

Brian R. Short (SBN 236140)
Email: Brian@ShortLegal.com
Dorota A. James (SBN 309933)
SHORTLEGAL, APC
Email: Dorota@ShortLegal.com
350 10th Ave., Suite 1000
San Diego, California 92101
Telephone: 619.272.0720
Facsimile: 619.839.3129

Attorneys for Plaintiff ROSE SMITH

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

ROSE SMITH, Individually and on behalf
of all other current and former all
similarly-situated and aggrieved
employees of Defendants in the State of
California,

Plaintiffs,

v.

TRADITION ONE and DOES 1 through
50, inclusive,

Defendants.

Case No.: 37-2020-00024461-CU-OE-CTL

Unlimited Civil - Amount Demanded
Exceeds \$25,000.00

CLASS ACTION [CCP § 382]

IMAGED FILE

**PLAINTIFF ROSE SMITH'S POINTS AND
AUTHORITIES IN SUPPORT OF
UNOPPOSED MOTION FOR AN ORDER
1) PROVISIONALLY CERTIFYING
SETTLEMENT CLASS; 2)
PRELIMINARILY APPROVING CLASS
SETTLEMENT; 3) DIRECTING
DISTRIBUTION OF NOTICE OF
SETTLEMENT TO THE CLASS; 4)
APPOINTING CLASS COUNSEL AND
CLASS REPRESENTATIVE; AND 5)
SETTING A HEARING FOR FINAL
APPROVAL OF CLASS SETTLEMENT**

Date: February 10, 2022

Time: 9:00 a.m

Judge: Hon. James A. Mangione

Dept.: C-75

Date Complaint Filed: July 15, 2020

TABLE OF CONTENTS

I. INTRODUCTION	1
II. SUMMARY OF ARGUMENT	2
III. FACTS AND PERTINENT PROCEDURAL BACKGROUND.....	3
IV. THE PROPOSED SETTLEMENT	5
V. LEGAL ARGUMENT	9
A. Conditional Certification Should Be Granted.....	9
B. Preliminary Approval of the Settlement is Warranted Here.	10
C. The Proposed Notice is More than Adequate.	12
D. The Proposed Incentive Payment To The Representative Plaintiff Is Reasonable, Justified, And Routinely Awarded.....	13
E. The Maximum Requested Attorneys’ Fees are Reasonable.	14
VI. CONCLUSION.....	15

TABLE OF AUTHORITIES

Cases

<i>Amchem Prods., Inc. v. Windsor</i> 521 U.S. 591 (1997).....	13
<i>Clark v. Am. Residential Serv. LLC</i> 175 Cal. App. 4th 785 (2009)	10
<i>Dunk v. Ford Motor Co.</i> 48 Cal. App. 4th 1794 (1996)	9
<i>Ferguson v. Lieff, Cabraser, Heimann & Bernstein</i> 30 Cal. 4th 1037 (2003)	9
<i>General Motors Corp. Engine Interchange Litig.</i> 594 F.2d 1106 (7th Cir. 1979)	2, 12
<i>Holden v. Burlington Northern, Inc.</i> 665 F. Supp. 1398 (D. Minn. 1987).....	3
<i>Horton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.</i> 855 F. Supp. 825 (E.D. N.C. 1994).....	2
<i>In re Cellphone Fee Termination Cases</i> 186 Cal. App. 4th 138 (2010)	14
<i>In re Traffic Exec. Assoc.-Eastern R.R.</i> 627 F.2d 631, 634 (2d Cir. 1980).....	3
<i>Ingram v. The Coca-Cola Co.</i> 200 F.R.D. 685 (N.D. Ga. 2001).....	13
<i>Kullar v. Foot Locker, Inc.</i> 168 Cal. App. 4th 116, 120 (2009)	3, 10
<i>Laffitte v. Robert Half Internat., Inc.</i> 1 Cal. 5th 480 (2016)	14, 15
<i>Mark v. Spencer</i> 166 Cal. App. 4th 219 (2008)	14
<i>ordstrom Com. Cases</i> 186 Cal. App. 4th 576 (2010)	10
<i>Van Vranken v. Atlantic Richfield Co.</i> 901 F. Supp. 294 (N.D. Cal. 1995)	13

Statutes

California Code of Civ. Proc. §382	9
California Rule of Court 3.769(f)	12
California Rules of Court, Rule 3.76 (e).....	1
California Rules of Court, Rule 3.769	2
California Rules of Court, Rule 3.769(d).....	1

Other Authorities

3-33 Matthew Bender Practice Guide: CA Pretrial Civil Procedure 33.31[2]	14
Newberg on Class Actions, Class Actions in State Courts, Preliminary Approval (4th ed. 2002) § 13:64	2, 10
West's Manual for Complex Litigation (Federal Judicial Center 4th ed. 2008) § 21.632	2, 10

I. INTRODUCTION

Pursuant to California Rules of Court, Rule 3.769(d) and (e), Plaintiff Rose Smith (hereinafter “Plaintiff”), on behalf of herself and all others similarly situated, respectfully requests that this Court grant preliminary approval for the proposed Stipulated Settlement Agreement and Release of Claims Agreement (“Agreement”) attached as Exhibit 1 to Declaration of Brian R. Short filed in support of instant motion (“Short Decl.”). In particular, Plaintiff respectfully requests that the Court: (1) grant preliminary approval for the settlement; (2) grant preliminary certification of the proposed class for settlement purposes only; (3) authorize the parties to provide notice to the class in the manner set forth in the agreement; (4) appoint Plaintiff’s Counsel as Class Counsel; and (5) schedule a final approval hearing.

Defendant Tradition One (“Tradition One” or “Defendant”) has agreed not to oppose this Motion or the relief requested herein.

This settlement is an important win for the absent Class Members, as it provides true value to each and every one of them for their claims, without the need for protracted and risky litigation. The key components of the Agreement are as follows:

- The class consists of 28 current and former non-exempt employees and exempt Substance Use Disorder Counselors who worked for Defendant within the State of California at any time between July 15, 2016 through November 9, 2021;
- Defendant will pay the full amount of the non-reversionary gross settlement amount of \$175,000.00 (“the Gross Fund Value Amount.”);
- Notice to Class Members will provide information regarding the settlement as well as allow individuals an opportunity to opt-out of the settlement;
- Participating Class Members are not subject to a general release or Civ. Code §1542 waiver and are only subject to a release for the wage and hour claims in this action only;
- The Net Fund Value Amount of \$94,166.67 is made available for direct payment to the approximately 28 class members, which equates to an average payment of \$3,363.09 per employee. This amount will be distributed pro rata based on the workweeks worked by each employee within the Class Period without any affirmative action being necessary on the part of the class member (like a submission of a claim form). Any uncashed checks will be distributed to Legal Aid at Work, a *cy pres* recipient jointly selected by the parties;
- A maximum amount of \$58,333.33 will be requested by Class Counsel to compensate them for their fees and up to \$7,000 for their costs incurred during the litigation of these claims;
- The Claims Administration costs expected not to exceed \$3,000 will be allocated from the Gross Fund Value Amount fund; a maximum of \$5,000 will be requested as a service award to the Class Representative; and

As detailed below, preliminary approval of a class action settlement is appropriate so long as the proposed settlement is “within the range of possible approval” based on a finding that the terms are fair, reasonable and adequate. West’s Manual for Complex Litigation (Federal Judicial Center 4th ed. 2008) § 21.632. [“Manual for Complex Litigation”]; See also, Newberg on Class Actions, Class Actions in State Courts, Preliminary Approval (4th ed. 2002) § 13:64. This settlement certainly qualifies under this standard, and Plaintiff posits that the Court will find this outcome is an excellent result for the absent Class Members. Accordingly, Plaintiff respectfully requests that the Court grant preliminary approval for this settlement, authorize the dissemination of the Notice to the Class Members, appoint Plaintiff’s Counsel as Class Counsel, and schedule a final fairness hearing.

Pursuant to California Rules of Court, Rule 3.769, the settlement of class actions requires the Court's approval. Here, Plaintiff seeks only preliminary approval of this settlement. Because the eventual final approval hearing will provide an opportunity to review the settlement following the notice process, preliminary approval of a class action settlement is appropriate so long as the proposed settlement is "within the range of possible approval." In re *General Motors Corp. Engine Interchange Litig.*, 594 F.2d 1106, 1124 (7th Cir. 1979) (quoting and following the Manual for Complex Litigation); *Horton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 855 F. Supp. 825, 827 (E.D. N.C. 1994); *Holden v. Burlington*

1 *Northern, Inc.*, 665 F. Supp. 1398, 1402 (D. Minn. 1987). Because parties seeking preliminary approval
2 are simply requesting the opportunity to allow absent and previously uninvolved class members to respond
3 to the settlement, preliminary approval “is at most a determination that there is what might be termed
4 ‘probable cause’ to submit the proposal to class members and hold a full-scale hearing as to its fairness.”
5 *In re Traffic Exec. Assoc.-Eastern R.R.*, 627 F.2d 631, 634 (2d Cir. 1980). In approving a class settlement,
6 courts must have sufficient information to assure themselves that the terms of the Settlement are fair,
7 reasonable and adequate. Moreover, courts must understand the amount in controversy and the realistic
8 range of outcomes of the litigation. *Kullar v. Foot Locker, Inc.*, 168 Cal. App. 4th 116, 120 (2009).

9 Because, as set forth below, the instant settlement was reached through informed, arms-length
10 bargaining between skilled counsel and with the benefit of a neutral experienced mediator, it is clear that
11 the parties have met this threshold. As such, the parties respectfully request that the Court grant
12 preliminary approval for the settlement, authorize notice to the class members, and schedule a final
13 fairness hearing.

14 **III. FACTS AND PERTINENT PROCEDURAL BACKGROUND**

15 Tradition One is a California based business which provides addiction treatment for patients with
16 substance abuse issues. Plaintiff Rose Smith is a former Tradition One employee who worked as a
17 Substance Use Disorder (“SUD”) counselor from September 21, 2019 until January 27, 2020 when her
18 employment was terminated. As a SUD counselor, Plaintiff worked along with a multidisciplinary team
19 of specialists to prepare initial treatment plans for Tradition One patients.

20 On July 15, 2020, Plaintiff filed a putative class and PAGA action lawsuit against Defendant on
21 behalf of herself and all other similarly-situated and current and former aggrieved employees of Defendant
22 with the California Superior Court, County of San Diego alleging eleven causes of action: 1) Failure to
23 Pay Minimum and Regular Wages; 2) Failure to Pay Overtime Wages; 3) Failure to Authorize and Permit
24 Rest Periods; 4) Failure to Authorize and Permit Meal Periods; 5) Failure to Provide Itemized Wage
25 Statement; 6) Failure to Pay Wages Upon Separation; 7) Violations of the Unfair Competition Law; 8)
26 PAGA Claims for Civil Penalties. In addition, Plaintiff alleged three (3) individual causes of action for
27 unlawful discrimination based on race and sexual orientation, and retaliation. The complaint was filed
28

1 after Plaintiff exhausted the administrative remedies by submitting to the LWDA her administrative
2 complaint on behalf of herself and other former and current aggrieved on March 18, 2020. Thereafter,
3 Plaintiff served upon Defendant her first set of formal discovery requests seeking standard class
4 information pertaining to the merits of her claims, defendant's potential affirmative defenses as well as
5 information necessary for Plaintiff to seek certification of the class including commonality of facts,
6 numerosity, and typicality of Plaintiff's claims.

7 Following a lengthy meet and confer process regarding Defendant's responses to Plaintiff's
8 discovery requests, Set One, Defendant, through its counsel ["Defense Counsel"] approached Plaintiff's
9 counsel to discuss the merits of the case, the deadline of the pending discovery motions, and to suggest
10 that the parties consider engaging in mediation prior to costly motion practice on the outstanding
11 discovery. During the pre-mediation discussions that ensued, Plaintiff's counsel requested, and Defendant
12 agreed to provide, a set of targeted informal discovery in lieu of formal discovery that would allow a
13 thorough evaluation of the claims and defenses at mediation.

14 Through numerous conversations and emails, the Parties' attorneys were able to narrow the scope
15 of the contested matters and rationally evaluate the merits and defenses which could be presented at the
16 mediation. During these discussions, the parties agreed to use experienced wage and hour mediator Hon.
17 Joan M. Lewis, Ret. and mutually agreed upon a mediation date. Defendant also agreed to provide
18 additional information and documents requested by Plaintiff's counsel to aid in their analysis of the claims
19 and potential defenses. The parties agreed to informally postpone the deadline for Defendant's response
20 to Plaintiff's formal discovery until after mediation, and to likewise extend all upcoming Court
21 appearances.

22 Prior to the mediation, Plaintiff performed a thorough analysis of the information and documents
23 produced by Defendant in response to Plaintiff's discovery requests, including but limited to the putative
24 Class Members' wage statements, timecards as well as Tradition One employment policies applicable to
25 the putative Class Members during the Class Period.

1 After Plaintiff's Counsel conducted an initial review of the documents, the parties exchanged
2 numerous email correspondence and participated in multiple phone calls to clarify details within the
3 production and discuss the underlying merits of the claims and affirmative defenses.

4 Furthermore, Plaintiff's Counsel considered additional documentation provided by the named
5 Plaintiff, which included copies of termination documents, original wage statements, time entries, and
6 policies received during her employment. After a thorough review of the relevant case law, the significant
7 amount of documents and records provided by Defendant, and information provided by the named
8 Plaintiff prior to mediation, Plaintiff also prepared a comprehensive damage analysis in order to assess
9 the potential damages as well as the risks involved with the probable outcomes in this litigation.

10 On November 9, 2021, the parties engaged in a full-day mediation with Hon. Joan M. Lewis, Ret.
11 in San Diego, California. Judge Lewis is a highly experienced neutral in wage and hour class and PAGA
12 actions and was able to lend this significant experience to the parties in their efforts to mediate the case.¹
13 Although the Parties previously had multiple discussions and shared emails with respect to the strength of
14 certain claims, Defendant vehemently denied that any act or omission on its part created any liability to
15 the Class Members for any of the claims alleged. Conversely, Plaintiff firmly believes in the merits of
16 her claims and the strong potential that the class could be certified. Yet, in spite of each party's firm belief
17 in their respective legal positions, after a full day of negotiations and information exchanges conducted
18 through the mediator, the Parties have concluded that further litigation would be protracted and expensive,
19 the results of which are uncertain and risky, and reached an agreement to settle this matter upon the terms
20 and conditions set forth in the Agreement for which they now seek preliminary approval.

21 **IV. THE PROPOSED SETTLEMENT**

22 The proposed settlement calls for the certification of the following settlement class:

23 ***All current and former non-exempt and exempt Substance Use Disorder***
24 ***Counselors who worked for Defendant within the State of California at***
25 ***any time from July 15, 2021 through November 9, 2021.***

26 _____
27 ¹ More information about Hon. Joan M. Lewis, Esq. and her background may be found at <https://www.judicategwest/adr/joan-lewis>

1 The class is estimated to consist of approximately 28 current and former employees of Defendant
2 in California. The identification of the defined settlement class is easily determined based on a review of
3 the Defendant's personnel records. (Agreement Sec. 5.03 (a)).

4 The Agreement provides for an individualized notice to each Class Member. The proposed notice
5 will be sent via first-class mail, postage pre-paid, and it will advise Class Members about the lawsuit and
6 settlement within 30-days of preliminary approval. (Agreement Sec. 5.03 (a)-(b)). The Agreement
7 provides for a multi-layer address verification procedure that will ensure Class Members receive the
8 notice even if they have moved since leaving their employment with Defendant. (Agreement Sec. 5.03
9 (b)). These additional address verification measures are intended to guarantee that the maximum number
10 of Class Members will be informed of the settlement and to ensure Class Member settlement funds are
11 received in a timely manner. Additionally, the proposed notice will provide Class Members with
12 information, including the anticipated individual settlement payment and methodology for computation
13 of that sum so that they will know how settlement payments will be computed. (See Class Notice attached
14 to Short Decl. ¶ 2 Ex. A).

15 Class Members who wish to participate in the settlement will not need to "opt-in" or take any
16 affirmative action or submit a claim form. Instead, their individual settlement checks will be mailed to
17 their best available address after the multi-layer address-verification procedures are carried out by the
18 Claims Administrator unless they decide to opt-out. (Agreement Sec. 5.06 (b)(5)). Any individuals who
19 do not cash their settlement checks within 90 days of issuance will be sent a reminder postcard and
20 permitted an opportunity to have the check reissued if lost, stolen or misplaced. (Agreement Sec. 5.06
21 (d)(5). Thereafter, individuals will have an additional 30 days, for a total of 120 days, in which to cash
22 their settlement checks. Id. If the checks remain uncashed after the 120-day period, the Claims
23 Administrator will deposit the funds with a mutually agreed upon and Court approved *cy pres* recipient
24 Legal Aid at Work, which represents low wage workers who are the victims of wage violations like the
25 allegations presented in this action.

26 Defendant has agreed to pay \$175,000.00 to settle this matter on a class-wide basis, which is the
27 total and all-inclusive maximum amount Defendant shall be obligated to pay under the settlement

embodied by this Agreement, exclusive of employer-side payroll taxes. The settlement sum includes Class Counsel's attorney's fees of not more than 1/3 of the Gross Settlement Amount or Fifty Eight Thousand and Three Hundred and Thirty Three Dollars and Thirty Three Cents (\$58,833.33) and litigation costs not to exceed Seven Thousand Dollars (\$7,000.00), a Service Award for Representative Plaintiff of not more than Five Thousand (\$5,000.00), a PAGA penalty payment of Ten Thousand Dollars (\$10,000.00), which includes the payment of Seven Thousand Five Hundred Dollars (\$7,500) to the LWDA, and the Claims Administration Costs anticipated to be not more than Three Thousand Dollars (\$3,000.00).

In order to provide an equitable distribution of the settlement funds, each settlement Class Member will receive a payment equal to their pro rata amount of workweeks worked during the Class Period as compared to the total amount of workweeks worked by all Class Members during the same period. (Agreement Sec. 5.06 (c)(1)). Using this formulation, the settlement results in an average approximate payment of \$3,363.09 to each and every participating Class Member on a non-reversionary basis, assuming 100% participation of all 28 individuals. If less than 100% of Class Members participate in the settlement, the participating Class Members' portion will increase pro rata until the settlement fund is fully exhausted. *Id.* Importantly, Defendant has also agreed to pay employer payroll side taxes separate and apart from this settlement fund. (Agreement Sec. 5.06 (c)(1)(ii), (5.06(b)(6))). This additional prospective relief is additional valuable consideration that, although difficult to value in numeric terms, significantly advances the interests of current employees and weighs heavily in favor of the reasonable nature of the settlement's terms.

Upon the Effective Date of the Judgment, all settlement Class Members will be deemed to have, and by operation of the Judgment will have, released all Released Claims as defined in the agreement. This release is specifically tailored to be as narrow as possible and is limited to the release of wage and hour claims based on the facts alleged in the operative complaint. *Id.* Class members who do not wish to be a part of the settlement Class and do not wish to be subject to the Judgment may request exclusion from the class action settlement. Those Class Members who submit a request to be excluded from the class action settlement will not be subject to the Judgment and will be deemed to have never participated in this

1 action. (Agreement Sec. 5.04 (a)). Class Members are also permitted to object to the settlement terms if
2 desired. (Agreement Sec. 5.04 (b)). All Class Members who do not timely request exclusion will become
3 members of the settlement Class and will be subject to the Judgment and its associated release regardless
4 of whether they become Participating Claimants by cashing their settlement checks. Id.

5 In addition to making payments to Participating Claimants, and subject to Court approval,
6 Defendant will pay up to 1/3 of the Gross Settlement Amount or \$58,333.33 for attorney's fees and up to
7 \$7,000 for reimbursement of litigation costs to Plaintiff's Counsel. These payments will reimburse Ms.
8 Smith and her attorneys for all attorney's fees, costs and other litigation expenses incurred in this case.
9 (Agreement Sec. 5.06 (b)(1)). As will be set forth in further detail in Plaintiff's Motion for Approval of
10 Attorney's Fees and Costs, which will be submitted to be heard in conjunction with the Motion for Final
11 Approval, this maximum attorney fee payment represents a reasonable reimbursement for the Plaintiff's
12 fees under either the common fund or the lodestar cross-check methodology and is intended to reimburse
13 Plaintiff for her attorney's work and risk during the litigation of the action. These fees requested are
14 reasonable in light of the significant efforts of experienced Counsel who obtained this substantial result
15 for the Class Members at the expense of other guaranteed potential hourly work. (Short Decl. ¶¶ 3-8).
16 This payment will be paid after the judgment becomes final along with payments made to settlement Class
17 Members.

18 Under the terms of the settlement, the cost of the professional claims administration fees,
19 including the cost of mailing the notice, reminder postcards and settlement payments, will be allocated
20 from the settlement amount. Class Counsel received an estimate of no more than \$3,000 for claims
21 administration for this settlement. (Agreement Sec. 5.06.e).

22 Finally, as to Ms. Smith' compensation for her unique efforts, the significant risks undertaken
23 by bringing about this litigation in the internet age when her lawsuit may easily be discovered by other
24 employers via Google and used as an "unstated" excuse to refuse to hire her, and in exchange for a much
25 broader general release pursuant to California Civil Code section 1542, Defendant has agreed to pay the
26 Representative Plaintiff a service award in the amount of up to \$5,000 from the gross settlement amount,
27 subject to Court approval of Plaintiff's Motion for Final Approval and Award of Attorney's Fees/Costs
28

and Class Representative Enhancement which will be submitted after preliminary approval. (Agreement at Sec. 5.06 (b)(3); Short Decl. ¶¶ 32-34).

Plaintiff has attached the settlement agreement at Exhibit 1 and the Notice as Exhibit 2 to the Declaration of Plaintiff's Counsel Brian Short in further support of this Motion for Preliminary Approval.

V. LEGAL ARGUMENT

A. Conditional Certification Should Be Granted.

Courts will grant certification if "the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all." Cod. Civ. Proc. §382. Specifically, courts will approve a class action if there is (a) an ascertainable class and (b) a well-defined community of interest with common questions of law or fact. *Id.* The community of interest prong embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." *Id.*

When considering whether to grant such certification, courts apply a "lesser standard of scrutiny" in the context of a stipulated settlement than they do for a contested motion for class certification. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1807 fn. 19 (1996). Here, Plaintiff handily surpasses her certification burden in this settlement context. Moreover, California courts strongly favor settlement. *Ferguson v. Lieff, Cabraser, Heimann & Bernstein*, 30 Cal. 4th 1037, 1054 (2003) (Kennard, J., concurring and dissenting) ("[p]ublic policy favoring settlement is especially weighty for class actions"). Based on this standard and the public policy in support of settlement, the proposed class should be certified for settlement purposes.

As to the first prong, the class is readily ascertainable from the Defendant's own internal records. To the extent a Class Member's information is outdated, the Class Administrator has reliable methods to find updated information for those Class Members. As to the second prong, the very foundation of this case presents common questions of law and fact as to all Class Members - whether Defendant is liable to Class Members' for their unpaid wages, failure to provide meal and rest breaks, improper wage statements, etc. Moreover, Ms. Smith' claims are 100% typical of the absent Class Members, and she has no divergent or competing interests. Likewise, as set forth in the accompanying declaration of Brian R. Short filed in

support of the instant motion, Ms. Smith is adequate to represent the class and has proven her adequacy through her vigilant and zealous participation in this case. In short, the requirements for certification are met here and preliminary approval should be determined on a class wide basis.

Plaintiff's Counsel also request that they be appointed as Class Counsel in this matter. As detailed in the attached declaration of Brian Short, Plaintiff's Counsel have significant experience in complex matters, have vigorously and exhaustively litigated this case, and are adequate to represent this Class. (Short Decl. ¶¶ 3-8).

B. Preliminary Approval of the Settlement is Warranted Here.

The purpose behind the preliminary approval process is for the Court to make an initial determination of whether the settlement is fair, reasonable, adequate, and within the range of possible approval. West's Manual for Complex Litigation (Federal Judicial Center 4th ed. 2008) § 21.632. ["Manual for Complex Litigation"]; See also, Newberg on Class Actions, Class Actions in State Courts, Preliminary Approval (4th ed. 2002) § 13:64. In making this determination, courts must understand the amount in controversy and the realistic range of outcomes of the litigations. *Kullar*, 168 Cal. App. 4th 116; *Clark v. Am. Residential Serv. LLC*, 175 Cal. App. 4th 785, 806 (2009). There is no doubt that this settlement meets this standard since it provides certainty and real value for the Class Members in a case with complex legal issues.

The trial court has broad discretion in determining whether a proposed settlement is fair and reasonable. When making this analysis, the court will consider factors such as: the strength of plaintiff's case; the risk, expense, complexity and duration of continued litigation; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience of Counsel; and the reaction of the Class Members to the proposed settlement. *Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 581 (2010). The trial court will also consider whether the settlement was the product of fraud or collusion between the parties. *Id.*

Looking at these factors, there can be no doubt this settlement is fair and reasonable. Although the Representative Plaintiff certainly believes in the strength of her case, Defendant presented valid arguments to the contrary at the full-day mediation before Hon. Joan M. Lewis (Ret.) The realities associated with the risks of protracted litigation and a potential appeal, even if successful at trial, was appropriately

1 considered during the mediation and ultimately aided in Plaintiff's decision to accept the instant
2 settlement. Moreover, Defendant has claimed financial hardship to satisfy a judgment in this matter,
3 particularly in the amount estimated by Plaintiff's Counsel, which is why obtaining payment now for the
4 Class Members is all-the-more valuable. Plaintiff's Counsel analyzed the damages available if successful
5 at trial and, based on Class Counsel's significant experience specializing in these types of claims in
6 complex actions, believed that settling now for the amount offered meant a recovery for the Class
7 Members rather than "going for broke" by taking the case to trial and potentially obtaining an uncollectible
8 judgment. Though it may be tempting for an advocate to insist that their position will ultimately prevail,
9 Plaintiff and her Counsel cannot ignore the value of minimizing risk for the Class Members, particularly
10 when an attractive alternative is available. (Short Decl. ¶ 24.)

11 This case also involves highly complex issues and required analysis of multiple nuanced legal
12 issues. The specifics of Plaintiff's job duties are unique and applying California law, specifically the
13 claimed by Defendant professional and administrative exemptions, to this set of job characteristics at trial
14 would have been complicated and arduous, potentially requiring the input of multiple experts who are
15 well-versed in industry-specific issues. (Short Decl. ¶ 24.) Moreover, Plaintiff's Counsel have already
16 invested significant time and money in their prosecution of this case, and continuing litigation would
17 require a substantial amount more and would likely increase the risks that the allegations would be subject
18 to procedural and substantive challenges. In addition to the time and expense of what would surely have
19 been an extensive discovery battle, there would have been the retention of allegation-specific experts,
20 meetings with those experts, expert depositions, not to mention the vast amount of time Counsel would
21 have devoted to class certification and trial preparation. Likewise, in a class-size that is relatively small
22 compared to large class-actions, there is a risk that the number of putative class members interested in
23 participating in the litigation could fall below the 20-person threshold sometimes cited by Courts in
24 California as a reasonable minimum class size. Alternatively, settling now and guaranteeing that the Class
25 Members will receive value for their claims vastly outweighs continued litigation. (Short Decl. ¶¶ 23-25.)

26 Importantly, the amount offered in settlement is fundamentally fair because it provides real and
27 immediate value to the Class Members. Assuming a claims rate of 100% and dividing equally among the
28 class, each Class Member would be entitled to \$3,363.09 to compensate them for their claims. In addition,

1 in an effort to make the payment more accurately reflect each Class Members' potential damages, Plaintiff
2 requested, and Defendant agreed, to make the reward proportional with each Class Members' workweeks
3 worked during the Class Period. In other words, the settlement of each Class Member's claims for wage
4 and hour violations, missed meal and rest breaks, failure to provide an accurate wage statement, *inter alia*,
5 will also accurately reflect the amount of time and effort each Class Member put into his or her job. (Short
6 Decl. ¶¶ 28.) In sum, this settlement is an ideal result for the Class Members. (Short Decl. ¶ 23.)

7 Finally, as to Counsel's experience, Plaintiff's attorneys boast more than 21 (years of experience
8 in class and complex actions and was utilized to reach this favorable result for the class. Mr. Short has
9 practiced complex class action litigation for more than 16 years and has been exclusively specializing in
10 class action and PAGA wage and hour employment litigation for the past 13 years while Associate Dorota
11 James has represented employees in wage and hour class actions for more than 10 years, both as an
12 attorney and previously as a licensed paralegal. (Short Decl. ¶¶ 3-8.). The counsel representing the Class
13 Members' interests spent considerable time and effort analyzing these complex legal issues, pre- and post-
14 filing, and developing novel legal arguments in an effort to ensure that all possible arguments were
15 presented as effectively as possible. (Short Decl. ¶¶ 11-16.) Without their efforts, along with those of the
16 Representative Plaintiff, the Class Members would be without recourse.

17 Based on the foregoing, preliminary approval is appropriate here because the proposed settlement
18 certainly falls "within the range of possible approval." *Id.*; see also *In re General Motors Corp.*, supra,
19 594 F .2d at p. 1124. This settlement was reached by arm's length negotiations, using an experienced
20 neutral, and a thorough review of Defendant's relevant documents.

21 **C. The Proposed Notice is More than Adequate.**

22 California Rule of Court, Rule 3.769(f) sets forth the standard under which approval of the form
23 and contents of notice will be approved. Representative Plaintiff has fulfilled this standard since the Notice
24 contains "an explanation of the proposed settlement and procedures for Class Members to follow in filing
25 objections to it and in arranging to appear at the settlement hearing[.]" Cal. R. Ct., Rule 3.769(f). [See
26 generally, Exhibit 2]

27 The proposed Notice contains detailed information regarding how each Class Member may make
28 his or her claim, including the precise documents which may be provided in support. It also summarizes,

in detail and including deadlines and how a Class Member may object to or opt-out of the settlement. [Exh. 2 to Short Decl.] The proposed Notice will be sent by first class mail to the mailing address for each Class Member. Since the class consists of current and former employees of Defendant, Defendant's records will be utilized to contact each Class Member at his/her last known mailing address. For any mailings that are returned, the Claims administrator will perform a skip trace to ensure each Class Member is apprised of his or her rights. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 618-620 (1997) (individual mailing to each Class Member is considered adequate notice.) Moreover, the Notice provides information on how class members may access court-filed documents via a dedicated website so that they may easily review these documents without the need to pay and fees to the court's own system.

D. The Proposed Incentive Payment To The Representative Plaintiff Is Reasonable, Justified, And Routinely Awarded.

Service payments to representative plaintiffs in class action settlements are intended to recognize the representative's level of risk, time expended, and the efforts he or she undertook. *Clark v. American Residential Services LLC*, 175 Cal.App.4th 785 (2009). "Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incurred during the course of the class action litigation." *See Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001). See also Manual § 30.42 n. 763 (noting that such awards "may sometimes be warranted for time spent meeting with class members or responding to discovery.") In the *Coca-Cola* case, supra, the Court approved incentive awards of \$300,000 to each named plaintiff in recognition of the services they provided to the class by responding to discovery, participating in the mediation process and taking the risk of stepping forward on behalf of the class. *See Ingram*, 200 F.R.D. at 694; *See also Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving a \$50,000 participation award). *See also Clark*, 175 Cal. App. 4th at 806. ("[T]he rationale for making enhancement awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class.")

Here, the parties agreed to pay the Plaintiff service awards in an amount not to exceed \$5,000 because of her extensive contribution during the case, the valuable information she was able to provide

prior to the mediation, and the risks that she incurred by serving as a named representative in a public class action lawsuit. Ms. Smith expended a significant amount of time, both pre- and post-filing, assisting with this litigation. Her assistance and copious and detailed record keeping provided several items of evidence which were pivotal to proving her claims. Moreover, Ms. Smith' documentation and detailed reprisal of events provided her attorneys with the details to craft a unique and comprehensive complaint based on multiple theories of liability. Ultimately, it was Ms. Smith' effort, assistance, and bravery which achieved this result for her fellow Class Members. (Short Decl. ¶¶ 32-34.)

Prior to and throughout the litigation, the Representative Plaintiff repeatedly spoke with Counsel, forwarded countless emails, poured over numerous documents, and aided her Counsel in litigating this case. Moreover, Ms. Smith took a day off from her current employment to make herself available during the mediation to answer any potential questions from the mediator regarding her employment with Tradition One and to support her fellow Class Members. (Short Decl. ¶¶ 32-34.)

Accordingly, Plaintiff's Counsel has requested, and Defendant has agreed to pay, Ms. Smith \$5,000 out of the settlement proceeds to reward her tremendous efforts which is reasonable and warranted under the circumstances of the case. *In re Cellphone Fee Termination Cases*, 186 Cal. App. 4th 1380, 1394 (2010) (affirming the trial court's award to each named plaintiff of \$10,000 as incentive payment.)

E. The Maximum Requested Attorneys' Fees are Reasonable.

An award of attorney fees in class action litigation are tied to Counsel's actual efforts to benefit the class. *Mark v. Spencer*, 166 Cal.App.4th 219, 229 (2008); see also 33 Matthew Bender Practice Guide: CA Pretrial Civil Procedure 33.31[2]. Accordingly, when class action litigation establishes a monetary fund for the benefit of the Class Members, the preferred method of attributing attorneys' fees is as a percentage of the common fund created by the settlement. *Laffitte v. Robert Half Internat., Inc.*, 1 Cal. 5th 480, 503 (2016). The fee award may then be "cross-checked" for reasonableness by reviewing Counsel's lodestar. *Id.* at 506.

Counsel intends to request \$58,333.33 in attorneys' fees and reimbursement for up to \$7,000 in costs at the final approval hearing. As will be demonstrated in the subsequent briefing prior to the final approval hearing and in Class Counsel's fee submission, the requested fees are reasonable according to the either the favored *common fund method* of computing fees or via the *lodestar crosscheck method*.

ShortLegal, APC spent significant pre-litigation time and resources ascertaining the viability of these claims both in pre-litigation review and analysis as well as during the formal discovery process and eventually in performing their comprehensive pre-mediation analysis. Likewise, the mediation and post-mediation settlement briefing, and post-approval administration monitoring requires a significant effort by Class Counsel (Short Decl. ¶¶ 9-15.). In addition, Class Counsel undertook this case knowing that they may not attain any financial benefit if a monetary result was achieved and was still required to set aside other work where the client would otherwise immediately pay the hourly-fees generally charged for legal services.

As will be more fully demonstrated in their request for reasonable attorneys' fees and costs which will be made in anticipation of the final approval hearing, Plaintiff's Counsel believes the Court will find their request to be reasonable, appropriate and subject to approval. *Id.* at 503. (Short Decl. ¶¶ 30-31)

VI. CONCLUSION

For reasons stated above and pursuant to California Rules of Court, Rule 3.769(d) and (e), Plaintiff Rose Smith respectfully requests that the Court issue an order: (1) granting preliminary certification of the settlement class for settlement purposes only; (2) granting preliminary approval for the proposed settlement including appointment of Plaintiff's Counsel as Class Counsel; (3) authorizing the parties to provide the proposed notice to the class; and (4) scheduling a final approval or fairness hearing on or about May 20, 2022 or as soon thereafter as the Court is available.

Dated: January 17, 2022

SHORTLEGAL, APC

By:



Brian R. Short, Esq.
Dorota A. James, Esq.