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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

MARLENE ESTELA; JEANINE DANIELS;
AND LINDA WILLIAMS, individuals, on
behalf of themselves and others similarly
situated,

Plaintiffs,

vs.

PACIFIC DENTAL SERVICES, LLC, a
Delaware limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 37-2020-00010251-CU-OE-NC
(Consolidated with Orange County Case No.
30-2020-01140863-CU-OE-CXC)

CLASS ACTION

Assigned for All Purposes To:

Hon. Robert P Dahlquist

Dept.: N-29

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
STIPULATION OF SETTLEMENT OF
CLASS, COLLECTIVE, AND
REPRESENTATIVE ACTION**

*[Filed concurrently with Notice of Motion and
Motion; Memorandum of Points and Authorities;
Declarations of other Class Counsel and
Plaintiffs; and [Proposed] Order]*

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Department N-29

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Second Amended Complaint: February 7, 2022

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiffs Marlene Estela, Jeanine Daniels, Linda Williams, and Tiffanie Le (“Plaintiffs”),
3 individually and on behalf of all other similarly situated and aggrieved employees of Defendant
4 Pacific Dental Services, LLC (“Defendant”) (collectively, “the parties”), without opposition from
5 Defendant, respectfully request preliminary approval of the parties’ Stipulation and Settlement of
6 Class, Collective, and Representative Action (“Settlement Agreement”) pursuant to California Code
7 of Civil Procedure § 382 and Rule 3.769 of the California Rule of Court.

8 **1. INTRODUCTION**

9 Plaintiffs and the Class members and the other aggrieved employees worked for Defendant
10 as dental hygienists and assistants and in similar and related positions in California. Plaintiffs
11 Marlene Estela, Jeanine Daniels, and Linda Williams filed their Class Action Complaint on February
12 24, 2020 in San Diego County against Defendant. (See Declaration of David Yeremian in support
13 of Motion for Preliminary Approval (“Yeremian Decl.”), ¶ 11). They filed a First Amended
14 Complaint adding a Penalties Under the Private Attorneys General Act, Labor Code § 2698, *et seq.*
15 (“PAGA”) on May 26, 2020. On July 6, 2020, Defendant filed a Notice of Related Cases regarding
16 the case of *Tiffanie Le v. Pacific Dental Services, LLC*, Orange County Superior Court Case No.
17 30-2020-01140652-CU-OE-CXC (“the Le Action”). The parties agreed to file a consolidated
18 complaint in this action, adding Tiffany Le as a named Plaintiff and incorporating the claims and
19 allegations in the Le Action. (Yeremian Decl., ¶¶ 11, 15).

20 Plaintiffs then filed the operative Second Amended Consolidated Class Action Complaint
21 on February 7, 2022 alleging thirteen causes of action against Defendant: (1) Failure to Pay
22 Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Failure to
23 Pay Wages Under the FLSA, 29 USC §§ 206, 207; (4) Meal Period Liability Under Labor Code §
24 226.7; (5) Rest-Break Liability Under Labor Code § 226.7; (6) Violation of Labor Code § 246; (7)
25 Violation of Labor Code § 226(a); (8) Violation of Labor Code § 221; (9) Violation of Labor Code
26 § 204; (10) Violation of Labor Code § 203; (11) Failure to Reimburse Necessary Business
27 Expenditures Under Labor Code § 2802; (12) Violation of Business & Professions Code § 17200 *et*
28 *seq.*; and (13) Penalties under Labor Code § 2698, *et seq.* (Yeremian Decl., ¶ 12).

1 The Second Amended Consolidated Class Action Complaint (the “Consolidated
2 Complaint”) added claims from the Le Action and added Ms. Le as a Named Plaintiffs and Class
3 Representative in this action. It also added a cause of action for failure to pay wages and overtime
4 under the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* and addressed other previously
5 unalleged claims under the PAGA claim, including, but not limited to, allegations regarding sick
6 pay. (Yeremian Decl., ¶¶ 13, 15).

7 The parties attended early mediation on January 5, 2021 and following mediation arrived at
8 agreed upon terms to settle all of Plaintiffs’ claims in this action. The parties then executed a detailed
9 Memorandum of Understanding and worked to finalize the terms of their long form Settlement
10 Agreement. (Yeremian Decl., ¶ 14). Class counsel provides further detail of the procedure and
11 background leading to the present settlement, along with an explanation of the parties’ settlement
12 negotiations. (Yeremian Decl., ¶¶ 12-17). Class counsel then summarizes Plaintiffs’ claims against
13 Defendant and Defendant’s responsive positions and arguments. (Yeremian Decl., ¶¶ 17-22).

14 Without opposition from Defendant, Plaintiffs request that the Court grant preliminary
15 approval of the parties’ Settlement Agreement, at **Exhibit A** to the concurrently filed Declaration of
16 David Yeremian (“Yeremian Decl.”), and the Class Notice provided at **Exhibit 1** to the Settlement.
17 Defendant’s records establish there are approximately **7,041** “Class Members” and the “Settlement
18 Class” are defined as: “All current and former non-exempt employees employed by Defendant in the
19 State of California during the stipulated Class Period,” and the Class Period is February 24, 2016
20 through and including the date of January 31, 2022. (Yeremian Decl., ¶¶ 9, 25, 33, Exhibit A,
21 Settlement, ¶¶ I.H., I.I.). Similarly, the PAGA Members are defined as: “All current and former non-
22 exempt employees employed by Defendant in the State of California during the period of February
23 24, 2019 through and including the date of Preliminary Approval. (*Id.* at Settlement, ¶ I.U.).

24 The parties participated in a private mediation with respected mediator, Jeff Krivis, Esq., on
25 January 4, 2021. The parties and mediator worked to arrive at the general terms for resolving this
26 action, subject to Court approval, and the parties’ counsel began working on the Memorandum of
27 Understanding. It was finalized and a long form Settlement Agreement was eventually completed,
28 which is now before the Court for preliminary approval. (Yeremian Decl., ¶¶ 14-15).

1 The agreed upon “Class Settlement Amount” is **\$1,500,000.00**, inclusive of all fees and costs.
2 (Yeremian Decl., ¶ 34). All **7,104** Settlement Class Members will automatically receive a settlement
3 share unless they opt out and will divide, on a *pro-rata* basis, a Net Settlement Amount of
4 approximately **\$887,500.00** if all allocations are approved. The estimated average gross individual
5 settlement payment to the Class members, using a straight average, is **\$124.93**. (Yeremian Decl., ¶¶
6 32-34, 71-72). The Class Settlement Amount of \$1,500,000.00 is approximately 11.60% of the total
7 maximum liability exposure Plaintiffs estimated Defendant faced at mediation. (*Id.* at ¶¶ 71-72).

8 The proposed Settlement is fair, reasonable, and adequate, and in the best interests of the
9 Class. Plaintiffs, with the consent of Defendant, respectfully requests that this Court issue an Order
10 in the form provided herewith: (1) preliminarily approving the proposed class-wide settlement of
11 this action; (2) approving the form and method for providing class-wide notice; (3) directing that
12 notice of the proposed settlement be given to the class; (4) appointing Plaintiffs Marlene Estela,
13 Jeannie Daniels, Linda Williams, and Tiffanie Le as Class Representative for settlement purposes
14 only; (5) appointing David Yeremian & Associates, Inc.; United Employees Law Group, P.C.;
15 Falakassa Law, P.C.; and Bokhour Law Group, P.C. as Class Counsel for settlement purposes only;
16 and (6) scheduling a hearing date for Final Approval of the Settlement and Plaintiffs’ Application
17 for attorneys’ fees and costs and for the representative enhancements and administration expenses.

18 **2. FACTUAL BACKGROUND, DISCOVERY, AND MEDIATION**

19 **A. Plaintiffs’ Claims and Defendant’s Denials**

20 Plaintiffs’ operative Consolidated Complaint asserts, *inter alia*, that Plaintiffs were generally
21 scheduled to work at least eight hour shifts, for five days a week and more as required, but worked
22 more hours than their scheduled shifts and they were paid. Plaintiffs further alleged claims for off
23 the clock work, as they were expected to clock out at or near their scheduled end time and then return
24 to working to complete all daily assignments while off the clock. (Yeremian Decl., ¶¶ 17-18).
25 Plaintiffs therefore asserted this off the clock work resulted in unpaid overtime and alleged
26 Defendant paid performance bonuses not included in the overtime rate. (*Id.* at 18-19).

27 Plaintiffs have further alleged claims for failure to provide meal periods and failure to
28 authorize and permit rest periods, and failure to reimburse necessary business expenses. Plaintiffs

1 also brought derivative claims for failure to provide accurate wage statements, failure to pay all
2 wages upon separation from employment, unlawful deductions, unfair competition, and for civil
3 penalties and wages under the PAGA. The FLSA Collective claims focus on the unpaid regular and
4 overtime wage claims under the FLSA, 29 USC §§ 206, 207, and are limited to those FLSA claims
5 held be the members of the Settlement Class in this action. (Yeremian Decl., ¶¶ 20-21). The
6 California employees in the Class will opt-into the FLSA collective by signing and cashing or
7 depositing their individual settlement payment checks, and the Administrator will include printed
8 language on the back of the check explaining this and that doing so will release their FLSA claims
9 against Defendant. (Yeremian Decl., ¶¶ 12, 21, 37, 42; *see also, e.g. Amaro v. Anaheim Arena Mgmt.,*
10 *LLC* (2021) 69 Cal. App. 5th 521, 580).

11 Defendant denies all of Plaintiffs' Class and PAGA claims, and contends, among other
12 things, it has complied at all times with all applicable laws and asserted that the Settlement Class
13 Members were properly compensated for all time worked, and otherwise treated at all times in
14 compliance with all applicable laws. (Yeremian Decl., ¶¶ 22, 26). Defendant also notably asserted
15 that all Class Members signed valid and enforceable arbitration agreements that included waivers of
16 class proceedings, and therefore the class claims were of negligible value. Defendant also asserted
17 that the Class members were employed at various different offices throughout California that
18 followed their own unique policies and practices and there was no common evidence of uniform
19 violations under commonly applied policies to permit class certification. (*Id.*).

20 After extensive investigation and discovery, including exchange of informal discovery and
21 analysis of relevant documents, data, and numbers, Class Counsel believed this case was appropriate
22 for resolution *via* mediation. Given the high level of risk for both sides, and the substantial
23 uncertainty and expense of protracted litigation, the parties elected to mediate Plaintiffs' claims and
24 explore settlement, which they achieved. (Yeremian Decl., ¶¶ 17-29, 43, 71, 73-76, 83, 88).

25 **B. Investigation and Discovery**

26 Before filing, Class Counsel investigated and researched the circumstances and facts
27 underlying the pertinent issues and the law applicable thereto. (Yeremian Decl., ¶¶ 23-29; 46-72).
28 This required thorough discussions and interviews between Class Counsel and Plaintiffs, in addition

1 to the above described research into the various legal issues involved in the case. (Yeremian Decl.,
2 ¶¶ 86-91). After filing the lawsuit and in advance of the mediation, Class Counsel conducted a
3 thorough investigation of the facts and claims giving rise to the action, including: (1) conducting
4 informal discovery and meeting and conferring with defense counsel about same; (2) reviewing and
5 analyzing time and pay records as well as employment related policies; (3) Plaintiffs' personnel file
6 and other documentation; (4) interviewing Plaintiffs and potential Class members; (5) researching the
7 applicable law and potential defenses; (6) constructing damage models based on interpretations of
8 California law; and (7) reviewing information and class data and numbers provided by Defendant in
9 response to discovery and in advance of the mediation. (*Id.* at ¶ 24).

10 Upon agreeing to schedule mediation, and leading up to their agreement, the parties conducted
11 discovery regarding the claims and defenses and the items Plaintiffs believed were required to file a
12 motion for class certification and complete a constructive and meaningful mediation. (Yeremian
13 Decl., ¶¶ 23, 27-29). In addition to the documents and data produced in formal discovery, Defendant
14 provided class data and relevant numbers. (*Id.* at ¶ 23-29). After conducting the initial investigation,
15 Class Counsel determined Plaintiffs' claims were suited for class action adjudication based on what
16 they believed was a common course of conduct affecting a similarly situated group of employees.
17 (*Id.* at ¶¶ 29, 46-72).

18 **C. Mediation and Settlement Efforts**

19 The parties attended early mediation on January 5, 2021 with Jeff Krivis, Esq., after
20 completing informal discovery, and following mediation arrived at agreed upon terms to settle all of
21 Plaintiffs' claims in this action. (Yeremian Decl., ¶ 14, 28). Mr. Krivis is a respected and highly
22 experienced mediator in wage and hour class actions. The mediation took place only after the parties
23 exchanged extensive informal information, documents, and data. During the mediation, the parties
24 discussed all aspects of the case, including the risks of litigation and the risks to both parties of
25 proceeding with a motion for class certification as well as the law relating to meal periods and rest
26 breaks and off the clock work. (Yeremian Decl., ¶¶ 14-15, 29, 46-72).

27 From Class Counsel's review of the facts, strengths, and weaknesses of the case, the risks and
28 delays posed by further litigation, and Class Counsel's own prior litigation experience, Counsel

believes that the recovery for each Class Member is fair and reasonable taking into consideration the amounts received in other wage and hour class actions, the risks inherent in litigation of this genre, and the reasonable tailoring of each Class Member's claim to the settlement award he or she will receive. (Yeremian Decl., ¶¶ 7, 29, 43, 73-76, 80). Based on the negotiations, which were extensive and conducted in good faith and at arm's length between attorneys with substantial experience litigating wage and hour cases, the Settlement was the product of a non-collusive settlement process and compromises in the interest of reaching a full and complete settlement. (Yeremian Decl., ¶¶ 23-29, 46-72, 81-85; *see also* concurrently filed Declarations of Alvin B. Lindsay ("Lindsay Decl.") and Walter Haines ("Haines Decl.") in support of Settlement Approval).

3. THE PROPOSED SETTLEMENT, TERMS, AND NOTICE

Defendant will pay the entirety of the agreed upon total settlement amount, referred to as the "Class Settlement Amount," of \$1,500,000.00. (Yeremian Decl., ¶ 30; Exhibit A, Settlement ¶ I.I).

The "Class Members" or "Class" is defined as: "All current and former non-exempt employees employed by Defendant in the State of California during the stipulated Class Period," and the Class Period is February 24, 2016 through and including the date of January 31, 2022. (Yeremian Decl., ¶ 33; Exhibit A, Settlement, ¶¶ I.H., I.I.). The PAGA Members are similarly defined as: "All current and former non-exempt employees employed by Defendant in the State of California during the period of February 24, 2019 through and including the date of Preliminary Approval. (*Id.* at Settlement, ¶ I.U.). Defendant's records establish approximately **7,104** Settlement Class Members. (Yeremian Decl., ¶¶ 25, 34, 71, 93-93).

The "Net Settlement Amount" is the Class Settlement Amount less Court-approved Settlement and Claims Administration Costs (up to \$42,500.00), Attorneys' Fees of up to one-third of the Class Settlement Amount (i.e. \$500,000.00), and Costs (up to \$15,000.00), the Class Representative Payments (\$40,000.00 total), and the 75% LWDA Payment portion of the PAGA Settlement Amount (i.e. \$15,000.00). (Yeremian Decl., ¶ 31, Exhibit A, Settlement, ¶ I.R.). Each Class Member who does not opt out will be entitled, provisionally, to a share of the Net Settlement Amount, and these Individual Settlement Payments will be a fixed proportional amount of the Net Settlement Amount per workweek. (*Id.* at Settlement, ¶¶ I.EE, VIII.8 and 8(a)-(b)).

1 If the Court approves all requested allocations and awards above, the Net Settlement Amount
2 is estimated to be **\$887,500.00**. For the approximately 7,104 estimated Settlement Class Members
3 (if no exclusions), the average gross individual settlement payment, using a straight average, is
4 **\$124.93**. Any amounts not approved by the Court as a Class Representative Payment, or Attorneys'
5 Fees and Costs, or Settlement and Claims Administration costs or for the PAGA claim will be added
6 back to the Net Settlement Amount to be distributed to the Settlement Class Members who are Class
7 participants. (Yeremian Decl., ¶¶ 34, 71, Settlement, ¶¶ I.C, I.E.). The parties have selected ILYM
8 Group, Inc. as the Settlement Administrator. (*Id.* at Settlement, ¶¶ I.D., I.E.; see also Exhibit 1
9 thereto, Class Notice).

10 Each Class Member who fails to opt out will be entitled to a share of the Net Settlement.
11 Individual Settlement Payments will be calculated and apportioned from the Net Settlement Amount
12 based on the number of workweeks a Class Member worked for Defendant in California during the
13 Class Period. (Yeremian Decl., ¶ 35, Exhibit A, Settlement, ¶¶ 8, 8(a), 8(b), 9-10). All Individual
14 Settlement Payments will be allocated twenty percent (20%) to wages and eighty percent (80%)
15 will be allocated as non-wage penalties. (Yeremian Decl., ¶ 35, Exhibit A, Settlement, ¶ XII.25).

16 On the back of all Settlement checks, the Administrator will include printed language
17 informing Class Members they are opting-into the Settlement for the purposes of releasing the FLSA
18 collective claims. (Yeremian Decl., ¶ 37; Exhibit A, Settlement, ¶ I.EE.). The "Effective Date" is
19 the date on which the Final Award becomes final. The Final Award "becomes final" only after the
20 Court grants the Motion for Final Approval and if no appeal is filed, the expiration date of the time
21 for the filing or noticing of any appeal from, or other challenge to, the Order Granting Final
22 Approval. This time period will not be less than seventy calendar days after the Court's Order is
23 entered. (*Id.* at Settlement, ¶ I.M.).

24 Any checks issued by the Claims Administrator to Class Members will be negotiable for 180
25 calendar days. After 180 calendar days from the date of mailing, the checks will become null and
26 void, and any monies remaining in the distribution account will be distributed to the Controller of
27 the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code §
28 1500 *et seq.*, for the benefit of those Settlement Class members who did not cash their checks until

1 such time that they claim their property. The parties agree that this disposition results in no “unpaid
2 residue” under California Civil Procedure Code § 384, as the entire Net Settlement Amount will be
3 paid to Settlement Class members, whether or not all checks are cashed. (Yeremian Decl., ¶ 39,
4 Exhibit A, Settlement, ¶ XI.23).

5 Upon the Final Approval by the Court of the Settlement Agreement, and except as to such
6 rights or claims as may be created by the Settlement Agreement, the Class Members will fully release
7 and discharge the Released Parties from any and all Class Released Claims for the entire Class
8 Period. (Yeremian Decl., ¶¶ 40-41, Exhibit A, Settlement, ¶¶ XIV.29, I.J.).

9 “The Class Released Claims include all claims for unpaid wages, including failure to pay
10 minimum wages, straight time compensation, overtime compensation, double-time compensation,
11 and interest; the calculation of the regular rate of pay; meal period and rest period premiums,
12 including failure to pay premiums at the regular rate of compensation; payment for all hours worked,
13 including off-the-clock work; failure to pay sick leave, including at the regular rate of pay; wage
14 statements; failure to keep accurate records; failure to reimburse business expenses; unlawful
15 deductions; failure to timely pay wages; unfair business practices related to the Released Claims;
16 penalties, including civil penalties, statutory penalties, recordkeeping penalties, wage statement
17 penalties, minimum-wage penalties, and waiting-time penalties; and attorneys’ fees and costs; all
18 claims related to the Class Released Claims arising under: the California Labor Code (including,...”
19 (Yeremian Decl., ¶ 41, Exhibit A, Settlement, ¶¶ XIV.29, I.J., I.A.A.). The Settlement and Notice
20 provide further details on the Class release, and Plaintiffs will provide a general release and Section
21 1542 waivers and separate individual settlement agreements specific to all their claims rather than
22 just those articulated in the pleadings. (Yeremian Decl., ¶¶ 86-91; Exhibit A, Settlement, ¶ I.X).

23 The parties have selected ILYM Group, Inc. as the Settlement Claims Administrator.
24 (Yeremian Decl., ¶¶ 25, 30, 34, 77; Exhibit A, Settlement, ¶¶ I.D., I.E.; *see also* Exhibit 1 thereto,
25 Class Notice). Based on a quotation from ILYM Group, the Settlement Agreement budgets up to
26 \$42,500.00 for its services. (*Id.*). Notice of the Settlement will be provided by the Administrator to
27 the Settlement Class in the form of the Class Notice attached to the Settlement along with the Notice
28 Packet documents at Exhibit 1. (Yeremian Decl., ¶ 43, 77-78; Exhibit A, Settlement, ¶¶ I.B.B.,

1 I.C.C. and Class Notice at Exhibit 1 thereto). The Class Notice includes a summary of the case and
2 settlement terms and provides Class Members with instructions on how to exclude themselves,
3 dispute their workweeks, and object to the settlement, and addresses the deadlines and procedures
4 for doing so. (Yeremian Decl., ¶¶ 43-45; Settlement, ¶¶ I.B.B., I.C.C., I.V., I.T; Class Notice).

5 **4. THE THREE-STEP APPROVAL PROCESS**

6 California Rule of Court 3.769 requires court approval of the settlement of class action
7 lawsuits. Preliminary approval is merely the first of three steps that comprise the approval procedure
8 for settlements of class actions. *See* Manual for Complex Litigation, Second §30.44 (1993); *Dunk*
9 *v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. The second approval step is dissemination of
10 notice of the settlement to all Class Members. *Id.* The third step is a final settlement approval
11 hearing, at which evidence and argument concerning the fairness, adequacy, and reasonableness of
12 the settlement may be presented and Class Members may be heard. *Id.*

13 The determinations of whether a settlement should be preliminarily approved requires,
14 “basic information about the nature and magnitude of the claims in question and the basis for
15 concluding that the consideration being paid for the release of those claims represents a reasonable
16 compromise.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 133 (2008). However, the
17 record need not contain an explicit statement of the maximum theoretical amount that the class could
18 recover. *See Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 409
19 (2010) (“*Kullar* does not,... require any such explicit statement of value; it requires a record which
20 allows “an understanding of the amount that is in controversy and the realistic range of outcomes of
21 the litigation.”). Nonetheless, Class Counsel and Plaintiffs’ expert performed a potential liability
22 exposure analysis in advance of mediation, which the parties addressed in detail with the mediator.
23 (Yeremian Decl., ¶¶ 16-17, 24-32, 46-72). “If the proposed settlement appears to be the product of
24 serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly
25 grant preferential treatment to class representatives or segments of the class, and falls within the
26 range of possible approval, then the court should direct that notice be given to the class members of
27 a formal fairness hearing, at which evidence may be presented in support of and in opposition to the
28 settlement.” Manual for Complex Litigation, Second § 30.44, at 229.

1 In deciding whether to approve a proposed class action settlement, the Court must find that
2 a proposed settlement is “fair, adequate, and reasonable” and falls within the “range of approval.”
3 *Dunk*, 48 Cal.App.4th at 1801-02. The trial court considers all relevant factors, such as “the strength
4 of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of
5 maintaining class action status through trial, the amount offered in settlement, the extent of
6 discovery completed and the stage of the proceedings, the experience and views of counsel, the
7 presence of a governmental participant, and the reaction of the class members to the proposed
8 settlement.” *Id.* The instant settlement satisfies all of these requirements.

9 **5. THE PROPOSED SETTLEMENT MEETS THE STANDARDS FOR APPROVAL**

10 The Court’s decision to preliminarily approve a settlement is granted great deference, as an
11 exercise within its broad discretion. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 234-235
12 (2001). Applying the above factors, the proposed settlement provides a substantial benefit to the
13 Class. It is fair, reasonable, and adequate, and should be preliminarily approved.

14 **A. The Settlement Is the Result of Serious, Informed, Non-Collusive Negotiations**

15 The proposed settlement was reached as a result of arm’s length negotiations after the
16 completion of substantial discovery and the exchange of necessary class data. (Yeremian Decl., ¶¶
17 14-15, 23, 27-29). The negotiations have been, at all times, adversarial and non-collusive in nature.
18 *See*, 4 Newberg on Class Actions § 13:45 (5th ed.) (due to the preference of settlement over
19 litigation, “a court will presume that a proposed class action settlement is fair when certain factors
20 are present, particularly evidence that the settlement is the product of arms-length negotiation,
21 untainted by collusion.”). While Plaintiffs believes in the merits of their case, they and counsel also
22 recognized the inherent risks of litigation and understood the benefit of the Settlement Class
23 receiving funds immediately, as opposed to risking an unfavorable decision on class certification,
24 or then at trial and appeal, that would take several years to litigate. (Yeremian Decl., ¶¶ 22-29, 46-
25 72, 73-76, 80). Given the high level of risk for both sides, and the substantial uncertainty and
26 expense of protracted litigation, the parties elected to mediate Plaintiffs’ claims and explore
27 settlement, which they eventually achieved. (Yeremian Decl., ¶¶ 17-29, 43, 71, 73-76, 83, 88)

1 **B. The Parties Engaged In Extensive Discovery and Investigation**

2 As discussed above, the parties engaged in substantial informal discovery before the
3 Settlement was reached to allow them to fully evaluate the class claims and Defendant's defenses.
4 (Yeremian Decl., ¶¶ 23-29; 46-72). This litigation has reached the stage where the parties have a
5 clear view of the strengths and weaknesses of their cases sufficient to support the settlement.

6 **C. Class Counsel Are Experienced Class Action and Employment Attorneys**

7 Experienced counsel, operating at arm's length, have weighed the strengths of the case and
8 examined all the issues and risks of litigation and endorse the proposed settlement. Class Counsel
9 are experienced in class actions, have represented their clients zealously, and have no conflicts of
10 interest. (Yeremian Decl., ¶¶ 3-9, 83-84, 97-98; Lindsay Decl., ¶¶ 3-12; Haines Decl., ¶¶ 2-8). Class
11 counsel submits the Settlement is fair, adequate and reasonable in view of the risks and other
12 considerations addressed, and is well-suited for final approval upon completion of the
13 administration process. (Yeremian Decl., ¶¶ 7, 29, 43, 73-76, 80; Lindsay Decl., ¶ 12).

14 **D. The Presence of a Governmental Participant**

15 Class Counsel will be submitting the Settlement Agreement to the LWDA concurrently with
16 the filing of this motion pursuant to Labor Code § 2699(1)(2). (Yeremian Decl., ¶ 16).

17 **E. The Strength of Plaintiffs' Case and the Risks and Cost of Further Litigation.**

18 As with all litigation, there was risk that Plaintiffs would not prevail on the merits of their
19 class claims. (Yeremian Decl., ¶¶ 17-29, 43, 71, 73-76, 83, 88). Class counsel has addressed the
20 strengths of each of the main class claims, Defendant's arguments against liability, and the
21 estimated potential liability exposure Defendant faced on each. (Yeremian Decl., ¶¶ 46-72). For
22 example, Plaintiffs contends they and the other class members were not properly provided meal
23 and rest periods. (Yeremian Decl., ¶¶ 50-56). Defendant contended that Plaintiffs and other class
24 members were provided with the opportunity to take proper meal and rest periods, on-duty breaks
25 were not required, its policies were lawful and it paid some penalty payments, and the lack of
26 records for rest periods created individualized issues. (*Id.* at ¶ 53; *see also, Brinker Restaurant*
27 *Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1028-29).

1 Plaintiffs also alleged they were not paid for all hours worked, including overtime pay, due
2 to Defendant's policy and practice of requiring off the clock work or paying at incorrect rates of
3 pay. (Yeremian Decl., ¶¶ 48-49). Defendant again argued these claims were not suitable for class
4 treatment, they did not require off the clock work, and that all Class members including Defendant
5 signed class waivers. (*Id.*). If Defendant prevailed, there would be no recovery.

6 There were also risks in proving liability for failure to provide accurate wage statements
7 under Labor Code § 226 and failure to pay all wages at termination under Labor Code § 203.
8 (Yeremian Decl., ¶¶ 57-63). These derivative claims require that the underlying claims be proven
9 first, and there are conflicting interpretations as to whether alleged meal and rest claims can even
10 provide the predicate violations for inaccurate wage statement and waiting time penalties claims.¹

11 Defendant also disputed liability for the underlying wage and meal and rest claims, and
12 penalties under Labor Code § 203 are available only if "an employer willfully fails to pay...any
13 wages of an employee who is discharged or quits..." With these penalties, there is always the risk
14 that the trier of fact will not find Defendant's actions willful. There was also risk associated with
15 the PAGA claim given the Court's discretion to award a lesser amount. *See*, Labor Code §
16 2699(e)(2). Plaintiffs' counsel addresses these risks. (Yeremian Decl., ¶¶ 60-67, 69-72).

17 While Plaintiffs believe and continue to believe this is a strong case for certification, there
18 is risk and significant expense associated with class certification proceedings. As set forth above,
19 Defendant disputed liability and the anticipated class certification motion, arguing significant legal
20 uncertainties are associated with wage and hour cases, which can be factually complex and require
21 protracted litigation to resolve. Plaintiffs allege there were company-wide policies that affected the
22 employees uniformly, and which could be established using representative testimony and company
23 documents that would not require separate mini-trials on liability. Defendant vigorously contested
24 liability and would have presented several defenses to the wage claims as well as to class
25 certification, including that class waivers prevent class proceedings along with the different policies

26
27 ¹ *See, Stewart v. San Luis Ambulance, Inc.*, 878 F.3d 883, 887 (9th Cir. 2017) (recognizing that the
28 "*Murphy v. Kenneth Cole Productions, Inc.*, 40 Cal. 4th 1094 (2007) "Court characterized the
extra hours paid for meal period violations as a 'premium wage' rather than a penalty," but, in
Kirby v. Immoos Fire Protection, Inc., 53 Cal. 4th 1244 1167-68 (2012), "the Court held that a
meal-period violation is not tied to the nonpayment of wages.").

1 and procedures followed by the different dental offices where Class members were employed.
2 (Yeremian Decl., ¶¶ 24-26, 46-70, 72, 73-76).

3 Finally, in class actions, decertification is always a possibility, and there is always a risk
4 that a trial of this magnitude can become unmanageable. (Yeremian Decl., ¶¶ 22, 72-73, 99-103).
5 Cases like *Duran v. U.S. Bank Nat. Assn.*, 59 Cal. 4th 1, 34 (2014) address the complexity of using
6 statistical samples in class actions, and decertification is a real risk that Class Counsel must take
7 into account. (See also, Yeremian Decl., ¶ 75). A class trial would have also required expert
8 witnesses, the accrual of extensive litigation costs, and commitment of extensive further time and
9 financial resources. Finally, given the complexity and unsettled nature of the issues, it is likely that
10 any outcome at trial would have resulted in a lengthy and costly appeal. An appeal would result in
11 further delay for the class members who have already waited years for resolution in this matter. (*Id.*
12 at ¶ 76). Risk and legal uncertainty must be dealt with in any litigation, and this Settlement was the
13 product of compromise accounting for those risks and that uncertainty.

14 **F. The Amount Offered in Settlement and Method of Allocation are Fair**

15 In light of the uncertainties and risks of certification and litigation, the parties agreed to a
16 compromise settlement of **\$1,500,000.00**. Class Counsel estimated approximately \$12.9 million in
17 potential liability exposure to Defendant for Plaintiffs' main claims for damages and penalties, and
18 the Class Settlement Amount of \$1,500,000.00 therefore represents a recovery for the Class
19 members of approximately **11.60%** of the total estimated maximum liability exposure. (Yeremian
20 Decl., ¶¶ 71-72). If the Court approves all requested allocations and awards above, the Net
21 Settlement Amount is estimated to be **\$887,500.00**. For the approximately **7,104** estimated
22 Settlement Class Members (if no exclusions), the average gross individual settlement payment,
23 using a straight average, is **\$124.93**. (Yeremian Decl., ¶¶ 34, 71, Exhibit A, Settlement, ¶¶ I.C, I.E.).
24 Any amounts not approved by the Court will be added back to the Net Settlement Amount to be
25 distributed to the Settlement Class Members who do not opt-out. (*Id.*).

26 Plaintiffs and Class counsel submit this is an excellent result and the Settlement is fair,
27 reasonable, and certainly advantageous to the Class. (Yeremian Decl., ¶¶ 7, 29, 43, 73-76, 80, 95-
28 97). Individual Settlement Payments will be calculated and apportioned from the Net Settlement

1 Amount based on the number of workweeks a Class Member worked for Defendant in California
2 during the Class Period. (Yeremian Decl., ¶ 35, Exhibit A, Settlement, ¶¶ 8, 8(a), 8(b), 9-10). Basing
3 the size of the award on Settlement Class Members' work weeks during the Class Period ensures
4 that those with more valuable potential claims receive more money. All Settlement Class Members
5 will enjoy benefits under the same formula, and none are singled out for special treatment, save for
6 Plaintiffs requested representative enhancement payments. (Yeremian Decl., ¶¶ 86-91; *see also*
7 concurrently filed Declarations of Marlene Estela ("Estela Decl."), Linda Williams ("Williams
8 Decl.") and Jeanine Daniels ("Daniels Decl.") in support of Settlement Approval).

9 **G. A Balance of Risk Factors and Kullar Analysis Support Approval**

10 In deciding whether to approve the settlement, the Court must balance these risk factors
11 against an "understanding of the amount in controversy and the realistic range of outcomes of the
12 litigation." *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130, 133; *Munoz v. BCI*
13 *Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-09. The court "must stop
14 short of the detailed and thorough investigation that it would undertake if it were actually trying the
15 case" *Munoz*, at 408. Plaintiffs' counsel used the comprehensive data and documents provided
16 to perform an analysis of the potential liability exposure Defendant faced on Plaintiffs' main class-
17 wide claims, establishing the realistic upper range of the outcome here. (Yeremian Decl., ¶¶ 14-16,
18 23-29, 46-72, 74). The Gross Settlement Amount represents a recovery of approximately **11.60%**
19 of the total maximum liability exposure Plaintiffs estimated. (Yeremian Decl., ¶¶ 34, 71-72).

20 The fact remains there was a very real prospect that nothing would be recovered if litigation
21 continued and class certification was ultimately denied. At the same time, further litigation would
22 require the expenditure of significant time and financial resources, and there is always the possibility
23 of adverse developments in the law and the likelihood of extended battles in both the trial court and
24 the courts of appeal. Settlement is a prudent compromise that benefits the Class Members promptly
25 and eliminates such concern.

26 **6. THE NOTICE PROVIDES ADEQUATE NOTICE TO THE CLASS MEMBERS**

27 To be deemed proper, a Notice must provide the class members with sufficient information
28 to make an informed decision as to whether to accept or object to the settlement. *Mullane v. Central*

1 *Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314. The notice must apprise the class members
2 of the pendency of the action; reasonably convey information regarding the settlement and the class
3 members' rights, entitlements, and obligations; and afford class members the opportunity to present
4 their objections. *Id.* The Notice (at Yeremian Decl., Exhibit A, Settlement, Exhibit 1 thereto)
5 provides all the information a reasonable person would need to make a fully informed decision about
6 the settlement. It will notify all Class members of the terms of the settlement, of its effect on their
7 rights, of their options as Class members (i.e., participate, object, opt out, and dispute work weeks),
8 and of the consequences of and procedures for exercising those options. (Yeremian Decl., ¶¶ 43-45,
9 77-79; Exhibit A, Settlement, ¶¶ IX.11-14, 16, and Settlement Class Notice at Exhibit 1 thereto).
10 The Notice also directs Class members who have questions or concerns to contact the settlement
11 administrator or Class Counsel. (*Id.*).

12 The standard for determining the adequacy of notice is whether it has "a reasonable chance
13 of reaching a substantial percentage of the class members." *Cartt v. Superior Court* (1975) 50
14 Cal.App.3d 960, 974. Here, the Notice will be sent via first-class mail to each of the 7,104 Class
15 members at their addresses from Defendant's records. (Yeremian Decl., ¶ 77; Exhibit A, Settlement,
16 ¶¶ IX.11-14). If any Notice Packets are returned undeliverable without a forwarding address, the
17 Claims Administrator will use the national change of address database and perform a skip trace to
18 locate the Class member and mail a new Notice to the correct address. (*Id.*). The Class Notice (at
19 Settlement, Exhibit 1) should be approved as the best and most practicable way to ensure the greatest
20 possible number of Class members will receive notice.

21 **7. CLASS REPRESENTATIVE ENHANCEMENT IS FAIR AND REASONABLE**

22 "At the conclusion of a class action, the class representatives are eligible for a special
23 payment in recognition of their service to the class." 5 Newberg on Class Actions § 17:1 (5th ed.).
24 Plaintiffs request a reasonable service award as an enhancement payment for their effort and
25 initiative in bringing and helping to prosecute this class action. Plaintiffs have dedicated significant
26 time and effort to these proceedings. (Yeremian Decl., ¶¶ 86-91; Daniels Decl., ¶ 11; Estela Decl.,
27 ¶ 11; Williams Decl., ¶ 11). Plaintiffs' courage in proceeding with their class-wide claims should
28 not be underestimated. By suing Defendant, Plaintiffs contend they increased their risk of retaliation

1 by prospective employers, who must choose between an applicant who has never sued a prior
2 employer and one who has. (Yeremian Decl., ¶ 88; *see also generally*, Daniels, Williams, and Estela
3 Declarations). Plaintiffs contend this risk is particularly real in the information age, where employers
4 can perform background checks of prospective employees, sometimes with the stroke of a key. (*Id.*).

5 Plaintiffs have devoted a substantial amount of time to helping Class Counsel effectively
6 develop and prosecute this action at every stage of the litigation. (Yeremian Decl., ¶¶ 86-91; Daniels
7 Decl., ¶ 11 (41 hours); Estela Decl., ¶ 11 (38 hours); Williams Decl., ¶ 11 (45 hours)). Both before
8 and after filing, Plaintiffs conferred with Class Counsel to discuss every aspect of this case. They
9 provided Class Counsel with information about Defendant and the industry, reviewed documents,
10 identified witnesses, consulted Class Counsel throughout the litigation, helped complete informal
11 discovery, have spoken with Class Members, and participated in the mediation process and reviewed
12 and signed the settlement agreements after several conferences with Class Counsel. (*Id.*)

13 Plaintiffs have spent a significant amount of time with Class Counsel detailing their
14 knowledge of Defendant's practices. They have diligently, adequately, and fairly represented the
15 Class members, and have not placed their interests above any member of the putative Class. This
16 sort of payment to Class representatives has been a common feature of settlements negotiated by
17 Class Counsel and has been routinely approved by trial courts. The representative enhancement
18 award in the amount of **\$10,000.00** to each of the Class Representatives is fair and reasonable.
19 (Yeremian Decl., ¶¶ 86-91; Exhibit A, Settlement, ¶ I.K.; Williams, Estela, and Daniels Decl.).

20 **8. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE**

21 Class Counsel consisting of David Yeremian & Associates, Inc., United Employees Law
22 Group, P.C., Falakassa Law, P.C., and Bokhour Law Group, P.C. respectfully request, without
23 opposition from Defendant, an award of attorneys' fees in an amount not to exceed one-third of the
24 Class Settlement Amount (i.e. up to **\$500,000.00**), and for an award of reasonable costs and
25 expenses in an amount not to exceed **\$15,000.00**, subject to approval by the Court. (Yeremian Decl.,
26 ¶¶ 81-85; Exhibit A, Settlement, ¶¶ I.C, I.F.). Class counsel submits it has the requisite experience,
27 knowledge, and resources to serve as Class counsel and to zealously represent the Class. (Yeremian
28 Decl., ¶¶ 3-9, 84, 97; Lindsay Decl., ¶¶ 3-12; Haines Decl., ¶¶ 2-8). Plaintiffs' counsel has incurred

substantial fees and costs thus far in the litigation, including approximately \$9,124.61 in litigation costs by David Yeremian & Associates, Inc. Class Counsel will provide further details regarding hourly rates, lodestar, and hours, and will document expenses incurred, in support of final approval and its fees and costs motion. (Yeremian Decl., ¶ 84).

9. PROVISIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE

Certification is appropriate when the moving party has demonstrated the existence of an ascertainable class and a well-defined community of interest among the class. *See, e.g., Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1021. Defendant does not dispute, for settlement purposes only, that all of the elements for class certification are met here. Defendant does not concede that certification is appropriate outside of this Settlement and preserve all rights to oppose certification if, for any reason, the settlement does not become effective. (Yeremian Decl., ¶ 92, Exhibit A, Settlement Agreement, ¶ X.V.30., X.V.I.I.47-48).

A. There Is A Numerous and Ascertainable Class

Whether a class is ascertainable is determined by examining the class definition, the size of the class and the means available for identifying class members. *See, Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263, 1271. Defendant's records establish approximately **7,104** total Class members. (Yeremian Decl., ¶¶ 25, 34, 71, 93-93). Defendant does not dispute, for settlement purposes, that they are ascertainable and sufficiently numerous. (Yeremian Decl., ¶¶ 93-94).

B. There Is a Well-Defined Community of Interest

A community of interest is established by predominant common issues of law and fact. *See Vasquez*, 4 Cal. 3d at 811. It "does not depend upon an identical recovery,...The mere fact that separate transactions are involved does not of itself preclude a finding of the requisite community of interest so long as every member of the alleged class would not be required to litigate numerous and substantial questions to determine his individual right to recover..." *Id.* at 809.

Plaintiffs contend, and Defendant does not dispute for settlement purposes only, that common issues of fact and law predominate as to each of the claims alleged by Plaintiffs. (Yeremian Decl., ¶¶ 99-100). California courts show "no hesitancy" in inferring class-wide causation, injury,

1 and damages when a common course of action has been shown. *B.W.I. Custom Kitchens v. Owens-*
2 *Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1350. This inference ““eliminates the need for each class
3 member to prove individually the consequences of the Defendant’s actions to him or her.”” *Id.* at
4 1351 (quoting *Rosack v. Volvo of America Corp* (1982) 131 Cal. App. 3d 741, 753).

5 This action involves, *inter alia*, a determination about Defendant’s alleged failure to provide
6 meal and rest periods, failure to pay wages and overtime due to allegedly common and unlawful
7 wage rate calculations and off the clock work policies, the resulting failure to pay final wages when
8 required, the failure to provide accurate paystubs, and largely derivative claims under the UCL and
9 PAGA. (Yeremian Decl., ¶¶ 19-23, 46-70). Plaintiffs contend these practices affected Class
10 members in the same way and present questions that are suitable for common adjudication because
11 all Class members were subject to the same employment policies and practices, which applied
12 uniformly to all Class members. The outcome of litigation on this matter depends upon questions
13 that are common to Class members. (Yeremian Decl., ¶¶ 99-100). While Defendant maintained
14 otherwise, these issues will not be decided on the basis of facts peculiar to each Class member, but
15 rather on facts common to them all, and liability can be determined on a class-wide basis. (*Id.*)

16 **C. The Named Plaintiffs’ Claims Are Typical**

17 A class representative’s claims are typical when they arise from the same event, practice, or
18 course of conduct that gives rise to the claims of other putative class members, and if their claims
19 rest on the same legal theories. The class representative’s claims must be “typical” but not
20 necessarily identical to the claims of other class members. It is sufficient that the representative is
21 similarly situated so that he or she will have the motive to litigate on behalf of all class members.
22 *Classen v. Weller* (1983)145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.*
23 (1987) 191 Cal.App.3d 1341, 1347 (“[I]t has never been the law in California that the class
24 representative must have identical interests with the class members.”). Thus, it is not necessary that
25 the class representative should have personally incurred all of the damages suffered by each of the
26 other class members. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.

27 Plaintiffs contend, and Defendant does not dispute for settlement purposes only, that
28 Plaintiffs’ claims are typical of class members’ claims because they arose from the same factual

1 basis and are based on the same legal theories. (Yeremian Decl., ¶¶ 95-96).

2 **D. Adequacy of Class Counsel and Class Representatives**

3 Class Counsel are experienced in class actions, have represented their clients zealously and
4 have no conflicts of interest. (Yeremian Decl., ¶¶ 3-9, 79-82, 95-96; Lindsay Decl., ¶¶ 3-12; Haines
5 Decl., ¶¶ 2-8). The Class Representatives' interests are aligned with those of the Class Members,
6 they suffered the same injuries, and have no conflicts of interest. (Yeremian Decl., ¶¶ 86-91, 97-98;
7 *see also* Williams, Daniels, and Estela Declarations). Class Counsel and the Class Representatives
8 are adequate.

9 **E. Predominance and Superiority**

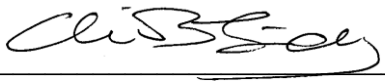
10 Individual issues do not predominate over those common to the class, as addressed above.
11 (Yeremian Decl., ¶¶ 99-100). Additionally, class proceedings are superior to individualized actions,
12 as there is little interest or incentive for Class members to individually control the prosecution of
13 separate actions. If Class members are forced to litigate their claims individually, it would result in
14 7,104 individual actions against Defendant, and the cost of individually litigating each such case
15 against Defendant would easily exceed the value of any relief that could be obtained. (Yeremian
16 Decl., ¶¶ 101-103). Class proceedings are superior to individual ones.

17 **10. CONCLUSION**

18 Plaintiffs respectfully requests that this Court grant preliminary approval; provisionally
19 certify the proposed Class for settlement purposes; approve Plaintiffs as the Class Representatives
20 and their counsel as Class Counsel; approve the proposed form of the Class Notice and plan for
21 administration; and schedule the final settlement approval hearing by entering the concurrently
22 provided [Proposed] Order.

23 DATED: April 4, 2022

DAVID YEREMIAN & ASSOCIATES, INC.

24 By 
25 David Yeremian
26 Alvin B. Lindsay
27 Attorneys for Plaintiffs Marlene Estela,
Jeanine Daniels, Linda Williams, and Tiffanie
28 Le and the Settlement Class