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SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

BRIAN HAZEL, on behalf of the State of
California, and on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

HIMAGINE SOLUTIONS, INC., and DOES 1-
100, inclusive,

Defendants.

Case No. RG20068159

[CLASS ACTION]

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT,
CONDITIONAL CERTIFICATION OF
SETTLEMENT CLASS, APPROVAL OF
NOTICE OF SETTLEMENT, AND
SETTING OF HEARING FOR FINAL
APPROVAL**

Date: May 4, 2021

Time: 3:00 p.m.

Judge: Hon. Stephen Pulido

Dept.: 517

Reservation No.: 2250761

Complaint filed: July 20, 2020

Trial date: None set

*Assigned for All Purposes to the Honorable
Stephen Pulido, Department 517*

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	RELEVANT FACTUAL BACKGROUND AND PROCEDURAL HISTORY	2
A.	Factual Background	2
B.	Procedural History	3
III.	CLASS-ACTION SETTLEMENT APPROVAL PROCEDURE	5
IV.	TERMS OF THE SETTLEMENT	6
A.	Monetary Terms.....	6
B.	Settlement Awards for Eligible Class Members	6
C.	Settlement Administration	6
D.	Preliminary Approval of the Settlement Is Appropriate	7
1.	The terms of the proposed Settlement are fair, reasonable, and adequate.	7
2.	The Settlement was reached after extensive investigation, discovery, and analysis of the class claims.	8
3.	Litigation of this action not only would delay recovery, but would be expensive, time-consuming, and would involve substantial risk.....	9
4.	Defendant would continue to contest liability on all issues.....	10
5.	Additional risks Plaintiff considered.	10
6.	Class Counsel are experienced class action litigators.....	11
7.	The proposed Settlement is well within the range of reasonableness.....	11
E.	The Service Award to the Plaintiff for His Efforts on Behalf of the Class Is Reasonable	12
F.	The Proposed Payment of Attorneys' Fees and Costs Is Reasonable and Should Be Preliminarily Approved.....	13
V.	THE COURT SHOULD CERTIFY THE PROPOSED SETTLEMENT CLASS FOR SETTLEMENT PURPOSES.....	15
A.	Plaintiff Satisfied the Ascertainability and Numerosity Requirements.	16
B.	Common Questions of Law and Fact Predominate In This Action.....	16
C.	The Typicality Requirement Is Satisfied	17

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

D. The Adequacy Requirement Is Satisfied.....17

VI. THE PROPOSED NOTICE PROVIDES ADEQUATE NOTICE TO THE CLASS.....17

VII. THE PROPOSED IMPLEMENTATION SCHEDULE.....18

VIII. CONCLUSION18

1 **TABLE OF AUTHORITIES**

2 **FEDERAL CASES**

3 *Churchill Village LLC v. General Electric* (9th Cir. 2004) 361 F.3d 566 17
4 *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011 7, 17
5 *In Re Activision Sec. Litig.* (N.D.Cal. 1989) 723 F. Supp. 1373 14
6 *In Re California Indirect Purchases* (1998) 1998 WL 1031494..... 12
7 *In Re Mego Fin. Corp. Sec. Litig.* (9th Cir. 2000) 213 F.3d 454 12
8 *In Re Pacific Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373 14
9 *In Re Vitamins Antitrust Litig.* (D.D.C. 2001) 2001 WL 34312839 14
10 *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234 12
11 *Van Vranken v. Atlantic Richfield Co.*, (N.D. Cal. 1995) 901 F.Supp. 294 14
12 *Williams v. MGM-Pathe Communications Co.* (9th Cir. 1997) 129 F.3d 1026 14

13 **STATE CASES**

14 *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135..... 12
15 *Barela v. Ralph's Grocery Company* (Los Angeles Super. Ct., No. BC070061, June 5, 1998).... 15
16 *Big Lots Overtime Cases* (San Bernardino Super. Ct., JCC Proceeding No. 4283, February 4,
17 2004)..... 14
18 *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43..... 14
19 *Chern v. Bank of America* (1976) 15 Cal.3d 866 17
20 *Clark v. Am. Residential Servs. LLC*
21 (2009) 175 Cal.App.4th 785..... 8
22 *Classen v. Weller* (1983) 145 Cal.App.3d 27 17
23 *Collins v. Rocha*, (1972) 7 Cal.3d 232 16
24 *Davis v. The Money Store, Inc.* (Sacramento Super. Ct., No. 99AS01716, December 26, 2000) . 15
25 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794..... 7
26 *Garcia v. Save Mart Supermarkets*, (Super. Ct., Stanislaus County, Aug. 3, 2004) No. 312026.. 15
27 *Green v. Obledo* (1981) 29 Cal.3d 126 5
28 *Jaimez v. Daiohs USA, Inc.* (2010) 181 Cal.App.4th 1286 16
Johnson v. GlaxoSmithKline, Inc. (2008) 166 Cal.App.4th 1497 17
Kullar v. Foot Locker Retail Inc. (2008) 168 Cal.App.4th 116, 129-31 8
Laffitte v. Robert Half Int'l Inc. (2014) 180 Cal. Rptr.3d 136 14
Miskell v. Automobile Club of Southern California (Orange County Super. Ct., No. 01CC09035,
May 27, 2003) 15

1	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> (2010) 186 Cal. App. 4th 399	12
2	<i>North County Contractor's Assn., Inc. v. Touchstone Ins. Svcs.</i> (1994) 27 Cal.App.4th 1085	7
3	<i>Ochoa v. Haralambos Beverage Co.</i> , (Super. Ct., Los Angeles County, Feb. 1, 2007) No. BC319588.....	14
4	<i>Ojito v. Robertson's Ready Mix Concrete, Inc.</i> , (Super. Ct., Riverside County, Jan. 16, 2007) No. RIC420994	15
5	<i>Reyes v. Board of Supervisors</i> , (1987)196 Cal.App.3d 1263	16
6	<i>Rose v. City of Hayward</i> , (1981) 126 Cal.App.3d 926.....	16
7	<i>Sav-on Drug Stores, Inc. v. Superior Court</i> (2004) 34 Cal.4th 319	15
8	<i>Sconce/Lamb Cremation Cases</i> (Los Angeles Super. Ct., JCC Proceeding No. 2085, March 24, 1992).....	15
9	<i>Terrell v. Ocean's 11 Casino, Inc.</i> , (Super. Ct., San Diego County, Feb. 10, 2004) No. GIC795732	15
10	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224	7, 8
11	<i>Wisniewski v. Pacific Maritime Assoc.</i> , (Super. Ct., Los Angeles County, Nov. 20, 2006) No. BC293134.....	15

STATUTES, RULES, AND REGULATIONS

14	California Civil Code Section 1781(f)	5
15	California Code of Civil Procedure Section 382	15
16	California Code of Regulations Title 8 Section 13520	11
17	California Rules of Court Rule 3.769.....	5

OTHER AUTHORITIES

18	<i>Attorney Fee Awards</i> Section 2:19 (3d Ed. 2004).....	14
19	<i>Manual for Complex Litigation</i> Section 14:6 (4th Ed. 2006).....	14
20	<i>Manual for Complex Litigation</i> Section 21:311 (4th Ed. 2006).....	18
21	<i>Manual for Complex Litigation</i> Section 21:63 (4th Ed. 2006).....	5, 7
22	<i>Newberg on Class Actions</i> Section 11:24 (4th Ed. 2002)	5, 14
23	<i>Newberg on Class Actions</i> Section 11:25 (4th Ed. 2002)	7
24	<i>Newberg on Class Actions</i> Section 11:26 (4th Ed. 2002)	5
25	<i>Newberg on Class Actions</i> Section 8:21 (4th Ed. 2002)	18
26	Posner, <i>Economic Analysis of the Law</i> (4th Ed. 1992).....	14

1 **I. INTRODUCTION**

2 Plaintiff Brian Hazel, on behalf of the State of California, and on behalf of himself and all
3 others similarly situated (“Plaintiff”), seeks preliminary approval of the settlement of this wage
4 and hour class action lawsuit against Defendant Himagine, Inc. (“Defendant” or “Himagine”).¹
5 Plaintiff and his counsel have achieved an exceptional result for the members of the Class, who are
6 current and former medical records coders for Defendant that work remotely throughout the State
7 of California. The Settlement resolves hundreds of claims that almost certainly never would have
8 been prosecuted as individual actions, and in so doing provide an excellent benefit to the members
9 of the Class.

10 The basic terms of the Settlement are as follows: (1) the Total Settlement Amount is
11 \$922,500.00; (2) no portion of the Total Settlement Amount will revert to Defendant; (3) a Net
12 Settlement Amount of approximately \$552,400.00 will be available for distribution to Participating
13 Class Members²; (4) Plaintiff requests, and Defendant does not oppose, an individual service
14 award of a maximum of \$15,000.00 for his efforts on behalf of the Class; (5) a sum of \$40,000.00
15 for PAGA penalties³; (6) the actual costs and expenses of the Settlement Administrator, Simpluris,
16 Inc., currently estimated to be \$5,600.00; (7) one-third of the Total Settlement Amount, or
17 \$307,500.00, for attorneys’ fees; and (8) reimbursement of actual costs to Class Counsel, which
18 are estimated at \$12,000.00. The average net award for each of the approximately 185 proposed
19 Class Members is an impressive \$2,985.95.⁴ Class Counsel submit that this is an exceedingly
20 strong recovery for a wage and hour class action.

21 The proposed Settlement satisfies all of the criteria for preliminary settlement approval
22 under California law and falls well within the range of reasonableness. *See* Declaration of Carolyn
23 Hunt Cottrell in Support of Plaintiff’s Motion for Preliminary Approval of Class Action
24 Settlement, Conditional Certification of Settlement Class, Approval of Notice of Settlement, and
25 Setting of Hearing for Final Approval (“Cottrell Decl.”), ¶¶ 60-76. Accordingly, Plaintiff requests

26 ¹ A true and correct copy of the Settlement Agreement (“Settlement”) is attached as **Exhibit 1** to the
27 Declaration of Attorney Carolyn Hunt Cottrell.

28 ² Class Members who do not opt-out are designated as “Participating Class Members” under the Settlement.
Participating Class Members need not submit a claim form in order to receive payment under the
Settlement.

³ Of this amount, \$30,000.00 is to be paid to California Labor and Workforce Development Agency
(“LWDA”), while \$10,000.00 would be distributed to Participating Class Members as part of the Net
Settlement Amount.

⁴ This figure assumes that the Class Members have an equal amount of workweeks and that no Settlement
Class Members opt out.

1 that the Court (1) grant preliminary approval of the proposed Settlement; (2) appoint Simpluris,
2 Inc. as Settlement Administrator for the proposed Settlement and approve the estimated costs of
3 settlement administration; (3) appoint Schneider Wallace Cottrell Konecky LLP and Shavitz Law
4 Group, P.A. as Class Counsel for the Class; (5) appoint Plaintiff Brian Hazel as Representative of
5 the Class; (6) provisionally certify the Class for settlement purposes only⁵; (7) preliminarily
6 approve a service award of \$15,000.00 to Plaintiff for his efforts on behalf of the Class; (8)
7 preliminarily approve an allocation of \$40,000.00 for PAGA penalties; (9) preliminarily approve
8 an award of attorneys' fees to Class Counsel in the amount of one-third of the Total Settlement
9 Amount, or \$307,500.00, plus reimbursement of Class Counsel's out-of-pocket expenses,
10 estimated at \$12,000.00; (10) approve the Notice of Proposed Class Action Settlement and Final
11 Approval Hearing ("Class Notice") and Notice of Estimated Settlement Award (collectively, the
12 "Class Notice Packet")⁶; and (11) approve the proposed implementation schedule, set forth in the
13 Notice of Motion, for relevant dates and deadlines regarding the administration and approval of the
14 Settlement.⁷

15 **II. RELEVANT FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

16 **A. Factual Background**

17 Plaintiff and the proposed Class Members are Defendant's current and former non-exempt
18 medical records coders in California, who work remotely reviewing medical records and
19 assigning appropriate medical codes to medical treatment and care provided by various medical
20 facilities and practices. *Id.*, ¶ 8; First Amended Class Action and Private Attorney General Action
21 Complaint ("FAC"), ¶ 25. Himagine is a privately-held healthcare information management
22 outsourcing company, and employs remote Coders throughout the State of California and the
23 United States. *See* FAC, ¶¶ 4, 23. Himagine works with children's and specialty hospitals,
24 academic medical centers, large health systems, small rural and secondary market facilities, and
25 physician and group practices across multiple specialties. *Id.*

26 ⁵ The Class is defined as all current and former employees who worked for Himagine in a non-exempt
27 Coder Position while residing in the State of California, at any time from November 1, 2015 through the
28 date on which the Superior Court grants preliminary approval of the Settlement. *See* Settlement, ¶¶ II.B,
III. At the time of Settlement there were approximately 178 Class Members. Plaintiff assumes 185 Class
Members for purposes of this motion, to present a conservative analysis.

⁶ True and correct copies of which are attached as **Exhibits A and B**, respectively, to the Settlement. The
Class Notice provides detailed information regarding the case and the Settlement, and the Notice of
Estimated Settlement Award informs Class Members of their estimated awards and allows them to submit
address changes and disputes.

⁷ If the Court is inclined to decide this notion on the papers, the Parties agree to proceed without a hearing.

1 Plaintiff alleges that Defendant required Class Members to work off-the-clock and incur
2 necessary business expenses that were never reimbursed. FAC, ¶¶ 6-9. Specifically, Plaintiff
3 alleges that when remote coders begin to work, they must log in and navigate through several
4 applications before they are actually deemed to be “on the clock.” *Id.*, ¶¶ 26-30. Plaintiff alleges
5 that this process typically takes approximately fifteen to twenty minutes per day and is uniform
6 for all coders. *Id.*, ¶ 6. Plaintiff further alleges that Defendant maintains a strict overtime policy,
7 in which all overtime must be pre-approved, and that Defendant maintains efficiency standards
8 based on the number of medical charts coded per hour, both of which drive further unpaid time.
9 *Id.*, ¶¶ 7-8, 27-28. Plaintiff also alleges an expense reimbursement claim, asserting that Defendant
10 did not reimburse for computers, internet access, telephone, and other supplies and services
11 necessary for the job of a remote coder, as a matter of policy.⁸ *Id.*, ¶¶ 9, 31. Plaintiff also alleged
12 that Defendant failed to provide compliant meal and rest periods. *Id.*, ¶ 128.

11 Defendant denied the allegations and contended, *inter alia*, that employees did not
12 experience any uncompensated time navigating applications because they manually keyed in their
13 exact start times every day; Defendant’s timekeeping policies required employees to accurately
14 record all work time and not work “off-the-clock”; and Defendant provided employees all meal
15 and rest periods required by California law.

15 As a result of these policies, Plaintiff brought class action and PAGA claims against
16 Defendant to challenge its alleged policies and practices of failing to compensate Class Members
17 for all hours worked, including at California minimum wage and overtime rates; failing to
18 reimburse Class Members for necessary business expenditures; and related violations for failing
19 to provide Class Members accurate, itemized wage statements and failing to timely pay Class
20 Members wages owed upon the termination of employment. *Id.*, ¶ 3.

21 **B. Procedural History**

21 Plaintiff filed his initial Class Action Complaint in Los Angeles County Superior Court on
22 April 29, 2020 (the “*Hazel I* Action”). Cottrell Decl., ¶ 12. The initial complaint in the *Hazel I*
23 Action asserted claims on an individual and putative class basis against Himagine for alleged
24 violations of California wage and hour laws. *Id.* On May 21, 2020, Plaintiff filed a First Amended
25 Complaint in the *Hazel I* Action, which added an overlapping cause of action for alleged
26 violations of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. section 201, *et seq.*, with respect

27 ⁸ Defendant began reimbursing coders with a monthly stipend to cover internet usage and related supplies
28 and services for their work, beginning on early 2020. Cottrell Decl., ¶ 65.

1 to a proposed California collective. *Id.*, ¶ 13. On July 8, 2020, Himagine removed the *Hazel I*
2 Action to the United States District Court for the Central District of California (the “District
3 Court”), where it was assigned Case No. 2:20-cv-06072. *Id.*, ¶ 14. On July 20, 2020, Plaintiff
4 filed a second complaint against Himagine, alleging PAGA-only claims with respect to the same
5 violations, in the instant action (the “*Hazel II* Action”).⁹ Shortly after the litigation was filed, the
6 Parties agreed to attend early mediation. *Id.*, ¶ 17.

7 The Parties participated in two mediation sessions, both of which were conducted by the
8 Honorable Gail A. Andler (Ret.) of JAMS ADR, a skilled and experienced mediator of wage and
9 hour actions. *Id.*, ¶ 18. Ahead of the mediations, Defendant provided informal discovery including
10 timekeeping and payroll information, hire dates, termination dates, and other information for the
11 entire Class. *Id.*, ¶ 19. The timekeeping and payroll information showed on-the-books data for
12 shifts worked, including dates of work, clock in and clock out times, duration, and amounts of
13 pay. Defendant also provided relevant written policies and employee handbook information in use
14 during the Class Period, as well as paystubs for named Plaintiff. *Id.* Class Counsel used the
15 timekeeping and payroll information produced by Defendant to perform an in-depth analysis of
16 Defendant’s exposure. *Id.*, ¶ 20. This exposure analysis drove Plaintiff’s negotiations with
17 Defendant at mediation. *Id.*

18 On August 6, 2020, the Parties participated in the first mediation session, through which
19 the Parties agreed to settle the expense reimbursement component of the *Hazel I* Action and the
20 *Hazel II* Action. *Id.*, ¶ 21. The Parties finalized this agreement in a prior settlement agreement
21 (the “Prior Agreement”). *Id.* Pursuant to the terms of the Prior Agreement, Plaintiff filed the
22 operative FAC in the instant action on November 2, 2020, which brought the California Labor
23 Code claims and putative California class alleged in the *Hazel I* Action into the *Hazel II* Action.
24 Plaintiff then filed a stipulation to dismiss the *Hazel I* Action in its entirety, without prejudice,
25 which the District Court granted on November 17, 2020. *Id.*, ¶ 22.

26 On December 7, 2020, the Parties participated in the second mediation, again presided over
27 by the Judge Andler. *Id.*, ¶ 23. During the second mediation, the Parties reached agreement on the
28 terms of a proposed Settlement that would resolve all claims made in the *Hazel II* Action,
inclusive of the off-the-clock claims, expense reimbursement claims, meal and rest period claims,

⁹ Plaintiff provided notice to the LWDA of his intent to pursue PAGA claims against Defendant on April 30, 2020. A true and correct copy of Plaintiff’s PAGA Notice is attached as **Exhibit 2** to the Cottrell Decl. The LWDA did not issue a response. *Id.*, ¶ 15.

1 and all other matters covered by the Settlement. The Parties first memorialized their agreement in
2 a Settlement Term Sheet and Agreement. *Id.*, ¶ 24. The Parties then negotiated and executed the
3 proposed long-form Settlement, submitted for approval herewith. *Id.*

4 **III. CLASS-ACTION SETTLEMENT APPROVAL PROCEDURE**

5 A class action may not be dismissed, compromised, or settled without the approval of the
6 court. (*See* California Civil Code § 1781(f); California Rule of Court 3.769; *see also* Federal Rule
7 of Civil Procedure 23(e).¹⁰) California Rule of Court 3.769 describes three distinct steps for
8 approval of class action settlements by California courts: (1) preliminary approval of the proposed
9 settlement after submission of a motion for preliminary approval, the proposed class action
10 settlement, and the proposed class notice; (2) mailing of notice of the settlement to all affected
11 members of the settlement class; and (3) a final settlement approval hearing at which members of
12 the settlement class may be heard regarding the settlement, and at which evidence and argument
concerning the fairness, adequacy, and reasonableness of the settlement is presented. This
procedure is similar to the procedure and criteria for approval of class actions under federal law.¹¹

13 With this motion, the Parties request that the Court take the first step in the settlement
14 approval process and grant preliminary approval. The purpose of the Court’s preliminary
15 evaluation of the proposed Settlement is to determine whether it is within the “range of
16 reasonableness” and, thus, whether notice to the Class of the terms and conditions of the
17 settlement, and the scheduling of a formal fairness hearing, are worthwhile. (*Newberg on Class*
Actions, §11:26.)

18 The Settlement proposed herein is based on arm’s-length negotiations that were guided by
19 Class Counsel’s investigation and the evaluation of informal discovery. Cottrell Decl., ¶¶ 54, 73.
20 The negotiations included extensive communications between Class Counsel and counsel for
21 Defendant and two mediation conferences supervised by an experienced and respected mediator.
22 *Id.* The proposed Settlement provides an excellent monetary recovery for the Class, and it satisfies
23 all of the required due process protections. *Id.*, ¶¶ 75-76, 98-104. Thus, the proposed Settlement is

24 ¹⁰ This Motion cites Federal Rule of Civil Procedure Rule 23 and federal case law construing it as authority
25 for class certification and class settlement approval in California courts. The California Supreme Court has
authorized and urged California’s trial courts to use these federal resources for guidance in considering
class action issues. (*Green v. Obledo* (1981) 29 Cal.3d 126, 145-46.)

26 ¹¹ It is also endorsed by the nation’s leading class action commentator, Professor Herbert Newberg, for
27 safeguarding class members’ procedural due process rights and enabling the court to fulfill its role as the
guardian of the interests of the class. (*See Newberg on Class Actions*, § 11:24 (4th Ed. 2002); *Manual for*
28 *Complex Litigation*, §21:63 (4th Ed. 2006).)

1 fair, reasonable, and adequate, and Plaintiff therefore requests that this Court grant preliminary
2 approval.

3 **IV. TERMS OF THE SETTLEMENT**

4 **A. Monetary Terms**

5 The Settlement provides for a Total Settlement Amount of \$922,500.00. Defendant agrees
6 to pay the employer's share of payroll taxes separately. *Id.*, ¶ 25. With the motion for final
7 approval, Class Counsel will seek fees of no more than one-third of the Total Settlement Amount,
8 or \$307,500.00, and actual costs, which are estimated at approximately \$12,000.00. *Id.*, ¶ 27. The
9 Settlement also sets aside \$5,600.00 for the costs of settlement administration, \$15,000.00 for a
10 service award to Plaintiff for his service to the Class, and \$40,000.00 for PAGA penalties.¹² *Id.*, ¶
11 28. If five percent (5%) or more of the Class Members, or a number of Class Members whose
12 Settlement Shares would be worth five percent (5%) or more of the Net Settlement Amount, opt
out of the Settlement, Defendant may, at its election, rescind the Settlement and all actions taken in
furtherance of it will be null and void. *Id.*, ¶ 30; Settlement, ¶ III.E.6.

13 **B. Settlement Awards for Eligible Class Members**

14 The estimated Net Settlement Amount available to Class Members totals \$552,400.00.
15 Cottrell Decl., ¶ 31. The Net Settlement Amount is to be allocated among and paid to Participating
16 Class Members (i.e., those Class Members who do not opt out of the Settlement) proportionally
17 based on the workweeks that they worked for Defendant as a percentage of the total workweeks
18 worked by all Participating Class Members, during the period from November 1, 2015 through the
19 date on which the Court grants preliminary approval. *Id.*, ¶ 32; Settlement, ¶¶ III.B.1, II.J.
20 Participating Class Members are not required to submit an opt-in form or claim form in order to
receive payment under the Settlement. Settlement, ¶ III.E.3.b.

21 **C. Settlement Administration**

22 The Parties have selected Simpluris, Inc. as the Settlement Administrator. Cottrell Decl., ¶
23 39; Settlement, ¶ III.D. The Settlement Administrator will satisfy due process requirements in
24 notifying Class Members of the Settlement and processing any opt-outs, objections, or disputes
25 regarding workweeks that may arise. *Id.*; Settlement, ¶ III.D, III.E.4; *see* Section VI, *infra*. If the
26 Settlement is finally approved, Simpluris, Inc. will administer payments to the Participating Class
27 Members, including calculation of payroll taxes and preparation of tax reporting documents for
the Participating Class Members. *Id.*, ¶ 74-76; Settlement, ¶ III.D, III.E.10.

28 ¹² See Footnote 3.

D. Preliminary Approval of the Settlement Is Appropriate

The decision to approve or reject a proposed settlement is committed to a court's broad discretion. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35.) To grant preliminary approval of a class action settlement, courts need find only that the settlement falls within the range of possible final approval, also described as "the range of reasonableness." (*See, e.g., North County Contractor's Assn., Inc. v. Touchstone Ins. Svcs.* (1994) 27 Cal.App.4th 1085, 1089-90; *see also Newberg on Class Actions* at §11:25.)

To make this determination, courts must consider several relevant factors, including "the strength of [the] plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and views of counsel." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) "The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." (*Wershba*, 91 Cal.App.4th at 245.)

1. The terms of the proposed Settlement are fair, reasonable, and adequate.

Courts make an initial evaluation of the fairness, reasonableness, and adequacy of the proposed settlement on the basis of information already known, supplemented as necessary by briefs, motions, or information presented by the settling parties. (*See Manual for Complex Litigation* at § 21:632.) Courts must ensure that "the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027.) A presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*Dunk*, 48 Cal.App.4th at 1802.) The first three of these conditions are satisfied here, and Plaintiff expects that the fourth condition will also be satisfied. *See Cottrell Decl.*, ¶¶ 52-76.

A preliminary review of the Settlement reveals the fairness of its terms. *See id.*, ¶ 53. The estimated Net Settlement Amount of \$552,400.00, derived from a Total Settlement Amount of \$922,500.00, will result in fair and just relief to the Class Members. *Id.* The result is not only within the reasonable standard, but Class Counsel believes it is exceptional when considering the nature of Plaintiff's claims and the difficulty and risks presented by continuing this litigation. *Id.*

1 **2. The Settlement was reached after extensive investigation, discovery, and**
2 **analysis of the class claims.**

3 California courts recognize that “a presumption of fairness exists where . . . [a] settlement
4 is reached through arm’s-length bargaining.” (*Wershba*, 91 Cal.App.4th at 245.) Preliminary
5 approval is warranted where the Court is provided sufficient information regarding the discovery
6 process and the facts developed (*see Kullar v. Foot Locker Retail Inc.* (2008) 168 Cal.App.4th
7 116, 129-31), so that the Court may form “an understanding of the amount that is in controversy
8 and the realistic range of outcomes of the litigation.” (*Clark v. Am. Residential Servs. LLC* (2009)
9 175 Cal.App.4th 785, 801.)

10 Here, to facilitate settlement negotiations, Class Counsel investigated the applicable law
11 and the facts in this case and extensively analyzed the potential damages that might be recovered
12 following the exchange of documents and information with Defendant. Cottrell Decl., ¶ 54.
13 Defendant provided informal discovery showing the shifts worked and compensation paid to
14 Class Members, including the date of work, daily hours worked on each project, project
15 description, and rate of pay. *Id.* Plaintiff used this information to perform a careful and extensive
16 analysis of the effects of Defendant’s timekeeping compensation policies and practices on Class
17 Members’ pay. *Id.*

18 Through discovery analysis, Plaintiff estimates that the Class Members worked an
19 estimated total of approximately 8,700 workweeks, or approximately 43,500 shifts, through the
20 present. *Id.*, ¶ 55. The vast majority of the shifts were eight hours long or more. *Id.* The weighted
21 average rate of pay was approximately \$19.94. *Id.* On average, the Class Members worked for
22 Defendant for approximately 41 pay periods. *Id.*

23 Applying these inputs and further data points to Defendant’s compensation policies,
24 Plaintiff prepared a damages analysis that provided the estimated recovery for each cause of
25 action. *Id.*, ¶ 56. The input variables in the analysis can be adjusted to reflect differing
26 assumptions for the level of violations that Plaintiff could prove. *Id.* Assuming that Plaintiff and
27 the Class fully prevail on the off-the-clock claims and prove that they are owed for 20 minutes of
28 unpaid time per each shift, at overtime rates, Plaintiff estimates the total damages for off-the-
clock work at approximately \$434,612,00. *Id.*, ¶ 57. Assuming that Plaintiff and the Class fully
prevail on the expense reimbursement (Labor Code § 2802) claim and prove that they are owed
\$50 *per week* in unreimbursed expenses per each workweek, Plaintiff estimates the total damages
for unreimbursed business expenses at approximately \$435,964.00. *Id.* Totaling these amounts

1 provides total damages for substantive (non-derivative, non-penalty) violations of approximately
2 \$870,576.00, based on the aggressive assumptions presented here. *Id.*

3 Plaintiff assesses Defendant's exposure for derivative violations (waiting time penalties,
4 wage statement penalties, and PAGA penalties) at approximately \$2,371,574.00. *Id.*, ¶ 58.
5 Defendant's total exposure, for both substantive and derivative claims, is estimated at
6 approximately \$3,242,149.00. *Id.* These figures provided benchmarks for Plaintiff and Class
7 Counsel to gauge settlement offers, compared to a hypothetical maximum that assumes complete
8 success on every claim and overcoming each of Defendant's defenses. *Id.* Accordingly, the
9 Settlement was agreed upon following an extensive review of the facts and law in this case. *Id.*;
10 *Kullar*, 68 Cal.App.4th at 129-31.

11 **3. Litigation of this action not only would delay recovery, but would be**
12 **expensive, time-consuming, and would involve substantial risk.**

13 If this case were to go to trial as a class action, it is estimated that Class Counsel's fees and
14 costs would exceed \$1,000,000.00. *Id.*, ¶ 59. Litigating the class claims in this action would
15 require substantial additional preparation and discovery and ultimately would involve the
16 depositions of Class Members and experts, the presentation of percipient and expert witnesses at
17 trial, as well as the consideration, preparation, and presentation of voluminous documentary
18 evidence and the preparation and analysis of expert reports. *Id.* The remote nature of coders' work
19 required them to use computers in the performance of their duties and to rely mostly on electronic
20 forms of communication with their supervisors and with Defendant. *Id.* As a result, most of the
21 document production in this case would require expensive and time-consuming retrieval, review,
22 and storage of large amount of Electronically Stored Information (ESI). *Id.*

23 Class Counsel concluded that a settlement that provides a material percentage of Plaintiff's
24 full damages estimate would be a beneficial and just result for the Class. *Id.*, ¶ 60. The proposed
25 \$922,500.00 Settlement achieves this result. *Id.* The \$922,500.00 Total Settlement Amount
26 accounts for over 100% of Plaintiff's estimates of Defendant's exposure for substantive violations,
27 and 28.45% of Plaintiff's estimates of Defendant's exposure for substantive and derivative
28 violations. The \$552,400.00 Net Settlement Amount accounts for 63.45% of Plaintiff's estimates
of Defendant's exposure for substantive violations, and 17.04% of Plaintiff's estimates of
Defendant's exposure for substantive and derivative violations. In light of the challenges that
Plaintiff would likely face, as discussed below, the proposed Settlement is extremely reasonable.
Id. In contrast to the risk and uncertainty of continued litigation, the Settlement will yield a

1 prompt, certain, and substantial recovery for Class Members. Such a result will benefit the Parties
2 and the court system. *Id.*, ¶ 61.

3 **4. Defendant would continue to contest liability on all issues.**

4 The reasonableness of the Settlement is further underscored by the fact that Defendant has
5 legal and factual grounds available to defend this action. *Id.*, ¶ 62. Defendant takes the position
6 that this case is not suitable for class or representative treatment and that it fully complied with its
7 obligations regarding payment of wages and reimbursement of expenses. *Id.* In particular,
8 Defendant vigorously disputed at mediation that Class Members were required to work off-the-
9 clock at all. *Id.*, ¶ 63. Defendant further contends that it maintains written policies and procedures
10 relating to wage and hour issues that are facially compliant with California law, and disputes that
11 Plaintiff and the Class Members are entitled to damages, penalties, or other relief sought. *Id.*

12 **5. Additional risks Plaintiff considered.**

13 Plaintiff would face other significant risks if the litigation were to proceed to trial. *Id.*, ¶ 64.
14 As an initial matter, Defendant changed its policy regarding reimbursement for work-related
15 expenditures by coders in early 2020. *Id.*, ¶ 65. At that time, Defendant began automatically
16 reimbursing coders with a monthly stipend to cover internet usage and related supplies and
17 services for their work. *Id.* This policy and practice may be viewed favorably by the trier of fact,
18 and could result in a decreased assessment of penalties for wage and hour violations. *See, e.g.*,
19 Lab. C. § 2699 (e)(2) (“a court may award a lesser amount” of PAGA penalties “if, based on the
20 facts and circumstances of the particular case, to do otherwise would result in an award that is
21 unjust, arbitrary and oppressive, or confiscatory”).

22 Before such merits inquiries, however, Plaintiff would have to file a Motion for Class
23 Certification. *Id.*, ¶ 66. This would require extensive investigation and outreach efforts by Class
24 Counsel to obtain supporting evidence, and would likely be vigorously contested by Defendant
25 with significant risk that the motion would be denied. *Id.* In the experience of Class Counsel,
26 putative class actions for off-the-clock claims have traditionally been difficult to certify.¹³ *Id.*
27 Plaintiff’s theory of off-the-clock work is based in large part on indirect pressures to work unpaid
28 time, driven by the overtime approval policy and efficiency requirements. *Id.*, ¶ 67. Such
pressures may be found to vary from worker to worker. Plaintiff would face considerable risk that

¹³ (*See, e.g., In re AutoZone, Inc., Wage & Hour Employment Practices Litig.* (N.D. Cal. 2012) 289 F.R.D. 526, 539, *aff’d*, No. 17-17533, 2019 WL 4898684 (9th Cir. Oct. 4, 2019); *Kilbourne v. Coca-Cola Co.* (S.D. Cal. July 29, 2015) No. 14CV984-MMA BGS, 2015 WL 5117080, at *14; *York v. Starbucks Corp.*, (C.D. Cal. Nov. 23, 2011) No. CV 08-07919 GAF PJWX, 2011 WL 8199987, at *30.)

1 the Court would find that individual issues predominate over common questions of law and fact.
2 *Id.*

3 Even assuming that the motion is granted, Plaintiff would then have to establish Class-wide
4 liability, and prove up various issues regarding damages and penalties. *Id.*, ¶ 68. Proving liability
5 and damages issues would also be complicated by any individualized differences in wage and
6 hour experiences across the coders, and would be vigorously disputed by Defendant. *Id.* Plaintiff
7 and Class Counsel would be confronted with a lack of documentary evidence regarding off-the-
8 clock time and unreimbursed expenses, as neither the amounts of time nor expenditures were
9 logged or tracked. Obtaining class certification, establishing liability, and proving damages would
likely take years, and would necessitate expert witness testimony and significant additional
litigation. *Id.*

10 Additionally, Plaintiff's derivative claims regarding waiting time penalties and wage
11 statements rise and fall with Plaintiff's other wage payment claims. *Id.*, ¶ 69. For example,
12 Plaintiff would recover nothing under § 203 if he was unable to prove the underlying claims or
13 defeat a "good faith" dispute defense. (*See* Cal. Code Regs. Tit. 8, § 13520 [good faith dispute,
14 based in law or fact, precludes award of waiting time penalties].) Cottrell Decl., ¶ 70. While
15 Plaintiff believes that he would have prevailed on these issues and others, Plaintiff recognizes the
16 risk that a fact finder may have found for Defendant on one or more of these issues and or found
damages to be significantly less than what Plaintiff claims. *Id.*, ¶ 71.

17 Defendant, represented by experienced employment lawyers, raised the above arguments,
18 and more, in mediation and would have done so in continued litigation. *Id.*, ¶ 72. Despite
19 Plaintiff's confidence in his ability to prove his claims on a Class-wide basis, any one of the
20 above defenses, if decided in favor of Defendant, could have reduced or even eliminated any
potential damages award. *Id.*

21 **6. Class Counsel are experienced class action litigators.**

22 Class Counsel are experienced and respected class action litigators. *See Id.*, ¶¶ 5-7. Based
23 on Class Counsel's knowledge and expertise in this area of law, Class Counsel believes this
24 Settlement will provide an excellent benefit to the Class Members. *Id.*, ¶ 74.

25 **7. The proposed Settlement is well within the range of reasonableness.**

26 The Settlement calls for a Net Settlement Amount of approximately \$552,400.00 for all
27 Class Members. *Id.*, ¶ 75. This amount will be available to the approximately 185 Class Members,
28 exclusive of attorneys' fees and costs, administrative costs and other expenses, and the service

award. *Id.* This amount provides an estimated average recovery of \$2,985.95 per Class Member, assuming one hundred percent (100%) participation in the Settlement.¹⁴ *Id.*

This is a recovery that easily falls within the range of reasonableness. (*See, e.g., In Re Mego Fin. Corp. Sec. Litig.* (9th Cir. 2000) 213 F.3d 454, 459 [“It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair.”][citation omitted].). Cottrell Decl., ¶ 76. It is equally well-settled that a proposed settlement is not to be measured against a hypothetical ideal result that might have been achieved. (*See, e.g., 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1150 [quoting *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 with approval: “This court has aptly held that ‘it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.’”]). The excellent result easily satisfies these standards.

E. The Service Award to the Plaintiff for His Efforts on Behalf of the Class Is Reasonable

Courts award service payments to advance public policy by encouraging individuals to come forward and perform their civic duty in protecting the rights of the class, as well as to compensate class representatives for their time, effort and inconvenience. (*In Re California Indirect Purchases* (1998) 1998 WL 1031494, *11.) It is well-established that representative plaintiffs are eligible for reasonable incentive payments to compensate them for the expense or risk they have incurred in conferring a benefit on other members of the class. (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412.)

Plaintiff Brian Hazel took the significant risk of coming forward to represent the interests of his fellow employees. Cottrell Decl., ¶ 77. He has subjected himself to risk with regards to future employment opportunities and his reputation in the community by his participation in this action. *Id.*, ¶ 78. His service as the named Plaintiff in a wage and hour class action lawsuit may be discerned by potential employers and members of the community, creating a very real risk of future repercussions, particularly with respect to his future job opportunities in the medical coding industry. *Id.*

Throughout this litigation, Plaintiff worked with Class Counsel and assisted in the development of the case. *Id.*, ¶ 79. He provided extensive information and documents including

¹⁴ See Footnote 4.

1 pay statements and policies agreements during Class Counsel's initial investigation and the
2 preparation of Plaintiff's complaints. *Id.* Moreover, he provided important information during the
3 lead-up to mediation, including detailed background regarding his understanding of Defendant's
4 policies, procedures, and systems that governed when coders would be considered "on the clock."
5 *Id.* As the alleged off-the-clock work is borne from these systems, Class Counsel's ability to
6 analyze and articulate them at mediation enhanced the Class Members' claims and likely
7 contributed to an increased recovery. *Id.* Plaintiff remained on call during the mediations and spent
8 much of the day on telephone calls with Class Counsel, during which he provided crucial, timely
9 information that assisted Class Counsel in responding to several arguments presented by
10 Defendant's Counsel in the mediation process. *Id.*, ¶ 80. Plaintiff has taken part in the Settlement
11 decision and remained apprised of the case at all times during Class Counsel's pre-suit
12 investigation of these claims and during approximately one year of litigation. *Id.*, ¶ 81.

13 As a result of Plaintiff's efforts and his willingness to step forward, the Class Members will
14 receive significant recoveries if the Settlement is approved. *Id.*, ¶ 82. On the other hand, if Plaintiff
15 did not serve as a Class Representative or assist in the prosecution of this case, the matter would
16 never have been brought on a class basis. The Class Members would not be getting any recovery,
17 and Defendant's alleged conduct would have gone unchecked. Plaintiff has committed his time to
18 this case and assumed significant risk to obtain the favorable result. *Id.*, ¶¶ 77-82. Payment to the
19 Plaintiff in the amount of \$15,000.00 is reasonable in light of the efforts he made and the risks he
20 took in filing and prosecuting this action to obtain this \$922,500.00 Settlement. *Id.*, ¶ 83.

21 **F. The Proposed Payment of Attorneys' Fees and Costs Is Reasonable and Should**
22 **Be Preliminarily Approved.**

23 Plaintiff seeks reasonable attorneys' fees and expenses from the \$922,500.00 Total
24 Settlement Amount. *Id.*, ¶ 84. Under the terms of the Settlement, Class Counsel may seek an award
25 of up to one-third of the Total Settlement Amount, or \$307,500.00. *Id.* The requested attorneys'
26 fees are reasonable when compared to Class Counsel's lodestar amount, currently estimated to be
27 \$275,000.00. *Id.*, ¶ 85. This amount would only increase with preparation and attendance at the
28 preliminary and final approval hearings, further correspondence with Class Members, and
Settlement administration and oversight. *Id.*

In this case, there was no guarantee of compensation or reimbursement. *Id.*, ¶ 86. Rather,
Class Counsel have undertaken all the risks of this litigation on a completely contingent fee basis.
Id. The inherent risk of proving liability and damages on a Class-wide basis and Defendant's
representation by skillful counsel confront Class Counsel with the prospect of recovering nothing
or close to nothing for their commitment to and investment in the case. *Id.* Nevertheless, Plaintiff
and Class Counsel have committed themselves to developing and pressing Plaintiff's legal claims

1 to enforce the employees' rights and maximize the Class recovery. *Id.*, ¶ 87. This commitment and
2 the risks involved are precisely the reasons for multipliers in contingency fee cases.¹⁵ *Id.* As
3 Participating Class Members will receive a significant payment if the Settlement is approved,
4 Class Counsel seek a reasonable fee award for their efforts and the risk they have assumed. *Id.*

5 Attorneys who litigate on a wholly or partially contingent basis expect to receive
6 significantly higher effective hourly rates in cases where compensation is contingent on success,
7 particularly in hard-fought cases where, like in the case at bar, the result is uncertain. *Id.*, ¶ 88.
8 This does not result in any windfall or undue bonus. *Id.* In the legal marketplace, a lawyer who
9 assumes a significant financial risk on behalf of a client rightfully expects that his or her
10 compensation will be significantly greater than if no risk was involved (*i.e.*, if the client paid the
11 bill on a monthly basis), and that the greater the risk, the greater the "enhancement." *Id.* Adjusting
12 court-awarded fees upward in contingent fee cases to reflect the risk of recovering no
13 compensation whatsoever for hundreds of hours of labor simply makes those fee awards consistent
14 with the legal marketplace, and in so doing, helps to ensure that meritorious cases will be brought
15 to enforce important public interest policies and that clients who have meritorious claims will be
16 better able to obtain qualified counsel. *Id.*

17 Fee awards in class actions average around one-third of the recovery. (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn. 11.)). Class Counsel's fee request is well within the range
18 customarily approved by California and federal courts in comparable class actions.¹⁶ Cottrell
19 Decl., ¶ 89. California Superior Courts frequently grant common fund awards of 30 percent (30%)
20 or more.¹⁷ *Id.*

21 ¹⁵ (Posner, *Economic Analysis of the Law*, 534, 567 (4th ed. 1992) ("A contingent fee must be higher than a
22 fee for the same legal services paid as they are performed... because the risk of default (the loss of the case,
23 which cancels the debt of the client to the lawyer) is much higher than that of conventional loans".))

24 ¹⁶ See, e.g., *Newberg on Class Actions* at §11:24; *Manual for Complex Litigation* at §14:6; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294 at 297-98 ("Class Counsel have also cited 73
25 district court opinions in which fees in the range of 30-50 percent of the common fund were awarded."); *In Re Pacific Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 379 (33% fee award); *Williams v. MGM-Pathe Communications Co.* (9th Cir. 1997) 129 F.3d 1026, 1027 (33% of total fund awarded); *In Re Activision Sec. Litig.* (N.D.Cal. 1989) 723 F. Supp. 1373, 1375 (noting that fee awards in common fund cases "almost
26 always hover[] around 30% of the fund created by the settlement") (cited with approval in *Lealao*, 82
27 Cal.App.4th at 49); *In Re Vitamins Antitrust Litig.* (D.D.C. 2001) 2001 WL 34312839 (34.6% of \$365
28 million recovery); *Laffitte v. Robert Half Int'l Inc.* (2014) 180 Cal. Rptr.3d 136, 149, *as modified* (Nov. 21,
2014) ("...the trial court's use of a percentage of 33 1/3 percent of the common fund is consistent with, and
in the range of, awards in other class action lawsuits.").

¹⁷ See, e.g., *Asalati v. Intel Corp.* (Santa Clara Super. Ct., Oct. 29, 2018) No. 16cv302615 (approving 33.3%
fee award, at a multiplier of 3.98 over lodestar); *Ochoa v. Haralambos Beverage Co.* (Los Angeles Super.
Ct., Feb. 1, 2007) No. BC319588 (approving 33.3% fee award with no mention of lodestar crosscheck); *Big
Lots Overtime Cases* (San Bernardino Super. Ct., JCC Proceeding No. 4283, Feb. 4, 2004) (approving

Furthermore, reasonable litigation expenses are ordinarily included in an award of attorneys' fees pursuant to California wage and hour law. Class Counsel's litigation costs are estimated at \$12,000.00. *Id.*, ¶ 90. All of the expenses were reasonable, were necessary to the prosecution, and are customarily billed to fee-paying clients. *Id.* Class Counsel also requests reimbursement for these expenses. *Id.*

V. THE COURT SHOULD CERTIFY THE PROPOSED SETTLEMENT CLASS FOR SETTLEMENT PURPOSES.¹⁸

This Court should certify the proposed Class pursuant to California Code of Civil Procedure § 382. California Code of Civil Procedure § 382 provides: "[W]hen 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." California has a strong public policy in favor of broad enforcement of wage and hour laws for the benefit of workers and in favor of using the class action device. (*Sav-on Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 340.) The party seeking certification has the burden to establish the existence of both an ascertainable class and a well-defined community of interest among class members. (*Id.* at 326 [citations omitted].) [citations omitted] The 'community of interest' requirement 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.*)

The benefits and efficiencies of this proposed Settlement, when compared to continued litigation of this case on either a class basis or through multiple individual suits, justifies

award of attorneys' fees of 33% of the recovery); *Barela v. Ralph's Grocery Company* (Los Angeles Super. Ct., No. BC070061, June 5, 1998) (same); *Davis v. The Money Store, Inc.* (Sacramento Super. Ct., No. 99AS01716, Dec. 26, 2000) (same); *Miskell v. Auto. Club of Southern Cal.* (Orange County Super. Ct., No. 01CC09035, May 27, 2003) (same); *Sconce/Lamb Cremation Cases* (Los Angeles Super. Ct., JCC Proceeding No. 2085, March 24, 1992) (same); *Ojito v. Robertson's Ready Mix Concrete, Inc.*, (Super. Ct., Riverside County, Jan. 16, 2007) No. RIC420994 (approving 30% fee award with no mention of lodestar crosscheck); *Jones v. Alliance Imaging, Inc.* (Alameda County Super. Ct., No. RG05210418, Nov. 27, 2006) (approving 33% fee award with no mention of lodestar crosscheck); *Wisniewski v. Pacific Maritime Assoc.* (Los Angeles County Super. Ct., No. BC293134, Nov. 20, 2006) (approving 30.7% fee award from \$12.9 million dollar settlement with no mention of lodestar crosscheck); *Garcia v. Save Mart Supermarkets* (Stanislaus County Super. Ct., No. 312026, Aug. 3, 2004) (approving 33% fee award with no mention of lodestar crosscheck); *Terrell v. Ocean's 11 Casino, Inc.* (San Diego County Super. Ct., No. GIC795732, Feb. 10, 2004) (approving 33% fee award with no mention of lodestar crosscheck).

¹⁸ Defendant maintains that a class cannot be properly certified on Plaintiff's claims, but recognizes that a lesser standard of scrutiny applies when evaluating class action criteria for settlement purposes, and that courts take settlement into account in evaluating class certification. *Amchen Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1977).

1 certification of the proposed Class. Cottrell Decl., ¶ 91. The Settlement specifically proposes a
2 Class for Settlement purposes only: all current and former employees who worked for HImagine in
3 a non-exempt Coder Position while residing in the State of California, at any time from November
4 1, 2015 through the date on which the Court grants preliminary approval of the Settlement.¹⁹
5 Settlement, ¶ II.B. Applying the standards outlined herein, the Court should certify the proposed
6 Class.

7 **A. Plaintiff Satisfied the Ascertainability and Numerosity Requirements.**

8 In determining whether a class is “ascertainable,” courts “examine the class definition, the
9 size of the class, and the means of identifying the class members.” (*Reyes v. Board of*
10 *Supervisors*, (1987) 196 Cal.App.3d 1263, 1274-75.) Plaintiff has defined the Class according to
11 objective criteria. The Class Members are easily identifiable and can be easily located. Cottrell
12 Decl., ¶ 93. Plaintiff satisfies the numerosity element as well with approximately 185 Class
13 Members. (*Rose v. City of Hayward*, (1981) 126 Cal.App.3d 926, 934; *Collins v. Rocha* (1972) 7
14 Cal.3d 232, 238.)

15 **B. Common Questions of Law and Fact Predominate In This Action**

16 “[T]he focus in a certification dispute is on what type of questions – common or individual
17 – are likely to arise in the action[.]” (*Sav-on*, 34 Cal.4th at 427.) The California Supreme Court
18 has expressly held that predominance does not require that all questions of law and fact be
19 uniform for all members of the class. (*Id.* at 338.) Here, Plaintiff contends that Defendant’s Class-
20 wide policies and procedures raise common issues of law and fact that are applicable to the claims
21 of Plaintiff and Class Members. Cottrell Decl., ¶ 94. Where, as in this case, uniform policies and
22 procedures apply on a class-wide basis, “the legal question to be resolved is not an individual one.
23 To the contrary, the common legal question remains the overall impact of [Defendants’] policies
24 on its [employees]” (*Jaimez v. Daiohs USA, Inc.* (2010) 181 Cal.App.4th 1286, 1299.)
25 Plaintiff alleges that Defendant has uniform policies applicable to all non-exempt coders. Cottrell
26 Decl., ¶ 94. Specifically, they are subject to the same timekeeping, payroll, compensation, and
27 overtime policies, the same expense reimbursement policies, and the same hiring, training, and
28 discipline processes. Plaintiff also contends that common factual issues that apply to the Class
Members, such as whether Defendant’s timekeeping, overtime, and efficiency requirements drive
off-the-clock work and whether Class Members pay for work-related expenditures without

¹⁹ “Coder Position” is defined as the following non-exempt positions: Coder Inpatient, Coder In/Outpatient, Coder Physician, Coder Outpatient PT, Coder ER PT, Coder ER, Coder Outpatient, Associate Coder - Acute Care, Coder HCC, Coder Inpatient PT, Coder Ancillary PT, Coder Physician PT, Coder Ancillary, and Coder In/Outpatient PT. Settlement, ¶ II.I.

1 reimbursement, would provide key evidence in support of Plaintiff's claims. *Id.* Plaintiff alleges
2 that these standardized policies and procedures are dictated by Defendant and apply to all of the
3 Class Members. *Id.*

4 **C. The Typicality Requirement Is Satisfied**

5 Plaintiff also must establish that he is a typical member of the Class he seeks to represent.
6 (*Chern v. Bank of America* (1976) 15 Cal.3d 866, 874.) A representative plaintiff's claims are
7 "typical" if they arise from the same event, practice, or course of conduct that gives rise to the
8 claims of the other class members and if their claims are based on the same legal theory. (*Classen*
9 *v. Weller* (1983) 145 Cal.App.3d 27, 46-47.) The typicality requirement is not onerous and does
10 not require the claims to be identical. (*Id.*)

11 Here, Plaintiff contends that he, like other Class Members, was subject to the policies and
12 practices that form the basis of the claims asserted in this case. Cottrell Decl., ¶ 95. Plaintiff
13 claims he was denied compensation for all hours worked and reimbursement for work expenses.
14 Plaintiff also claims that, like Plaintiff, the Class Members were subjected to the same illegal
15 policies and practices to which Plaintiff was subjected and the Class claims are based on the same
16 legal theory as Plaintiff's individual claims. Accordingly, Plaintiff is a member of the Class he
17 seeks to represent, and his claims are "typical" of those asserted by other Class Members. *Id.*

18 **D. The Adequacy Requirement Is Satisfied**

19 A plaintiff is an adequate class representative if his or her claims are not inconsistent with
20 or antagonistic to the claims of the class members. (*See Johnson v. GlaxoSmithKline, Inc.* (2008)
21 166 Cal.App.4th 1497, 1509.) In the instant case, there is no conflict between Plaintiff and the
22 proposed Class. Plaintiff's claims are in line with those of the Class and Plaintiff has prosecuted
23 this case with the interests of the Class in mind. Cottrell Decl., ¶ 96. Furthermore, Plaintiff has
24 selected counsel with extensive experience in class action and employment litigation, including
25 wage and hour class actions, and who do not have any conflict with the Class. *Id.* For the
26 foregoing reasons, Plaintiff is an adequate class representative, and Schneider Wallace Cottrell
27 Konecky LLP and Shavitz Law Group, P.A. are appropriate Class Counsel. *Id.*, ¶ 97.

28 **VI. THE PROPOSED NOTICE PROVIDES ADEQUATE NOTICE TO THE CLASS.**

"Adequate notice is critical to court approval of a class settlement under Rule 23(e)." (*Hanlon*, 150 F.3d at 1025.) A class action settlement notice "is satisfactory if it 'generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.'" (*Churchill Village LLC v. General Electric* (9th Cir. 2004) 361 F.3d 566, 575.)

1 Here, all Class Members will be identified, and the Class Notice Packet will be sent via U.S.
2 Mail and via email to each Class Member at their last known addresses provided by Defendant.
3 Settlement, ¶ III.E.2.b. Prior to the initial mailing, the Settlement Administrator will check the
4 addresses provided by Defendant through the National Change of Address System. *Id.* If the
5 Notice Packet is returned as undeliverable, the Settlement Administrator will perform a skip trace
and resend the Notice Packet. *Id.*, ¶ III.E.2.c.

6 The proposed Class Notice Packet is clear and straightforward, and provides information on
7 the case, the meaning and nature of the proposed Settlement, its terms and provisions, and the
8 rights of the Class Members to participate, opt out, and object. It describes the monetary awards
9 that the Settlement will provide to Participating Class Members and the Class release. It also
10 provides the date, time, and location of the Final Approval Hearing, and the identity and contact
11 information for Class Counsel. *See* Settlement, Exh A. The proposed Class Notice Packet also
12 fulfills the requirement of neutrality in class notices. (*See Newberg on Class Actions* at §§ 8:21 and
13 8:39; *Manual for Complex Litig.* at §§ 21:311 and 21:312.) Based on the foregoing, the Class
Notice Packet complies with the standards of fairness, completeness, and neutrality required of a
settlement class notice disseminated under authority of the Court. Cottrell Decl., ¶ 118.

14 **VII. THE PROPOSED IMPLEMENTATION SCHEDULE**

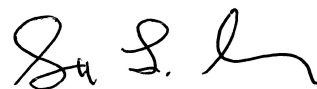
15 Plaintiff respectfully requests that the Court approve the proposed implementation
16 schedule for approval of the Settlement. The proposed implementation schedule is reflected in the
17 Plaintiff's Notice of Motion and Motion for Preliminary Approval of Class Action Settlement,
18 Conditional Certification of Settlement Class, Approval of Notice of Settlement, and Setting of
Hearing for Final Approval, and is adopted in the proposed order accompanying this motion.

19 **VIII. CONCLUSION**

20 For the foregoing reasons, Plaintiff respectfully requests that the Court grant this Motion for
21 Preliminary Approval and enter an order consistent with the Proposed Order submitted herewith.

22 Respectfully submitted,

23 Dated: April 5, 2021



24
25 Carolyn Hunt Cottrell
26 David C. Leimbach
27 Scott L. Gordon
28 SCHNEIDER WALLACE COTTRELL
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