

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Misty M. Lauby, Esq. [CSB No. 243009]
misty@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
4590 Allstate Drive
Riverside, CA 92501
Tel: (951) 320-1444
Fax: (951) 320-1445

Attorneys for Plaintiff and on behalf of the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

NATALIE PALMER, individually, on
behalf of all similarly situated current and
former employees, and on behalf of the
State of California and all Aggrieved
Employees;

Plaintiff,

vs.

CHARTER HOSPICE, INC., a California
Corporation; CHARTER HOSPICE OF
COLTON, LLC, a California Limited
Liability Company; ARCH B. GILBERT,
an individual; FRED FRANK, an
individual; and DOES 1 through 10,
inclusive;

Defendants.

Case No.: CIVDS2013037
*[Assigned to Hon. Judge David Cohn, Dept S26,
for all purposes]*

**PLAINTIFF'S UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT;
DECLARATION IN SUPPORT
THEREOF; [PROPOSED] ORDER**

Hearing

Date: July 12, 2021

Time: 10:00 a.m.

Dept.: S26

Complaint filed: June 25, 2020

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 12, 2021, at 10:00 a.m. or as soon thereafter as
the matter may be heard by the Honorable David Cohn in Department S26 of the San Bernardino
County Superior Court, located at 247 West Third Street San Bernardino CA 92415, Plaintiff
Natalie Palmer, individually and on behalf of all others similarly situated, will and hereby does

1 move the Court for entry of an Order preliminarily approving the Parties' class action settlement,
2 including:

- 3 1. Certifying the class for purposes of settlement only;
- 4 2. Preliminarily appointing Plaintiff as class representative for settlement purposes;
- 5 3. Appointing Plaintiff's counsel as class counsel for purposes of settlement only;
- 6 4. Preliminarily approving the class action settlement as fair, adequate, and reasonable,
7 based upon the terms set forth in the Settlement Agreement;
- 8 5. Directing distribution of the Class Notice, including notice of the opportunity to
9 exclude oneself from, or object to, the settlement;
- 10 6. Setting a date for a final fairness hearing to determine, following dissemination of the
11 Class Notice, whether to grant final approval of the Settlement.

12 This motion is based upon this Memorandum of Points and Authorities in Support
13 thereof; the Declaration of Plaintiff's counsel (Brian Mankin) in support thereof; the Class
14 Action Settlement Agreement (the "Settlement Agreement"); the proposed Order granting
15 Preliminary Approval of the Settlement; all other records, pleadings, and papers filed in this
16 action; and upon such other evidence or argument as may be presented to the Court at the
17 hearing of this motion.

18 Dated: May 3, 2021

LAUBY, MANKIN & LAUBY LLP

20 BY:



21 Brian J. Mankin, Esq.
22 Attorneys for Plaintiffs and the Proposed
23 Class
24
25
26
27
28

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND	3
A.	THE SETTLEMENT CLASS	3
B.	PROCEDURAL HISTORY	3
C.	SUMMARY OF THE CLAIMS AND DEFENSES.....	5
III.	SUMMARY OF THE PROPOSED SETTLEMENT	7
A.	SETTLEMENT CONSIDERATION AND ALLOCATION	7
B.	NOTICE PROCEDURES	7
C.	EXCLUSION AND OBJECTION PROCEDURES.....	8
D.	SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES.....	8
E.	TIMING OF SETTLEMENT DISBURSEMENTS	10
F.	TAX TREATMENT	10
G.	PARTICIPATING CLASS MEMBERS' RELEASE OF CLAIMS.....	10
H.	AGGRIEVED EMPLOYEES' RELEASE OF CLAIMS	11
IV.	PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS UNDER THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY CERTIFICATION IS APPROPRIATE FOR PURPOSES OF SETTLEMENT.....	12
A.	NUMEROSITY AND ASCERTAINABILITY	13
B.	WELL-DEFINED COMMUNITY OF INTEREST	13
V.	THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT, WHICH IS FAIR, ADEQUATE, AND REASONABLE	14
A.	CLASS ACTION SETTLEMENTS ARE SUBJECT TO JUDICIAL REVIEW AND APPROVAL UNDER THE CALIFORNIA RULES OF COURT	14
B.	THE SETTLEMENT IS RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE NEGOTIATIONS	16
C.	THE EXTENT OF THE INVESTIGATION WAS MORE THAN SUFFICIENT TO PERMIT PRELIMINARY APPROVAL OF THE SETTLEMENT	16
D.	THE SETTLEMENT IS A REASONABLE COMPROMISE OF CLAIMS.....	16
E.	PLAINTIFF'S COUNSEL IS EXPERIENCED IN SIMILAR WAGE-AND-HOUR LITIGATION	21
F.	THE CLASS NOTICE CONFORMS TO ALL APPLICABLE STATUTES AND RULES	22
G.	THE NON-REVERSIONARY "CHECKS CASHED" DISTRIBUTION ENSURES MAXIMAL RECOVERY FOR CLASS MEMBERS.....	23
H.	THE ATTORNEY'S FEES ALLOCATION UNDER THE SETTLEMENT AGREEMENT IS FAIR.....	23
I.	THE CLASS REPRESENTATIVES' SERVICE AWARD REQUEST IS FAIR AND APPROPRIATE.....	24
VI.	THE COURT SHOULD APPOINT SIMPLURIS AS SETTLEMENT ADMINISTRATOR	25
VII.	TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING	25
VIII.	CONCLUSION	26

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Natalie Palmer seeks preliminary approval of a \$750,000 wage-and-hour class
4 action settlement (the “Settlement Amount”) on behalf of approximately 250 putative class
5 members, which includes all current and former non-exempt employees of defendants Charter
6 Hospice, Inc., and Charter Hospice of Colton, LLC, and their owners (collectively, “Defendants”
7 or “Charter”), who worked in the State of California and performed nursing duties (the “Class
8 Members”) at any time during the period of June 25, 2016 through the Preliminary Approval
9 Date (the “Class Period”). The payment to each Class Member under the Settlement Agreement
10 is based on the number of Work Weeks that each Class Member was employed by Defendants in
11 a Covered Position during the Class Period. The Class Action Settlement Agreement is attached
12 as Exhibit “A” to the Declaration of Brian J. Mankin (“Mankin Decl.”), and is hereinafter
13 referred to as the “Settlement Agreement” or “S.A.” The proposed Notice of Settlement of Class
14 Action (“Class Notice”) is attached to the Mankin Declaration as Exhibit “B.”

15 Under the terms of the Settlement Agreement, Defendants will not oppose Plaintiff
16 Counsel’s application for a reasonable award of attorney’s fees not to exceed the total amount of
17 \$250,000 which is 1/3 of the Maximum Settlement Amount (hereinafter, the “Settlement
18 Amount”), Plaintiff Counsel’s litigation expenses not to exceed \$15,000, Settlement
19 Administrator Costs of \$15,000, PAGA penalties of \$25,000 (of which \$18,750 or 75% will be
20 paid to the LWDA and the remaining \$6,250 or 25% will be paid to the Aggrieved Employees on
21 a pro rata basis), and a Service Payment of \$5,000 to Plaintiff Natalie Palmer (“Class
22 Representative”). (S.A. ¶ 47(a-h)).

23 After all Court-approved deductions from the Settlement Amount, it is estimated that
24 \$855,833.34 will be available to pay the approximately 250 Class Members, as follows:

25 ///

26 ///

27 ///

28 ///

	Total Amount
<i>Gross Settlement Amount</i>	\$ 750,000.00
Attorneys' Fees (1/3)	\$ 250,000
Litigation Costs	\$ 15,000.00
Administrator Costs	\$ 5,300.00
PAGA Penalties	\$ 25,000.00
Class Representative's Service Award	\$ 5,000.00
<i>Net Settlement Amount</i>	\$ 449,700

Assuming 250 Class Members, the average payment to each class member will be approximately \$1,798.80 each (\$449,700 / 250). Of course, the actual payment will be calculated on a pro-rata basis according to the number of Workweeks Worked by each Class Member. Assuming an estimated 9,100 weeks worked, each Workweek will have a value of approximately \$49.42 on average. In addition, Aggrieved Employees (*i.e.*, individuals who worked during the PAGA Period starting on June 25, 2019) will receive a pro rata share of the \$6,250 PAGA Penalties (accounting for 25% of the total \$25,000 allocation). (Mankin Decl., ¶ 9).

The settlement is non-reversionary and Class Members will not be required to submit claim forms to receive payment, but each Class Member will receive the Class Notice containing information about his/her share, the opportunity to dispute the number of Workweeks Worked, and the opportunity to opt-out or object to the settlement. All Class Members who do not affirmatively opt-out will receive a settlement check upon the Court granting final approval. Likewise, all Aggrieved Employees will receive a share of the PAGA Penalties once the settlement receives final approval.

Because the settlement is fair and reasonable and was negotiated at arm's length by experienced counsel and an experienced mediator following a sufficient exchange of information and documents prior to mediation, it should be preliminarily approved. Plaintiff respectfully request that the Court enter an order preliminarily approving the settlement, conditionally certifying the Class under Code of Civil Procedure § 382 for settlement purposes, approving the proposed Class Notice, appointing Plaintiff's counsel as class counsel, appointing Simpluris as the Settlement Administrator, and scheduling a hearing for final approval of the Settlement.

1 **II. BACKGROUND**

2 **A. THE SETTLEMENT CLASS**

3 The Class is defined as follows:

4 All current and former non-exempt employees of Defendants
5 Charter Hospice, Inc., and Charter Hospice of Colton, LLC.,
6 (collectively, “Charter”) who worked in the State of California and
7 performed in-home nursing duties at any time between June 25,
8 2016 and the Preliminary Approval Date. (S.A. ¶ 37).

8 **B. PROCEDURAL HISTORY**

9 On June 5, 2020, Plaintiff submitted a letter to the California Labor Workforce
10 Development Agency (the “LWDA”) for civil penalties under the Private Attorney General Act
11 of 2004 (the “PAGA”), and simultaneously sent a letter to Defendants requesting the production
12 of her personnel and timekeeping records in order to further evaluate her wage and hour claims.
13 (Mankin Decl., ¶ 12). While the LWDA exhaustion period was running, Plaintiff filed a putative
14 class action complaint in the Court. Thereafter, the LWDA declined to assert jurisdiction over
15 the PAGA, thereby giving Plaintiff the right to bring PAGA claims.

16 On August 13, 2020, Plaintiff filed a first amended complaint that alleges class and
17 PAGA claims, including: (1) failure to pay minimum and regular wages, (2) failure to pay
18 overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure
19 to reimburse for business expenses, (6) failure to timely pay final wages, (7) failure to provide
20 accurate itemized wage statements, (8) unfair and unlawful competition pursuant to Business and
21 Professions Code §17200 *et seq.*, and (9) related claims under PAGA. (Mankin Decl., ¶ 13).

22 Defendants retained counsel and vehemently disputed the claims, including noting in the
23 Joint Initial Status Conference Statement:

24 Defendants deny all of the allegations contained in the First
25 Amended Complaint and contend that at all relevant times they
26 complied with all applicable provisions of the California Labor
27 Code and relevant wage orders. Defendants contend that they
28 properly paid Plaintiff and all other putative class members and/or
aggrieved employees for all overtime worked, and did not
discourage the employees from working and recording overtime as
required by their job responsibilities. Defendants contend that they

1 provided all compliant meal periods, and authorized and permitted
2 compliant rest periods, and that they paid the required premiums
3 if/when employees were unable to take compliant meal or rest
4 periods as the result of work responsibilities. Defendants contend
5 that to the extent Plaintiff and other putative class members and/or
6 aggrieved employees did not take compliant meal and/or rest
7 periods, they chose not to take the breaks provided, and
8 Defendants did not require them to take non-compliant meal or rest
9 periods. Defendants further contend that they reimbursed Plaintiff
10 and other putative class members/aggrieved employees for all
11 necessary business expenses, and paid all wages owed at the time
12 of separation from employment.

13 Despite the disputed nature of the claims, prior to taking depositions, conducting
14 discovery, and filing a disputed motion for class certification, the parties agreed to explore a
15 resolution through mediation. In preparation for the mediation, the Parties informally
16 exchanged documents and information that allowed both sides to calculate the potential damages
17 and evaluate potential risk, including extensive policies and procedures pertaining to each claim
18 alleged, and statistics relating to the number of current and former employees, number of shifts,
19 pay periods and other things. In this regard, Defendants provided a comprehensive sampling of
20 timekeeping and payroll records of the Class Members. This robust sampling enabled both
21 parties to take a deep dive into the claims. Additionally, during this process, Plaintiff and her
22 counsel analyzed, researched, and investigated the potential issues, including matters related to
23 the calculation of damages, trial, and appellate issues and risks. (*Id.* ¶ 14).

24 On February 18, 2021, the parties participated in a full-day mediation with Jeff Krivis,
25 who is one of the most experienced and reputable class action mediators in California.
26 Ultimately, Mr. Krivis issued a mediator's proposal calling for a class-wide settlement for
27 \$750,000. The Parties accepted the mediator's proposal and memorialized the terms of the
28 settlement in a long-form Settlement Agreement. (Mankin Decl., ¶ 15). The Parties now seek
the Court's preliminary approval of the Settlement.

///

///

1 **C. SUMMARY OF THE CLAIMS AND DEFENSES**

2 Plaintiff alleged numerous wage and hour violations on behalf of the non-exempt
3 employees who performed nursing duties. However, Defendants vigorously contested and
4 denied each of Plaintiff's material allegations on the merits and as to the propriety of a class
5 action or PAGA representative action on behalf of the putative class and allegedly aggrieved
6 employees, as discussed herein.

7 First, Plaintiff contends that Defendants violated minimum wage and overtime laws in a
8 number of ways, including (1) failing to pay on-call time over 40 hours in a week at one and one-
9 half times regular rate, (2) giving the employees no choice but to perform off-the-clock work
10 after hours, and (3) by deducting 30-minutes of pay for lunch periods whether the employee was
11 able to take their break or not. Defendants countered that they paid significant overtime wages
12 which undermines Plaintiff's claim that employees had no choice but to work off the clock.
13 Further, Defendants alleged that Plaintiff was an outlier whose experience was not representative
14 of the rest of the class members. (Mankin Decl., ¶ 17).

15 Second, Plaintiff alleged that because she and the Class Members were assigned to
16 service an average of 5-7 clients per day over large geographic territories, their schedule was so
17 tight that they were often unable to take their meal periods. Despite this, Plaintiff and the Class
18 Members were required to record meal periods and the company took an automatic deduction of
19 30 minutes each day regardless of whether the employee took a lunch period. Moreover,
20 Plaintiff alleged that Defendants failed to pay any meal premiums until September 2019 after
21 Pharos Investment Company took a 51% interest and made changes to certain company policies,
22 including its policy to never pay meal premiums. However, Defendants argued that it has fully
23 compliant meal break policies and that all breaks were made available and missed, short or late
24 breaks were solely the decision of the employee. (Mankin Decl., ¶ 18).

25 Third, Plaintiff further alleged that Defendants failed to properly train its employees to
26 take rest breaks. Indeed, she was not even aware that there was a policy allowing for rest breaks
27 until Pharos became involved in late 2019 and required that the employees start logging rest
28 periods on their personal activity logs. However, at all relevant times, Plaintiff and the Class

1 Members were regularly unable to take rest periods because they were either with a client or
2 travelling to a client at all times throughout the day and did not have adequate time to take
3 breaks. Despite this, rest period premiums were never paid. Again, Defendants argued that its
4 policies were compliant with California law and that because the Class Members were on their
5 own for most of the day, they were free to take breaks whenever they chose. (Mankin Decl., ¶
6 19).

7 Fourth, Plaintiff alleged that she and the Class Members were not reimbursed for
8 necessary business expenses for things such as the use of home computers, home internet and
9 cell phones which they used to carry out their duties for the company. (Mankin Decl., ¶ 20).

10 Fifth, Plaintiff sought waiting time penalties under Labor Code §§ 201 – 203 for each
11 *former* employee due to the violations discussed above. Defendants opposed this claim on the
12 merits by arguing that this claim is solely derivative of the claims above, and that Defendants
13 would defeat those claims at the class certification stage or on dispositive motion. (Mankin
14 Decl., ¶ 21).

15 Sixth, Plaintiff raised claims for wage statement violations due to the to the failure to
16 accurately state total hours worked for every pay period with an auto-deduct. However,
17 Defendants again opposed this claim and argued that, even if there was merit to the auto-deduct
18 theory (which Defendants denied), statutory § 226(e) penalties are not proper for these type of
19 “derivative” violations. (Mankin Decl., ¶ 22).

20 Lastly, Defendant argued that there are substantive reasons that would prevent
21 certification of the Class. Defendant claimed that individual issues predominate, as there are too
22 many individual issues involved in each Class Member’s claims. For example, Defendant
23 asserted that Class Members were given so much latitude with regards to whether and how they
24 took their meal and rest breaks, that a fact-finder would have to determine for each Class
25 Member whether a break was missed and why, and why a break was noncompliant/nonexistent,
26 because if it was by the employee’s choice, no liability attaches to the Defendant. (Mankin
27 Decl., ¶ 23).

28 ///

1 Despite the disputed nature of the claims, the Parties concluded that further litigation of
2 the Action would be protracted and expensive, and that it is desirable that the Action be fully and
3 finally settled in order to limit further risk, expense and protracted litigation.

4 **III. SUMMARY OF THE PROPOSED SETTLEMENT**

5 The following is a summary of the principal terms of the Settlement Agreement.

6 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

7 The \$750,000 Settlement Amount is non-reversionary and will be paid out to Class
8 Members without the need to submit a claim form or take any affirmative action. It includes (1)
9 Plaintiff's attorneys' fees and costs, as approved by the Court; (2) a service award of \$5,000 to
10 Plaintiff, subject to approval by the Court; (3) settlement administrator expenses, not to exceed
11 \$5,300; (4) a \$25,000 PAGA award, 75 percent of which is to be paid to the LWDA pursuant to
12 California Labor Code § 2699(i) and 25 percent to the Aggrieved Employees; and (5) the
13 aggregate of all Individual Settlement Amounts of the Participating Class Members. (S.A. ¶
14 47(a-h)). Defendants will separately pay their share of employer's payroll taxes and
15 withholdings.

16 After all Court-approved deductions from the Settlement Amount, it is estimated that
17 \$449,700 will be available to pay the Individual Settlement Amounts to approximately 250 Class
18 Members. Thus, the average settlement payment is approximately \$1,798.80.

19 **B. NOTICE PROCEDURES**

20 The proposed Class Notice will be provided to the Class Members showing the estimated
21 amount that each Class Member will receive and the number of workweeks he/she is credited
22 (Exhibit B to the Mankin Decl.). Within 15 business days after entry by the Court of its Order of
23 Preliminary Approval, Defendants shall provide the Settlement Administrator with a list of Class
24 Members containing names, addresses, telephone numbers, Social Security Numbers, and the
25 total Workweeks Worked in the Class and PAGA Periods (the "Class Data"). (S.A. ¶¶ 5, 63).

26 Within 10 days of receipt of the Class Data, the Settlement Administrator shall calculate
27 the number of weeks worked for each Class Member, populate the Class Notice for each, and
28 send each Class Member the Class Notice via first-class, United States mail. (S.A. ¶ 64).

1 In the event that any Class Notice mailed to a Class Member is returned as having been
2 undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace
3 search and seek an address correction for such Class Member(s), and a second Class Notice will
4 be sent to any new or different address obtained. (S.A. ¶ 65).

5 **C. EXCLUSION AND OBJECTION PROCEDURES**

6 Class Members who do not timely Opt-Out of the Settlement will be deemed to
7 participate in the Settlement and shall become a Participating Class Member without having to
8 submit a claim form or take any other action. In order to Opt-Out of the Settlement, the Class
9 Member must submit a written request to the Settlement Administrator no later than 30 days
10 after being mailed by the Settlement Administrator (“Notice Response Deadline”). (S.A. ¶¶ 19,
11 68). Any Opt-Out request that is not postmarked by the Notice Response Deadline will be
12 invalid. (S.A. ¶ 68(a)).

13 The Class Notice shall inform the Class Members of their right to object to the
14 Settlement. Any Class Member who wishes to object to the Settlement must submit a written
15 objection to the Settlement Administrator no later than the Notice Response Deadline. The
16 objection must include the case name and number and must set forth, in clear and concise terms,
17 a statement of the reasons why the objector believes that the Court should find that the proposed
18 Settlement is not in the best interest of the Class and the reasons why the Settlement should not
19 be approved, including the legal and factual arguments supporting the objection. (S.A. ¶ 68(c)).

20 **D. SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES**

21 The amount of each Settlement Class Member’s Individual Settlement Amount is tied to
22 the number of Workweeks Worked that a Settlement Class Member worked for Defendants in
23 California during the Class Period. Individual Settlement Payments will be made as follows:

- 24 • Defendants will calculate the total number of Work Weeks worked by each
25 Settlement Class Member during the Class Period and the aggregate total number of Work
26 Weeks worked by all Settlement Class Members during the Class Period.
- 27 • To determine each Settlement Class Member’s estimated Individual Settlement
28 Payment, the Settlement Administrator will use the following formula: The Net Settlement

1 Amount will be divided by the aggregate total number of Work Weeks, resulting in the “Work
2 Week Value.” Each Settlement Class Member’s Individual Settlement Payment will be
3 calculated by multiplying his or her total number of Work Weeks during the Class Period by the
4 Work Week Value.

5 • Individual Settlement Payments will be reduced by any required deductions for
6 each Participating Class Member as specifically set forth herein, including employee-side tax
7 withholdings or deductions.

8 • The entire Net Settlement Amount will be disbursed to all Participating Class
9 Members. If there are any valid and timely Requests for Exclusion, the Settlement Administrator
10 shall proportionally increase the Individual Settlement Payment for each Participating Class
11 Member according to the number of Work Weeks worked, so that the amount actually
12 distributed to the Settlement Class equals 100% of the Net Settlement Amount.

13 (S.A. ¶ 47(c)).

14 Additionally, each “Aggrieved Employee” will receive a share of the PAGA Penalties
15 based on a pro-rata basis. Thus, the \$6,250 PAGA Penalties allocated to the Aggrieved
16 Employees will be divided and paid on a Work Week basis. (S.A. ¶ 47(h)).

17 The Class Notice will inform Class Members of the estimated share and the number of
18 Work Weeks he/she worked during the Class Period. Class Members may dispute their Weeks
19 Worked if they feel they worked more weeks in the Class or PAGA Periods than Defendants’
20 records show by timely submitting evidence to the Settlement Administrator. (S.A. ¶ 66).

21 As noted, assuming a class size of 250 Class Members, the average payment to each class
22 member will be approximately \$1,798.80 each, although the actual payment will be calculated on
23 a pro-rata basis as shown above. Assuming an estimated 9,100 weeks worked, each Workweek
24 will have a value of approximately \$49.42 on average. Indeed, this is an excellent result for the
25 Class Members.

26 Moreover, it is estimated that there are 45 Aggrieved Employees who worked an
27 estimated 3,120 Workweeks during the PAGA Period. The Aggrieved Employees will share in
28 the \$6,250 PAGA award on a pro rata basis.

1 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

2 Defendants are required to deposit the Settlement Amount, along with the employers’
3 share of payroll taxes owed, with the Settlement Administrator, by the later of December 1, 2021
4 or 15 calendar days after the “Effective Date” and these funds will be used to pay: (1) the class
5 attorney fees and expenses, as approved by the Court; (2) the service awards, as approved by the
6 Court; (3) administrative expenses, as approved by the Court; (4) a \$25,000 PAGA award; and
7 (5) the aggregate of all Individual Settlement Amounts of participating Class Members. (S.A. ¶
8 69). Within 10 days after the Court’s approval of the Settlement, the Settlement Administrator
9 shall issue payments to cover all court-approved payments. (S.A. ¶ 70).

10 Class Members will have 180 days to cash his/her settlement check. If a Class Member
11 fails to cash a check by the deadline, then the Settlement Administrator shall issue the unclaimed
12 funds to the California State Controller in the name of the Class Member. (S.A. ¶ 71).

13 **F. TAX TREATMENT**

14 The Parties agree that one-third of each Individual Settlement Amount shall constitute
15 wages (for which each Participating Class Member will be issued an IRS Form W-2 for such
16 payment), and the remaining two-thirds shall constitute interest and penalties (for which each
17 Participating Class Member will be issued an IRS Form 1099 for the interest and penalty
18 allocation). (S.A. ¶ 47(d)). Additionally, the PAGA Penalties payable to the Aggrieved
19 Employees will be classified entirely as civil penalties and shall be reported as required on an
20 IRS Form 1099. (S.A. ¶ 47(h)).

21 Defendants will separately pay their share of employer payroll taxes on the sum allocated
22 to wages. (S.A. ¶ 47(a)).

23 **G. PARTICIPATING CLASS MEMBERS’ RELEASE OF CLAIMS**

24 In exchange for these payments, the Settlement Agreement ¶ 29 provides that the
25 Participating Class Members will release the Released Parties of the claims alleged or could have
26 been alleged based on the facts stated in the operative complaint, as follows:

27 ///

28 ///

1 all claims stated in the Complaint and those based solely upon the
2 facts in the Complaint, including: (a) failure to pay minimum wages,
3 (b) failure to pay overtime wages, (c) failure to provide meal
4 periods, (d) failure to provide rest breaks, (e) failure to reimburse
5 business expenses, (f) failure to failure to timely pay wages each
6 period and upon separation of employment, (g) failure to provide
7 accurate itemized wage statements, and (i) unfair and unlawful
8 competition, and (j) all other claims for statutory penalties based on
9 the facts or claims alleged in the Complaint (“Released Claims”).

10 The time governing the release (i.e., the “Release Period”) shall be the same as the Class
11 Period. (S.A. ¶ 31).

12 It is understood and agreed that the Settlement Agreement will not release any person,
13 party or entity from claims, if any, by Class Members for workers compensation, unemployment,
14 or disability benefits of any nature, nor does it release any claims, actions, or causes of action
15 which may be possessed by Settlement Class Members under state or federal discrimination
16 statutes including, without limitation, the Cal. Fair Employment and Housing Act, the Cal.
17 Government Code § 12940, et seq.; the Unruh Civil Rights Act, the Cal. Civil Code § 51, et seq.;
18 the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, et seq.;
19 the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101, et seq.; the Employee
20 Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq.; and all of their
21 implementing regulations and interpretive guidelines.

22 **H. AGGRIEVED EMPLOYEES’ RELEASE OF CLAIMS**

23 The Settlement Agreement ¶ 23 also defines the “PAGA Released Claims” as follows:

24 [A]ll PAGA claims seeking civil penalties that is premised upon (a)
25 failure to pay minimum wages, (b) failure to pay overtime wages,
26 (c) failure to provide meal periods, (d) failure to provide rest breaks,
27 (e) failure to reimburse business expenses, (f) failure to failure to
28 timely pay wages each period and upon separation of employment,
(g) failure to provide accurate itemized wage statements, and (h) all
other claims for civil penalties recoverable under the Private
Attorneys General Act, Labor Code § 2698 *et seq.* based on the facts
or claims alleged in the Complaint. The time period governing the
PAGA Released Claims shall be any time during the PAGA Period.
The PAGA Released Claims do not release any Aggrieved
Employee’s claims for wages or statutory penalties.

1 The time governing the PAGA Released Claims is June 25, 2019 through the Preliminary
2 Approval Date (the “PAGA Period”; see S.A. ¶¶ 22 and 23). Moreover, the PAGA Released
3 Claims do not release any Aggrieved Employee’s claims for wages of statutory penalties. (S.A.
4 ¶ 23). Finally, even if an Aggrieved Employee requests exclusion from the Class settlement, that
5 individual will still be subject to the PAGA Released Claims to the fullest extent permitted by
6 law and will receive a pro-rata share of PAGA Penalties. (S.A. ¶ 68(a)).

7 **IV. PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS UNDER**
8 **THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY**
9 **CERTIFICATION IS APPROPRIATE FOR PURPOSES OF SETTLEMENT**

10 California Rule of Court 3.769(d) provides that the Court may make an order approving
11 certification of a provisional settlement class at the preliminary approval stage. It is well-
12 established that trial courts should use a “lesser standard of scrutiny” for determining the
13 propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor*
14 *Co.* (1996) 48 Cal.App.4th 1794, 1807 at n.19. The reasons include that no trial is anticipated in
15 a settlement class, so the case management issues inherent in determining if the class should be
16 certified need not be confronted; and the trial court’s fairness review of the settlement protects
17 the interests of the non-representative class members. *Id.*; see also *Officers for Justice v. Civil*
18 *Service Com.* (9th Cir. 19150) 688 F.2d 615, 633 (“Th[e] relationship between the certification
19 determination and the merits of the case is further attenuated within the context of the settlement
20 evaluation process . . . [C]ertification issues raised by class action litigation that is resolved short
21 of a decision on the merits must be viewed in a different light.”); *Amchem Prods., Inc. v.*
22 *Windsor* (1997) 521 U.S. 591, 620 (“Confronted with a request for settlement-only class
23 certification, a district court need not inquire whether the case, if tried, would present intractable
24 management problems . . . for the proposal is that there be no trial.”). As discussed below, for the
25 purposes of this settlement only, Plaintiff request that this Court provisionally certify the Class,
26 as defined above, under Code of Civil Procedure § 3150.

27 ///

28 ///

1 **A. NUMEROSITY AND ASCERTAINABILITY**

2 Numerosity is met if a proposed class is so large that joinder of all members would be
3 impracticable. *See* Cal. Code Civ. Proc. § 3150. A proposed settlement class is ascertainable if
4 the class members can be objectively identified and given notice of the litigation without
5 unreasonable time or expense. *See Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th
6 89, 101. Here, according to Defendants’ records, there are approximately 250 Class Members.
7 This figure satisfies the numerosity requirement.

8 **B. WELL-DEFINED COMMUNITY OF INTEREST**

9 1. Commonality

10 To justify certification, the class proponent must show that questions of law or fact
11 common to the class predominate over the questions affecting the individual members. *See*
12 *Arenas v. El Torito Rests., Inc.* (2010) 183 Cal.App.4th 723, 732 (citing *Washington Mut. Bank*
13 *v. Superior Court* (2001) 24 Cal.4th 906, 913. Plaintiff contends that the Class was subject to
14 common policies and practices relating to the payment of wages, the provision of meal and rest
15 breaks, among other things. While the Parties dispute whether a class would be appropriate if the
16 litigation were to continue, they agree to class certification for the purposes of this settlement
17 only.

18 2. Typicality

19 Typicality “focuses on whether there exists a relationship between the Plaintiff’s claims
20 and the claims alleged on behalf of the class.” *See* Herbert B. Newberg & Alba Conte, *Newberg*
21 *on Class Actions* (“*Newberg*”) § 3:13 (4th ed. 2002). Again, the Parties dispute whether
22 Plaintiff’s claims are typical of the Class for the purposes of any continued litigation of the
23 Action, but agree for the purposes of this settlement only, that Plaintiff asserts claims regarding
24 Defendants’ meal and rest break practices, wage statements, and the provisions governing the
25 timely and complete payment of wages, which are at the core of the lawsuit.

26 3. Adequacy of Representation

27 The proposed class representative must establish that he or she will adequately represent
28 the proposed class. *See Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540,

1 546. Specifically, Plaintiff is adequate to represent the class because she was employed by
2 Defendants during the Class Period, experienced the same wage and hour practices as the rest of
3 the Class, understood her duties as a Class Representative, has been willing to undergo the risks
4 of litigation, and has no conflict of interest.

5 Adequacy may be established by the fact that counsel are experienced practitioners. *See*
6 *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001)
7 244 F.3d 1152, 1162. Here, Plaintiff is represented by Class Counsel with extensive experience
8 in wage and hour class actions like the instant matter. (Mankin Decl. ¶¶ 2-6).

9 4. Superiority

10 Certification of the Class for settlement purposes is superior here because there will be a
11 global resolution of all claims at once, which fosters judicial economy. Class certification for
12 settlement purposes is also vastly superior to litigation of numerous individual claims because
13 most of the claims are too small to litigate outside of the class context.

14 **V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT,**
15 **WHICH IS FAIR, ADEQUATE, AND REASONABLE**

16 **A. CLASS ACTION SETTLEMENTS ARE SUBJECT TO JUDICIAL REVIEW AND**
17 **APPROVAL UNDER THE CALIFORNIA RULES OF COURT**

18 The law favors settlements. *Bush v. Superior Court* (1992) 10 Cal.App.4th 1374. This is
19 particularly true in class actions where substantial resources can be conserved by avoiding the
20 time, cost, and rigors of formal litigation. However, a class action may not be dismissed,
21 compromised, or settled without the Court's approval. Cal. R. Ct. 3.769(a). The California Rules
22 of Court set forth the procedures for court approval of a class action settlement: (1) the Court
23 preliminarily approves the settlement; (2) class members receive notice as directed by the Court;
24 and (3) the Court conducts a final approval hearing to inquire into the fairness of the proposed
25 settlement. *See* Cal. R. Ct. 3.769(c), (e-g).

26 The decision to approve or reject a proposed settlement lies within the Court's sound
27 discretion. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35.
28 Nevertheless, in considering a potential settlement for approval, a court is not to turn the

1 approval hearing “into a trial or rehearsal for trial on the merits . . . [or] to reach any ultimate
2 conclusions on the contested issues of fact and law which underlie the merits of the dispute.”
3 *Officers for Justice*, 688 F.2d at 625.

4 The Court’s ultimate duty is to determine whether the settlement is fair, adequate, and
5 reasonable. *See Dunk*, 48 Cal.App.4th at 1801 (setting forth the “fair, adequate, and reasonable”
6 standard) (citing *Officers for Justice*, *supra*); *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177
7 Cal.App.4th 734, 742-43 (a trial court must approve a class action settlement agreement, but only
8 after determining that it is ““fair, adequate and reasonable,”” considering factors such as the
9 ““risk, expense, [and] complexity”” of continued litigation) (citations omitted). The Court enjoys
10 broad discretion in making its fairness determination, and should consider factors including, but
11 not limited to:

12 [T]he strength of Plaintiff’s case, the risk, expense, complexity and likely duration
13 of further litigation, the risk of maintaining class action status through trial, the
14 amount offered in settlement, the extent of discovery completed and the stage of
15 the proceedings, the experience and views of counsel . . . and the reaction of the
16 class members to the proposed settlement.

17 *Dunk*, *supra* (detailing non-exhaustive list of factors for court’s consideration at final approval).

18 The above factors are not exclusive “and the court is free to engage in a balancing and
19 weighing of factors depending on the circumstances of each case.” *Wershba*, 91 Cal.App.4th at
20 245. However, in doing so, the Court must give “[due] regard to what is otherwise a private
21 consensual agreement between the parties.” *Id.* The inquiry must be limited “to the extent
22 necessary to reach a reasoned judgment that the agreement is not the product of fraud or
23 overreaching by, or collusion between, the negotiating parties.” *Id.* (citation and internal
24 quotation marks omitted).

25 At the preliminary approval stage, the Court need only determine that the settlement falls
26 within the “range of possible judicial approval,” so that notice to the class and the scheduling of
27 the fairness hearing are worthwhile. *See Newberg* § 11:25. Indeed, the Court should grant
28 preliminary approval if there are no “grounds to doubt its fairness or other obvious deficiencies .
.. and [the settlement] appears to fall within the range of possible approval.” *Manual For*

1 *Complex Litigation* (Third) § 30.41 (1995); *see Dunk*, 48 Cal.App.4th at 1802. A “presumption
2 of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2)
3 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)
4 counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Dunk*,
5 *supra* (citing *Newberg* § 11:41). As shown below, the settlement falls well within the range of
6 approval because there are no grounds to doubt its fairness.

7 **B. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE**
8 **NEGOTIATIONS**

9 The settlement was the product of extensive arm’s length negotiations between counsel
10 and was facilitated by an experienced wage-and-hour class action mediator. Though cordial and
11 professional, the settlement negotiations were adversarial and non-collusive in nature. The
12 settlement reached is the product of substantial effort by the parties and their counsel. Although
13 Plaintiff and her counsel believed that there was a possibility of certifying the claims, they
14 recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable
15 decisions on class certification, summary judgment, at trial and/or on the damages awarded,
16 and/or on an appeal that can take several more years to litigate. In addition, if Defendants
17 prevailed on any of its defenses, the employees may not have received any monetary recovery.

18 **C. THE EXTENT OF THE INVESTIGATION WAS MORE THAN SUFFICIENT TO PERMIT**
19 **PRELIMINARY APPROVAL OF THE SETTLEMENT**

20 Plaintiff thoroughly investigated and evaluated the factual and legal strengths and
21 weaknesses of this case before reaching the settlement. As described above, the settlement was
22 reached after extensive investigation and research, thorough calculations and risk evaluation, and
23 a substantial exchange of information relating to the Class Members prior to mediation. (Mankin
24 Decl. ¶¶ 11-15, 25-28).

25 **D. THE SETTLEMENT IS A REASONABLE COMPROMISE OF CLAIMS**

26 To evaluate a settlement, the parties must provide the trial court with “basic information
27 about the nature and magnitude of the claims in question and the basis for concluding that the
28 consideration being paid for the release of those claims represents a reasonable compromise.”

1 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. The *Kullar* requirement was
2 further explained in *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186
3 Cal.App.4th 399, which held that an explicit statement of the maximum theoretical amount that
4 the class could recover was not necessary:

5 Greenwell misunderstands *Kullar*, apparently interpreting it to
6 require the record in all cases to contain evidence in the form of an
7 explicit statement of the maximum amount the plaintiff class could
8 recover if it prevailed on all its claims – a number which appears
9 nowhere in the record of the case. But *Kullar* does not, as Greenwell
10 claims, require any such explicit statement of value; it requires a
11 record which allows “an understanding of the amount that is in
12 controversy and the realistic range of outcomes of the litigation.

13 A settlement is not judged against what might have been recovered had a plaintiff
14 prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair
15 and reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 246, 250
16 (“Compromise is inherent and necessary in the settlement process ... even if the relief afforded
17 by the proposed settlement is substantially narrower than it would be if the suits were to be
18 successfully litigated, this is no bar to a class settlement because the public interest may indeed
19 be served by a voluntary settlement in which each side gives ground in the interest of avoiding
20 litigation.”)

21 Of particular relevance to the reasonableness of the proposed Settlement is the fact that
22 significant legal and factual grounds for defending this action exist. First, in addition to
23 disputing the merits of Plaintiff’s claims, Defendants strongly disputed that Plaintiff could obtain
24 class certification, arguing a lack of commonality of the legal claims and injuries. Defendants
25 further argued that it complied with the applicable law and that any purported deviations
26 therefrom were individualized in nature, thereby limiting Plaintiff’s ability to certify the class.
27 While Plaintiff asserts that this is a suitable case for certification, she realizes that there is always
28 a significant risk associated with class certification proceedings, which could significantly limit
29 the claims that she could pursue on a class basis.

///

1 In light of the uncertainties of protracted litigation, this negotiated settlement reflects the
2 best practicable recovery for the Class. While the total settlement amount is, of course, a
3 compromise figure, the potential risks and opportunities of both parties were effectively weighed
4 and considered by the parties, resulting in a fair and equitable settlement.

5 Based upon detailed data obtained through informal discovery and information
6 exchanges, Plaintiff's counsel estimated the following data points through the date of mediation:
7 (1) approximately 250 total Class Members, (2) approximately 9,100 workweeks during the
8 Class Period, (3) approximately 45 Aggrieved Employees, and (4) approximately 3,120
9 workweeks during the PAGA Period. From these metrics, and when factoring in claim
10 certification probabilities and liability probabilities, Class Counsel formulated detailed damages
11 models to value the claims in preparation for mediation and to reach a realistic and reasonable
12 resolution.

13 Plaintiff contends that her strongest claim was for unpaid overtime, based on the
14 allegation that Defendants failed record and compensate the Class Members for significant
15 amounts of time where the employees performed work off-the-clock such as completing patients'
16 charts after they arrived home in the evenings resulting in a class-wide underpayment of
17 overtime. Based on the sampling data provided by Defendants, Plaintiff's experience, and
18 Plaintiff's knowledge of Defendant's practices, Plaintiff estimated that Class Members were
19 subject to this violation for and aggressive three hours per day during 50% of the 45,340 shifts at
20 an average overtime pay rate of \$37.50 per hour giving the claim a \$2,550,375 damage value if
21 Plaintiff overcame all of Defendants' defenses. Plaintiff also alleged that the underpayment
22 resulted in the failure to pay all wages owed upon separation of employment, leading to
23 violations of Labor Code §§ 201 – 202 which trigger waiting time penalties under Labor Code §
24 203. Based on data showing there were 170 *former* Class Members impacted, Plaintiff
25 calculated the maximum potential waiting time penalties at \$1,402,500. Thus, this overtime
26 claim had a combined value (including waiting time penalties) of \$3,952,875. However,
27 Defendants raised a variety of strong defenses including that (1) Defendants provided charting
28 time to the Class Members which was recorded in the timekeeping records which would

1 eliminate the necessity to work off-the-clock, (2) even if there were work performed off-the-
2 clock, it was nowhere near three hours per day, and (3) off-the-clock work is a highly
3 individualized issue that would easily be defeated at the class certification stage. While Plaintiff
4 believed that this claim was strong and had a likelihood of success at class certification Plaintiff
5 assigned 30% risk at certification and a 40% risk on the merits, leading to a risk-adjusted value
6 of \$1,185,862.50 for the overtime claim.

7 Plaintiff's claim regarding minimum wages arose out of Defendants' alleged practice of
8 requiring Class Members to record meal periods even if they were unable to take them, thus
9 resulting in 30 minutes of unpaid work time on occasions when this occurred. Plaintiff estimates
10 that this issue occurred in 50% of the 45,340 shifts at an average rate of pay of \$25 resulting in
11 \$283,375.00 in class damages for this claim. However, Defendants vehemently denied that this
12 was a company policy or practice and that records show that the Class Members were able to
13 take their breaks. Further, because of the individualized inquiries required to prove this claim,
14 Defendant argued that it would not be certified. Recognizing the inherent risks in proving such a
15 claim, Plaintiff assigned a 75% risk adjustment her minimum wage claims giving it a value of
16 \$70,843.75.

17 Next, Plaintiff's claims for meal and rest break violations focused on the theory that
18 employees did not receive adequate breaks, and thus were owed a wage premium for each
19 violation. Based on an analysis of the sampling of payroll and timekeeping records, Plaintiffs
20 alleged there were a total of 22,670 meal period violations and 17,905 rest break violations.
21 Thus, the maximum potential damages for the meal and rest break claims totaled \$1,014,375.
22 However, this violation rate failed to account for various risks and defenses, such as the
23 argument that, for every allegedly noncompliant break, a fact-finder would have to determine for
24 each Class Member whether a break was missed and why, and why a break was
25 noncompliant/nonexistent, because if it was by the employee's choice, no liability attaches to the
26 Defendants. Based on the facts and corresponding defenses, Plaintiffs assigned a 20% risk at
27 class certification and a 20% risk on the merits. In sum, this placed a total risk-adjusted value of
28 \$608,625 on the meal and rest break claims.

1 Additionally, Plaintiff claimed that Defendants failed to reimburse business expenses due
2 because Class Members had to complete work at home on their home computers and used their
3 cell phones for business purposes. Plaintiff assigned an estimated value of \$50 per month for
4 2,267 months worked by Class Members for a total of \$113,350 in class damages. However,
5 Plaintiff recognized that company computers were provided in late September 2019 and
6 Defendants argued that there was no requirement that Class Members perform patient charting
7 on a computer. As a result, Plaintiff assigned a 75% adjustment to this claim for a total risk-
8 adjusted value of \$28,337.50.

9 Finally, Plaintiff alleged that Defendants failed to provide accurate wage statements due
10 to the failure to state total hours worked during the pay periods, as well as the derivative
11 violations discussed above. In total, Plaintiff estimates there were 1,386 wage statements at
12 issue, and, with a 100% violation rate, the claim had a maximum value of \$136,350.00 under the
13 \$50/\$100 standard of § 226(e). However, Defendants raised many defenses, including that: (a)
14 these violations, if any, did not result in any “injury” under § 226(e), (b) the violations, if any,
15 were not “knowing and intentional” and could not support the assessment of penalties, and (c)
16 “derivative” wage statement claims are without merit. These defenses all went to the merits, not
17 to defeating class certification. Thus, Plaintiff did not assign a risk at the class certification stage
18 and only applied a 20% risk on the merits. Thus, this resulted in a risk-adjusted value for the
19 wage statement claims of \$109,080.

20 In sum, when factoring in the defenses and risks of ongoing litigation, Plaintiff’s estimate
21 the risk-adjusted class recovery as follows:

22	• Overtime and Waiting Time Penalty Claims	\$1,185,862.50
23	• Minimum Wage Claims	\$ 70,843.75
24	• Meal and Rest Break Claims	\$ 608,625.00
25	• Business Expense Reimbursement Claims	\$ 28,337.50
26	• Wage Statement Penalty Claims:	<u>\$ 109,080.00</u>
27	Plaintiff’s Estimate of Total Risk-Adjusted Damages	\$2,002,748.75

28 ///

1 While the PAGA civil penalty would have a maximum value in the high six figures, this
2 figure fails to acknowledge that courts have wide latitude to reduce the amount of civil penalties
3 “based on the facts and circumstances of a particular case” and if “to do otherwise would result
4 in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(h).
5 Moreover, Defendants argued against the merits of the underlying claims and particularly that
6 the “willfulness” standard and/or “good faith” defenses mitigated the civil penalty claims and
7 rendered any such penalties as uncertain. Defendants also argued that it is improper to stack
8 civil penalty claims on top of the underlying claim. For these reasons, the Parties submit that the
9 agreed-upon settlement is fair and reasonable.

10 Defendants vigorously contested Plaintiff’s claims and denied each material allegation on
11 the merits and as to the propriety of a class action and PAGA representative action. As to each
12 of Plaintiff’s allegations, Defendants argued that its policies and procedures were compliant with
13 California law.

14 **E. PLAINTIFF’S COUNSEL IS EXPERIENCED IN SIMILAR WAGE-AND-HOUR**
15 **LITIGATION**

16 The view of the attorneys actively conducting the litigation is entitled to significant
17 weight in deciding whether to approve the settlement. *Ellis v. Naval Air Rework Facility* (N.D.
18 Cal. 1980) 87 F.R.D. 15, 18, *aff’d* (9th Cir. 1981) 661 F.2d 939; *Kullar v. Foot Locker Retail,*
19 *Inc.* (2008) 168 Cal.App.4th 116, 128 (court must take into account “the experience and view of
20 counsel”) (internal quotation and citation omitted).

21 Plaintiff’s Counsel is also highly experienced in Class/PAGA litigation, having been
22 named “Super Lawyer” in employment litigation (a distinction awarded to only 5% of litigators),
23 having achieved large settlements and verdicts, including one of the largest PAGA awards in
24 California’s history, collecting over \$200 million for its clients, having tried class and PAGA
25 cases against Fortune 100 companies, among other things. (Mankin Decl. ¶¶ 2-6). Plaintiff’s
26 counsel, operating at arm’s length, weighed the strengths and risks of this case, and are of the
27 view that this is a fair and reasonable settlement in light of the nature of the claims, realistic risk
28 adjusted value of damages, complexities of the case, the state of the law, and uncertainties of

1 class certification and litigation. (*Id.* ¶¶ 11, 25-30).

2 **F. THE CLASS NOTICE CONFORMS TO ALL APPLICABLE STATUTES AND RULES**

3 The proposed Class Notice should be approved, as it fully informs the Class Members of
4 the nature of the lawsuit and each Class Member's rights under terms of the Settlement
5 Agreement and applicable law. The manner in which the Class Notice shall be disseminated, as
6 outlined above, shall ensure that all or nearly all of the Class Members shall be properly notified
7 of the proposed settlement.

8 The proposed Class Notice and proposed plan for the Settlement Administrator to mail
9 the Class Notice to the last known address of all class members complies with all the
10 requirements of California Rule of Court 3.79(f) and 3.766(b). The contents of the proposed
11 Class Notice includes (1) the material terms of the settlement; (2) the proposed attorneys' fees,
12 litigation expenses, and the costs of administration; (3) details about the final fairness hearing
13 and how class members may elect to exclude themselves or make an objection; and (4) how class
14 members can obtain additional information. *See* Class Notice (Exhibit B to Mankin Decl.). In
15 addition, it will inform Class Members of their estimated settlement share.

16 The Court has wide discretion in approving the means of providing notice, so long as the
17 class representative "provide(s) meaningful notice in a form that should have a reasonable
18 chance of reaching a substantial percentage of class members." *Archibald v. Cinerama Hotels*,
19 (1976) 15 Cal.3d 853, 861. Here, the parties' notice plan is that notice of the Settlement will be
20 disseminated directly to the class members by first class mail by the settlement administrator,
21 since Defendants has the last known addresses of all class members and the Settlement
22 Administrator will perform a skip trace and update those addresses for any class notices that are
23 returned and re-send the notice.

24 The Class Notice satisfies the requirements of Rule of Court 3.766 and afford Settlement
25 Class Members with all due process protections required by the United States Constitution.
26 Moreover, the contents of the Class Notice are in compliance with Cal. R. Ct. 3.766(d), because
27 the Notice includes, without limitation (1) a detailed explanation of the case, including the basic
28 contentions or denials of the parties; (2) a statement that the court will exclude the member from

1 the class if the member so requests by a specified date; (3) a procedure for the member to follow
2 in requesting exclusion from the class; (4) a statement that the judgment, whether favorable or
3 not, will bind all members who do not request exclusion; and (5) a statement that any member
4 who does not request exclusion may, if the member so desires, enter an appearance through
5 counsel. The 30-day deadline for Class Members to exclude themselves is reasonable, as it
6 provides Class Members with sufficient time to do so and, if they so choose, to seek independent
7 legal advice in the interim. If a Member does not opt-out, then he or she will automatically be
8 sent a settlement check.

9 **G. THE NON-REVERSIONARY “CHECKS CASHED” DISTRIBUTION ENSURES**
10 **MAXIMAL RECOVERY FOR CLASS MEMBERS**

11 The fact that each member who does not opt out of the Settlement shall be mailed a check
12 ensures that every Class Member will be paid unless he or she affirmatively acts to exclude
13 himself or herself. Moreover, the Settlement Amount is non-reversionary, which means that no
14 settlement funds will revert to Defendants; instead, if any checks are not cashed before the
15 objection deadline, the funds will be transferred to the state’s unclaimed property department
16 subject to approval of the Court. Such terms are favored by Courts and demonstrate that there
17 was no collusion between counsel for the parties and that the Settlement is fair and favorable to
18 the Class Members.

19 **H. THE ATTORNEY’S FEES ALLOCATION UNDER THE SETTLEMENT AGREEMENT IS**
20 **FAIR**

21 Under the terms of the Settlement Agreement, Class Counsel is requesting \$250,000 in
22 attorneys’ fees and costs, which is equal to one-third of the Settlement Amount. *See, e.g.*
23 *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th. 480 (approving 1/3 fee in the amount of \$6.33
24 million at a 2.13 lodestar multiplier, when class action litigation establishes a monetary fund for
25 the benefit of the class members, the trial court may determine the amount of a reasonable fee
26 by choosing an appropriate percentage of the fund created); *see also Stuart v. RadioShack*
27 *Corp.* (N.D. Cal. Aug. 9, 2010) No. C-07-4499 EMC, 2010 WL 3155645 (approving fee award
28 of 1/3 of the total maximum settlement amount of \$4.5 million) (the court noted that the fee

1 award of 1/3 of the total settlement was “well within the range of percentages which courts
2 have upheld as reasonable in other class action lawsuits”); *Singer v. Becton Dickinson and Co.*
3 (S.D. Cal. June 1, 2010) No. 08-cv-1501-IEG (BLM), 2010 WL 2196104, at *8 (approving fee
4 award of 33.33% of the common fund); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal.
5 Nov. 14, 2007) No. 1:05cv0484 DLB, 2007 WL 3492841, at *4 (awarding fees of 1/3 of
6 common fund in a wage and hour class action, noting: “[f]ee awards in class actions average
7 around one-third of the recovery.”); *Martin v. FedEx Ground Package System, Inc.* (N.D. Cal.
8 Dec. 31, 2008) No. C 06-6883 VRW, 2008 WL 5478576, at *8 (approving fees of 1/3 of
9 common fund).

10 Once the Court grants preliminary approval of the Settlement Agreement and Class
11 Notice is disseminated, Plaintiff’s counsel will submit a comprehensive request for attorneys’
12 fees and costs with its final approval motion.

13 **I. THE CLASS REPRESENTATIVES’ SERVICE AWARD REQUEST IS FAIR AND**
14 **APPROPRIATE**

15 The Settlement Agreement provides an incentive award payment of \$5,000 to the Class
16 Representative, which is reasonable given large recovery that Class Members will receive on
17 average, as well as the time and effort she devoted to this case. Her efforts included providing
18 factual background for the Class and PAGA complaint; providing documents and information
19 about Defendants’ compensation plan; participating in phone calls to discuss litigation and
20 settlement strategy; making themselves available throughout the litigation to assist with
21 analyzing the claims and defenses; helping Class Counsel prepare for the mediation; and
22 reviewing the settlement documents. The Class Representative also assumed significant risk in
23 bringing this litigation—namely, had she lost, she could have been ordered to pay Defendants’
24 costs.

25 The requested service award falls within the range of incentive payments typically
26 awarded to Class Representatives in similar class actions. *See e.g. Bond v. Ferguson Enterprises,*
27 *Inc.* (E.D. Cal. June 30, 2011) No. 1:09–cv–1662 OWW MJS, 2011 WL 2648879 (approving
28 \$11,250 service award to each of the two class representatives in a trucker meal break class

1 action; *Ross v. US Bank National Association* (N.D. Cal. Sept. 29, 2010) No. C 07-02951 SI,
2 2010 WL 3833922, at *2 (approving \$20,000 enhancement award to Class Representative in
3 California wage-and-hour class action settlement); *Vasquez v. Coast Valley Roofing, Inc.* (E.D.
4 Cal. 2010) 266 F.R.D. 4150, 493 (approving service awards in the amount of \$15,000 each from
5 a \$300,000 settlement fund in a wage/hour class action); *West v. Circle K Stores, Inc.* (E.D. Cal.
6 Oct. 19, 2006) NO. CIV. S-04-0438 WBS GGH, 2006 U.S. Dist. LEXIS 76558, at *28 (“the
7 court finds Plaintiff’s enhancement payments of \$ 15,000 each to be reasonable.”); *Glass v. UBS*
8 *Fin. Servs.* (N.D. Cal. Jan. 26, 2007) No. C-06-4068 MMC, 2007 U.S. Dist. LEXIS 8476, at *52
9 (finding “requested payment of \$ 25,000 to each of the named Plaintiff is appropriate” in wage
10 and hour settlement); *Louie v. Kaiser Found. Health Plan, Inc.* (S.D. Cal. Oct. 6, 2008) Case No.
11 08cv0795 IEG RBB, 2008 U.S. Dist. LEXIS 78314, at *18 (approving “\$25,000 incentive award
12 for each Class Representative” in wage an hour settlement).

13 **VI. THE COURT SHOULD APPOINT SIMPLURIS AS SETTLEMENT**
14 **ADMINISTRATOR**

15 Subject to the Court’s approval, the parties stipulated to Simpluris serving as the
16 Settlement Administrator. Simpluris is experienced in administering class action settlements and
17 has provided a flat-fee proposal to administer this settlement for \$5,300. (Mankin Decl. ¶ 35).

18 **VII. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING**

19 The last step in the approval process is the formal hearing, whereby proponents of the
20 settlement may explain and describe its terms and conditions and offer argument in support of
21 approval, and Class Members or their counsel may be heard in support of or in opposition to the
22 settlement. Subject to the Court’s approval, the Settlement Agreement stipulates that the Court
23 schedule a hearing for final approval of the settlement approximately 120 days after the
24 Preliminary Approval Hearing Date, in accordance with the following schedule:

25 ///

26 ///

27 ///

28 ///

July 12, 2021	Preliminary Approval (PA) hearing
August 12, 2021 (15 business days plus 10 days after PA)	Deadline for Settlement Administrator to complete first mailing of the Notice Packet to all Settlement Class Members.
September 13, 2021 (30 days after mailing Class Notice)	Deadline for Settlement Class Members to submit Requests for Exclusion and Objections to the settlement.
16 court days before Final Approval hearing	Deadline for Plaintiff to file and serve Motion for Final Approval of Settlement and application for award of attorneys' fees, costs and service payments.
9 court days before Final Approval hearing	Deadline for filing of any written opposition to Plaintiff's Motion for Final Approval of Settlement, or filing any response to an objection to the settlement.
5 court days before final approval hearing	Deadline for filing of any written reply to opposition Motion for Final Approval of Settlement.
TBD (Approximately November 9, 2021 - 120 days after Preliminary Approval is granted)	Final Approval Hearing.

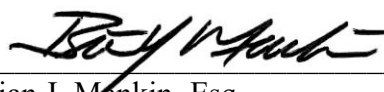
VIII. CONCLUSION

For all of the foregoing reasons, Plaintiff respectfully requests that the Court grant the motion for preliminary approval of the settlement.

Dated: May 3, 2021

LAUBY, MANKIN & LAUBY LLP

BY:


 Brian J. Mankin, Esq.
 Attorneys for Plaintiff and the Proposed Class

PROOF OF SERVICE
(Pursuant to CCP §§ 1013(a)(1) and 2015.5)

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

I am employed in the County of Riverside, State of California. I am over the age of 18 and not a party to the within action; my business address is 4590 Allstate Drive, Riverside, California 92501.

On May 4, 2021, I caused to be served the foregoing document(s) described as follows:

PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; DECLARATION IN SUPPORT THEREOF; [PROPOSED] ORDER

I declare that I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **By Mail** I deposited such envelope in the mail at Riverside, California. The envelope was mailed with postage thereon fully prepaid.

☐ **By Facsimile** I sent this document via fax to all parties as listed on attached service list, on

☐ **By Overnight Service** I deposited such envelope in a facility regularly maintained by the United Parcel Service for receipt of items for overnight delivery, with overnight delivery expenses prepaid, addressed to the person to be served.

☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was not successful.

☐ **By Certified Mail-Return Receipt Requested** I caused such envelope with postage fully prepaid thereon, to be placed in the United States mail at Riverside, California

☐ **By Personal Service** I caused said document(s) to be personally served by hand on the parties listed on the attached service list.

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 4, 2021, Riverside, California.

☐ **Federal** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



Tracie Chiarito, Declarant

SERVICE LIST

Varouj N. Arabian, Esq.
Gene F. Williams, Esq.
GORDON REES SCULLY MANSUKHANI
633 W. Fifth Street, 52nd Floor
Los Angeles, CA 90071
213-576-5073-Varouj direct dial
213-270-7831-Gene direct dial
213-680-4470-fax
varabian@grcm.com
gwilliams@grsm.com
Attorneys for Defendants, CHARTER HOSPICE, INC., CHARTER HOSPICE OF COLTON,
LLC, ARCH B. GILBERT, and FRED FRANK