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SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

EVA YANEZ, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

GARDNER FAMILY HEALTH
NETWORK, INC., a California corporation;
and DOES 1 through 10, Inclusive,

Defendants

Case No. 20CV364033

ASSIGNED FOR ALL PURPOSES TO:

The Honorable Peter H. Kirwan
Department 19

CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR AN ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: TO BE ASSIGNED

Time: 9:00 a.m.

Dept: 19

Judge: Hon. Peter H. Kirwan

Complaint filed: February 24, 2020

Trial date: Not set

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I. INTRODUCTION

Plaintiff seeks preliminary approval of a \$1,125,000 non-reversionary wage and hour class and Private Attorney Generals' Act (PAGA) settlement for an estimated 735 non-exempt employees who worked for Defendant Gardner Family Health Network, Inc. ("Defendant" or "Gardner") in the State of California, at any time from February 24, 2016, to March 18, 2022, ("Class Period"). Declaration of Jeff Geraci, ("Geraci Decl."), ¶10.

II. THE PARTIES

A. Plaintiff

Eva Yanez worked as a Medical Assistant in San Jose starting in 2003. She became a Referral Clerk in 2005, and her employment ended in August 2019. Geraci Decl. ¶11.

B. Defendant

The health care provider that became Gardner Family Health Network, Inc., began in 1967, and after steady growth and a series of mergers and affiliations, now operates facilities in San Jose, Alviso, Atherton, and Gilroy. It provides medical, dental, mental health, optometry, pharmacy and other services. Geraci Decl. ¶12.

C. The Class and Aggrieved Employees

The Class is, "All non-exempt employees of Defendant who worked at any time from February 24, 2016, to March 18, 2022, in the State of California." Joint Stipulation of Settlement and Release of Class Action ("Settlement Agreement," "SA"), ¶I.E. The 735 Class members worked an estimated 96,969 weeks during the Class Period. Geraci Decl. ¶13.

The Class includes an estimated 540 PAGA Aggrieved Employees who worked anytime January 24, 2019 to March 18, 2022 ("PAGA Period"). SA ¶I.Z; Geraci Decl. ¶14. The PAGA Aggrieved Employees worked an estimated 26,288 pay periods. Geraci Decl. ¶15.

III. PLAINTIFF'S CLAIMS AND GARDNER'S DEFENSES

Plaintiff alleged employees were underpaid by Gardner's policy of paying based on rounded, rather than actual time. Plaintiff also alleged underpayment caused by rounding violated certain municipal minimum wage ordinances. Gardner stopped rounding in September 2020, and contended its policy had a neutral impact during the class period. Geraci Decl. ¶16.

1 Plaintiff argued Gardner did not provide compliant meal or rest periods and did not
2 adopt fully compliant written meal and rest policies until 2020. Gardner contended its policies
3 were compliant, it did not discourage employees from taking breaks, but employees were free
4 to, and did, choose not to take breaks at times, and few violations occurred throughout the class
5 period. Geraci Decl. ¶17.

6 Plaintiff alleged Gardner failed to include all compensation when calculating the regular
7 rate and underpaid overtime wages as a result. Gardner contended bonuses were modest and
8 infrequent and overtime was rare. Geraci Decl. ¶18.

9 **IV. PROCEDURAL HISTORY, INVESTIGATION AND INFORMAL DISCOVERY**

10 The action was filed February 24, 2020, alleging failure to provide: all wages; compliant
11 rest and meal periods; accurate wage statements; and timely final wages. PAGA claims for the
12 same violations were filed April 3, 2020. Geraci Decl. ¶19.

13 Plaintiff served form and special interrogatories, requests for admission and documents,
14 and noticed Gardner's deposition. After extensions, Gardner responded in December 2020,
15 producing over 1,000 pages of documents. Geraci Decl. ¶20.

16 The Parties agreed to mediate and exchanged information, including nearly 100% of the
17 time data for the period of February 20, 2016 to January 31, 2021 and nearly 100% of the class
18 payroll data from February 27, 2016 to January 23, 2022 (those few employees promoted to
19 exempt positions during the class period were not included, though they remain class members
20 while non-exempt); and, number of members (current and former) and aggregate workweeks
21 and pay period for the Class and PAGA Periods. Plaintiff's consultant analyzed the data and
22 created a damage model. Geraci Decl. ¶21.

23 With significant investigation, research, formal and informal discovery, and analysis of
24 data by Plaintiff and her consultant, the Parties mediated with Hon. Maria-Elena James (Ret.)
25 on March 18, 2022. After a full day of arms'-length negotiations, the Parties reached an
26 agreement in principle and signed a memorandum of understanding (MOU). The Parties
27 continued to negotiate all necessary terms and entered the Settlement Agreement presented for
28 preliminary approval. Geraci Decl. ¶22, Exhibit 1.

V. SUMMARY OF PROPOSED SETTLEMENT

A. Settlement Terms

Gardner will pay the maximum Gross Settlement Amount (“GSA”) of \$1,125,000, which includes: (a) attorneys’ fees of \$375,000 (one-third of the GSA) to compensate Class Counsel for work performed and remaining to be performed to secure final approval (apportioned 50/50 between Class Counsel with Plaintiff’s written consent. Geraci Decl. ¶24); (b) litigation costs not to exceed \$21,500; (c) Class Representative Service Payment of \$5,000 for Ms. Yanez’ work performed, risks undertaken for a cost judgment, potential impairment of future employment opportunities, and benefits conferred on absent Class members; (d) PAGA Payment of \$30,000 [\$22,500 to California Labor and Workplace Development Agency (LWDA) (75%); \$7,500 to Aggrieved Employees (25%)]; and (e) Settlement Administration costs of \$10,000. Gardner will pay the employer’s share of payroll taxes in addition to the GSA. Geraci Decl. ¶23.

After Court-approved deductions, the estimated Net Settlement Amount (“NSA”), \$683,500, will be distributed to Participating Class Members. Individual Settlement Shares will be calculated by dividing the number of weeks each Class Member worked during the Class Period by the number of Work Weeks all Class Members worked during the Class Period and multiplying that number by the Net Settlement Amount. Geraci Decl. ¶25; SA ¶III.F.5(a).

The parties estimate Participating Settlement Class Members who worked the entire class period will receive a total of \$2,227 (316 weeks x \$7.05 per week), with an average estimated total payment of \$929 (\$683,500 NSA / 735 Class Members). An estimated 540 aggrieved employees will divide the 25% PAGA payment based on pay periods worked during the PAGA period, even if they opt-out of the class settlement. Geraci Decl. ¶26.

Settlement payments are allocated 30% to wages, with normal payroll deductions taken and IRS W-2 Forms issued, and, 70% interest and penalties with IRS 1099 Forms issued. Geraci Decl. ¶27; SA ¶III.F.5(b). Checks uncashed 180 days after issuance will be sent to cy pres recipient, Legal Aid at Work, a non-profit provider of legal services. Geraci Decl. ¶28, 62; SA ¶III.H(9).

B. Settlement Administration and Class Notice

CPT Group, Inc. (“Settlement Administrator”) will update addresses using the National Change of Address database, and mail the Notice of Class Action Settlement (“Class Notice”), with Change of Address Form, to all Class Members. Geraci Decl. ¶29; SA ¶III.H.2(b-d).

The Class Notice explains: how to participate in the Settlement without submitting a claim; dispute the basis of an Individual Settlement Payment; object or opt-out; release to be given, date of Final Approval hearing, and how to obtain further information. Geraci Decl. ¶30.

C. Released Claims

“Released Claims” are: “all causes of action and factual or legal theories that were alleged in the Complaint or reasonably could have been alleged based on the facts alleged in the Complaint, including: (a) failure to pay minimum wages; (b) failure to pay overtime wages; (c) failure to provide meal periods; (d) failure to provide rest breaks; (e) failure to provide accurate itemized wage statements; (f) failure to timely pay wages due upon separation of employment; (g) Violations of the Unfair Competition Law; (h) civil penalties under PAGA.” The Released Claims include all claims for compensatory, consequential, incidental, liquidated, punitive, and exemplary damages; restitution; interest; costs and fees; injunctive or equitable relief; and any other remedies available at law or equity during the Class Period. SA ¶I.DD.

VI. ARGUMENT

A. Class Action Settlements Are Subject to Court Review and Approval

“Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.” California Rules of Court, Rule 3.769 (g). A court should disapprove a settlement “only with considerable circumspection.” *Jamison v. Butcher & Sherrerd*, 68 F.R.D. 479, 481 (E.D. Pa. 1975). (State courts may be guided by federal authority when analyzing class settlements. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 239 (2001)).

At preliminary approval, a court “limits its inquiry to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties.” *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006).

B. The Settlement is Fair, Reasonable, and Adequate

In deciding whether to approve a proposed class action settlement the Court must find a proposed settlement is “fair, adequate and reasonable.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996). The trial court considers all relevant factors, such as: “the strength of Plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” *Id.* The Court determines whether the Settlement is the product of fraud, overreaching, or collusion, and, taken as a whole, is fair, reasonable and adequate to all concerned. *Dunk, supra* at 1801.

A proposed settlement is presumed fair where: (1) parties agreed after extensive arms’-length negotiations; (2) sufficient investigation and discovery allow counsel and the Court to act intelligently; (3) counsel is experienced; and, (4) percentage of objectors is small. *Id.* at 1802.

The proposed Settlement is entitled to a presumption of fairness if: (1) it is the product of serious, informed, non-collusive negotiations with an experienced mediator; (2) investigation of the facts and law allow Plaintiff, her counsel, and the Court to make informed settlement decisions; and, (3) the Class is represented by experienced counsel. The percentage of objectors (4) cannot be known until the Class has notice and an opportunity to respond. At this stage, the proposed Settlement is entitled to the presumption of fairness.

1. Serious, Informed, Non-Collusive Negotiations Led to Settlement

The Parties mediated with a respected and experienced wage and hour class action mediator and reached a settlement in principle. Counsel continued negotiations and entered a detailed Agreement, while aggressively pursuing their positions at all times. Geraci Decl. ¶32.

2. Discovery and Stage of the Proceedings Support Settlement

Plaintiff’s Counsel investigated all claims and defenses, conducted discovery, and after agreeing to mediation, requested, and received, comprehensive data and documents, which allowed liability to be assessed and Class-wide damages to be calculated. Geraci Decl. ¶33.

Investigation and informal discovery gave the Parties a clear understanding of their strengths and weaknesses before negotiations. *Id.*, See *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 410 (2010) (approving settlement where “considerable information [exists] from which to assess the strength of the class claims” and litigation risks).

Proof of wage and hour class claims is based, at any stage, almost entirely on written policies and time and pay records. Plaintiff’s counsel obtained those records, and an expert analyzed them and prepared a damage model, before a settlement was negotiated.

3. Counsel are Experienced in Similar Litigation

Plaintiff’s Counsel have significant experience in wage and hour employment class actions. Geraci Decl. ¶¶2-9, 34; Declaration of Sahag Majarian II, (“Majarian Decl.”) ¶¶2-4. Counsel was able to compare settlement of Class claims with risks of certification, trial, and appeal. Sharon L. Hightower, and her colleagues at Erickson Arbuthnot, are skilled lawyers, with significant experience, who defended Gardner vigorously throughout. Geraci Decl. ¶35.

Experienced counsel believes the Settlement is fair, reasonable, and in the Class’ best interest in light of the monetary recovery, and risks of: certification, summary adjudication, establishing damages, and uncertainty of appeals. Geraci Decl. ¶36; Majarian Decl. ¶¶6-7.

The view of attorneys actively conducting the litigation “is entitled to significant weight” in settlement approval. *Fisher Bros. v. Cambridge Lee Industries, Inc.*, 630 F.Supp. 482, 488 (E.D. Pa. 1985). The Settlement satisfies the three *Dunk* requirements, should be presumed fair, adequate and reasonable, and preliminarily approved.

4. The Settlement is Fair and Reasonable

Plaintiff and her counsel concluded the proposed Settlement was reasonable. As described below, Gardner strongly disputed certification, liability, and proof of damages.

C. The Settlement is a Reasonable Compromise of Claims

“[T]o ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation,” the Court acts as a fiduciary for the class. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 129 (2008).

1 *Kullar* does not require the parties to submit an illusory prediction of the outer reaches
2 of exposure without taking in to account actual risks of certification, decertification, dispositive
3 motions, and trial. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal.App.4th 399,
4 408 (2010). It also does not require an explicit statement of the maximum amount the class
5 could recover if it prevailed on all claims provided the record allows “an understanding of the
6 amount that is in controversy and the realistic range of outcomes of the litigation.” *Id.* at 409.

7 *Munoz* examined the trial court record including number of class members, payroll data,
8 and variances in duties and rest and meal period experience. It found this “an adequate basis
9 from which to garner a reasonably adequate understanding of the amount that is in controversy
10 within the meaning of *Kullar*.” *Id.*

11 Class Counsel relied on similar data as in *Munoz*. Plaintiff’s economist analyzed
12 voluminous data, and calculated Class-wide damages through mediation. Geraci Decl. ¶37.

13 **1. Labor Code § 1194 Unpaid Wages (Rounding and Regular Rate)**

14 Employers must pay for all hours they “suffer or permit” employees to work. *Morillon*
15 *v. Royal Packing Company*, 22 Cal. 4th 575, 584-5 (2000); Labor Code § 1194.

16 A review of records showed an equal percentage of pay periods with overpayments as
17 underpayments (28% over, 28.2% under), with overpayments exceeding underpayments by over
18 2,400 hours. There was a maximum of \$282,022 in damages using underpaid shifts only.
19 (9,531 unpaid hours x average regular rate of \$29.59 per hour = \$282,022). Geraci Decl. ¶38.

20 Gardner contended there could be no liability because its rounding policy was “fair and
21 neutral on its face” and did “not result, over a period of time, in failure to compensate the
22 employees properly for all the time they have actually worked.” *See’s Candy Shops v. Superior*
23 *Court*, 210 Cal.App.4th 889, 907 (2012). Based on data and legal analysis, Plaintiff was forced
24 to concede this was correct and this claim had no value. Geraci Decl. ¶39.

25 Plaintiff alleged, by rounding, Gardner failed to meet its obligation to “pay Employees
26 no less than the Minimum Wage set forth” in the San Jose Minimum Wage Ordinance, and a
27 similar Atherton ordinance, calling for wages higher than the minimum set by the State of
28 California. Because the rounding claim failed, this theory was also assigned no value.

1 “Regular rate of pay, which can change from pay period to pay period, includes
2 adjustments to the straight time rate, reflecting, among other things, shift differentials and the
3 per-hour value of any nonhourly compensation the employee has earned.” *Alvarado v. Dart*
4 *Container Corp.*, 4 Cal. 5th 542, 554 (2018). Work in excess of eight hours must be paid at a
5 rate not less than 1.5 times the employee’s regular rate. Labor Code § 510(a).

6 A review of records ultimately showed few bonuses were paid (an average of \$36,649
7 per year to the Class, excluding additional bonuses for work during the pandemic). The records
8 showed only a small amount of overtime hours worked (average shift length was 7.8 hours) and
9 total underpayment, even including pandemic pay, was only \$117,763. Geraci Decl. ¶40.

10 Gardner contended at least some of the bonuses were discretionary and were not
11 required to be included in the regular rate and argued the small alleged exposure suggested there
12 was no violation. Plaintiff believed there was a 50% probability of prevailing for a reasonable
13 exposure of \$58,882. Geraci Decl. ¶41.

14 **2. Labor Code § 226.7 Meal Period Premiums**

15 “[A]n uninterrupted 30-minute period during which the employee is relieved of all
16 duty,” must “start after no more than five hours.” *Brinker Restaurant Corp. v. Superior Court*,
17 53 Cal. 4th 1004, 1042 (2012).

18 A total of 79,554 unique meal period violations were found in Gardner’s records and were
19 multiplied by the aggregate average regular rate of \$29.59 per hour, to calculate a maximum
20 exposure of \$2,354,003 (79,554 x \$29.59 regular rate). Geraci Decl. ¶42.

21 Gardner argued there were relatively few violations overall, and analysis of time records
22 by Plaintiff’s consultant did show only 19.3% unique meal period violations in all shifts.
23 (79,554/412,478 = 19.28%). Plaintiff believed maximum damages would be significantly
24 reduced, if awarded at all, based on the relatively low violation rate, which tends to suggest
25 employees may have chosen to take lunch late, or come back early (the number of missed meals
26 was only 4.5%). Damages were also likely to be reduced based on adoption, during the class
27 period, of compliant written meal period policies. Plaintiff’s counsel concluded realistic
28 exposure was no more than 40% of maximum, or \$941,601. Geraci Decl. ¶43.

1 **3. Labor Code § 226.7 Rest Period Premiums**

2 Employers must authorize the first rest period in “shifts from three and one-half to six
3 hours in length...” *Brinker, Id.* at 1029 (2012).

4 Assuming a violation in 20% of 407,517 shifts over 3.5 hours, yields a maximum
5 exposure of \$2,411,674 (81,503 x \$29.59). Geraci Decl. ¶44. Gardner correctly emphasized
6 there was no evidence rest breaks were discouraged. *Id.*

7 Certifying and establishing rest period claims is more difficult for several reasons.
8 No records of rest periods are required and no presumption of violation can be argued.
9 Also, regardless of workload or other impediment, it is easier for employees to take 10-minute,
10 rather than 30-minute breaks. Plaintiff believed maximum damages would be reduced by the
11 introduction, late in the class period, of written rest period policies, and that a court may find
12 employees were not discouraged from taking rest breaks. Plaintiff’s counsel concluded realistic
13 exposure was no more than 20% of maximum, or \$482,337. Geraci Decl. ¶45.

14 **4. Labor Code § 226 Wage Statement Penalties**

15 Wage statements must show, among other things, “total hours worked by the employee”
16 and “corresponding number of hours worked at each hourly rate.” Labor Code § 226 (a)(2)(9).

17 Plaintiff contended wage statements were non-compliant because they did not show all
18 hours worked due to rounding, did not contain the legal name of the employer, and did not show
19 all correct hourly rates, because regular rate was not calculated correctly. Geraci Decl. ¶46.

20 Because the rounding claim was ultimately determined to have no value, Plaintiff
21 abandoned that theory. Arguably, Gardner’s legal name was not shown for a small portion of
22 the class period, but was shown as “Gardner Family Health,” and “Gardner Family Healt.”, and
23 this theory was also abandoned. Geraci Decl. ¶47.

24 At the time of settlement, the only pay periods which could credibly argued to be
25 non-compliant were those in which an employee received additional compensation, such as a
26 bonus, and worked some overtime, and so was not paid the correct regular rate. This occurred in
27 only 1,619 pay periods, or 6.16% of the 26,288 pay periods in the one year before the complaint
28 was filed. (26,288 x .0616% = 1,619. Based on Section 226’s penalty of \$50 for the initial

1 violation and \$100 for each subsequent violation, maximum exposure was \$161,850 (1 x \$50 +
2 1,618 x \$100). Even this exposure is overstated, as some class members would have reached the
3 statutory maximum penalty per employee of \$4,000. Geraci Decl. ¶48.

4 Plaintiff discounted this claim to 50% based on the risk they would not prove an
5 underlying violation, and if proven, the violation would not be found to be “knowing and
6 intentional,” and penalties would be significantly reduced or not awarded. This resulted in a
7 realistic exposure of approximately \$67,075. Geraci Decl. ¶49.

8 **5. Labor Code § 203 Waiting Time Penalties**

9 An employer must pay all wages due to an involuntarily terminated employee at the
10 time of termination, or within 72 hours to an employee voluntarily terminating. If failure to pay
11 final wages is willful, they continue at the same rate for up to 30 days. Labor Code §§ 201, 203.

12 At the time of settlement, the only former employees eligible for waiting time penalties,
13 were those with claims for unpaid wages. During the statutory period there were an estimated
14 330 former employees, of those, it was estimated 288 received additional compensation and
15 worked overtime in the same pay period. Absolute maximum exposure was calculated as
16 \$1,994,129 (288 e’ees x 7.8 hr avg. shift x 30 days x \$29.59). Geraci Decl. ¶50.

17 Even if Plaintiff could prevail on the underlying regular rate overtime claim, several
18 factors made it likely waiting time penalties would be significantly reduced, or fail entirely. The
19 underlying maximum exposure was quite small, at \$117,763. Gardner argued it would not
20 succeed, contending many of the bonuses identified by Plaintiff were discretionary and not
21 required to be included. Perhaps more importantly, was whether the alleged underpayment of
22 overtime could be found willful. Geraci Decl. ¶51.

23 Even if wages were found to owed, a court could find Gardner had a good faith belief it
24 was paying all wages, and “a good faith dispute that any wages are due will preclude imposition
25 of waiting time penalties under Section 203.” *Hill v. Walmart Inc.*, 2021 U.S. Dist. LEXIS
26 20950, *17 (N.D. Cal. January 14, 2021).

27 Considering all factors, waiting time penalties were discounted to 10%, for a reasonable
28 exposure of \$199,413. Geraci Decl. ¶52.

1 Earlier this year, after the Parties entered the MOU, the California Supreme Court
2 announced wage statement and waiting time penalties may be established by meal and rest
3 period violations. *Naranjo v. Spectrum Security Services, Inc.* (2022) 13 Cal.5th 93 (decided
4 May 23, 2022. At the time of settlement, the only claim which clearly supported waiting time
5 penalties was for unpaid wages. *Naranjo v. Spectrum Security Services, Inc.*, 40 Cal. App. 5th
6 444, 474 (2019); review granted, 2020 Cal. LEXIS 167 (January 2, 2020) (Finding rest and
7 meal period premiums do not support waiting time penalties.)

8 **6. Labor Code §§ 2699 PAGA Penalties**

9 “PAGA penalties are paid 75% to the California Labor and Workforce Development
10 Agency and 25% to aggrieved employees. Thus, in wage and hour class action cases that settle,
11 [] very little of the total settlement is paid to PAGA penalties in order to maximize payments to
12 class members.” *Magadia v. Wal-Mart Assocs.*, 384 F. Supp. 3d 1058, 1101 (2019).

13 “[T]he amount of the common settlement fund reserved for PAGA penalties
14 [is adequate], as courts frequently approve settlements in wage and hour class action and PAGA
15 actions that minimize the total amount of the settlement that is paid to PAGA penalties in order
16 to maximize payments to class members.” (citations omitted) *Mejia v. Walgreen Co.*, 2020 U.S.
17 Dist. LEXIS 220685, *26 (E.D. Cal. Mar. 24, 2021).

18 For the 26,288 potential pay periods starting one year before filing, penalties were
19 calculated at initial violation rates for those pay periods in which one of five violations could
20 have occurred: Sec. 1194 (reg. rate OT) – \$135,100; Sec. 226.7 (meal) – \$1,131,400; Sec. 226.7
21 (rest) - \$1,31,400; Sec. 226 (wage statements) – \$2,628,800; Sec. 203 – \$20,900 (final pay)
22 (209 former employees). (\$100 per pay period) Total penalties - \$5,389,000. Geraci Decl. ¶53.

23 A court has authority to completely reduce penalties, as long as not to “zero.” *Thurman*
24 *v. Bayshore Transit Management, Inc.*, 203 Cal. App. 4th 1112, 1135 (2012). See *Carrington v.*
25 *Starbucks Corp.*, 30 Cal. App. 5th 504, 517 (2018) (Plaintiff requested “nearly \$70 million in
26 penalties,” trial court’s \$150,000 award upheld on appeal).

27 Plaintiff believed reasonable exposure was no more than 10% of exposure, \$538,900,
28 based on factors considered in determining reasonable exposure for class claims, the ability of

1 the court to reduce penalties nearly to zero, and decisions holding “courts have inherent
2 authority to ensure that PAGA claims can be fairly and efficiently tried and, if necessary, may
3 strike a claim that cannot be rendered manageable.” *Wesson v. Staples the Office Superstore,*
4 *LLC*, 68 Cal. App. 5th (2021).

5 The \$30,000 PAGA allocation is well within the range approved by California courts.
6 See *Alcala v. Meyer Logistics, Inc.*, 2019 LEXIS 166879, *26 (C.D. Cal. June 17, 2019)
7 (PAGA penalties 1.25% of settlement reasonable, “falls within the zero to two percent range for
8 PAGA claims approved by courts.”); *In re M.L. Stern Overtime Litig.*, 2009 LEXIS 31650, *1
9 (S.D. Cal. Apr. 13, 2009) (PAGA settlement of 2%); *Magadia, Id.* at 1101, citing, *Ceja-Corona*
10 *v. CVS Pharm., Inc.*, 2015 U.S. Dist. LEXIS 5118 (E.D. Cal. Jan. 14, 2015) (\$10,000 penalties,
11 \$900,000 settlement, recommendation adopted, 2015 U.S. Dist. LEXIS 25730 (E.D. Cal. Mar.
12 3, 2015). (The LWDA was served with the motion for approval when filed). Geraci Decl. ¶61 -
13 Exh. 2.

14 **D. The Settlement is Fair, Adequate, and Reasonable**

15 Plaintiff and her Counsel gave serious consideration to all facts and arguments and
16 concluded the Settlement is fair and reasonable. The Maximum Settlement Amount represents
17 64% of the reasonable value of Class claims. ($\$1,125,000/\$1,763,158 = 0.638$), and 16% of
18 maximum exposure ($\$1,125,000/\$7,039,417 = 0.1598$). The proposed settlement is within the
19 “ballpark” of reasonableness. Geraci Decl. ¶55.

20 Settlement Payments are characterized as 30% wages and 70% penalties and interest.
21 Geraci Decl. ¶56. This is roughly consistent with alleged maximum exposure: \$12,897,928 =
22 100% \$4,883,452/37.8% (overtime, rest/meal premium wages), \$2,441,726/19% (interest),
23 \$5,572,750/43.2% (wage statement, waiting time, PAGA penalties). *Id.*

24 A settlement is not judged solely against what might have been recovered at trial, nor
25 must a settlement provide 100% of damages sought to be fair and reasonable. *Linney v. Cellular*
26 *Alaska Partnership*, 151 F.3d 1234, 1242 (9th Cir. 1998). Adequacy must be judged as “a
27 yielding of absolutes. . . Naturally, the agreement reached normally embodies a compromise; in
28 exchange for the saving of cost and elimination of risk, the parties each give up something they

1 might have won had they proceeded. . .” “It is well-settled law that a cash settlement amounting
2 to only a fraction of the potential recovery does not . . . render the settlement inadequate or
3 unfair.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 628, 624 (9th Cir. 1982)
4 (citation omitted).

5 **VII. CONDITIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE**

6 When an ascertainable and sufficiently numerous class exists, with a well-defined
7 community of interest, and class litigation would be superior to alternate means of adjudication,
8 certification is appropriate. See *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004,
9 1021 (2012).

10 Ascertainability is determined by examining class definition, size, and means for
11 identifying members. *Reyes v. Bd. of Supervisors*, 196 Cal. App. 3d 1263, 1271 (1987). The
12 Class is ascertainable from Defendant’s records and joinder is impracticable.

13 The community of interest requirement embodies three factors: Predominant common
14 questions of law or fact; representatives with claims typical of the class; and class
15 representatives who, with their counsel, can adequately represent the class. *Fireside Bank v.*
16 *Sup. Ct.*, 40 Cal. 4th 1069, 1089 (2007).

17 Plaintiff alleges each Class Member was subject to policies Plaintiff alleged caused
18 damage to her and the Class, including policies which underpaid wages, caused missed meal
19 and rest breaks, or resulted in non-compliant wage statements. Where the same alleged conduct
20 forms the basis for claims of Plaintiff and the class, they are common for settlement purposes.

21 Plaintiff can adequately protect the interests of the Class. See *Wershba v. Apple*
22 *Computers, Inc.*, 91 Cal. App. 4th 224, 238. Plaintiff accepted the risks of serving as class
23 representative, spent significant time assisting in the prosecution of the action, and placed the
24 interest of the class above their own. See Declaration of Eva Yanez, (“Yanez Decl.”), ¶¶2, 6, ,
25 7, 11. A service award is appropriate. *Clark v. American Residential Services LLC* (2009) 175
26 Cal.App.4th 785, 804-807.

27 Plaintiff’s attorneys are qualified to conduct the litigation and Plaintiff’s interests are
28 not antagonistic to Class interests. *McGhee v. Bank of Am.*, 60 Cal. App. 3d 442, 450 (1976).

Counsel have no conflicts of interest, have vigorously prosecuted this Action on behalf of Plaintiff and the Class, and have significant experience litigating class actions, including those involving similar claims. Geraci Decl. ¶¶8, 9, 57; Majarian Decl. ¶¶2-6. Plaintiff and Class Members have co-extensive claims and the terms of the Settlement apply to all Class Members equally, with no conflict between them.

The settlement of Plaintiff's alleged discrimination and retaliation claims does not implicate her adequacy as a class representative. Plaintiff's individual claim had significant potential value, likely several times the amount she accepted in settlement. Yanez Decl. ¶¶4, 10, 11; Geraci Decl. ¶58.

As is in virtually every class or PAGA action, Gardner was unwilling to settle class claims without a complete release of all of Plaintiff's claims. This included claims for retaliation and wrongful termination which Gardner understood Plaintiff had arguably exhausted administrative remedies for and believed had merit. Rather than jeopardize or delay class settlement, Plaintiff accepted an individual settlement of all claims. Geraci Decl. ¶59.

Plaintiff's counsel is taking no fee on Ms. Yanez' individual settlement and it is being paid by Defendant outside the Class settlement. Plaintiff's conduct in accepting this individual settlement demonstrates her commitment to the interests of the class and supports her adequacy as a Class Representative. Geraci Decl. ¶60.

VIII. PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS

The Parties propose the following schedule for final proceedings:

1. Class Data provided to Administrator: Within 30 calendar days of Preliminary Approval
2. Mail Notice Packet to the Class: Within 14 calendar days of receipt of Class Data
3. Notice Response Deadline: On or before 45th calendar day from initial date Administrator mails Notice Packet to Class (plus 15 days if re-mailed)
4. File Motion for Final Approval and Administrator's Declaration Re Claims: No sooner than 20 days after the close of the Notice Response Deadline
5. Final Approval Hearing: A date convenient on the Court's calendar

1 **IX. CONCLUSION**

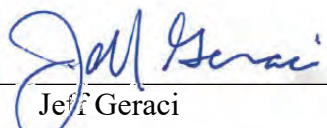
2 Plaintiff requests the Settlement be preliminarily approved, Notice approved and
3 ordered sent to the Class, CPT Group appointed Administrator, Cohelan Khoury & Singer and
4 Law Offices of Sahag Majarian II confirmed as Class Counsel, Plaintiff Eva Yanez confirmed
5 as Class Representative, and a Final Approval Hearing date set.

6 Respectfully submitted,

7 COHELAN KHOURY & SINGER
8 LAW OFFICES OF SAHAG MAJARIAN II

9 Dated: November 23, 2022

10 By: _____

11 
12 Jeff Geraci

13 Attorneys for Plaintiff EVA YANEZ, on behalf of
14 herself and all others similarly situated
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