND
AUTHORITIES**

*[Filed with Declaration of Camron
Dowlatsahi, Declaration of Plaintiff
Elizabeth To, and [Proposed] Order]*

HEARING INFORMATION:

DATE: July 16, 2025

TIME: 1:30 p.m.

DEPT: 19

Complaint Filed: October 14, 2024

Trial Date: None Set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on July 16, 2025, or as soon thereafter as the case may be
3 heard, in Department 19 of the Santa Clara Superior Court of the State of California, located at 191
4 N. First St, Santa Clara, CA 95113, Plaintiff ELIZABETH TO (“Named Plaintiff” or “Plaintiff”),
5 on behalf of herself and all others similarly situated and aggrieved, will and hereby do move for
6 Preliminary Approval of the proposed Class Action Settlement and Representative Action
7 Settlement in this case.

8 This Motion is unopposed and based on the Class Action and PAGA Settlement Agreement
9 and Class Notice (“Settlement Agreement”), which is submitted herewith as **Exhibit 1**. Plaintiff
10 further moves for an Order that specifically includes the following:

- 11 1. Certifies a class for settlement purposes only;
- 12 2. For purposes of settlement, designates Plaintiff Elizabeth To as the Class
13 Representative, and Camron Dowlatshahi and Arash Sadat of the law firm of Mills Sadat Dowlat
14 LLP as Class Counsel;
- 15 3. Confirms ILYM Group, Inc. as the Settlement Administrator;
- 16 4. Approves, as to form and content, the Class Notice attached as **Exhibit A** to the
17 Settlement Agreement submitted in support of this Motion;
- 18 5. Approves the form and content of the proposed method of participating in the
19 Settlement, requesting exclusion from the Settlement, or objecting to the Settlement;
- 20 6. Grants preliminary approval of the Class Action and PAGA Settlement; and
- 21 7. Sets a Final Approval and Settlement Fairness Hearing on the first available date on
22 or after July 16, 2025 to provide time for the notice process and preparation of and proper service
23 of the Motion for Final Approval.

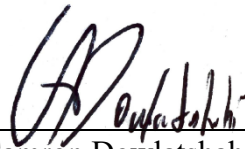
24 This Motion will be based on this Notice of Motion, the Memorandum of Points and
25 Authorities filed herewith, the Declaration of Plaintiff Elizabeth To, the Declaration of Camron
26 Dowlatshahi, and exhibits attached thereto, argument of counsel and upon such other material
27 contained in the file and pleadings of this action.

28 //

1 Dated: June 24, 2025

MILLS SADAT DOWLAT LLP

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3 By:


Camron Dowlatsahi

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5 Attorneys for Plaintiff Elizabeth To, on behalf of
6 herself and all others similarly situated and
7 aggrieved
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. FACTUAL AND PROCEDURAL BACKGROUND**

3 On August 12, 2024, Plaintiff Elizabeth To (“Ms. To”) sent a demand letter to her former
4 employer Intuitive Surgical, Inc. (“Intuitive Surgical” or “Defendant”) requesting her personnel
5 file and payroll records in furtherance of putative wage and hour claims, including for unpaid
6 meal break premiums and related penalties. On September 9, 2024, after Ms. To sent her letter,
7 Defendant provided the requested personnel file.

8 On October 11, 2024, Ms. To submitted to the Labor Workforce and Development Agency
9 (“LDWA”), and sent via certified mail to Defendant, a notice of Labor Code violations pursuant
10 to Labor Code section 2699.3(a).

11 On October 14, 2024, Plaintiff filed a class and representative action alleging wage and
12 hour violations under Labor Code sections 201-203, 204, 226, 226.7, 512, 1182.12, 1194, 1194.2,
13 1197, 1197.1, 1198, and 2802, as well as violations of the Labor Code Private Attorneys’ General
14 Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), and the Unfair Competition
15 Law under Business & Professional Code sections 17200, *et seq.*, in the Superior Court of the
16 State of California, County of Santa Clara, Case No. 24CV449420 (the “Action”), on behalf of
17 herself and other aggrieved, non-exempt California employees and former employees of Intuitive
18 Surgical seeking civil penalties and unpaid wages where applicable. The Action was based on the
19 theory that Defendant failed to pay Plaintiff, putative class members, and aggrieved employees for
20 all hours worked, failed to provide uninterrupted meal and rest periods, failed to provide premium
21 pay for missed meal and rest breaks, and failed to furnish accurate wage statements, among other
22 wage and hour violations.

23 Thereafter, Plaintiff’s Counsel and Defense Counsel exchanged documents and engaged in
24 settlement negotiations regarding Plaintiff’s purported claims. In order to facilitate a settlement of
25 the Action, the parties agreed to attend mediation.

26 On December 19, 2024, the parties participated in an all-day mediation presided over by
27 Nikki Tolt, a well-regarded mediator, who has mediated many wage and hour class actions. The
28 parties engaged in good faith, arm’s-length negotiations concerning possible resolution of the

1 Action and were able to reach a settlement at the conclusion of mediation.

2 The Parties have conducted significant investigation of the facts and law during the
3 prosecution of this Action. Prior to mediation, Plaintiff's Counsel obtained, through informal
4 discovery, the approximate average hourly rate for putative class members and aggrieved
5 employees, the number of putative class members and aggrieved employees in certain time frames
6 (including one year before filing the Action), and the number of workweeks worked by putative
7 class members. In addition, Plaintiff's Counsel reviewed Defendant's statements of wage-and-
8 hour policies provided to putative class members and aggrieved employees, including Intuitive
9 Surgical's meal and rest break policies, among other things. Plaintiff's Counsel conducted a
10 statistical analysis of the information and presented the information during mediation. Plaintiff's
11 Counsel also investigated the law as applied to the facts discovered regarding the alleged claims
12 of Plaintiff and potential defenses thereto, and the potential damages claimed by Plaintiff.

13 Defendant denied, and continues to deny, each of the allegations asserted in the litigation,
14 has repeatedly asserted and continues to assert defenses to Plaintiff's claims and contentions, and
15 expressly denied and continues to deny that it engaged in any wrongdoing or has any liability
16 arising out of any of the facts or conduct alleged in the litigation. Nevertheless, the parties
17 tentatively agreed upon terms to settle the litigation on a class and representative basis after
18 considering the sharply disputed factual and legal issues involved in this litigation, the risks
19 associated with further prosecution, and the substantial benefits to be received pursuant to the
20 compromise and settlement of the Action.

21 **II. THE SETTLEMENT**

22 Subject to court approval pursuant to Code of Civil Procedure section 382 and California
23 Rules of Court, rule 3.679, *et seq.*, Plaintiff and Defendant have agreed to settle the Action by
24 agreement upon the terms and conditions and for the consideration set forth in the Settlement
25 Agreement, a copy of which is attached to the Declaration of Camron Dowlathshahi as Exhibit 1.
26 A summary of the terms of the settlement are as follows:

- 27 • Defendant will stipulate, for the purposes of this settlement only, to certification of a class
28 defined as: all persons who are employed or were previously employed by Defendant in

1 California and classified as a non-exempt employee at any time from October 14, 2020,
2 through the date of the Court's Preliminary Approval or ninety (90) days from the date the
3 Agreement is fully executed, whichever is sooner (the "Class," "Class Period," and each
4 individual in the class a "Class Member") (Exhibit 1 at ¶¶ 1.5, 1.9 and 1.12);

- 5 • Defendant shall pay a total of \$4,500,000.00 which is referred to herein as the Gross
6 Settlement Amount (Exhibit 1 at ¶ 1.22);
- 7 • Defendant shall additionally be responsible for payment of the employer portion of payroll
8 taxes due on the wage portion of each Individual Class Payment (Exhibit 1 at ¶ 3.1);
- 9 • An Individual Class Payment will be calculated by (a) dividing the Net Settlement
10 Amount by the total number of Workweeks worked by all Participating Class Members
11 during the Class Period and (b) multiplying the result by the Participating Class Member's
12 Workweeks worked (Exhibit 1 at ¶ 3.2.4);
- 13 • The Settlement Administration costs, not to exceed \$16,950.00, will be paid out of the
14 Gross Settlement Amount (Exhibit 1 at ¶ 3.2.3);
- 15 • Class Counsel will apply for, and Defendant will not oppose, attorneys' fees of up to
16 \$1,500,000.00, which represents thirty-three percent (33%) of the Gross Settlement
17 Amount, and actual Costs and Expenses not to exceed \$25,000.00, all of which will be
18 paid out of the Gross Settlement Amount (Exhibit 1 at ¶ 3.2.2);
- 19 • Class Counsel will apply for, and Defendant will not oppose, an enhancement award of not
20 more than \$5,000.00 to the Class Representative, which will be paid out of the Gross
21 Settlement Amount (Exhibit 1 at ¶ 3.2.1);
- 22 • All Participating Class Members will release Intuitive Surgical and all other Released
23 Parties from all claims that were alleged in or reasonably could have been alleged based
24 on the facts occurring during the Class Period as stated in the PAGA Notice or the
25 Operative Complaint. Except as set forth in Exhibit 1 at ¶ 5.3, Participating Class
26 Members do not release any other claims, including claims for vested benefits, wrongful
27 termination, violation of the Fair Employment and Housing Act, unemployment insurance,
28 disability, social security, workers' compensation, or claims based on facts occurring

outside of the Class Period (Exhibit 1 at ¶ 5.2);

- 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). Each Wage Portion is subject to tax withholding and will be reported on an IRS W-2 Form. The remaining 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for statutory and civil penalties, statutory or other non-wage damages, and interest (the "Non-Wage Portion"). Each Non-Wage Portion is not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any taxes owed on their Individual Class Payment, excluding the Employer Payroll Taxes (Exhibit 1 at ¶ 3.2.4.1);
- Defendant has agreed to pay \$50,000.00 as PAGA penalties, seventy-five percent (75%) or \$37,500.00 of which will be paid to the California Labor and Workforce Development Agency ("LWDA"), and twenty-five percent (25%) or \$12,500.00 of which will be distributed to Aggrieved Employees (Exhibit 1 at ¶¶ 3.2.5-3.2.5.1) — all of which shall be paid out of the Gross Settlement Amount; and
- Participating Class Members will have one hundred eighty (180) days from the date of issuance of the check to cash their check. The Administrator will cancel all checks not cashed by the void date. For any check uncashed or cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member/Aggrieved Employee, thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). (Exhibit 1 at ¶¶ 4.4.1, 4.4.3).

III. THE TWO-STEP APPROVAL PROCESS

Any settlement of class litigation must be reviewed and approved by the Court. This is done in two steps: (1) an early (preliminary) review by the trial court; and (2) a final review after notice has been distributed to the class members for their comment or objections. The Manual for Complex Litigation Second states at section 30.44:

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1 A two-step process is followed when considering class settlements ... if the
2 proposed settlement appears to be the product of serious, informed, non collusive
3 negotiations, has no obvious deficiencies, does not improperly grant preferential
4 treatment to class representative or segments of the class, and falls within the range
of possible approval, then the court should direct that notice be given to the class
members of a formal fairness hearing, at which evidence may be presented in
support of and in opposition to the settlement. (*Id.* at § 10 (1985).)

5 Thus, the preliminary approval of the trial court is simply a conditional finding that the
6 settlement appears to be within the range of the acceptable settlements. As class action Professor
7 Herbert B. Newberg comments, “The strength of the findings made by a judge at a preliminary
8 hearing or conference concerning a tentative settlement proposal may vary. The court may find
9 that the settlement proposal contains some merit, is within the range of reasonableness required
10 for a settlement offer or is presumptively valid subject only to any objections that may be raised at
11 a final hearing.” (4 Conte & Newberg, *Newberg on Class Actions* [“Newberg on Class Actions”],
12 § 11.26 (4th Ed. 2002).)

13 The procedures for submission of a proposed settlement for preliminary approval is
14 discussed at section 11.24 through 11.26 of *Newberg on Class Actions*. Newberg observes at
15 section 11.24:

16 When the parties to an action reach a monetary settlement, they will usually
17 prepare and execute a joint stipulation of settlement, which is submitted to the
18 court for preliminary approval. The stipulation should set forth the central terms of
19 the agreement, including but not limited to, the amount of the settlement, form of
payment, manner of determining the effective date of settlement, and any recapture
clause.

20 The Settlement Agreement in this case is fair, reasonable, and in the best interest of the
21 class.

22 **IV. THE PRESUMPTION OF FAIRNESS**

23 A trial Court has broad powers to determine whether a proposed settlement in a class
24 action is fair. (*Mallick v. Superior Court* (1979) 89 Cal.App.3d, 434, 438.) A class action
25 settlement is presumptively fair if it was reached through arm’s-length negotiations between
26 experienced counsel after extensive investigation, litigation, and discovery. (*Dunk v. Ford Motor*
27 *Company* (1996) 48 Cal.App.4th 1749, 1802.) The presumption of fairness is consistent with
28 California’s public policy goal of favoring settlements. (*Cellphone Termination Fee Cases* (2009)

1 180 Cal.App.4th 1110, 1118 (“public policy generally favors the compromise of complex class
2 action litigation”).)

3 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless
4 evidence to the contrary is offered. In short, there is a presumption that the negotiations were
5 conducted in good faith. (Newberg on Class Actions, § 11.51; *In re Volkswagen “Clean Diesel”*
6 *Marketing, Sales Practices, and Products Liability Litigation* (N.D. Cal. May 17, 2017) No. 16-
7 cv-00295, 2017 WL 2214655 (citing *United States v. Oregon* (9th Cir. 1990) 913 F.2d 576,
8 580).)¹

9 Courts do not substitute their judgment for that of the proponents, particularly where, as
10 here, settlement has been reached with the participation of experienced counsel familiar with the
11 litigation. (*Hammon v. Barry* (D.D.C. 1990) 752 F.Supp. 1087, 1093 (citing Newberg on Class
12 Actions, § 11.44, p. 457 and *Steinberg v. Carey* (S.D.N.Y. 1979) 470 F.Supp. 471); *In re Ikon*
13 *Office Solutions, Inc. Securities Litigation* (E.D. Pa. 2002) 209 F.R.D. 94, 104 (citing *Sommers v.*
14 *Abraham Lincoln Federal Savings & Loan Association* (E.D. Pa. 1978) 79 F.R.D. 571, 576).)

15 While the recommendations of counsel proposing the settlement are not conclusive, the
16 Court can properly take them into account, particularly where, as here, they have been involved in
17 litigation for some period of time, appear to be competent, have experience with this type of
18 litigation, and have obtained substantial data from the opposing party. See Newberg on Class
19 Actions, § 11.47. In this Action, the Settlement was reached after extensive factual and legal
20 research, informal discovery disputes, discussions between Class Counsel and Class
21 Representative, preparation of damages analyses, and a mediation with experienced mediator,
22 Nikki Tolt.

23 The Settlement that has been reached, subject to this Court’s approval, is the product of
24 tremendous effort and a great deal of expense by the parties and their counsel. It is, of course, a
25

26 ¹ This Motion occasionally cites federal case law and commentaries thereon which construe authority for
27 conditional class certification and settlement approval in California courts. The California Supreme Court
28 has authorized and urged California’s trial courts to use federal resources for guidance in considering class
issues. (*Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-
46.)

1 compromise figure. However, counsel for the parties are satisfied that this figure is reasonable in
2 light of the risks and expense of continued litigation.

3 **V. NOTICE OF SETTLEMENT AGREEMENT AND APPOINTMENT OF**
4 **SETTLEMENT ADMINISTRATOR**

5 A notice of settlement of a class action “must contain an explanation of the proposed
6 settlement and procedures for class members to follow in filing written objections to it and in
7 arranging to appear at the settlement hearing and state any objections to the proposed settlement.”
8 *Cal. Rules of Court*, rule 3.769, subd. (f). Attached to the Declaration of Camron Dowlatsahi as
9 Exhibit 1 is the Settlement Agreement between the Parties. Attached to the Settlement Agreement
10 as Exhibit A is the proposed Notice of Class Action Settlement (“Class Notice”) to be distributed
11 to the class members in English and Spanish. The proposed Class Notice satisfies these
12 requirements.

13 The Parties respectfully request that this Court approve the above-referenced Class Notice
14 and dissemination of the Class Notice to the Class Members, consistent with the manner and
15 timing as set forth in the Settlement Agreement. The Parties have agreed to use ILYM Group,
16 Inc., an experienced Settlement Administrator, to administer the settlement. The Parties have
17 further agreed that the administration costs, not to exceed \$16,950.00, will be paid out of the
18 Gross Settlement Amount. A copy of the proposed bid from ILYM Group, Inc., which outlines
19 the proposed administration costs, is attached to the Declaration of Camron Dowlatsahi as
20 **Exhibit 2**. It is requested that the Court appoint ILYM Group, Inc. to serve as the Settlement
21 Administrator. The Parties and their Counsel represent that they have no interest or relationship,
22 financial or otherwise, with the Administrator other than a professional relationship arising out of
23 prior experiences administering settlements.

24 **VI. THE SETTLEMENT IS FAIR AND REASONABLE BASED UPON OBJECTIVE**
25 **EVIDENCE**

26 **A. The Circumstances of the Settlement Support Preliminary Approval**

27 A proposed settlement is presumed to be fair when the following factors are present: (1) it
28 is reached through arm’s-length negotiations; (2) investigation and discovery are sufficient to

1 allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and
2 (4) the percentage of objectors is small. (*Dunk, supra*, 48 Cal.App.4th at p. 1802.) As analyzed
3 above, the first three elements are satisfied here.

4 The circumstances of the Settlement support preliminary approval. The law favors the
5 settlement of lawsuits, particularly in class actions and other complex cases. (*Officers for Justice*
6 *v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 (“Voluntary conciliation and settlement
7 are the preferred means of dispute resolution.”).) Here, the Settlement resolves a putative class
8 and representative action.

9 In determining whether the settlement is actually within the range of fairness, courts
10 consider additional factors such as the strength of the plaintiff’s case, the risk, expense,
11 complexity and likely duration of further litigation, the risk of maintaining class action status
12 throughout trial, the amount offered in settlement, and the experience and views of counsel.
13 (*Hanlon v. Chrysler Corp.* (1998) 150 F.3d 1011, 1026, *overruled on other grounds by Wal-Mart*
14 *v. Dukes* (2011) 564 U.S. 338; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116,
15 128; *Dunk, supra*, 48 Cal.App.4th at p. 1794, 1800-1801; *Wershba v. Apple Computer, Inc.*
16 (2001) 91 Cal.App.4th 224, 245.) Furthermore, courts give “proper deference to the private
17 consensual decision of the parties[.]” (*Hanlon, supra*, 150 F.3d at p. 1027.)

18 Here, applying a *Dunk/Kullar* analysis, the settlement is fair and reasonable based on
19 objective evidence. The settlement that has been reached, subject to this Court’s approval, is the
20 product of substantial effort by the Parties and their counsel. The settlement was reached after
21 extensive factual and legal investigation and research, a review of pleadings, informal discovery,
22 exchanges of documents and information, statistical analysis of timekeeping records and liability
23 exposure, review of Defendant’s employment policies, discussions with Plaintiff regarding
24 Defendant’s wage practices, correspondence and negotiation between counsel, settlement
25 discussions prior to mediation, a full day of mediation, review of evidence and rulings in similar
26 actions litigated elsewhere in the state, and a review of similar cases in the same industry
27 elsewhere in the country. The settlement amount is, of course, a compromise figure. It
28 considered the risks related to liability, damages, and all the defenses asserted by Defendant.

1 Plaintiff asserts that the wage and hour claims and the claims for resulting penalties would
2 be certified. On the other hand, Intuitive Surgical argued that Plaintiff cannot meet the
3 requirements of class certification as they claim that any wage discrepancies or missed meal and
4 rest breaks are not the product of an overarching policy or practice that was uniformly applied;
5 that compliant meal and rest periods were made available; that Defendant did not deter employees
6 from taking meal and rest periods; and that Defendant's meal and rest period policies are/were
7 compliant. Defendant further contends that class certification would not be warranted because
8 individual liability issues predominate over any class allegations

9 While Plaintiff believes in her chances of success of certifying the claims if permitted,
10 Plaintiff recognized the potential risk, expense, and complexity posed by litigation on a class
11 basis. Plaintiff's claims in this Action – claims that involve numerous Class Members during the
12 Class Period working with Intuitive Surgical – would require substantial preparation and
13 discovery and ultimately would involve the deposition and presentation of numerous more
14 witnesses (including Class Members and expert witnesses), as well as the consideration,
15 preparation, and analysis of expert reports. Therefore, further class litigation, if permitted, would
16 have carried with it significant expense incurred by each side (above and beyond the tens of
17 thousands of dollars of expense already incurred).

18 Again, Plaintiff and Intuitive Surgical have very strong, and opposing, positions on
19 liability in this case. Intuitive Surgical denies any wrongdoing of any kind associated with the
20 claims alleged in the Action, and further denies that, for any purpose other than that of settling
21 this lawsuit, the allegations in the Action are appropriate for class treatment. In light of the
22 sharply contested legal and factual issues, the risks of continued litigation, and substantial benefits
23 to Class Members under the Settlement, the terms and conditions of this class settlement are fair
24 and reasonable to all sides.

25 **B. The Settlement Amount Is Well Within the Range of Reasonableness**

26 To determine whether a settlement is fair and reasonable, the court should “consider
27 enough information about the nature and magnitude of the claims being settled, as well as the
28 impediments to recovery, to make an independent assessment of the reasonableness of the terms

1 to which the parties have agreed.” (*Kullar, supra*, 168 Cal.App.4th at p. 116, 133.) The Court is
2 “not to try the case” but rather “satisfy itself that the class action settlement is within the ‘ballpark
3 of reasonableness.’” (*Id.*) In making this determination, courts require “a record which allows an
4 understanding of the amount that is in controversy and the realistic range of outcomes of the
5 litigation.” (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal
6 citation omitted).) The settlement amount reached in this case provides significant recovery to
7 participating Class Members, based on the circumstances, and easily falls within the range of
8 reasonableness.

9 **1. Missed Meal Breaks**

10 The allegation that Defendant deprived Class Members of meal and rest periods, and failed
11 to pay premium pay for those missed meal and rest breaks, was the driving force of this litigation.
12 Intuitive Surgical contends, in defense, that each of the potential issues is individualized and there
13 is no uniform pattern or practice of depriving employees of meal or rest breaks meriting class
14 certification.

15 Based on Defendant’s analysis of the available payroll records, it was determined that the
16 number of workweeks in which meal periods could be missed was as high as 260,000. Using this
17 information and data provided by Defendant, an average (weighted) hourly wage of about \$46.54,
18 and assuming a violation every time a worker worked a full time shift five days per week, every
19 week, the liability exposure possible for this claim could exceed \$60,502,000 over the Class
20 Period (1,300,000 shifts x \$46.54/hr.).

21 **2. Missed Rest Breaks**

22 In Plaintiff’s experience, Class Members were, at times, not taking rest breaks because
23 there simply was not enough time to take them, or they were pressured to work through them.
24 Plaintiff further reports that even when they were permitted (either by supervisors or breaks in
25 work) to take rest breaks, they were interrupted by coworkers or the demands of their workload.

26 Intuitive Surgical contends that they have maintained throughout the Class Period
27 compliant rest period policies; that compliant rest breaks always were made available to Class
28 Members; and that individual issues predominate as to why rest periods were not taken (if not

1 taken).

2 Based on Defendant's analysis of payroll records, the average hourly wage for the Class
3 Period is approximately \$46.54. Assuming a 100% violation rate for missed rest breaks (*i.e.*, that
4 each Class Member missed at least one rest break on each of the approximately 1,300,000 shifts
5 worked during the Class Period), the estimated exposure for rest break premiums totals
6 \$60,502,000 (1,300,000 shifts x \$46.54/hr.).

7 **3. Recovery of Penalties**

8 Plaintiff contends that she and Class Members would have been entitled to recover
9 statutory penalties for Intuitive Surgical's alleged failure to issue compliant wage statements
10 under California Labor Code section 226, subdivision (e) and for Intuitive Surgical's failure to
11 issue all earned wages immediately upon termination or within 72 hours of resignation under
12 California Labor Code sections 201, 202, and 203. The statutory penalties are derivative of the
13 wage and hour claims. As a result of Intuitive Surgical's purported failure to provide compliant
14 wage statements each pay period, each aggrieved employee could recover up to a maximum of
15 \$4,000.00 aggregate penalty pursuant to Labor Code section 226, subdivision (e), depending on
16 the number of pay periods he or she was issued a non-compliant wage statement. As a result of
17 Intuitive Surgical's failure to pay all earned wages immediately upon termination or within 72
18 hours of resignation, each former employee could recover up to a maximum of a 30-day penalty.

19 However, there are certain inherent risks associated with these claims. With respect to the
20 wage statement claim, it commands a one-year statute of limitations period, which would
21 significantly weigh on this claim. With respect to the waiting time penalty claim, Plaintiff
22 anticipates that Intuitive Surgical would argue that the Labor Code requires that there be a willful
23 showing that the employer knew of its obligation and intentionally refused to act. (*Naranjo v.*
24 *Spectrum Security Services* (2022) 13 Cal.5th 93, 126.)

25 **4. PAGA Penalties**

26 Plaintiff also alleged that Defendant's conduct created liability under the Labor Code
27 Private Attorney General Act ("PAGA"). PAGA claims are extraordinarily difficult to evaluate
28 because there are several obstacles to the actual award of the civil penalty. First, it is arguably

unclear whether penalties continue to accrue until the court finds a violation to exist. Second, Labor Code § 2699(e)(1) and (2) give trial courts immense discretion to assess or lower the penalty amount. Indeed, several courts have exercised their broad discretion and have dramatically limited PAGA awards. Third, defendants routinely argue that, when other statutory penalties have been imposed, additional penalties under PAGA are unjust (*e.g.*, in cases where damages are already “in play” based on underlying wage violation claims, as we have here). (*See Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 528 (“imposing the maximum [PAGA] penalty would be unjust, arbitrary, and oppressive . . .”); *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1213, *disapproved on another ground in Cohen v. Superior Court* (2024) 102 Cal.App.5th 706, 720.))

Thus, while the PAGA calculation herein for approximately 40,000 pay periods could reach \$8,000,000, the likelihood of that sum ever being awarded is slim. Despite this potential recovery, given that PAGA penalties would likely be deemed duplicative of other penalties awardable here, given the extreme “haircuts” many courts are giving to PAGA penalties and given the presence here of class-action allegations (the absence of which often being the reason so-called “Plan B” PAGA penalties are sought to begin with), PAGA penalties were discounted.

Nevertheless, the amount of PAGA civil penalties to be paid from the Gross Settlement Amount is fair to those affected (*see Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77) and is allocated at twenty-five percent (25%) to the aggrieved employees (\$12,500.00) and seventy-five percent (75%) to LWDA (\$37,500.00).

5. Gross Settlement Amount

Class Counsel obtained a Gross Settlement Amount of \$4,500,000.00. This Gross Settlement Amount represents a significant recovery. Class Counsel considers this to be a fair, reasonable and adequate settlement for Class Members, when considering all issues and risks related to liability, the hurdles to class certification, and considering the case law regarding fair, reasonable, and adequate settlements. (*See, e.g., Officers for Justice v. Civil Service Comm 'n* (9th Cir. 1992) 688 F.2d 615, 628 (“It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not . . . render the settlement inadequate or unfair.”))

1 **VII. THE PROPOSED ATTORNEYS' FEES AND COSTS ARE REASONABLE**

2 Class Counsel seeks an attorneys' fees award of \$1,500,000.00, which is approximately
3 thirty-three percent (33%) of the Gross Settlement Amount, and costs not to exceed \$25,000.00.
4 The requested fee falls well within the historical range of attorneys' fee awards under the common
5 fund theory, which is generally from 25% to 50%. The requested fee is fair compensation for
6 undertaking complex, risky, expensive, and time-consuming litigation on a contingent fee basis.
7 Indeed, this case was litigated with conflict between counsel, including regarding whether
8 penalties could be obtained for aggrieved employees in the form of unpaid wages, and the
9 approximate number of class members and violations.

10 Moreover, when information was obtained through informal means, extensive work was
11 performed by Class Counsel, including the review of voluminous time and pay records and
12 analyses regarding the certifiability and merits of each of Plaintiff's claims, the merits of those
13 claims, and what damages would be recoverable. Additionally, thousands of dollars were
14 expended, including in filing fees, for statisticians to analyze Defendant's data, and attend
15 mediation to try to resolve this Action.

16 The California Supreme Court has expressly recognized that the awarding of a percentage
17 of the "common fund" created as a result of the settlement is an appropriate method for the
18 calculation of an attorneys' fees award in a class action. (*Laffitte v. Robert Half Intern. Inc.*
19 (2016) 1 Cal.5th 480, 503-504.) The purpose of the common fund/percentage approach is to
20 "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary
21 does not bear the entire burden alone." (*Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d
22 759, 769; *see also* Laffitte, 1 Cal.5th at 489.) In *Quinn v. State of California* (1995) 15 Cal.3d
23 162, the California Supreme Court stated that "one who expends attorneys' fees in winning a suit
24 which creates a fund from which others derive benefits may require those passive beneficiaries to
25 bear a fair share of the litigation costs." (*Id.* at 167.) Similarly, in *City and County of San*
26 *Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the
27 common fund doctrine has been applied "consistently in California when an action brought by one
28 party creates a fund in which other persons are entitled to share." (*Id.* at 110.) The reasons for

1 applying the common fund doctrine further include:

2 “ ... fairness to the successful litigant, who might otherwise receive no benefit
3 because his recovery might be consumed by the expenses; correlative prevention of
4 an unfair advantage to the others who are entitled to share in the fund and who
5 should bear their share of the burden of its recovery; encouragement of the attorney
6 for the successful litigant, who will be more willing to undertake and diligently
7 prosecute proper litigation for the protection or recovery of the fund if he is assured
8 that he will be properly and directly compensated should his efforts be successful.”
9 *Id.*

10 The “lodestar method,” which focuses on the amount of work done, is the alternative
11 method for determining attorney fee awards. (*Lafitte*, 1 Cal.5th at 489.) Several courts have
12 expressed frustration with the alternative “lodestar” approach for deciding fee awards, which
13 usually involves wading through voluminous and often indecipherable time records. Commenting
14 on the lodestar approach, Chief Judge Marilyn Hall Patel wrote in *In re: Activision Securities*
15 *Litigation* (N.D. Cal 1989) 723 F.Supp. 1373:

16 “This court is compelled to ask, 'Is this process necessary?' Under a cost-benefit
17 analysis, the answer would be a resounding, 'No!' Not only do the Lindy Kerr
18 Johnson analyses consume an undue amount of court time with little resulting
19 advantage to anyone, but in fact, it may be to the detriment of the class members.
20 They are forced to wait until the court has done a thorough, conscientious analysis
21 of the attorneys' fee petition. Or, class members may suffer a further diminution of
22 their fund when a special master is retained and paid from the fund. Most
23 important, however, is the effect the process has on the litigation and the timing of
24 settlement. Where attorneys must depend on a lodestar approach, there is little
25 incentive to arrive at an early settlement.”

26 (*Id.* at 1375.) The percentage approach is preferable to the lodestar because: (1) it aligns the
27 interests of class counsel and absent class members; (2) it encourages efficient resolution of the
28 litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the
demands on judicial resources. (*Id.* at 1378-79.)

29 This was reaffirmed in 2016 by the California Supreme Court as well. The California
30 Supreme Court noted that “[c]urrently, all the circuit courts either mandate or allow their district
31 courts to use the percentage method in common fund cases; none require sole use of the lodestar
32 method.” (*Lafitte*, 1 Cal.5th at 493 (citations omitted).) It further noted that “the Third Circuit
33 itself holds that while both methods of calculating a fee may be used, the percentage-of-recovery

1 method is generally favored in common fund cases because it allows courts to award fees from the
2 fund in a manner that rewards counsel for success and penalizes it for failure.” (*Id.* (citing *In re:*
3 *Rite Aid Corp. Securities Litigation* (3rd Cir. 2005) 396 F.3d 294, 300).) And, as the California
4 Supreme Court stated, “Most state courts to consider the question in recent decades have also
5 concluded the percentage method of calculating a fee award is either preferred or within the trial
6 court’s discretion in a common fund case.” (*Lafitte*, 1 Cal.5th at 494.)

7 The California Supreme Court noted that even “[t]he American Law Institute has also
8 endorsed the percentage method’s use in common fund cases, with the lodestar method reserved
9 mainly for awards under fee shifting statutes where the percentage method cannot be applied or
10 would be unfair due to specific circumstances of the case. (*Id.* (citing ALI, Principles of the Law
11 of Aggregate Litigation (2010) § 3.13).) It continued:

12 “Although many courts in common-fund cases permit use of either a percentage of-
13 the-fund approach or a lodestar (number of hours multiplied by a reasonable hourly
14 rate), most courts and commentators now believe that the percentage method is
15 superior. Critics of the lodestar method note, for example, the difficulty in applying
16 the method and cite the undesirable incentives created by that approach-i.e., a
17 financial incentive to extend the litigation so that the attorneys can accrue
additional hours (and thus, additional fees). Moreover, some courts and
commentators have criticized the lodestar method because it gives counsel less of
an incentive to maximize the recovery of the class.”

18 (*Id.* (citing ALI, Principles of the Law of Aggregate Litigation (2010) § 3.13, com. b).)

19 “While the percentage method has been generally approved in common fund cases, courts
20 have sought to ensure the percentage fee is reasonable” *Id.* at 495 (citations omitted). Class
21 Counsel’s request for fees of approximately thirty-three percent (33%) of the Gross Settlement
22 Amount is within the range of reasonableness. Notably, one-third of the common fund was the
23 exact amount requested by class counsel in *Lafitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th
24 480. In that case, the trial court rejected the one-third common fund award and was reversed by
25 the California Supreme Court who determined that the trial court erred by not approving one-third
26 of the common fund as class counsel’s attorneys’ fees award. (*Laffitte*, 1 Cal.5th at 485-486,
27 506.)

28 This is also in line with attorney fee awards historically awarded in common fund cases.

1 Indeed, historically, courts have awarded percentage fees in the range of 20% to 50%, depending
2 on the circumstances of the case. (Newberg on Class Actions, § 14.03; *In re Activision Securities*
3 *Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1378.) According to Newberg on Class Actions,
4 “No general rule can be articulated on what is a reasonable percentage of a common fund.”
5 Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in
6 order to ensure that the fees do not consume a disproportionate part of the recovery obtained for
7 the class, although somewhat larger percentages are not unprecedented.” (Newberg on Class
8 Actions, § 14.03.) Newberg on Class Actions further notes: “achievement of a substantial
9 recovery with modest hours expended should not be penalized but should be rewarded for
10 considerations of time saved by superior services performed.” (*Id.* at § 14.01, p. 14-10:1411.)

11 Class Counsel have borne, and continue to bear, the entire risk and cost of litigation
12 associated with this class action on a pure contingency basis. The factual and legal issues posed
13 in this case were evolving and difficult, particularly in light of the disputes between the Parties
14 regarding discovery and the purported arbitration agreements.

15 Class Counsel has easily already expended hundreds of hours on this matter, including
16 through:

- 17 • the initial investigation of the matter, including extensive client interviews;
- 18 • seeking informal discovery from Defendant, including written policies, time records,
19 and pay records;
- 20 • meeting and conferring regarding mediation, and negotiating with opposing counsel
21 regarding the parameters thereof;
- 22 • analyzing written policies produced by Defendant;
- 23 • analyzing time and payroll records (in conjunction with Plaintiff) produced by
24 Defendant;
- 25 • analyzing other documents (including purported meal and rest break policies)
26 produced by Defendant;
- 27 • preparing for and attending mediation;
- 28 • negotiating a Memorandum of Agreement;

- negotiating and finalizing a long form settlement agreement;
- preparing a draft class notice and obtaining bids for administration;
- filing a Class and Representative Action Complaint in this Action; and
- preparing the instant Motion for Preliminary Approval.

Moreover, further efforts will be necessary for preliminary and final approval. Based on Class Counsel's past experience in wage and hour class action litigation, Class Counsel is very likely to be called upon, after the Class Notice has been sent, to expend substantial amounts of additional time to help Class Members understand the terms of the proposed settlement, and to assist Class Members in the preparation and documentation of their claims. It is also likely that, even after final approval of the settlement has been granted, Class Counsel will be called upon to expend additional amounts of time in the presentation and resolution of contests and disputes relating to Class Members' claims under the terms of the proposed settlement, as to the amounts of individual claims and perhaps other individual issues. Finally, Class Counsel will have to work with the Settlement Administrator to submit a report to this Court regarding the distribution plan pursuant to Code of Civil Procedure section 384 along with a proposed amended judgment, which will require further time and cost to be expended.

Class Counsel's experience, qualifications, and reputation support the requested fee award. Courts commonly assess fees in light of the skill and experience of counsel, and here, Class Counsel possess extensive experience handling class and representative actions on behalf of employees. Class Counsel has served as lead counsel in numerous wage-and-hour class and PAGA actions in California state courts. Through this work, Class Counsel have developed significant familiarity with the complex and evolving legal issues unique to this area of law, making them well-equipped to prosecute claims on a representative basis

Here, Class Counsel has also reasonably incurred \$11,457.25 in litigation costs. Such costs were reasonably incurred because they were actually incurred and required to prosecute this Action. For example, they include, but are not limited to, the complaint filing fee and mediation fee. The complaint filing fee was required for Plaintiff to initiate this Action, and the mediation fee facilitated the Parties' settlement discussions, which ultimately led to the Agreement. The

1 Parties have agreed to reimbursement of litigations costs not to exceed \$25,000.00, and any un-
2 awarded litigation costs shall be allocated to the Net Settlement Amount by the Administrator.

3 Thus, the Court should preliminarily approve the requested attorneys' fees and costs,
4 which are justified by the results achieved, the complexity of the issues, the difficulty of the case,
5 the time expended, and the great risk undertaken by Class Counsel. The requested attorneys' fees
6 will not be opposed by Defendant and are well within established guidelines.

7 **VIII. THE REQUESTED ENHANCEMENT AWARD TO THE NAMED PLAINTIFF**
8 **AND CLASS REPRESENTATIVES IS REASONABLE**

9 Plaintiff, who served as the named plaintiff, is entitled to an enhancement award for her
10 service as class representative, for answering extensive questions by Class Counsel, being
11 available by phone during mediation, and the risk in being the named plaintiff. Furthermore,
12 Plaintiff will be providing Defendant a general release of all claims in exchange for the
13 enhancement award.

14 Class Counsel can attest that Plaintiff devoted a great deal of time assisting counsel in this
15 case, communicated with counsel frequently, and was a valuable participants in the strategy for
16 and success of the mediation. Plaintiff risked intrusive discovery and the payment of employer
17 costs. In the experience of Class Counsel, the typical enhancement award in wage and hour class
18 actions ranges from approximately \$10,000 to \$40,000, although some awards are higher. *See*
19 *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000
20 participation award to a single class representative.) Here, Class Counsel seeks an enhancement
21 of not more than \$5,000.00 to the Plaintiff for her service. Defendant does not oppose the
22 requested enhancement to Plaintiff. The Declaration of Plaintiff Elizabeth To in support of the
23 requested enhancement award is concurrently filed with this Motion.

24 **IX. THE PROPOSED CLASS NOTICE IS ADEQUATE**

25 Trial courts have wide discretion in fashioning an appropriate class notice. (*Cartt v.*
26 *Superior Court* (1975) 50 Cal.App.3d 960, 973-74.) "In regard to the contents of the notice, the
27 notice given to the class must fairly apprise the class members of the terms of the proposed
28 compromise and of the options open to dissenting class members. . . . As a general rule, [the]

1 class notice must strike a balance between thoroughness and the need to avoid unduly
2 complicating the content of the notice and confusing class members.” (*Wershba v. Apple*
3 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 251-52 (citation omitted).) Apart from case law, the
4 California Rules of Court provide further guidance on the contents of a class notice. (*See Cal.*
5 *Rules of Court*, Rule 3.766(d) and Rule 3.769(f).)

6 Here, the proposed Class Notice approved by the Parties is attached as Exhibit A to the
7 Settlement Agreement and meets all of the necessary criteria. The proposed Class Notice
8 provides Class Members with an explanation of the case, how their individual settlement
9 payments will be calculated, their option to participate in the Settlement, object to it, or exclude
10 themselves along with the corresponding deadlines, their option to hire an attorney if they desire
11 or appear without an attorney, the date of the final fairness hearing (which will be inserted in the
12 materials once the date is set by the Court), and the binding effect of final approval for those
13 individuals who do not exclude themselves from the Settlement. The proposed Class Notice also
14 provides the contact information for Class Counsel and the Settlement Administrator should Class
15 Members have any questions. The proposed Class Notice meets all the requirements specified in
16 the California Rules of Court, provides “sufficient information” about the Settlement and Class
17 Member options, and therefore, merits Court approval.

18 **X. CONDITIONAL CERTIFICATION FOR SETTLEMENT PURPOSES**

19 **A. The Class Should Be Preliminarily Certified**

20 In California, there are two certification prerequisites: (1) the existence of an
21 “ascertainable class” and; (2) “a well-defined community of interest in the questions of law and
22 fact involved affecting the parties to be represented.” (*Sotelo v. MediaNews Group, Inc.* (2012)
23 207 Cal.App.4th 639, 647.) In addition, as set forth above, California courts utilize the
24 procedures prescribed by the Federal Rules of Civil Procedure in class actions filed in California.
25 (*Schneider v. Vennard* (1986) 183 Cal.App.3d 1340, 1345-46; *Daar v. Yellow Cab Co.* (1967) 67
26 Cal.2d 695, 695; *Vasquez v. Sup. Ct.* (1971) 4 Cal.3d 800.)

27 Indeed, to certify a class, the party advocating class treatment must demonstrate: (1) a
28 numerous class; (2) predominant common questions of law or fact; (3) class representatives with

claims or defenses typical of the class; and (4) class representatives who can adequately represent the class. (*Williams v. Sup. Ct.* (2013) 221 Cal.App.4th 1353, 1360 (citing *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.) Each of the criteria for class certification is satisfied in this instance:

1. Numerosity – According to the California Supreme Court, a putative class is sufficiently numerous to achieve the numerosity requirement if their joinder is impracticable and thus substantial benefits accrue both to litigants and the courts if the action proceeds as a class action. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435, 446.) While no set number is required as a matter of law for the maintenance of a class action, the California Supreme Court has upheld a class size as low as ten (10) members. (*See Hendershot v. Ready to Roll Transportation, Inc.* (2014) 228 Cal.App.4th 1213, 1222.)

While as few as ten (10) class members can be sufficiently numerous, Defendant identified far more (*i.e.*, 2,073) putative Class Members. This number exceeds the minimum number of individuals required to meet the numerosity requirement. In short, this number is sufficiently numerous to establish the numerosity requirement; in fact, it is nearly enough for numerosity to be *presumed* satisfied.

2. Identifiable – Here, the class is identifiable because its definition is precise and comprised of objective criteria rendering the Class Members discernable. The objective criteria includes the nature of the position held by the Class Member (*i.e.*, non-exempt); the time period during which the Class Member held the position (*i.e.*, from October 14, 2020, through the date of the Court’s Preliminary Approval or ninety (90) days from the date the Agreement is fully executed, whichever is sooner); the state in which the Class Member worked (*i.e.*, California); and the employer of the Class Member (*i.e.*, Defendant). Such objective terms are sufficient for finding a class identifiable. *See e.g., Wilner v. Sunset Life Ins. Co.*, (2000) 78 Cal.App.4th 952, 959-60

3. Commonality – California law also requires that “questions of law or fact common to the class [be] substantially similar and predominate over the questions affecting the individual members.” (*In re Steroid Hormone Product Cases* (2010) 181 Cal.App.4th 145, 153.)

Common issues predominate when they would be “the principal issues in any individual action, both in terms of time to be expended in their proof and of their importance.” (*Vasquez v. Sup. Ct.* (1971) 4 Cal.3d 800,810; *see also Hatashi v. First American Home Buyers Protection Corp.* (2014) 223 Cal.App.4th 1454, 1462-1463.) Common questions need only be “sufficiently pervasive to permit adjudication in a class action rather than in a multiplicity of suits.” (*Vasquez v. Sup. Ct.* (1971) 4 Cal.3d 800, 810.) Commonality is easily satisfied if there is one issue common to class members. (*Hanlon v. Chrysler Corp.* (9th Cir. 1988) 150 F.3d 1011, 1019.)

Here, common issues include, without limitation, whether Defendant violated applicable wage and hour laws, *i.e.*, failed to provide uninterrupted meal and rest periods or compensation in lieu thereof. Because there are common issues, this requirement is satisfied for purposes of settlement.

4. Typicality – Typicality requires only that the named plaintiff’s interests in the action be significantly similar to those of other class members. (*Williams*, 221 Cal.App.4th at 1360 (citing *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021).) A representative plaintiff’s claims are typical if they arise from the same event, practice, or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theories. (*Miller v. Woods* (1983) 16 Cal.App.3d 862,874; *accord In re Broadwing, Inc. ERISA Litigation* (S.D. OH. 2006) 252 F.R.D. 369, 377 (citing *In re Am. Med. Sys.* (6th Cir. 1996) 75 F.3d 1069, 1079) *quot.* Newberg on Class Actions, § 3-13 at 3-76).) Indeed, when the same underlying conduct affects the named plaintiff and the class sought to be represented, the typicality requirement is met irrespective of any varying fact patterns that may underlie individual claims. (*See Daniels v. Centennial Group, Inc.* (1993) 16 Cal.App.4th 467, 473.)

As the court in *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341 explained: “[I]t has never been the law in California that the class representative must have **identical** interests with the class members. The only requirements are that common questions of law and fact **predominate** and that the class representative be **similarly** situated.” (*Id.* at 1347 (citations omitted, emphasis in original).)

1 In this case, Plaintiff's claims are precisely the same as those of the class she seeks to
2 represent: like other members of the Class, they were employed by Defendant during the relevant
3 time period as non-exempt employees, and Plaintiff contends that Defendant's wage policies were
4 uniformly applied to its non-exempt employees. Accordingly, Plaintiff's claims are typical of
5 those of the Class Members.

6 **5. Adequacy of Representation** – To maintain a class action, the representative
7 plaintiff must adequately protect the interests of the class. (*Williams*, 221 Cal.App.4th at 1360.)
8 Adequacy of representation consists of two components. First, there must be no disabling
9 conflicts of interest between the class representatives and the class. Second, the class
10 representative must be represented by counsel who are competent and experienced in the kind of
11 litigation to be undertaken. (*See McGhee v. Bank of Am.* (1976) 60 Cal.App.3d 442, 450; *In re*
12 *Juniper Networks, Inc. Securities Litigation* (N.D. Cal. 2009) 264 F.R.D. 584, 590.)

13 Both criteria are met in this instance:

14 i. **No Disabling Conflict of Interest Exist Between the Class**
15 **Representatives and the Class**

16 No conflicts, disabling or otherwise, exist between Plaintiff and Class Members because
17 Plaintiff has allegedly been damaged by the same alleged conduct (*i.e.*, she was classified as a
18 non-exempt employee, not provided meal and rest breaks, not paid premium pay, etc.) and thus
19 has the incentive to fairly represent all Class Members' claims to achieve the maximum possible
20 recovery.

21 ii. **Class Counsel Are Experienced Attorneys, Especially in the Realm of**
22 **Wage and Hour Cases**

23 Class Counsel are experienced employment litigation attorneys and have a successful track
24 record in litigating numerous wage and hour cases and currently serves as lead class counsel in
25 multiple pending wage-and-hour class and representative actions across various California
26 jurisdictions. After a thorough investigation and settlement discussions, the Parties arrived at
27 terms that they viewed as in the best interest of both the Class Members and the Parties.

28 Plaintiff's goals have been realized via redress for the employees whose wage and hour

rights were violated. While Defendant denies liability, they have nonetheless agreed to settle the matter to avoid any potential expense. Should the Court refuse to grant preliminary approval of this Settlement, many of the Class Members may be denied any recourse for Defendant's alleged violations.

6. Superiority of Class Action – Also relevant to the Court's certification decision is whether a class action is the superior method of adjudication. (*Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.) In that vein, "[t]his state has a public policy which encourages the use of the class action device." (*ABM Industries Overtime Cases* (2017) 19 Cal.App.5th 277, 299 (citing *Sav-On Drug Stores, Inc. v. Sup. Ct.* (2004) 34 Cal.4th 319, 240).) Indeed, "with respect to the superiority of the class action mechanism . . . courts regularly certify class actions to resolve wage and hour claims." (*Id.* at 300.) "In this arena the class action mechanism allows claims of many individuals to be resolved at the same time, eliminates the possibility of repetitious litigation and affords small claimants with a method of obtaining redress for claims which otherwise would be too insufficient to warrant individual litigation." *Id.* Moreover, the issues slated for contest are primarily common issues involving common evidence. It would not be efficient or fair to relegate these complaints to multiple trials." (*Id.* (citing *Bufile v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1208; *see also Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1034.)

"Indeed, as the California Supreme Court elaborated in *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 'a theory of liability that an employer has a uniform policy and that that policy measured against wage order requirements, allegedly violates the law - is by its nature a common question entirely suited for class treatment. [Citation.] In the general case to prematurely resolve such disputes, conclude a uniform policy complies with the law, and thereafter reject class certification ... places defendants in jeopardy of multiple class actions, with one after another dismissed until one trial court concludes there is some basis for liability and in that case approves class certification. [Citation.] It is far better from a fairness perspective to determine class certification independent of threshold questions disposing of the merits, and thus permit defendants who prevail on those merits, equally with those who lose on the merits, to obtain the preclusive benefits of such victories against an entire class and not just a named plaintiff.'"

(*ABM Industries Overtime Cases* (2017) 19 Cal.App.5th 277, 300 (quoting *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1034).)

1 The *ABM Industries Overtime Cases* Court further noted that:

2 “California courts consider 'pattern and practice evidence, statistical evidence,
3 sampling evidence, expert testimony, and other indicators of a defendant's
4 centralized practices in order to evaluate whether common behavior towards
5 similarly situated plaintiffs make class certification appropriate. [Citation.] Other
6 relevant factors include 'whether the class approach would serve to deter and
7 redress alleged wrongdoing.' [Citation.] Moreover, in the wage and hour context, '
8 [w]e have recognized that retaining one's employment while bringing formal legal
9 action against one's employer is not 'a viable option for many employees,' 'and thus
a class action may be appropriate as a current employee who individually sues his
or her employer is at greater risk of retaliation.' [Citations.] And ... our high court
noted that class actions may be particularly useful for immigrant workers with
limited English language skills, as illegal employer conduct might otherwise
escape their attention.”

10 (*ABM Industries Overtime Cases*, 19 Cal.App.5th at 300 (citations omitted).)

11 The California Supreme Court has also noted that where not a lot of individual suits are
12 brought by putative class members, it indicates that they have little interest in personally
13 controlling their claims. (*Dynamex Operations West, Inc. v. Sup. Ct.* (2018) 4 Cal.5th 903, 924.)
14 The Court should also consider that “consolidating all the claims before a single court would be
15 desirable because it would allow for consistent rulings with respect to all the class members’
16 claims.” (*Id.*)

17 This wage and hour class action is no exception and meets all the criteria to establish that
18 it is a superior vehicle for resolution of the issues it seeks to resolve. First, it pertains to purported
19 uniform practices, including Defendant allegedly not paying its non-exempt employees for all
20 time under Defendant’s control, not making meal and rest breaks available to non-exempt
21 employees, not paying meal and rest break premiums for missed meal and rest breaks, which
22 allows claims of many individuals to be resolved at the same time, eliminates the possibility of
23 repetitious litigation, and affords small claimants with a method of obtaining redress for claims
24 which otherwise would be too insufficient to warrant individual litigation. It is also brought by a
25 former employee who is not at as great a risk of retaliation as current employees, who are less
26 likely to seek such redress for themselves.

27 //

1 In addition, Plaintiff is not aware of any other action against Defendant brought on an
2 individual basis for redress, which signals that putative Class Members have little interest in
3 personally controlling their claims. Further, a class action would eradicate the concern of
4 inconsistent rulings regarding the wage and hour issues brought as part of this class action.

5 Thus, the class action meets all criteria for certification. Importantly, a lesser standard of
6 scrutiny applies when evaluating these criteria for settlement purposes. (*Dunk v. Ford Motor Co.*
7 (1996) 48 Cal.App.4th 1800, 1807, n.19 (there is a “lesser standard of scrutiny for settlement
8 cases” [citations omitted])). Accordingly, the Class meets all criteria for certification and should
9 be certified for purposes of effectuating this settlement. (*Caro v. Procter & Gamble Co.* (1993)
10 18 Cal.App.4th 664, 654 (“[i]f the statutory criteria are satisfied, a trial court is under a duty to
11 certify the class and is vested with no discretion to deny certification based upon other
12 considerations”).)

13 **XI. CONCLUSION**

14 The proposed Class and PAGA Settlement is fair, adequate, and reasonable. It will result
15 in substantial payments to Class Members and Aggrieved Employees; it is non-collusive; and it
16 was achieved as the result of informed, extensive, and arm’s-length negotiations conducted by
17 counsel for respective parties, who are experienced in wage and hour class action litigation.

18 For the foregoing reasons, the Parties respectfully request that the Court grant preliminary
19 approval of the proposed settlement as set forth in the attached Settlement Agreement, sign the
20 proposed Order, approve and authorize mailing of the proposed Class Notice submitted herewith,
21 and set a date for the final approval hearing.

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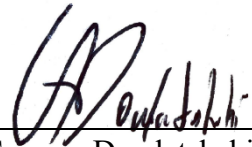
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2 Dated: June 24, 2025

MILLS SADAT DOWLAT LLP

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5 By:


Camron Dowlatshahi

6 Attorneys for Plaintiff Elizabeth To on behalf of
7 herself and all others similarly situated and
8 aggrieved
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