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SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

TANIYA ABRON, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

UNIVERSITY HEALTHCARE ALLIANCE,
a California Corporation; and DOES 1-10,
inclusive,

Defendants.

Case No. RG20066438

Assigned for all purposes to
Hon. Evelio Grillo
Dept. 21

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS AND PAGA ACTION
SETTLEMENT**

Date: June 23, 2023
Time: 9:00 a.m.
Dept: 21

Action Filed: June 30, 2020
SAC Filed: September 28, 2022
Trial Date: None Set

RES ID: 269846710090

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1 **I. INTRODUCTION**

2 Plaintiff Taniya Abron (“Plaintiff”) seeks preliminary approval of a proposed class and
3 Private Attorneys General Act (“PAGA”) settlement entered into by and between Plaintiff and
4 Defendant University HealthCare Alliance (“Defendant” or “UHA”) (together, the “Parties”)
5 after lengthy litigation, mediation, and thorough investigation of the claims alleged.

6 Prior to the settlement of this action, the Parties thoroughly investigated the facts
7 relating to the Plaintiff’s allegations and claims on behalf of herself and the putative class, and
8 engaged in a thorough analysis of the legal principles applicable to the claims asserted. The
9 Parties engaged in extensive document and information exchange, including data points with
10 regard to the number of putative class members, shifts worked, wages paid, and wage
11 statements issued to the Class. Thereafter, the Parties commenced settlement negotiations
12 through a private mediator and were ultimately able to reach the current settlement by way of a
13 mediator’s proposal, after continued negotiations when the matter did not initially settle at
14 mediation. This entire settlement amount is non-reversionary, such that no monies will revert
15 to Defendant. Plaintiff believes that the settlement amount is fair, adequate, and reasonable,
16 especially given the risks and uncertainty of class certification and the merits of this case.

17 Defendant denies all allegations and has vehemently contested Plaintiff’s claims.
18 Although Plaintiff and her counsel disagree with Defendant’s position and believe that she
19 would prevail on class certification and merits, they recognize the expenses and inherent risks
20 in drawn-out litigation, as well as the specific risks that a class might not be certified and/or
21 that Plaintiff could fail to establish liability. Based on their own independent investigation and
22 evaluation, Plaintiff and her Counsel are of the opinion that the settlement for the consideration
23 and on the terms set forth in the Class Action and PAGA Settlement Agreement (the
24 “Settlement Agreement”) is fair, reasonable, and adequate and is in the best interests of the
25 Class in light of all known circumstances and the expenses and risks inherent in litigation.

26 Therefore, Plaintiff respectfully requests that the Court grant this Motion for
27 Preliminary Approval of Class Action Settlement.

II. PROCEDURAL HISTORY

On June 30, 2020, Plaintiff commenced this Action by filing a Complaint alleging causes of action against UHA for: (1) failure to pay wages for all hours worked; (2) failure to timely pay wages due at termination; (3) failure to provide accurate itemized wage statements; and (4) violation of California's unfair competition law. (Declaration of James R. Hawkins ("Hawkins Decl."), ¶ 3).

On September 9, 2020, Plaintiff filed a First Amended Complaint, alleging causes of action for: (1) failure to pay wages for all hours worked; (2) failure to timely pay wages due at termination; (3) failure to provide accurate itemized wage statements; (4) violation of California's unfair competition law; and (5) enforcement of California Labor Code § 2698, *et seq.* ("PAGA"). Hawkins Decl. ¶ 4.

As set forth more fully in the Declaration of James R. Hawkins, filed herewith, the Parties thoroughly investigated and evaluated the case and engaged in significant investigation, research and information exchange prior to the mediation. Plaintiff's counsel also retained an expert to assist with the analysis and evaluation. Hawkins Decl. ¶¶ 8-11.

On March 11, 2022, the Parties participated in a full day of mediation with Tripper Ortman, an experienced complex class action mediator. The Parties failed to reach an agreement. Thereafter, and after continuing arm's length negotiations with the mediator, the mediator issued a mediator's proposal, which was ultimately accepted by the Parties and which provided the framework for this Settlement. *Id.* ¶ 5.

On September 20, 2022, pursuant to the settlement agreement, the Parties stipulated to the filing of a Second Amended Complaint ("SAC"). This Court granted leave to file a SAC on September 26, 2022. On September 28, 2022, Plaintiff filed a SAC, which alleges causes of action against UHA for: (1) failure to pay wages for all hours worked; (2) failure to provide lawful meal periods; (3) failure to authorize and permit lawful rest periods; (4) failure to timely pay wages due at termination; (5) failure to provide accurate itemized wage statements; (6) violation of California's unfair competition law; and (7) enforcement of California Labor Code § 2698, *et seq.* ("PAGA"). *Id.* ¶ 6.

III. LEGAL ANALYSIS

Any settlement of a class action lawsuit must be reviewed and approved by the Court. This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after notice has been distributed to the class members for their comment or objections. The *Manual for Complex Litigation, Third* § 30.41 states:

Approval of class action settlements involves a two-step process. First, counsel submits the proposed terms of settlement and the court makes a preliminary fairness evaluation. If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of class representatives or of segments of the class, or excessive compensation for attorneys, and appears to fall within the range of possible approval, the court should direct that notice...be given to the class members of a formal fairness hearing, at which arguments and evidence may be presented in support of and in opposition to the settlement.

Thus, the preliminary approval by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. As Professor Newberg comments, “[t]he strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court may find that the settlement proposal contains some merit, is within the range of reasonableness required for a settlement offer, or is presumptively valid subject only to any objections that may be raised at a final hearing.” Alba Conte & Herbert B. Newberg, 4 *Newberg on Class Actions* § 11.26 (4th ed. 2002).

The parties also may, at the preliminary approval stage, request that the court provisionally certify the class—conditional upon final approval of the settlement. “[P]re-certification settlements are routinely approved if found to be fair and reasonable.” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 240 (2001); *accord Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1803 (1996) (although the settlement was reached before any “adversary certification,” the court was satisfied that it was “fair, adequate and reasonable”); *In re Baldwin-United Corp.*, 105 F.R.D. 475, 478 (S.D.N.Y. 1984) (“many courts have employed this practice in the name of judicial efficiency in order to facilitate apparently beneficial settlement proposals”). As further explained by Professor Newberg:

1 The strength of the findings made by a judge at a preliminary hearing or
2 conference concerning a tentative settlement proposal...may be set out in
3 conditional orders granting tentative approval to the various items submitted to
4 the court. Three basic rulings are often conditionally entered at this preliminary
5 hearing. These conditional rulings may approve a temporary settlement class, the
6 proposed settlement, and the class counsel's application for fees and expenses.

7 *4 Newberg on Class Actions* § 11.26.

8 **A. Proposed Class**

9 The claims are being settled on behalf of a Class defined as “all persons who, for the
10 four years prior to the filing of this class action to the present, are, or have been, employed by
11 Defendant in the State of California as non-exempt employees.” See Settlement Agreement §
12 1.5. The Class Period is June 30, 2016, through March 11, 2022. *Id.* §1.12.

13 **B. Settlement Terms and Evaluation**

14 Courts presume the absence of fraud or collusion in the negotiation of settlement unless
15 evidence to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989);
16 *Mars Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir.
17 1987); *In re Chicken Antitrust Litig.*, 560 F. Supp. 957, 962 (N.D. Ga. 1980). Courts do not
18 substitute their judgment for that of the proponents, particularly where, as here, settlement has
19 been reached with the participation of experienced counsel familiar with the litigation. *Nat'l*
20 *Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004); *Hammon v.*
21 *Barry*, 752 F. Supp. 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y.
22 1979); *In re Armored Car Antitrust Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979); *Sommers v.*
23 *Abraham Lincoln Federal Sav. & Loan Ass'n*, 79 F.R.D. 571 (E.D. Pa. 1978).

24 While the recommendations of counsel proposing the settlement are not conclusive, the
25 Court can properly take them into account, particularly where, as here, they have been
26 involved in formal and informal discovery and negotiations for some period of time, appear to
27 be competent, have experience with this type of litigation, and have exchanged substantial
28 evidence from the opposing party. See *Newberg on Class Actions*, *supra*, § 11.47; *Nat'l Rural*
Telecomms. Coop., 221 F.R.D. at 528 (“[s]o long as the integrity of the arm's length

1 negotiation process is preserved, however, a strong initial presumption of fairness attaches to
2 the proposed settlement...[citations] and ‘great weight’ is accorded to the recommendations of
3 counsel, who are most closely acquainted with the facts of the underlying litigation”).

4 Here, both Plaintiff’s and Defendant’s counsel have a great deal of experience in wage
5 and hour class action litigation. Plaintiff’s counsel has been approved as class counsel in many
6 wage and hour class actions and have extensive litigation experience. Hawkins Decl. ¶¶ 65-68;
7 Lucio Decl. ¶¶ 9-16.

8 In preparing for mediation, each side apprised the other of their respective factual
9 contentions, legal theories and defenses, and the evidentiary basis supporting such positions.
10 Each side also conducted its own investigation, research, and evaluation of the facts,
11 circumstances, and applicable law. In addition, the parties exchanged mediation briefs. Based
12 upon these fully-informed positions, the Parties engaged in arm’s length negotiations with the
13 assistance of respected wage and hour mediator Tripper Ortman. Hawkins Decl. ¶¶ 3-11; 22-
14 50.

15 At the time of mediation, Defendant identified approximately 1,408 putative class
16 members who collectively worked a total of 237,478 workweeks¹. Based on this data, Plaintiff
17 estimated Defendant’s potential liability as follows:

- 18 • Failure to pay wages: approximately \$1 million exclusive of penalties (premised
19 on \$30.73 average hourly rate of pay during Class Period and 32,103 hours
20 underpaid due to rounding² (32,103 x \$30.73 = \$986,546.70);
- 21 • Failure to provide meal periods: approximately \$1.45 million (premised on
22 69,945 missed meal periods x \$30.73 average rate of pay during Class Period
23 less meal period premiums paid (\$695,824));
- 24 • Failure to authorize and permit rest periods: approximately \$6 million (premised
25 on 197,333 rest period violations (20% of shifts over 6 hours));

26
27 ¹ UHA represents that there are 1,708 Class Members and 284,986 total workweeks during the
28 Class Period. (Settlement Agreement, § 9.)

² UHA changed timekeeping software as of January 1, 2021. The new software does not round
time.

- Failure to pay all final wages: approximately \$12 million (premised on an average rate of pay of \$30.73 and 1,640 former employees as of March 2022 (($\$30.73 \times 8 \times 30$) $\times$ 1,640)); and
- Failure to provide accurate wage statements: approximately \$4.3 million (premised on approximately 44,310 pay periods and \$50 for an initial violation and \$100 for a subsequent violation as set forth in Labor Code Section 226(e)).

Hawkins Decl. ¶¶ 22-40.

With respect to potential liability of Plaintiff's PAGA claims, Plaintiff estimated that Defendant could face civil penalties under the PAGA for the violations described above in excess of \$60 million if Plaintiff proved each violation and was able to "stack" penalties.³ Hawkins Decl. ¶¶ 41-50. Considering the risks and discretion of the Court to reduce PAGA penalties, a reasonable expectation of PAGA penalties if this case were taken to trial is approximately \$4,431,000, or \$100 per pay period. Hawkins Decl. ¶ 50.

Even assuming Plaintiff prevailed on her PAGA claims, the Court has discretion to reduce PAGA penalties substantially. Pursuant to Labor Code § 2699(e)(2), the Court can decline to award PAGA penalties where "if, based on the facts and circumstances of the particular case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Indeed, as shown in the Court of Appeal's decision in *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504 (2018), while the plaintiff prevailed on his PAGA claim at trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with the law. *Id.* at p. 517. Upon review, the Court of Appeal found such reduction to be proper. *Id.* at p. 539.

Although Plaintiff believes in the merits of the alleged claims and maintains that there is no reason for reducing PAGA penalties, Plaintiff is aware that Defendant may raise defenses to Plaintiff's claims that could be persuasive to the Court. Even if Plaintiff was to successfully prove her claims at trial, there is a possibility that the Court may only award a small percentage

³ With respect to the rounding claim, only 19,673 pay periods impacted during the PAGA Period.

1 of PAGA penalties, as the Court has discretion to do so. The Gross Settlement Amount was
2 premised with this risk in mind, associated with the possibility of the Court significantly
3 reducing Plaintiff's PAGA penalties, along with other attendant risks, even if Plaintiff was to
4 prevail at trial. Hawkins Decl. ¶ 51.

5 Thus, the settlement for each Class Member is fair, reasonable, and adequate, given the
6 inherent risks of litigation, including the substantial risks relative to class certification and the
7 merits of the claims, the costs of pursuing such litigation, the risk of appeals, and the risks
8 associated with the Court's discretion to reduce PAGA penalties. The settlement is the result of
9 extensive arm's-length negotiations between the Parties and their counsel and was facilitated
10 by an experienced and neutral mediator.

11 Although Plaintiff believes that a class can be certified, Plaintiff also believes in the
12 fairness of the settlement, factoring in the uncertainty and risks to Plaintiff in not prevailing on
13 one or more of the causes of action or theories alleged in the SAC, the possibility of non-
14 certification, and the potential for appeals. Here, the risk of appeals spanning many years is
15 real. Defendant has raised numerous defenses to class certification. Notably, Defendant
16 comprehensively challenged and would continue to challenge the appropriateness of Plaintiff
17 bringing these claims on behalf of the putative class. Defendant maintains that Plaintiff is not
18 similarly situated with other members of the putative class, that there are no questions common
19 to the class, and that individualized questions would predominate over any questions common
20 to the putative class, that Plaintiff is not a suitable class representative, and that adjudicating
21 these claims as a class action would be unmanageable for the Court. Defendant also generally
22 denies the claims in Plaintiff's complaint and continues to assert a variety of affirmative
23 defenses including that Defendant's rounding policy is neutral on its face and therefore
24 complies with California law.

25 These risks on class certification are compounded by the California Supreme Court's
26 holding in *Duran v. U.S. Bank Nat'l Ass'n*, 59 Cal.4th 1 (2014). There, the plaintiff obtained
27 class certification and subsequently prevailed at trial after eight years of litigation, but the
28 judgment and the certification ruling were reversed by the California Supreme Court after an

1 additional five years of litigation. The case was remanded to the superior court where class
2 certification was denied and plaintiff's subsequent appeal also was denied.

3 Indeed, numerous courts have held that gross settlements approximating between only
4 8% and 25% of the defendant's potential exposure are fair and reasonable. *See, e.g., In re*
5 *Mego Fin. Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (holding that class action
6 settlement recovering 16% of potential exposure was fair and reasonable; "[i]t is well-settled
7 law that a cash settlement amounting to only a fraction of the potential recovery does not per
8 se render the settlement inadequate or unfair. Rather, the fairness and the adequacy of the
9 settlement should be assessed relative to risks of pursuing the litigation to judgment"; noting
10 that whether the settlement is fair and adequate depends on the "the difficulties in proving the
11 case"); *Bellinghausen v. Tractor Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at *6
12 (N.D. Cal. Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and
13 25% of the defendant's potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, U.S.
14 Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014) (court granted preliminary approval of
15 wage and hour class settlement which obtained **only 9.1%** of projected damages, given the
16 risks of continued litigation); *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-00261 SBA
17 EMC, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action
18 settlement of approximately 15% of the potential recovery was fair and reasonable). Here, the
19 Gross Settlement Amount is fair and reasonable as it is approximately 17% of the maximum
20 potential recovery of Plaintiff's class and PAGA claims if Plaintiff were to fully succeed at
21 trial, and approximately 45% of the reasonable exposure in this matter. Hawkins Decl. ¶ 51.

22 Despite the asserted fairness of the settlement terms, as set forth in the Notice of Class
23 Action Settlement, should any Class Member wish to pursue his or her own case for the claims
24 being released herein, each Class Member has the right to submit a request for exclusion (*i.e.*,
25 opt-out) from the settlement. Settlement Agreement, § 8.5. Moreover, as set forth in the
26 Notice, Class Members are advised of their right to object to any of the terms contained in the
27 Settlement Agreement. *Id.* § 8.7.

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1. Manner of Distribution of the Settlement to Class Members

The Settlement Agreement provides for Five Million Dollars (\$5,000,000.00) as the Gross Settlement Amount. Settlement Agreement, §§ 1.22, 3.1. The Net Settlement Amount, calculated after deduction of attorneys' fees (up to \$1,666,666), costs (up to \$20,000), Class Representative Service Payment (up to \$10,000.00), PAGA Penalties (\$250,000.00), and Settlement Administration Costs (up to \$18,000), is estimated to be approximately \$3,035,334. Settlement Agreement, § 1.28. Each Participating Class Member who does not opt-out of the Settlement will be awarded a portion of the Net Settlement Amount on a pro-rata basis, based upon the number of work weeks each respective Participating Class Member worked during the Class Period. In addition, each Aggrieved Employees will be awarded a portion of the PAGA penalties allocated to Individual PAGA Payments (\$62,500) on a pro-rata basis, based upon the number of PAGA Pay Periods worked during the PAGA Period. *Id.*, § 3.2.5.

Based thereon, each Participating Class Member may potentially recover approximately \$1,777.12 based on a raw average. Hawkins Decl., ¶ 12. The amount actually paid to each Participating Class Member may increase or decrease depending on the actual number of work weeks he or she worked during the Class Period and/or the number of timely Requests for Exclusion received. *Id.* Given the defenses raised, the history of litigation detailed above, and the risk of lengthy appeals, Plaintiff's counsel believes this to be a fair result for the Class.

Finally, the terms of the settlement provide that uncashed checks (upon the expiration date) shall be distributed to the California State Controller's Office's unclaimed property fund to be held in the name of the participating class member. Settlement Agreement § 4.4.3. None of the settlement funds will revert to Defendant.

2. Scope of the Release of Class Members' Claims

As a condition of participating in this settlement, Participating Class Members shall waive and release:

any and all claims that were asserted in the Action, or that arise from the facts, circumstances, transactions, events, occurrences, acts, disclosures, statements,

omissions or failures to act alleged in Plaintiff's Complaint, First Amended Complaint, Second Amended Complaint, or letters to the LWDA (the "Action") regardless of whether such claims arise under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law ("the Released Claims"). The Released Claims specifically include, but are not limited to Labor Code §§ 201, 202, 203, 204, 226, 226.2, 510, 512, 1174, 1174.5, 1194, 1194.2, 1194.3, 1194.5, 1197.1, 1198, 1199, 2699(a), 2699.3, 2699.5, the related IWC Wage Order No. 5-2001, and Business & Professions Code §§ 17200, et seq., claims based on alleged violations of these Labor Code and Wage Order provisions and all other claims, such as those under the California Labor Code, Wage Orders, regulations, and/or other provisions of law, that could have been pleaded based on the facts asserted in the Action. This includes claims for (1) failure to pay wages for all hours worked; (2) failure to provide lawful meal periods; (3) failure to authorize and permit lawful rest periods; (4) failure to timely pay wages due at termination; (5) failure to provide accurate itemized wage statements; (6) violation of California's unfair competition law; and (7) enforcement of California Labor Code § 2698, et seq. ("PAGA"); (8) all related violations of the applicable Wage Orders; and (9) interest, fees, and costs. The enumeration of these specific statutes shall neither enlarge nor narrow the scope of res judicata based on the claims that were asserted in the Action or could have been asserted in the Action based on the facts and circumstances alleged in any Complaint on file in the Action. Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

Settlement Agreement, § 6.2.

Therefore, the Released Claims are narrowly tailored to only encompass those claims that were alleged in the Action and thus are appropriately limited. Hawkins Decl. ¶ 13.

3. Tax Treatment of Settlement Amounts

As Plaintiff's lawsuit sought statutory and civil penalties, the Parties have agreed that the settlement payments to Class members will be allocated: (1) 80% to penalties and interest and reported on a 1099 Form; and (2) 20% to wages and reported on a W-2 Form. Settlement Agreement. § 3.2.4.1.

4. Affirmative Obligations to be Undertaken by Class Members or Class Counsel and the Reasons for Any Such Obligations

As stated above, Class Members do not need to do anything should they wish to receive their share of the settlement funds. Thus, this substantially decreases the burden each Class

1 Member must bear in order to receive their settlement share. If a Class Member does not wish
2 to take part in this settlement and be bound by the release, the Class Member must submit an
3 exclusion request. Settlement Agreement, § 8.5.

4 **C. Notice to Class Members**

5 Defendant will transmit to the Settlement Administrator a list of the names, last known
6 mailing address and telephone number, the last four digits of the Social Security number, and
7 the number of Weeks Worked and Pay Periods credited to each Class Member and Aggrieved
8 Employee (“Class Data”). Settlement Agreement, § 8.4.1. Upon receipt of the information and
9 prior to mailing the Notice of Class Action Settlement (“Notice”), the Settlement
10 Administrator shall perform a search based on the National Change of Address Database for
11 information to update and correct for any known or identifiable address changes. *Id.*, § 8.4.2.
12 Within 30 days of receipt of the Class Data, the Settlement Administrator shall mail the Notice
13 to all Class Members. *Id.* The Settlement Administrator will re-mail the Notice to Class
14 Members for whom the notice is returned with a forwarding address and perform a skip-trace
15 or other search on Class Members and re-mailing for whom a Notice is returned as
16 undeliverable. *Id.*, § 8.4.3.

17 As set forth in the Notice, Class Members will be allowed to opt out of the settlement,
18 challenge the number of workweeks in the Notice, or object to the settlement. *Id.*, §§ 8.5-8.7.

19 **D. Provisional Certification of the Settlement Class is Appropriate**

20 California Rules of Court 3.769(c)-(e) authorize courts to grant conditional certification
21 of a settlement class. Conditional class certification is appropriate at the preliminary approval
22 stage where, as here, the Court has not certified the proposed Settlement Class, as it is defined
23 in the Settlement Agreement, and the requirements for certification are met. 4 Newberg §
24 11:22 (4th ed. 2002). The purpose of conditional class certification is to facilitate distribution
25 to all Class Members of the notice of the terms of the proposed Settlement and the date and
26 time of the final approval hearing. *See* Manual for Complex Litigation, § 21.632. Neither
27 formal notice nor a hearing is required for the Court to grant conditional certification; the
28 Court may grant such relief upon informal application by the settling parties and may conduct

any necessary hearing in court or in chambers, at the Court’s discretion.

1. Plaintiff Has Shown the Existence of an Ascertainable and Sufficiently Numerous Class

Generally, a class is ascertainable if “it identifies a group of unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself as having a right to recover based on the description.” *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal. App. 4th 1524, 1533. In this case, Plaintiff identified class members by the classification Defendant gave to them upon hiring (non-exempt), the specific location they worked (California), and the time period they worked (June 30, 2016 to present). Plaintiff contends, and Defendant does not dispute for settlement purposes only, the proposed Settlement Class definition allows the Parties to easily ascertain Settlement Class Members and allows the Settlement Class Members to easily identify themselves as members of the class. The numerosity requirement is met if the class is so large that joinder of all members would be impracticable. *See Gay v. Waiters’ & Dairy Lunchmen’s Union, Local No. 30* (N.D. Cal. 1980), *aff’d* 694 F. 2d 531 (9th Cir. 1982). Here, Defendant’s payroll records show that the proposed Settlement Class contains approximately 1,708 class members, which makes the joinder of all putative class members impracticable.

2. Plaintiff’s Claims are Typical of the Class

The commonality requirement is met when there are questions of law and fact common to the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) (“The existence of shared legal issues with divergent legal factual predicates is sufficient, as is a common core of salient facts couple with disparate legal remedies within the class”). Commonality requires only that some common legal or factual questions exist; the plaintiff need not show that all issues in the litigation are identical. *See Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473 (1981). Defendant’s conduct is central to the commonality inquiry. *See City of San Jose v. Superior Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13 (1971). Where the employer’s conduct is uniformly directed at a class of employees, as it is here, the class wide impact of the Defendant’s policies satisfies the commonality requirement.

1 *See Stephens v. Montgomery Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

2 Plaintiff claims and continues to claim that the Released Claims have merit and give
3 rise to the liability on the part of Defendant. The claims of Plaintiff and the Settlement Class
4 all flow from the same source allegations and practices. The members of the proposed
5 Settlement Class and Plaintiff have all worked under the same policies and practices. Thus,
6 Plaintiff's claims are typical to those of Class Members. (Declaration of Taniya Abron
7 ("Abron Decl."), ¶ 3-4).

8 **3. Class Counsel Has Adequately Represented the Class and Has
Experience with Wage and Hour Class Actions**

9 A class representative adequately represents the class when: (1) the named plaintiff has
10 no fundamental conflict of interest with the class he or she purports to represents and (2) the
11 named plaintiff, through qualified counsel, vigorously and tenaciously protects the interests of
12 the class. *See, e.g., Richmond*, 29 Cal. 3d 462 at 472.

13 Plaintiff does not have any interests adverse to the Class, nor have any such issues been
14 raised or presented. Abron Decl. ¶ 12, 15. Plaintiff has taken all necessary steps to represent
15 the interests of the Class, including providing information and documents to Plaintiff's
16 counsel. Abron Decl., generally. For such reasons, Plaintiff has adequately represented the
17 Class Members and will continue to do so.

18 From the inception of the case, Class Counsel has zealously represented the interests of
19 the class. The settlement was obtained for the benefit of the class, as opposed to the individual
20 Class Representative. Further, Class Counsel has been approved as class counsel on a number
21 of prior cases, have litigated numerous other class action cases, and are competent to represent
22 the class. Hawkins Decl. ¶¶ 65-68.

23 **4. Class-wide Settlement is Superior to Multiple Individual Lawsuits**

24 Manageability of the trial is not an issue in this case because the parties reached a
25 settlement. *Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 591, 620. Therefore, for
26 settlement purposes only, class resolution in this case, particularly in the settlement context, is
27 superior to any other available method for the fair and efficient resolution of the controversy.

28 *See Dunk*, 48 Cal.App.4th 1794 at 1807 n. 19.

1 **E. Costs and Fees**

2 **1. Attorneys' Fees and Costs**

3 California state and federal courts have recognized that an appropriate method for
4 determining an award of attorneys' fees is based on a percentage of the total value of benefits
5 to Class Members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224,
6 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977); *Boeing Co. v. Van Gemert*, 444 U.S.
7 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The
8 purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread
9 litigation costs proportionally among all the beneficiaries so that the active beneficiary does
10 not bear the entire burden alone." *Vincent*, 557 F.2d at 769.

11 The common fund doctrine is predicated on the principle of preventing unjust
12 enrichment. When a litigant's efforts create or preserve a fund from which others derive
13 benefits, he may require the passive beneficiaries to compensate those who created the fund.
14 Both California state and federal courts have embraced this doctrine. *Serrano III*, 20 Cal.3d at
15 35; *Vincent*, 557 F.2d at 769. Similarly, in *City and County of San Francisco v. Sweet*, 12
16 Cal.4th 105, 110 (1995), the California Supreme Court recognized that the common fund
17 doctrine has been applied "consistently in California when an action brought by one party
18 creates a fund in which other persons are entitled to share." The reasons for applying the
19 common fund doctrine include: "fairness to the successful litigant, who might otherwise
20 receive no benefit because his recovery might be consumed by the expenses; correlative
21 prevention of an unfair advantage to the others who are entitled to share in the fund and who
22 should bear their share of the burden of its recovery; encouragement of the attorney for the
23 successful litigant who will be more willing to undertake and diligently prosecute proper
24 litigation for the protection or recovery of the fund if he is assured that he will be properly and
25 directly compensated should his efforts be successful." *Id.*

26 Indeed, the California Supreme Court has also now held that the award of attorneys'
27 fees in common fund wage and hour class action settlements should start with the percentage
28 method. *See Laffitte v. Robert Half Int'l*, 1 Cal.5th 480, 503 (2016) ("We join the

1 overwhelming majority of federal and state courts in holding that when class action litigation
2 establishes a monetary fund for the benefit of the class members, and the trial court in its
3 equitable powers awards class counsel a fee out of that fund, the court may determine the
4 amount of a reasonable fee by choosing an appropriate percentage of the fund created”).

5 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3
6 percent of the fund. *Laffitte*, 1 Cal.5th at 506. And this was based on a lodestar amount that
7 required a multiplier of 2.13. *Id.* at 487. As the Court held, only when the multiplier is
8 “extraordinarily high or low [should] the trial court [] consider whether the percentage method
9 should be adjusted so as to bring the imputed multiplier within a justifiable range.” *Id.* at 505.

10 The Settlement Agreement provides for a payment of a maximum of one-third of the
11 Gross Settlement Amount (or \$1,666,666.67) for payment to Class Counsel as attorneys’ fees.
12 UHA does not oppose Plaintiff’s counsel’s request for attorney’s fees. Thus, this payment
13 should be presumed to be fair. The litigation history in the collective actions also demonstrates
14 the value provided to the class and expended by class counsel.

15 Further, the Settlement Agreement provides for reimbursement of Class Counsel’s
16 litigation costs in an amount up to \$20,000.00. UHA does not oppose Plaintiff’s counsel’s
17 request for costs. Class Counsel has expended costs at their own risk, for example, to file this
18 instant action, effect service of process, pay the mediation fees, and pay of other litigation-
19 related costs.

20 Based on the foregoing, the Court should preliminarily approve the attorneys’ fees and
21 costs being requested by Plaintiff.

22 **2. Proposed Payment to the Class Representative**

23 Class Representative Taniya Abron requests a service award of \$10,000.00. Settlement
24 Agreement, § 1.14. The Class Representative met and conferred with Class Counsel on a
25 number of occasions to discuss the case, provided documents and information to Class
26 Counsel, and reviewed the Settlement Agreement. As part of her duties as the Class
27 Representative, Plaintiff provided invaluable information and documents that resulted in this
28 settlement. Abron Decl. ¶¶ 11-13, 17; Hawkins Decl. ¶¶ 56-57. In addition to the invaluable

1 services that Plaintiff provided, she also took a significant risk, both professionally and
2 monetarily, in acting as the Class Representative and seeking benefits on behalf of the Class.
3 Because the claims alleged by the Class Representative involved the payment of costs to the
4 prevailing party, Plaintiff could have possibly faced paying the costs of Defendant had she not
5 prevailed in this action. Id.

6 Furthermore, given that future employers are much less likely to hire individuals who
7 have filed suit against their prior employer, particularly cases of this nature, Plaintiff may face
8 prejudice in the future from other potential employers. Plaintiff took this risk upon herself and
9 the whole Class benefited from these risks taken by Plaintiff. Class Members did not have to
10 file individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did
11 they have to face the potential for retaliation and not getting future employment had they filed
12 a public lawsuit. Plaintiff also agreed to provide a general release and waiver of Civil Code
13 Section 1542 as part of the settlement. Settlement Agreement, § 6.1.1.

14 **3. Settlement Administrator**

15 The Parties have jointly selected, subject to court approval, CPT Group, Inc. to serve as
16 the Settlement Administrator. Settlement Agreement § 8.1. CPT Group is a well-recognized
17 class action settlement administrator. CPT Group estimates the administration fee to be
18 \$18,000 to perform all duties specified in the Settlement Agreement. (Declaration of Julie
19 Green on behalf of CPT Group, Inc.).

20 **IV. NOTICE TO THE LWDA**

21 In conjunction with the filing of this Motion, Plaintiff provided notice to the Labor and
22 Workforce Development Agency. Hawkins Decl. ¶ 18.

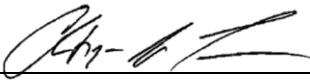
23 **V. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR** 24 **PRELIMINARY APPROVAL**

25 Here, the proposed settlement is fair, adequate, and reasonable. It will result in both
26 substantial monetary benefits to class members; it is non-collusive; and it was achieved as the
27 result of informed, extensive, and arm's-length negotiations conducted by counsel for
28 respective parties who are experienced in wage and hour class action litigation. For the

1 foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of
2 the proposed settlement, sign the proposed Order, approve and authorize mailing of the
3 proposed Notice of Class Action Settlement, and set a date for a final approval hearing.
4

5 DATED: May 26, 2023

JAMES HAWKINS APLC

6
7 By: 
8 James R. Hawkins
9 Christina M. Lucio
10 *Attorneys for Plaintiff and the Class*
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Superior Court of Alameda County Public Portal

Make a Reservation

Abron VS University Healthcare Alliance, a California corpor

Case Number: RG20066438 Case Type: Unlimited Civil Category: Other Employment Complaint Case
Date Filed: 2020-06-30 Location: Rene C. Davidson Courthouse - Department 21

Reservation

Case Name: Abron VS University Healthcare Alliance, a California corpor	Case Number: RG20066438
Type: Motion re: (Motion for Preliminary Approval)	Status: RESERVED
Filing Party: Taniya Abron (Plaintiff)	Location: Rene C. Davidson Courthouse - Department 21
Date/Time: 06/23/2023 9:00 AM	Number of Motions: 1
Reservation ID: 269846710090	Confirmation Code: CR-OQUYRNJZTFKVV RHCA

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	0.00	1	0.00
Court Technology Fee	1.00	1	1.00
TOTAL			\$1.00

Payment

Amount: \$1.00	Type: Visa
Account Number: XXXX6358	Authorization: 03441D
Payment Date: 1969-12-31	

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