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SUPERIOR COURT OF THE STATE 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

Reservation ID: 949352402507

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT AGREEMENT
AND AWARD OF CLASS COUNSEL'S
FEES, LITIGATION EXPENSES, AND
CLASS REPRESENTATIVE SERVICE
PAYMENT**

Date: December 29, 2023
Time: 9:00 a.m.
Dept: 21

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Trial Date: None Set

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1 **I. INTRODUCTION**

2 This motion seeks final approval of a common fund, non-reversionary wage and hour class
3 action settlement of \$5,000,000.00 between Plaintiff Taniya Abron (“Plaintiff”), on behalf of
4 herself and the conditionally certified Settlement Class, and Defendants University Healthcare
5 Alliance (“Defendants”) (collectively, the “Parties”). The Settlement is attached to the
6 Declaration of James R. Hawkins (“Hawkins Final Decl.”), submitted herewith, as Exhibit 2.

7 The Settlement was preliminarily approved on August 23, 2023. The Settlement
8 Administrator, CPT Group, Inc. (“CPT”), carried out the notice and other procedures ordered by
9 this Court. The Class Members have until December 8, 2023 to submit a request for exclusion,
10 object to the Settlement or dispute their gross wages. As of the date of this filing, the Class has
11 overwhelmingly supported the Settlement, as CPT has received only three requests for exclusion
12 from the Settlement and one objection. The proposed Settlement is fair, reasonable, and adequate
13 in light of Defendant’s asserted legal and factual defenses. Class Counsel and Defendant’s
14 Counsel are experienced in wage and hour class action litigation, and have reached an objectively
15 fair, reasonable, and adequate Settlement. Final approval is warranted.

16 Plaintiff also respectfully requests the Court grant Class Counsel’s requested fees and
17 litigation expenses by approving this motion and application for an award of one third of the
18 common fund (approximately \$1,666,666.00) for attorneys’ fees and \$15,724.47 for costs.
19 Plaintiff further requests that this Court award a \$10,000.00 class representative service payment
20 to Plaintiff Taniya Abron for her role in obtaining this excellent result for the Settlement Class.
21 The Settlement meets the criteria for final approval and Plaintiff respectfully requests this Court
22 grant final approval and enter the proposed Order and Judgment filed concurrently herewith.

23 **II. SUMMARY OF SETTLEMENT TERMS**

24 There are 1,697 Participating Settlement Class Members, which represents a 99.8%
25 participation rate. (Declaration of Jennifer Forst (“Forst Decl.”) ¶ 14.)

26 **A. Settlement Amounts**

- 27 1. Gross Settlement Amount (“GSA”): \$5,000,000.00. (Ex. 2, Settlement, ¶ 1.22.)
28 2. Net Settlement Amount (“NSA”): \$3,039,609.53 (Hawkins Final Decl. ¶ 10.)

- 1 3. Settlement Administration Fees: \$18,000.00. (See Forst Decl. ¶ 18).
- 2 4. Class Representative Service Payment: \$10,000.00 (Id. ¶ 15.).
- 3 5. Class Counsel's Fees and Litigation Costs: Class Counsel requests \$1,666,666.00
- 4 (one-third of the GSA) for fees and \$15,724.47 for costs¹. (Hawkins Final Decl., ¶ 34, Ex. 4).

5 **B. Calculation of Participating Class Member's Individual Settlement Payments**

6 All Participating Class Members will receive a share of the NSA without the need to

7 submit a claim form. Individual Class Payment are calculated by (a) dividing the NSA by the total

8 number of Workweeks worked by all Participating Class Members during the Class Period and

9 (b) multiplying the result by the number of each Participating Class Member's Workweeks. (Ex.

10 2, Settlement § 3.2.4).

11 **C. Release by the Class, the LWDA, and Plaintiff**

12 Upon the Effective Date and Defendant's funding of the GSA, Participating Class

13 Members who are not aggrieved employees will fully release the Released Parties from the

14 Released Claims as set forth in Section 6.2 of the Settlement. Plaintiff, as the designated agent of

15 the LWDA, will also enter into a PAGA Release as set forth in Section 6.4. In addition, Plaintiff

16 will enter into a broader release of her individual claims. (Ex. 2, Settlement §§ 6.1, 6.1.1).

17 **III. THE CLASS MEMBERS RECEIVED NOTICE AND OVERWHELMINGLY**

18 **SUPPORT THE SETTLEMENT.**

19 CPT prepared the Notice Packet from the text provided by Counsel. (Forst Decl., ¶ 3-4,

20 Ex. A). On September 8, 2023, CPT received the class list from Defendant containing each Class

21 Member's name, last-known mailing address, Social Security number, Employee ID and hire and

22 termination dates. (Forst Decl., ¶ 5).

23 On October 9, 2023, CPT mailed, via U.S. First Class mail, the Notice to 1,700 Settlement

24 Class Members after updating the addresses using the National Change of Address (NCOA)

25 database. (Forst Decl. ¶ 6-7). The Notices advised Settlement Class Members of their right to

26 request exclusion or object to the Settlement, dispute their workweeks, do nothing, and the

27 ¹ The Court preliminarily approved up to \$20,000.00 for Class Counsel's Litigation Expenses,

28 however Plaintiff's Counsel only seeks reimbursement of \$15,724.47 in actual costs. The

remaining amount will revert to the NSA for distribution to the Settlement Class.

1 implications of each such action. The Notice advised Settlement Class Members of applicable
2 deadlines and other events, including the Final Approval Hearing, and how Settlement Class
3 Members could obtain additional information, and provided a toll-free telephone number. The
4 Notice Packets also disclosed the claims that would be released upon final approval and the
5 Settlement Class Member's workweeks worked during the Class Period and estimated Individual
6 Settlement Payment based thereon. (Id., Ex. A).

7 CPT mailed a total of 1,700 Notices to Settlement Class Members and 47 Notices were
8 returned as undeliverable by the U.S. Postal Service, ten of which had forwarding addresses.
9 (Forst Decl. ¶¶ 5-8). CPT promptly performed a computerized skip trace for the Notices without
10 forwarding addresses to obtain an updated address (Id.). CPT obtained updated or forwarding
11 addresses for 38 Class Members, and these Notice Packets were promptly re-mailed. (Id. ¶ 9).
12 CPT successfully delivered Notices to 1,688 of the 1,700 Settlement Class Members, representing
13 99.3% of the Settlement Class. (Id.). Only twelve notices were undeliverable. (Id.)

14 The deadline to object or request exclusion from the Settlement is December 8, 2023,
15 except for those Class Members whose Notices were remailed or were not part of the original
16 mailing, for whom the deadline is extended to December 22, 2023. (Id. ¶¶ 7; Settlement §§ 1.43,
17 8.4.4, 8.5.1, 8.6, 8.7). As of the date of this filing, one Settlement Class Member has submitted
18 an objection, three requested exclusion, and zero have disputed their workweek allocations. (Forst
19 Decl. ¶¶ 10-12, Ex. B, C). Thus, currently, 1,697, or 99.8% of the Settlement Class Members will
20 participate. (Id. ¶ 14). CPT will submit a supplemental declaration following the deadline with
21 the final number of opt outs, objections, and disputes.

22 CPT followed the notice procedures delineated in the Preliminary Approval Order.
23 Therefore, notice to the Settlement Class of the proposed Settlement was reasonably calculated,
24 and has apprised the Settlement Class Members of the pendency of the action and afforded them
25 an opportunity to opt out or present their objections or disputes.

26 **IV. THE SETTLEMENT SATISFIES THE REQUIREMENTS FOR FINAL** 27 **APPROVAL.**

28 **A. Legal Standard for Final Approval of Class Action Settlement.**

1 “[V]oluntary conciliation and settlement are the preferred means of dispute resolution.
2 This is especially true in complex class action litigation . . .” *7-Eleven Owners for Fair*
3 *Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1140, 1151 (internal citation omitted).
4 A class action may not be dismissed, compromised, or settled without the Court’s approval. Cal.
5 Rules of Court (“CRC”) 3.769 and 3.770. The Court’s inquiry is limited to whether the proposed
6 settlement is “fair, adequate, and reasonable.” *Wershba v. Apple Comp., Inc.* (2001) 91 Cal. App.
7 4th 224, 244-245. A settlement is “fair, adequate and reasonable” warranting final approval when
8 “the interests of the class are better served by the settlement than by further litigation.” *Manual*
9 *for Complex Litigation* (4th ed. 2008) § 21.61.

10 CRC 3.769 describes the procedure for final approval of a class action settlement in three
11 distinct steps: (1) Preliminary approval of the proposed settlement by the Court; (2) Dissemination
12 of notice of the settlement to all affected Class Members; and (3) A “formal fairness hearing,” or
13 final settlement approval hearing, at which Class Members may be heard regarding the settlement,
14 and matters concerning the fairness, adequacy, and reasonableness of the settlement may be
15 presented. The first and second step have been completed.

16 The third and final step is the Final Approval Hearing, at which the Court determines
17 whether the Settlement is fair, adequate, and reasonable. A settlement agreement is presumptively
18 fair when it is (1) the product of arm’s-length bargaining; (2) supported by sufficient investigation
19 and/or discovery to allow assessment of Plaintiffs’ claims; (3) supported by experienced counsel;
20 and (4) subject to only a small percentage of objections. *In re Cellphone Fee Termination Cases*
21 (2010) 186 Cal. App. 4th 1380, 1389 (internal quotation citation omitted). To enter a final order
22 approving the Settlement and enter judgment thereon, California courts consider several factors,
23 including the strength of a plaintiff’s case: the risk, expense, complexity, and likely duration of
24 further litigation; the risk of maintaining class action status through trial; the value of the
25 settlement; the extent of discovery completed and the stage of the proceedings; the experience
26 and views of counsel; and the reaction of the class members to the proposed settlement. *Wershba*,
27 91 Cal. App. 4th at 244-45. Courts must also give “proper deference to the private consensual
28 decision of the parties . . . to the extent necessary to reach a reasoned judgment that the agreement

1 is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and
2 the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Hanlon v.*
3 *Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027.

4 **B. The Factors to be Considered Favor Final Approval**

5 Settlement resolves inherent uncertainty and is therefore strongly favored by the courts,
6 particularly in class actions. *See Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d 943,
7 950. Here, Plaintiff recognized several risks inherent in litigating this case including the
8 probability of achieving and maintaining class action status through trial and any appeal, the
9 likelihood of class action recovery at trial after analyzing the merits of Defendant’s legal defenses,
10 and the current state of the law regarding certification and establishing common questions of fact.

11 Defendant contended that, *inter alia*, the class is unmanageable and not fit for certification,
12 Plaintiff’s claims are not typical of the class, their rounding policy was neutral or worked to
13 benefit Class Members, their meal and rest period policies were compliant with legal
14 requirements, Class Members were required to record and attest to meal period start and end
15 times, and their wage statements were compliant or any violations were not knowing and
16 intentional. (Ex. 1, Declaration of James R. Hawkins in Support of Motion for Preliminary
17 Approval (“Hawkins Prelim. Decl.”) ¶¶ 22-51).

18 While the Settlement may be less than the amount that the Class could potentially recover
19 at trial, it is highly unlikely that Plaintiff and the Class would receive the full amount to which
20 they believe they are entitled for the reasons outlined in the Hawkins Declarations. The GSA,
21 even if only a fraction of a total *potential* recovery, is a fair and adequate *real* recovery for Class
22 Members. *See In re Mego Fin. Corp. Sec. Litig.* (9th Cir. 2000) 213 F.3d 454, 459.

23 **C. The Value and Fairness of the Settlement Favors Final Approval.**

24 A court must consider whether the settlement is fair. *See Hanlon*, 150 F. 3d 1027. The
25 monetary relief provided by the Settlement is a meaningful recovery to the Class warranting final
26 approval. Class Counsel has provided the Court with a detailed description of the claims, defenses
27 and Defendant’s potential exposure, thereby providing the Court with a sufficient understanding
28 of the amount in controversy and potential outcomes of the case, so that it can properly evaluate

1 the sufficiency of the Settlement, as required in *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App.
2 4th 116, 129-30 (2008). (See, Ex. 1, Hawkins Prelim. Decl., ¶¶ 19-50.) At the time of preliminary
3 approval, the Court determined that the Settlement appeared to be fair, adequate and reasonable
4 and favors approval. Since then, only one Settlement Class Member has objected to the
5 Settlement and only three have opted out. (Forst Decl. ¶¶ 11, 12, Ex. B, C). The objection should
6 be disregarded as it states as the “Reasons for Objection”: “All of them.” (Id., Ex. B). The
7 “reasons” for objection lack specificity, and no factual or legal support is provided. Counsel
8 cannot meaningfully respond except to reiterate that the Settlement is fair, reasonable and
9 adequate and supported by all known facts as set forth in the declarations submitted. Indeed,
10 nothing has changed since the time of preliminary approval and the Settlement was
11 overwhelmingly accepted by the Settlement Class..

12 Plaintiff here, through Class Counsel, secured a common fund of \$5,000,000.00 for the
13 Settlement of the claims alleged in the class action. This is well within the ballpark of
14 reasonableness and will provide a meaningful benefit to Class Members. The 1,697 Participating
15 Class Members will be paid a pro-rata portion of the NSA. As such, the Settlement treats each
16 Participating Class Member equally relative to others in the Class. While Class Counsel believes
17 Plaintiff’s claims are meritorious, Defendants have raised formidable factual and legal arguments
18 in support of their defenses. Given these available grounds for defending against the asserted class
19 claims and the risks of maintaining class certification through the trial and after any appeals, the
20 Settlement is fair, reasonable, and adequate. (Hawkins Final Decl. ¶¶22-26).

21 **D. The Parties’ Investigation Favors Final Approval**

22 “[T]he extent of discovery completed and the stage of proceedings” are factors considered
23 in assessing the fairness, adequacy, and reasonableness of a class action Settlement. *Dunk v. Ford*
24 *Motor Co.*, (1996) 48 Cal. App. 4th 1801. “This factor evaluates whether the parties have
25 sufficient information to make an informed decision about settlement.” *In re LinkedIn User*
26 *Privacy Litig.*, 309 F.R.D. 573, 588 (N.D. Cal. 2015) (citation omitted).

27 The Parties entered into the Settlement after conducting an extensive investigation, which
28 enabled Class Counsel and Defense Counsel to thoroughly evaluate the strengths and weaknesses

of the claims. (See, Ex. 1, Hawkins Prelim Decl., ¶¶ 8-11.) The settlement negotiations between the Parties were extensive and occurred at arm's length. The Parties attended a full day mediation session with the experienced wage and hour mediator Tripper Ortman on March 11, 2022. (Id. ¶ 14.) The case did not settle at mediation but was resolved through continued negotiations and a mediator's proposal. (Ex. 2, Settlement, ¶ 2.3.) Thus, the Parties' investigation and discovery are sufficient to allow Class Counsel and the Court to act intelligently.

E. The Endorsement of the Parties' Counsel Favors Final Approval

The endorsement of experienced and well-informed counsel of a settlement as fair, reasonable, and adequate is entitled to significant weight. *Dunk*, 48 Cal. App. 4th at 1801-02. Here, experienced counsel endorses the Settlement as being fair, adequate, and reasonable. Class Counsel believes that the Settlement is the best interest of the Class, and an excellent result for the Class. (Hawkins Final Decl., ¶¶ 22-26, 29.) This endorsement is entitled to significant weight.

V. THE CLASS COUNSEL FEES REQUESTED ARE FAIR AND REASONABLE AND FAVOR APPROVAL

"When a fee is set by a court rather than by contract, the object is to set it at a level that will approximate what the market would set. . . . The judge, in other words, is trying to mimic the market in legal services." *Gaskill v. Gordon* (7th Cir. 1998) 160 F.3d 361, 363. Given the reliance of our legal system on private litigants to enforce the law in class actions, attorneys providing these substantial benefits should be paid an award equal to the amount negotiated in private bargaining that takes place in the legal marketplace. *Deposit Guaranty Nat. Bank, Jackson, Miss. v. Roper* (1980) 445 U.S. 326, 338, *rehg. denied*, 446 U.S. 947. The "percentage of the fund method more accurately reflects the results achieved." *Laffitte v. Robert Half International, Inc.*, 1 Cal. 5th 439 (2016); see also *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 50.

At the time this case was brought, the result was far from certain. Defendant's numerous defenses created difficulties with common proof and complex legal issues for Class Counsel to overcome. Throughout the action, Defendant challenged whether Plaintiff could prove commonality or whether a class action trial was manageable under the standards set forth in *Duran v. U.S. Bank Nat'l Assn.* (2014) 59 Cal. 4th 1. As a result, there was considerable risk that

1 Plaintiff would not prevail on a motion for certification or that Defendant would prevail on its
2 defenses, thus, defeating any and all recovery to the Class. Even if Plaintiff were to obtain class
3 certification, establishing liability is by no means a foregone conclusion. (Hawkins Prelim. Decl.
4 ¶¶ 21, 51). The Settlement was possible only because Class Counsel was able to persuade
5 Defendant that Class Counsel could prevail on issues regarding liability and obtain and maintain
6 class certification for the Class through trial and overcome difficulties in proof as to monetary
7 relief. In successfully navigating these hurdles so as to persuade Defendant to settle, Class
8 Counsel displayed skillful advocacy which is the product of extensive experience in this realm.
9 (Hawkins Final Decl. ¶ 34, 59; see also Ex. 1, Hawkins Prelim. Decl., generally)

10 To represent the Class on a contingent fee basis, Class Counsel had to devote the necessary
11 time and resources to this contingent case. (Hawkins Final Decl. ¶ 40.) Class Counsel gave up the
12 hourly work that a firm can bank on for the risky contingent fee work in this case which could
13 have paid Class Counsel nothing. *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000).

14 **A. The Agreement for the Payment of Fees and Expenses is Appropriate**

15 Parties to a class action may negotiate not only the settlement of the action itself, but also
16 the payment of attorneys' fees. See *Evans v. Jeff D.* (1980) 475 U.S. 717, 734-35, 738, n.30.
17 "Ideally, of course, litigants will settle the amount of a fee." *Hensley v. Eckerhart* (1983) 461
18 U.S. 424, 437. The trial court "has a responsibility to encourage agreement" on fees. *Blum v.*
19 *Stenson* (1984) 465 U.S. 886, 902 n.19. Here, the Settlement provides an award of one-third (1/3)
20 of the GSA for Class Counsel's fees. Such a fee is in line with what the market would provide
21 for similar services and the Court can enforce such an agreement. The United States Supreme
22 Court instructed, ". . .attorneys providing the essential enforcement services must be provided
23 incentives roughly comparable to those negotiated in the private bargaining that takes place in the
24 legal marketplace, as it will otherwise be economic for Defendants to increase injurious
25 behavior." *Deposit Guaranty Nat. Bank, supra*, 445 U.S. at 338.

26 Here, the requested fee and cost award was negotiated during adversarial bargaining by
27 counsel for each of the parties, after the substantive terms of the Settlement had been negotiated.
28 The requested fee and cost award was a product of arms-length negotiations and fairly reflects

the marketplace value of the services rendered by Class Counsel in this case. Thus, the fee agreed to by the Parties should be approved.

B. Class Counsel's Fee Award is Properly Calculated as a Percentage of the Total Value Created for the Benefit of the Class

Class Counsel seeks an attorney fee award for their successful prosecution and resolution of this action, calculated as one-third (1/3) of the value of the common fund created by the Settlement. Courts have long recognized that an appropriate method for determining the award of Class Counsel's fees is based on a percentage of the total value of benefits afforded to class members by the settlement. *Laffitte*, 1 Cal. 5th at 494; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Paul, Johnson, Alston & Hunt v. Graulity* (9th Cir. 1989) 886 F.2d 268, 272; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. The awarding of a fee based on a percentage of the common fund recovered is to "spread litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent*, *supra*, 557 F.2d at 769. The Settlement Fund is \$5,000,000.00, thus Class Counsel requests \$1,666,666.00 in attorneys' fees as it is properly calculated as a percentage (33-1/3%) of the common fund created for the benefit of the Settlement Class.

1. In a Common Fund Case, the Supreme Court Approves an Award Based Upon the Percentage of the Fund

California courts are expressly authorized to award attorneys' fees so as "to ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation." *Lealao v. Beneficial Cal., Inc.*, *supra*, 82 Cal.App.4th at 50. As *Lealao* explained, "attorneys providing the essential enforcement services must be provided incentives roughly comparable to those negotiated in the private bargaining that takes place in the legal marketplace, as it will otherwise be economic for Defendants to increase injurious behavior. It has therefore been urged (most persistently by Judge Richard Posner) that in defining a 'reasonable fee' in such representative actions the law should "mimic the market." *Id.* at 47.

In this case, the fees are being paid from the common fund, accordingly, the fee should be awarded to mimic fees freely negotiated in the legal marketplace for comparable common fund

1 cases under *Lealao*. As *Lealao* acknowledged, the percentage-of-the-benefit approach should be
2 considered because here “it better approximates the workings of the marketplace than the lodestar
3 approach.” *Id.*, 82 Cal.App.4th at 49; see also *Apple Computer, Inc. v. Superior Court* (2005)
4 126 Cal.App.4th 1253, 1270. In *Laffitte*, the California Supreme Court confirmed that the
5 percentage of the fund method is properly used in a common fund case:

6 The recognized advantages of the percentage method – including relative ease of
7 calculation, alignment of incentives between counsel and the class, a better approximation
8 of market conditions in a contingency case, and the encouragement it provides counsel to
9 seek an early settlement and avoid unnecessarily prolonging the litigation (*Lealao, supra*,
82 Cal.App.4th at pp. 48–49; *Rawlings v. Prudential-Bache Properties, Inc., supra*, 9 F.3d
at p. 516)—persuade us the percentage method is a valuable tool that should not be denied
our trial courts. *Laffitte*, 1 Cal. 5th at 503.

10 Moreover, the Supreme Court in *Laffitte* indicated that the trial courts may utilize a
11 “lodestar cross-check” to double check the reasonableness of the percentage fee award. *Id.* Indeed,
12 the Court explicitly held that the lodestar is a cross check that should not override the primary use
13 of the percentage method in stating, “[W]e emphasize the lodestar calculation, when used in this
14 manner, does not override the trial court's primary determination of the fee as a percentage of the
15 common fund and thus does not impose an absolute maximum or minimum on the potential fee
16 awardA lodestar cross-check is simply a quantitative method for bringing a measure of the
17 time spent by counsel into the trial court's reasonableness determination; as such, it is not likely
18 to radically alter the incentives created by a court's use of the percentage method.” *Id.* at 505.

19 Because the Settlement is a common fund, and the percentage of the fund is the
20 comparable marketplace for fee awards in common fund cases, *Laffitte* and *Lealao* support an
21 award based upon the percentage of the common fund. Here, as noted below, one-third is within
22 the range of comparable awards for common fund cases, which establishes the fee award as
23 reasonable. Moreover, as discussed below, the lodestar cross-check further supports the
24 reasonableness of the percentage fee award as it falls within the range approved in *Laffitte*.

25 **2. The Percentage Fee Award is Supported by a Lodestar Cross-Check**

26 The reasonableness of the requested attorneys’ fee of \$1,666,666.00 is also established by
27 reference to Class Counsel’s lodestar cross-check in this matter. The lodestar for Plaintiff’s
28 counsel in this case is \$514,667.50 and therefore the requested fee would represent a multiplier

1 of approximately 3.24 on that billed time. (Hawkins Final Decl. ¶¶ 34-51). Lodestar cross-checks
2 with multipliers far in excess of 2 are commonly approved. *See e.g., Wershba v. Apple Computer,*
3 *Inc.*, 91 Cal. App. 4th 224, 255 (2001) (“Multipliers can range from 2 to 4 or even higher.”);
4 *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 and fn. 6 (approving 3.65
5 multiplier and collecting cases “finding a range of 0.6-19.6, with most (20 of 24, or 83%) from
6 1.0-4.0 and a bare majority (13 of 24, or 54%) in the 1.5-3.0 range”); *Rievman v. Burlington*
7 *Northern Railroad Co.* (S.D.N.Y. 1987) 118 F.R.D. 29, 35 (“In recent years, multipliers between
8 3 and 4.5 have been common”); *Behrens v. Wometco Enterprises, Inc.* (S.D.Fla. 1988) 118 F.R.D.
9 534, 549 (court applied multiplier of 3, noting that this was “average” for a large complicated
10 class action where multipliers ranged from 2.26 to 4.5); *Thayer v. Wells Fargo Bank*, 92
11 Cal.App.4th 819, 834 (2001), (“[t]here is no...rule limiting the factors that may justify an exercise
12 of judicial discretion to [adjust the] lodestar”).

13 In determining the outcome of a fee award in a class action matter, one of main
14 benchmarks to consider is the result for the class. The Supreme Court has said that in an award
15 of attorney’s fees the “most critical factor is the degree of success obtained.” *Hensley v.*
16 *Eckerhart*, 461 U.S. 424, 436 (1983). The “benefit obtained for the class” is considered the
17 “foremost” consideration in determining the appropriate fee in a common fund case. *In Re*
18 *Bluetooth*, 654 F.3d at 942; see also, *Lealao v. Beneficial California, Inc.* 82 Cal.App.4th 19, 80
19 (attorneys should be rewarded not punished for achieving a substantial benefit for the class with
20 a minimum of time invested).

21 In considering the benefit obtained for the class in this matter, it is important to consider
22 the size of the Class average individual settlement payment. There are approximately 1,697
23 participating class members, who, on average, will receive approximately \$1,824.77 each, with
24 payments reaching up to approximately ¶ 3,937.29. (Forst Decl. ¶ 16). These are significant sums
25 and above the average settlement payments in the majority of wage and hour settlements.
26 (Hawkins Final Decl., ¶ 38, Ex. 3). These considerable payments provide an excellent benefit to
27 the class and support an increased multiplier in the consideration of attorneys’ fees.

28 Here, the fees request cross checks with a lodestar multiplier of 3.24. This amount does

not include the time that will be spent on administering this settlement following final approval and responding to inquiries by class members, which is likely to be a significant additional investment of time. Thus, the award is justified and cross checks under California law. In this case, consideration of Class Counsel's overall lodestar as a cross-check to the percentage figure strongly supports the reasonableness of the requested fee award.

3. The Percentage Award is Reasonable

Fee determinations in both common fund and statutory fee situations are incapable of mathematical precision because of the intangible factors that must be resolved in the court's discretion based on the circumstances of each particular case. See, A. Conte, Attorney Fee Awards, 2nd Ed., 207, at 44. A court must decide, based on the unique posture of each case, what percentage of the common fund would most reasonably compensate Class Counsel given the nature of the litigation and the performance of counsel. *Paul, Johnson, Alston & Hunt, supra*, 886 F.2d at 272. Courts apply a five-part test in reviewing a reasonable percentage fee in common fund cases: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee and the financial burden carried by the Plaintiffs; and (5) awards made in similar cases. *In re Omnivision Technologies, Inc.* (N.D. Cal. 2007) 2007 WL 4293467 at *9. Here, each of the five factors are met and strongly support an award of the percentage fee (33-1/3%) requested in this case.

a. The Results Achieved

"The overall result and benefit to the class from the litigation is the most critical factor in granting a fee award." *Omnivision*, 2007 WL 4293467 at *9. Class Counsel obtained a very favorable result in this case for the Class Members. The Settlement provides monetary benefits to the Class Members that are favorable compared to those recovered in similar wage and hour class actions. (Hawkins Final Decl. ¶ 38, Ex. 3). The Settlement is advantageous to the Class Members because the proceeds will be distributed shortly as opposed to waiting years for a similar, or possibly, less favorable result. There is little question that the result achieved in this litigation is significant. The average estimated payment to each Class Member, including the PAGA Payment, is \$1,824.77, and the highest is \$3,937.29. (Forst Decl., ¶ 16).

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1 **Burden**

2 There is a substantial difference between the risk assumed by attorneys being paid by the
3 hour and attorneys working on a contingent fee basis. *Powers v. Eichen* (9th Cir. 2000) 229 F.3d
4 1249, 1256. The attorney working on a contingent basis can only log hours while working unpaid
5 towards a result that will hopefully entitle him to a marketplace contingent fee, otherwise, the
6 contingent fee attorney receives nothing. *Id.* at 1257.

7 In this case, Class Counsel subjected themselves to this contingent fee market risk in this
8 all or nothing contingent fee case wherein the necessity and financial burden of private
9 enforcement makes the requested award appropriate. Counsel retained on a contingency fee basis,
10 is entitled to a premium in order to compensate for both the risks and the delay in payment. See
11 e.g. *Stanger v. China Elec. Motor, Inc.* (9th Cir. 2016) 812 F.3d 734 (courts “must” apply a risk
12 enhancement); *Stetson v. Grissom* (9th Cir. 2016) 821 F.3d 1157, 1166 (abuse of discretion not to
13 apply risk multiplier). Despite the most vigorous and competent of efforts, success is never
14 guaranteed. *McKittrick v. Gardner* (4th Cir. 1967) 378 F.2d 872, 875. If counsel is not adequately
15 compensated for the risks inherent in difficult class actions, competent attorneys will be
16 discouraged from prosecuting similar cases. *Steiner v. BOC Financial Corp.* (S.D.N.Y. 1980)
17 1980 U.S. Dist. LEXIS 14561 at *6- *7. Here, a number of difficult issues, the adverse resolution
18 of any one of which could have doomed the successful prosecution of the action, were present
19 here. As discussed above, attorneys’ fees in this case were not only contingent but extremely
20 risky, with a very real chance that Class Counsel would receive nothing for their efforts, having
21 devoted time and advanced costs, and in this type of litigation where the corporate defendants and
22 their attorneys are well funded, this can prove to be very expensive and risky. Because the risk of
23 advancing costs in this type of litigation can be significant, it is therefore cost prohibitive to many
24 attorneys. Class Counsel has advanced \$15,724.47 in costs which could not have been recovered
25 if this case had been lost. (Hawkins Final Decl., ¶ 52, Ex. 4).

26 **e. Awards in Similar Cases**

27 The attorneys’ fees requested by Class Counsel are within the range of fees awarded in
28 comparable cases. Over the past 10 years, the courts have historically awarded fees in the range

of 20% to 50%. *In re Warner Communications Sec. Lit* (S.D. N.Y. 1985) 618 F.Supp. 735, 749-50. Class Counsels' requested fees are one-third (1/3) of the total value of the case, a percentage well within the range of reasonableness given the excellent results obtained for the Class, the risks undertaken, and the skill of the prosecution. *See Laffitte*, 1 Cal. 5th at 486, 506.

4. Class Counsel's Costs Were Reasonably Incurred

Class Counsel requests reimbursement for expenses and costs in the amount of \$15,724.47 which is significantly less than the \$20,000.00 preliminarily approved by this Court. These litigation expenses are detailed in the Hawkins Declaration. (Hawkins Decl., ¶ 52; Ex. 4). These costs were reasonably incurred in the prosecution of this matter. (*Id.*).

5. The Class Representative Should Receive the Requested Service Payment

Plaintiff respectfully submits that for her service as the Class Representative, she should be awarded \$10,000.00 as the agreed Class Representative Service Payment.

Plaintiff has performed her duties to the Class admirably and without exception. (See Hawkins Final Decl. ¶¶ 27-33; Declaration of Taniya Abron generally). Plaintiff also assumed the risk that she might possibly be liable for costs incurred in this case, and risked being "blacklisted" by other future employers for having sued Defendants in a class action. See *Guippone v. BH S&B Holdings LLC* (S.D.N.Y. Oct. 28, 2011) 2011 U.S. Dist. LEXIS 126026, at **4, 20. Without Plaintiff's support, cooperation and information, no other employees would be receiving any benefit. The payment of the service payment to a successful class representative is appropriate and the amount of \$10,000.00 is a small portion of the total Settlement secured on behalf of the Class. This payment to compensate Plaintiff for her effort and risk in bringing this case to benefit the other 1,697 employees and secure a total settlement of \$5,000,000.00.

VI. THE SETTLEMENT ADMINISTRATOR'S REQUESTED EXPENSES ARE REASONABLE AND APPROPRIATE.

The parties retained a neutral third-party administrator, CPT Group, Inc., to administer the notice process. CPT's duties are enumerated in the Declaration of Jennifer Forst (Forst Decl. ¶ 2). CPT's expenses in administering the Settlement are \$18,000.00, which Plaintiff believes is appropriate and respectfully requests the Court award to CPT. (*Id.* ¶ 18).

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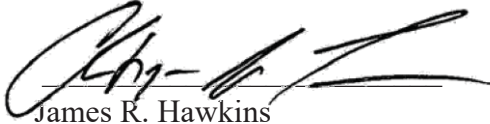
VII. CONCLUSION

The Settlement is the product of arm’s length negotiations after significant investigation and discovery, and mediation. It provides meaningful benefits to the Class Members that are fair when weighed against the significant potential risk, delay, and cost of further litigation. Thus, Plaintiff respectfully requests that the Court grant final approval to the Settlement.

In addition, Class Counsel’s fee request is supported by the California Supreme Court’s ruling in *Laffitte*. 1 Cal. 5th 439 (2016). The request is well within the realm of reasonableness approved by courts given the efforts expended in this case. Class Counsel undertook great risks on a contingent fee basis and achieved a favorable result for the benefit of Settlement Class Members. Class Counsel respectfully requests approval of the application for award of attorneys’ fees of \$1,666,666.00, reimbursement of litigations costs of \$15,724.47, and a Class Representative Service Payment of \$10,000.00 to Plaintiff Taniya Abron.

Dated: December 6, 2023

JAMES HAWKINS, APLC

By: 
James R. Hawkins
Christina M. Lucio

Attorneys for Plaintiff and the
Conditionally Certified Class



Superior Court of Alameda County Public Portal

Court Reservation Receipt

Reservation

Reservation ID:
949352402507

Status:
RESERVED

Reservation Type:
Motion (Motion for Final Approval of Class Action and
PAGA Action Settlement)

Number of Motions:
1

Case Number:
RG20066438

Case Title:
Abron VS University Healthcare Alliance, a California
corpor

Filing Party:
Taniya Abron (Plaintiff)

Location:
Rene C. Davidson Courthouse - Department 21

Date/Time:
December 29th 2023, 9:00AM

Confirmation Code:
CR-GXCGOU6NZMXEPSPZG

Fees

Description	Fee	Qty	Amount
Motion (name extension)	.00	1	.00
Court Technology Fee	1.00	1	1.00
TOTAL			\$1.00

Payment

Amount:
\$1.00

Type:
Visa

Account Number:
XXXX6358

Authorization:
06251D

Payment Date:
2023-09-06

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