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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

JANINE GARCIA, Individually and on behalf
of all similarly-situated employees of
Defendants in the State of California,

Plaintiffs,

v.

RESPIRONICS CALIFORNIA, LLC and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 37-2020-00013942-CU-OE-CTL

Unlimited Civil - Amount Demanded
Exceeds \$25,000.00

IMAGED FILE

**PLAINTIFF JANINE GARCIA'S
MEMORANDUM OF POINT AND
AUTHORITIES IN SUPPORT OF
UNOPPOSED MOTION AND 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**

**[Filed concurrently with Declaration of Brian R.
Short, and [Proposed] Order]**

Hearing Date: April 29, 2022

Time: 9:00 A.M.

Judge: James A Mangione

Dept: C-75

Complaint Filed: March 12, 2020

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I. INTRODUCTION

Pursuant to California Rules of Court, Rule 3.769(d) and (e), Plaintiff Janine Garcia (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 Respironics California, LLC, (“RESPIRONICS” or “Defendant”) does not oppose this Motion or the relief requested herein.

This settlement follows a highly contested litigation and was achieved after the parties attended mediation with experienced neutral Lou Marlin, Esq. and subsequently by months-long post-mediation settlement negotiations. It 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 26 customer advocates, complaint analysts, and investigators who worked for RESPIRONICS within the State of California, from March 12, 2016 through the date the Court issues a Preliminary Approval Order or 120 days from October 13, 2021;
- Defendant will pay the full amount of the non-reversionary gross settlement amount of \$135,000 (“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 \$65,750 is made available for direct payment to the approximately 24 class members, which equates to an average payment of \$2,528.85 per employee. This amount will be distributed pro rata based on the monies earned 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).
- A maximum amount of one-third of the gross settlement amount (or \$45,000) will be requested by Class Counsel to compensate them for their fees and up to \$10,000 for their costs incurred during the litigation of these claims;
- The Claims Administration costs expected not to exceed \$5,000 will be allocated from the gross settlement amount; a maximum of \$7,500 will be requested as a service award to the

Class Representative; and

- A payment of \$3,750 to the California Labor Workforce and Development Agency which represents 75% of the total \$5,000 allocated for PAGA penalties.

As set forth in detail below, this settlement will provide tangible and valuable prospective relief. This settlement is the result of the significant efforts of Plaintiff and her Counsel, including an exhaustive legal analysis of the complex issue of misclassification the putative Class Members as exempt employees under the administrative and professional exemptions prior to filing and a detailed and thorough analysis of the discovery provided by the Defendant once the case was filed. After an in-depth analysis of the claims, the current state of the case law on-point in California regarding the claims asserted, potential defenses, and potential damages related to the allegations asserted, the parties engaged in a full-day mediation with neutral mediator Lou Marlin. With the benefit of Mr. Marlin's substantial experience in wage and hour class actions, along with his neutral input, the parties were able to reach an agreement that is subject of the instant motion.

As set forth in more detail 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; 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.

II. SUMMARY OF ARGUMENT

Pursuant to Cal. Rules of Court, Rule 3.769, the settlement of class actions requires the court's approval. Here, Plaintiff seeks only preliminary approval of a settlement the parties reached through at arm's length settlement negotiations. 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 Northern, Inc.*, 665 F. Supp. 1398, 1402 (D. Minn. 1987). Because parties seeking preliminary approval are simply requesting the opportunity to allow absent and previously uninvolved class members to respond to the settlement, preliminary approval “is at most a determination that there is what might be termed ‘probable cause’ to submit the proposal to class members and hold a full-scale hearing as to its fairness.” *In re Traffic Exec. Assoc.-Eastern R.R.*, 627 F.2d 631, 634 (2d Cir. 1980). In approving a class settlement, courts must have sufficient information to assure themselves that the terms of the Settlement are fair, reasonable and adequate. Moreover, courts must understand the amount in controversy and the realistic range of outcomes of the litigation. *Kullar v. Foot Locker, Inc.*, 168 Cal. App. 4th 116, 120 (2009).

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

III. FACTS AND PERTINENT PROCEDURAL BACKGROUND

RESPIRONICS is a California corporation that which engages in the design, developing, manufacturing and servicing of ventilators, and associated respiratory equipment. Plaintiff Janine Garcia is a former employee and has worked for RESPIRONICS as customer advocate from February 2019 until May 2020. On March 12, 2020, Plaintiff filed her class action lawsuit on behalf of similarly-situated employees of RESPIRONICS alleging that they have been improperly misclassified as exempt employees and thereby denied the benefits of employees pursuant to the relevant provisions of the Cal. Labor Code, including but not limited to payment for all hours worked, reimbursement of necessary business expenses, and off-duty meal and rest breaks. Plaintiff also brought claims under Cal. Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et seq. (“UCL”) and the Private Attorney General Act (“PAGA”) for civil penalties resulting from Defendant’s violations of the applicable sections of the California Labor Code. (Declaration of Brian R. Short (“Short Decl.”) ¶10.)

1 At the outset and during the course of the action, Plaintiff conducted comprehensive research
2 regarding the application of the administrative exemption as defined in the applicable California Wage
3 Order and codified as 8 Cal. Code Regs. § 11040 to the instant matter and whether Defendant can carry
4 its burden of meeting all the prerequisites of the exemption and, consequently, prove Plaintiff and other
5 putative Class Members are properly classified as exempt employees. Plaintiff also performed an
6 extensive review of Defendant's voluminous instructions, manuals, policies, and practices to be followed
7 and adhere to the by putative Class Members while performing their job duties. The review was necessary
8 to assess whether the primary duties of the Class Members were directly related to the management
9 policies or general business operations of Defendant or its customers. (Short Decl. ¶13.)

10 Once the action was commenced, Plaintiff served upon Defendant her first set of discovery
11 requests seeking standard class information pertaining to the merits of her claims, defendant's potential
12 affirmative defenses as well as information necessary for Plaintiff to seek certification of the class
13 including commonality of facts, numerosity, and typicality of Plaintiff's claims. Following lengthy
14 discovery meet and confer efforts and after Plaintiff filed motion to compel Defendant's further responses,
15 the parties agreed to attempt to resolve the action through a provide mediation. (Short Decl. ¶¶14-15.)
16 During the pre-mediation discussions that ensued, Plaintiff's counsel requested, and Defendant agreed to
17 provide information and data sufficient to thoroughly examine the claims and defenses and evaluate the
18 settlement value of the action. This included documents and information regarding the size of the class,
19 total number of current and former employees, total number of workweeks worked by the Class Members
20 in addition to documents and information already produced during the formal discovery. The information
21 requested allowed a thorough evaluation of the claims and defenses at mediation. (Short Decl. ¶¶ 14-16.)

22 Prior to the mediation, the parties exchanged numerous email correspondence and participated in
23 multiple phone calls to discuss further the underlying merits of the claims and affirmative defenses.
24 Through numerous pre-mediation conversations and emails, the Parties' attorneys were able to narrow the
25 scope of the contested matters and rationally evaluate the merits and defenses which could be presented
26 at the mediation. They also agreed to use experienced wage and hour mediator Lou Marlin and mutually
27 agreed upon a mediation date. (Short Decl. ¶¶ 17, 20.) In advance of mediation and after thorough review
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1 of the relevant case law and statutes, the significant amount of documents and records provided by
2 Defendant during formal and informal discovery, and information provided by the named Plaintiff,
3 Plaintiff also prepared a comprehensive damage analysis in order to assess the potential damages as well
4 as the risks involved with the probable outcomes in this litigation. (Short Decl. ¶¶18-19.)

5 On October 13, 2021, the parties engaged in a full-day remote mediation with mediator Mr. Lou
6 Marlin who is a highly experienced neutral in wage and hour class actions and was able to lend his
7 significant experience to the parties in their efforts to mediate the case. Although the Parties previously
8 had multiple discussions and shared emails with respect to the strength of certain claims, Defendant
9 vehemently denied that any act or omission on its part created any liability to the Class Members for any
10 of the claims alleged. Conversely, Plaintiff firmly believes in the merits of her claims and the strong
11 potential that the class could be certified. However, after a full day of negotiations, information exchanges
12 conducted through the mediator, the parties ultimately reached an agreement with respect to the basic
13 terms of the settlement, which was later finalized in the Agreement for which now Plaintiff seeks
14 preliminary approval. (Short Decl. ¶¶20-21.) Plaintiff and Defendant concluded, after taking into account
15 the sharply disputed factual and legal issues involved into this action, the risks involved in further
16 litigation, and the benefits to be received pursuant to the terms of the Agreement, that the settlement
17 reached by the parties is in the best interest of the representative Plaintiff and the Class and is fair and
18 reasonable.

19 **IV. THE PROPOSED SETTLEMENT**

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

21 *"Class Member(s)" means all persons who worked for Defendant as*
22 *Customer Advocate-Complaint Specialists and Complaint Investigators or*
23 *employees with similar job profiles and job duties in California at any time*
24 *from March 12, 2016 through the date the Court issues a Preliminary*
Approval Order or 120 days from October 13, 2021 – whichever is earlier.
(the "Class Period") (which is estimated to consist of approximately 26
current and former employees from the beginning of the Class Period
though the date of the mediation)."

25 The class is estimated to consist of approximately 26 current and former employees of Defendant
26 in California. The identification of the defined settlement class is easily determined based on a review of
27 the Defendant's personnel records. (Agreement Sec. 5.03 (a)). The Agreement provides for an
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1 individualized notice to each Class Member. The proposed notice will be sent via first-class mail, postage
2 pre-paid, and it will advise Class Members about the lawsuit and settlement no later than 30-days after
3 preliminary approval. (Agreement Sec. 5.03 (a)-(b)). The Agreement provides for a multi-layer address
4 verification procedure that will ensure Class Members receive the Notice even if they have moved since
5 leaving their employment with Defendant. (Agreement Sec. 5.03 (b)). These additional address
6 verification measures are intended to guarantee that the maximum number of Class Members will be
7 informed of the settlement and to ensure Class Member settlement funds are received in a timely manner.
8 Additionally, the proposed notice will provide Class Members with information, including the anticipated
9 individual settlement payment and methodology for computation of that sum so that they will know how
10 settlement payments will be computed. (See Class Notice attached to Short Decl. ¶ 2 Ex. A).

11 Class Members who wish to participate in the settlement will not need to take any affirmative
12 action or submit a claim form. Instead, their individual settlement checks will be mailed to their best
13 available address after the multi-layer address-verification procedures are carried out by the Claims
14 Administrator. (Agreement Sec. 5.03 (b)). Any individuals who do not cash their settlement checks within
15 90 days of issuance will be sent a reminder postcard and permitted an opportunity to have the check
16 reissued if lost, stolen or misplaced. (Agreement Sec. 5.06 (d)(5)). Thereafter, individuals will have an
17 additional 30 days, for a total of 120 days, in which to cash their settlement checks. Id. If the checks
18 remain uncashed after the 120-day period, the Claims Administrator will deposit the funds with a mutually
19 agreed upon and Court approved *cy pres* recipient Legal Aid at Work, which represents low wage workers
20 who are the victims of wage violations like the allegations presented in this action.

21 Defendant has agreed to pay \$135,000 to settle this matter on a class-wide basis, which is the
22 total and all-inclusive maximum amount Defendant shall be obligated to pay under the settlement
23 embodied by this Agreement. The settlement sum includes Class Counsel's attorney's fees of not more
24 than one-third of the settlement amount of Forty Five Thousand Dollars and Zero Cents (\$45,000) and
25 litigation costs not to exceed Ten Thousand Dollars (\$10,000), a Service Award for Representative
26 Plaintiff of not more than Seven Thousand and Five Hundred Dollars (\$7,500), a PAGA penalty
27 payment of Five Thousand Dollars (\$5,000), which includes the payment of Three Thousand Sand
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1 Seven Hundred and Fifty Dollars (\$3,750) to the LWDA, the Claims Administration Costs anticipated to
2 be not more than Five Thousand Dollars (\$3,000).

3 In order to provide an equitable distribution of the settlement funds, each settlement Class
4 Member will receive a payment equal to their pro rata amount of monies earned during the Class Period
5 as compared to the total amount of monies paid to all Class Members during the same period. (Agreement
6 Sec. 5.06 (c)(1)). Using this formulation, the settlement results in an average payment of \$2,528.85 to
7 each and every Class Member on a non-reversionary basis, assuming 100% participation of all 26
8 individuals. However, class members with longer tenure or paid more will receive a higher settlement
9 amount consistent with their higher proportion of estimated damages based on the claims asserted in this
10 action. If less than 100% of Class Members participate in the settlement, the participating Class Members'
11 portion will increase pro rata until the settlement fund is fully exhausted. *Id.*

12 Upon the Effective Date of the Judgment, all settlement Class Members will be deemed to have,
13 and by operation of the Judgment will have, released all Released Claims as defined in the agreement.
14 (Agreement Sec. 7.02) This release is specifically tailored to be as narrow as possible and is limited to the
15 release of wage and hour claims based on the facts alleged in the operative complaint. *Id.* Class members
16 who do not wish to be a part of the settlement Class and do not wish to be subject to the Judgment may
17 request exclusion from the class action settlement. Those Class Members who submit a request to be
18 excluded from the class action settlement will not be subject to the Judgment and will be deemed to have
19 never participated in this action. (Agreement Sec. 5.04 (a)). Class Members are also permitted to object
20 to the settlement terms if desired. (Agreement Sec. 5.04 (b)). All Class Members who do not timely request
21 exclusion will become members of the settlement Class and will be subject to the Judgment and its
22 associated release regardless of whether they become Participating Claimants by cashing their settlement
23 checks. *Id.*

24 In addition to making payments to Participating Claimants, and subject to Court approval,
25 Defendant will pay up \$45,000 for attorney's fees and up to \$10,000 for reimbursement of litigation costs
26 to Plaintiff's Counsel for their costs advanced prosecuting this case on behalf of the putative class. These
27 payments will reimburse Ms. Garcia and her attorneys for all attorney's fees, costs and other litigation
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1 expenses incurred in this case. (Agreement Sec. 5.06 (b)(1)). As will be set forth in further detail in
2 Plaintiff's Motion for Approval of Attorney's Fees and Costs, which will be submitted to be heard in
3 conjunction with the Motion for Final Approval, this maximum attorney fee payment represents a
4 reasonable reimbursement for the Plaintiff's attorney's lodestar accrued during the litigation of the action
5 and recognizes the dedicated efforts of experienced Counsel who obtained this significant result for the
6 Class Members at the expense of other guaranteed potential hourly work and without a guarantee of
7 payment for the work performed. (Short Decl. ¶¶ 3-8). This payment will be paid after the judgment
8 becomes final along with payments made to settlement Class Members.

9 Under the terms of the settlement, the cost of the professional claims administration fees,
10 including the cost of mailing the notice, reminder postcards and settlement payments, will be allocated
11 from the settlement amount. Class Counsel received an estimate for \$3,000. Any excess of the allotted
12 funds will be used to resolve any potential issues in the claims administration process and any unused
13 portion will be reallocated wholly to the class in order to increase Class Members' settlement share.
14 (Agreement Sec. 5.06.e). Finally, as to Ms. Garcia' compensation for her unique efforts, the significant
15 risks undertaken by bringing about this litigation in the internet age when her lawsuit may easily be
16 discovered by other employers via Google and used as an "unstated" excuse to refuse to hire her, and in
17 exchange for a much broader general release pursuant to California Civil Code section 1542, Defendant
18 will pay the Representative Plaintiff a service award in the amount of up to \$7,500. (Agreement at Sec.
19 5.06 (b)(3); Short Decl. ¶¶ 36-37). Ms. Garcia will also submit a declaration regarding the work she
20 performed on behalf of the class in conjunction with the filing of Plaintiff's Motion for Final Approval.

21 **V.LEGAL ARGUMENT**

22 **A. Conditional Certification Should Be Granted.**

23 Courts should grant class certification if "the question is one of a common or general interest, of
24 many persons, or when the parties are numerous, and it is impracticable to bring them all before the court,
25 one or more may sue or defend for the benefit of all." C.C.P. §382. Specifically, courts will approve
26 certification of a class action if there is (a) an ascertainable class and (b) a well-defined community of
27 interest with common questions of law or fact. *Id.* The community of interest prong embodies three factors:
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(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 contact 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 misclassification, unpaid wages, unreimbursed expenses, failure to provide meal and rest breaks, improper wage statements, etc. Moreover, Ms. Garcia's 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. Garcia 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; 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 v. Foot Locker, Inc.*, 168 Cal. App. 4th 116, 120 (2009); *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.*

Evaluation of these factors further indicates that the present 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 Mr. Lou Marlin. The realities associated with the risks of protracted litigation and a potential appeal, even if successful at trial, was appropriately considered during the mediation and ultimately aided in Plaintiff's decision to accept the instant settlement. Additionally, the number of class members in the putative action is relatively small and could potentially affect the numerosity requirements of maintaining a class action should individuals choose to opt-out of the settlement thereby creating more risk for Plaintiff's class certification. Moreover, Defendant has claimed that a lengthy litigation in the uncertain current economic environment of the pandemic could put the company under financial stress and result in potential financial difficulties to satisfy a judgment in this matter, particularly in the amount estimated by Plaintiff's Counsel, which is why obtaining payment now for the Class Members is all the more valuable. Plaintiff's Counsel analyzed this settlement amount very carefully and realized that settling now for the amount offered meant a recovery for the Class Members and weighted it against a prolonged litigation leading to a trial and a possibility of uncollectible judgment. Though it may be tempting for an advocate to insist that their position will ultimately prevail,

1 Plaintiff and her Counsel cannot ignore the value of minimizing risk for the Class Members, particularly
2 when an attractive alternative is available. (Short Decl. ¶¶ 22-28)

3 This case also involves highly complex issues and required analysis of multiple nuanced legal
4 issues involving professional and administrative exemptions and the relevant case law that applies to these
5 exemptions. These factors create additional complexity and therefor trial could potentially be complicated
6 and arduous and require the input of multiple experts who are well-versed in industry-specific issues.
7 (Short Decl. ¶ 23.) Each of these factors increase the risk that Plaintiff may be less successful at trial than
8 the value brought in the current proposed settlement. Moreover, Plaintiff's Counsel have already invested
9 significant time and money in their prosecution of this case, and continuing litigation would require a
10 substantial amount more investment of resources and expenses and would likely increase the risks that the
11 allegations would be subject to procedural and substantive challenges. In addition to the time and expense
12 of what would surely have been an extensive discovery battle, there would have been high costs related
13 to the retention of field-specific experts, meetings with those experts, expert depositions, not to mention
14 the vast amount of time Counsel would have devoted to class certification and trial preparation. Although
15 Class Counsel is happy to make the investment on behalf of the Class, there is always a risk that well-
16 funded Defendants will "out-spend" its adversary, both from a time and money value. Alternatively,
17 settling now and guaranteeing that the Class Members will receive a significant value for their claims
18 vastly outweighs continued litigation. (Short Decl. ¶28.)

19 Importantly, the amount offered in settlement is fundamentally fair because it provides real and
20 immediate value to the Class Members. Assuming a claims rate of 100% and dividing equally among the
21 class, each Class Member would be entitled to an average of \$2,528.85 to compensate them for their
22 claims. However, in an effort to make the payment more accurately reflect each Class Members' potential
23 damages, Plaintiff requested, and Defendant agreed, to make the reward proportional with each Class
24 Members' wages earned during the Class Period. In other words, the settlement of each Class Member's
25 claims for misclassification, wage and hour violations, failure to reimburse all expenses, failure to provide
26 an accurate wage statement, *inter alia*, will also accurately reflect the amount of time and effort each Class
27 Member put into his or her job. (Short Decl. ¶ 31.)

28 Finally, as to Counsel's experience, Plaintiff's attorneys boast more than 20 years of experience

1 in class and complex actions and was utilized to reach this favorable result for the class. Mr. Short has
2 practiced complex class action litigation for more than 16 years and has been exclusively specializing in
3 complex class action and PAGA wage and hour employment litigation for the past 12 years while
4 Associate Dorota James has represented employees in wage and hour class actions for more than 10 years,
5 both as an attorney and previously as a licensed paralegal. (Short Decl. ¶¶ 3-8). All attorneys representing
6 the Class Members' interests spent considerable time and effort analyzing these complex legal issues, pre
7 and post filing, and developing novel legal arguments in an effort to ensure that all possible arguments
8 were presented as effectively as possible. (Short Decl. ¶¶ 12-18). Without their efforts, along with those
9 of the Representative Plaintiff, the Class Members would be without recourse.

10 Based on the foregoing, preliminary approval is appropriate here because the proposed settlement
11 certainly falls "within the range of possible approval." *Id.*; see also *In re General Motors Corp.*, supra,
12 594 F .2d at p. 1124. This settlement was reached by arm's length negotiations, using an experienced
13 neutral, and a thorough review of Defendant's relevant documents.

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

15 Cal. Rule of Court, Rule 3.769(f) sets forth the standard under which approval of the form and
16 contents of notice will be approved. Plaintiff has fulfilled this standard since the Notice contains "an
17 explanation of the proposed settlement and procedures for Class Members to follow in filing objections
18 to it and in arranging to appear at the settlement hearing[.]" [See generally, Exhibit 2]. The proposed
19 Notice contains detailed information regarding how each Class Member may make his or her claim,
20 including the precise documents which may be provided in support. It also summarizes, in detail and
21 including deadlines and how a Class Member may object to or opt-out of the settlement. [Exh. 2 to Short
22 Decl.] The proposed Notice will be sent by first class mail to the mailing address for each Class Member.
23 Since the class consists of current and former employees of Defendant, Defendant's records will be
24 utilized to contact each Class Member at his/her last known mailing address. For any mailings that are
25 returned, the Claims administrator will perform a skip trace to ensure each Class Member is apprised of
26 his or her rights. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 618-620 (1997) (individual mailing
27 to each Class Member is considered adequate notice.) Moreover, the Notice provides information on how
28

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 Payments 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.") The requested incentive payment is particularly justified here where Plaintiff brought this action as a current employee of Defendant and thereby risked the potentiality that she could be terminated under some pre-textual reason in retaliation for filing this action.

Here, the requested enhancement is reasonable, and should be preliminarily approved. The parties agreed to pay the Plaintiff service awards in an amount not to exceed \$7,500 because of her extensive contribution during the case, the valuable information she was able to provide both prior to and at the mediation she attended, and the risks that she incurred by serving as a named representative in a public class action lawsuit. Ms. Garcia 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. Garcia's documentation and detailed reprisal of events provided her attorneys with the details to craft a unique and comprehensive complaint

1 based on multiple theories of liability. Ultimately, it was Ms. Garcia’ effort, assistance, and bravery which
2 achieved this result for her fellow Class Members. (Short Decl. ¶¶ 36-37.)

3 Prior to and throughout the litigation, Plaintiff has performed considerable services on behalf of
4 the Class during litigation. She sought an attorney, repeatedly spoke with Counsel at length during the
5 litigation, forwarded countless emails, poured over numerous documents, and aided her Counsel in
6 litigating this case. Moreover, Ms. Garcia made herself available via phone for the full-day mediation in
7 October 13, 2021, taking time out of her busy work schedule to support her fellow Class Members. (Short
8 Decl. ¶¶ 36-37.) Accordingly, Plaintiff’s Counsel has requested, and Defendant has agreed to pay, Ms.
9 Garcia \$7,500 as an incentive for her work done on behalf of the class in obtaining this significant result.
10 The requested enhancement is justified and reasonable and Plaintiff respectfully requests approval of this
11 incentive payment in conjunction with the settlement approval. *In re Cellphone Fee Termination Cases*,
12 186 Cal. App. 4th 1380, 1394 (2010) (affirming the trial court’s award to each named plaintiff of \$10,000
13 as incentive payment.)

14 **E. The Maximum Requested Attorneys’ Fees are Reasonable.**

15 An award of attorney fees in class action litigation are tied to Counsel’s actual efforts to benefit
16 the class. *Mark v. Spencer*, 166 Cal. App. 4th 219, 229 (2008). Hence, when class action litigation
17 establishes a monetary fund for the benefit of the Class Members, the preferred method of attributing
18 attorneys’ fees is as a percentage of the common fund created by the settlement. *Laffitte v. Robert Half*
19 *Internat., Inc.*, 1 Cal. 5th 480, 503 (2016). The fee award may then be “cross-checked” for reasonableness
20 by reviewing Counsel’s lodestar. *Id.* at 506.

21 Counsel intends to request one-third (1/3) of the gross settlement amount (\$45,000) for their
22 attorneys’ fees and reimbursement for up to \$10,000 in costs at the final approval hearing. The requested
23 fee falls well within the range of reasonableness. As will be demonstrated at the final approval hearing
24 and in Class Counsel’s fee submission, their lodestar certainly supports this fee request, as does the great
25 result obtained for the absent Class Members. The settlement reached by the parties in this matter is a
26 product of Class Counsel work they performed during the course of the litigation. Class Counsel
27 ShortLegal, APC spent significant time and resources ascertaining the viability of these claims,
28 researching and analyzing the unique issues surrounding a misclassification claim in this particular field,

1 performing the extensive discovery that set the case up to the point where class certification could be filed
2 if necessary, analyzing the potential damages for mediation and engaging in protracted and in-depth
3 settlement discussions regarding the valuation of the claims that brought about this settlement. (Short
4 Decl. ¶¶ 12-19.) In addition, Plaintiff drafted a first amended complaint and extensive discovery requests,
5 and ultimately, spent a tremendous amount of time reviewing and analyzing Defendant's documents,
6 drafting the mediation brief, and attending the mediation. Importantly, Class Counsels' efforts will not
7 stop here as they have a significant amount of work ahead of them in drafting the final papers, working
8 with the Claims Administrator during the administration of the notices and the post-administration process
9 and any necessary inquiries from class members, and dealing with any other post-settlement issues that
10 may arise.

11 Finally, Class Counsel undertook this case knowing that they may have to set aside other work
12 where the client would otherwise immediately pay the hourly-fees generally charged for legal services.
13 As will be more fully demonstrated in their request for reasonable attorneys' fees and costs which will be
14 made in anticipation of the final approval hearing, Plaintiff's Counsel believes the Court will find their
15 request to be reasonable, appropriate and subject to approval. (Short Decl. ¶ 33-34.)

16 VI. CONCLUSION

17 For reasons stated above and pursuant to Cal. Rules of Court, Rule 3.769(d) and (e), Plaintiff
18 respectfully requests that the Court issue an order: (1) granting preliminary certification of the settlement
19 class for settlement purposes only; (2) granting preliminary approval for the proposed settlement including
20 appointment of Plaintiff's Counsel as Class Counsel; (3) authorizing the parties to provide the proposed
21 notice to the class; and (4) scheduling a final approval or fairness hearing.

22 Dated: April 6, 2022

SHORTLEGAL, APC

23 By: 
24

25 Brian R. Short, Esq.
26 Dorota James, Esq.
27 Attorneys for Plaintiff
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