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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

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

Plaintiff,

v.

PSYCHIATRIC ALTERNATIVES AND
WELLNESS CENTER PROFESSIONAL
CORPORATION and DOES 1 through 50,
inclusive,

Defendants

Case No.: 37-2020-00029809-CU-OE-CTL

Unlimited Civil - Amount Demanded
Exceeds \$25,000.00
IMAGED FILE

CLASS ACTION [CCP § 382]

Reservation No.: 2427894

**PLAINTIFF'S MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
OF UNOPPOSED MOTION FOR AN
ORDER 1) PROVISIONALLY
CERTIFYING SETTLEMENT CLASS; 2)
PRELIMINARILY APPROVING CLASS
SETTLEMENT; 3) DIRECTING
DISTRIBUTION OF NOTICE OF
SETTLEMENT TO THE CLASS; 4)
APPOINTING CLASS COUNSEL AND
CLASS REPRESENTATIVE; AND 5)
SETTING A HEARING FOR FINAL
APPROVAL OF CLASS SETTLEMENT**

Judge: Carolyn Caietti
Dept.: C-70
Hearing Date: March 4, 2022
Hearing Time: 10:30 a.m.
Date Complaint Filed: August 25, 2020

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I. INTRODUCTION

Pursuant to California Rules of Court, Rule 3.769(d) and (e), Plaintiff Melody Donboli (hereinafter “Plaintiff”), on behalf of herself and all others similarly-situated, respectfully requests that this Court grant preliminary approval for the proposed Stipulated Settlement Agreement and Release of Claims Agreement (“Agreement”) attached as Exhibit 1 to Declaration of Brian R. Short filed in support of instant motion (“Short Decl.”). In particular, Plaintiff respectfully requests that the Court: (1) grant preliminary approval for the settlement; (2) grant preliminary certification of the proposed class for settlement purposes only; (3) authorize the parties to provide notice to the class in the manner set forth in the agreement; (4) appoint Plaintiff’s Counsel as Class Counsel; and (5) schedule a final approval hearing. Defendant Psychiatric Alternatives And Wellness Center Professional Corporation, (“PAWC” or “Defendant”) does not oppose this Motion or the relief requested herein.

This settlement, which follows a highly contested litigation and was achieved after the parties attended mediation with experienced neutral Steve Vartabedian, Esq. followed by months-long post-mediation settlement negotiations, is an important win for the absent Class Members, as it provides true value to each and every one of them for their claims without the need for protracted and risky litigation.

The key components of the Agreement are as follows:

- The class consists of 60 Marriage and Family Therapists and Licensed Social Clinical Workers who worked for PAWC within the State of California, from August 25, 2016 through the date the Court issues a Preliminary Approval Order;
- Defendant will pay the full amount of the non-reversionary gross settlement amount of \$1,050,000.00 (“the Gross Fund Value Amount.”);
- Notice to Class Members will provide information regarding the settlement as well as allow individuals an opportunity to opt-out of the settlement;
- Participating Class Members are not subject to a general release or Civ. Code §1542 waiver and are only subject to a release for the wage and hour claims in this action only;
- The Net Fund Value Amount of \$652,500 is made available for direct payment to the approximately 60 class members, which equates to an average payment of **\$10,875** per employee. This amount will be distributed pro rata based on the monies earned by each employee within the Class Period without any affirmative action being necessary on the part of the class member (like a submission of a claim form).
- A maximum amount of one-third of the gross settlement amount (or \$350,000) will be requested by Class Counsel to compensate them for their fees and up to \$10,000 for their costs incurred during the litigation of these claims;
- The Claims Administration costs expected not to exceed \$5,000 will be allocated from the gross settlement amount; a maximum of \$7,500 will be requested as a service award to the Class Representative; and
- A payment of \$18,750 to the California Labor Workforce and Development Agency which represents 75% of the total \$25,000 allocated for PAGA penalties.

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1 As set forth in detail below, this settlement will provide tangible and valuable prospective relief.
2 In addition to the significant monetary recovery to class members, Defendant has agreed to undertake a
3 review its payroll policies to ensure compliance with California law going forward. This settlement is the
4 result of the significant efforts of Plaintiff and her Counsel, including an exhaustive analysis of the novel
5 statutes and case law prior to filing and a detailed and thorough analysis of the discovery provided by the
6 Defendant once the case was filed. After an in-depth analysis of the claims, the current state of the case
7 law on-point in California regarding the claims asserted, potential defenses, and potential damages related
8 to the allegations asserted, the parties engaged in a full-day mediation with neutral mediator Steve
9 Vartabedian. With the benefit of Mr. Vartabedian's substantial experience in wage and hour class actions,
10 along with his neutral input, the parties were able to resolve numerous issues pertaining to the merits of
11 the case and the terms of this settlement agreement during the mediation. Following the productive
12 mediation session, the parties continued their good-faith settlement negotiations and, ultimately, reached
13 an agreement that is subject of the instant motion.

14 As set forth in more detail below, preliminary approval of a class action settlement is appropriate
15 so long as the proposed settlement is "within the range of possible approval" based on a finding that the
16 terms are fair, reasonable and adequate. West's Manual for Complex Litigation (Federal Judicial Center
17 4th ed. 2008) § 21.632; See also, Newberg on Class Actions, Class Actions in State
18 Courts, Preliminary Approval (4th ed. 2002) § 13:64. This settlement certainly qualifies under this
19 standard, and Plaintiff posits that the Court will find this outcome is an excellent result for the absent Class
20 Members. Accordingly, Plaintiff respectfully requests that the Court grant preliminary approval for this
21 settlement, authorize the dissemination of the Notice to the Class Members, appoint Plaintiff's Counsel
22 as Class Counsel, and schedule a final fairness hearing.

23 **II. SUMMARY OF ARGUMENT**

24 Pursuant to Cal. Rules of Court, Rule 3.769, the settlement of class actions requires the court's
25 approval. Here, Plaintiff seeks only preliminary approval of this settlement. Because the eventual final
26 approval hearing will provide an opportunity to review the settlement following the notice process,
27 preliminary approval of a class action settlement is appropriate so long as the proposed settlement is
28 "within the range of possible approval." In re *General Motors Corp. Engine Interchange Litig.*, 594 F.2d

1 1106, 1124 (7th Cir. 1979) (quoting and following the Manual for Complex Litigation); *Horton v. Merrill*
2 *Lynch, Pierce, Fenner & Smith, Inc.*, 855 F. Supp. 825, 827 (E.D. N.C. 1994); *Holden v. Burlington*
3 *Northern, Inc.*, 665 F. Supp. 1398, 1402 (D. Minn. 1987). Because parties seeking preliminary approval
4 are simply requesting the opportunity to allow absent and previously uninvolved class members to respond
5 to the settlement, preliminary approval “is at most a determination that there is what might be termed
6 ‘probable cause’ to submit the proposal to class members and hold a full-scale hearing as to its fairness.”
7 *In re Traffic Exec. Assoc.-Eastern R.R.*, 627 F.2d 631, 634 (2d Cir. 1980). In approving a class settlement,
8 courts must have sufficient information to assure themselves that the terms of the Settlement are fair,
9 reasonable and adequate. Moreover, courts must understand the amount in controversy and the realistic
10 range of outcomes of the litigation. *Kullar v. Foot Locker, Inc.*, 168 Cal. App. 4th 116, 120 (2009).

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

15 **III. FACTS AND PERTINENT PROCEDURAL BACKGROUND**

16 PAWC is a California professional corporation that provides mental health services to its patients
17 throughout the State of California. Plaintiff Melody Donboli is a current employee and has worked for
18 PAWC as Marriage and Family Therapist since 2014. On August 25, 2020, Plaintiff filed her class action
19 lawsuit on behalf of similarly-situated therapists of PAWC alleging that they have been improperly
20 misclassified as independent contractors and thereby denied the benefits for employees pursuant to the
21 relevant provisions of the Cal. Labor Code, including but not limited to payment for all hours worked,
22 reimbursement of necessary business expenses, and off-duty meal and rest breaks. Plaintiff also brought
23 claims under Cal. Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et seq. (“UCL”) and the
24 Private Attorney General Act (“PAGA”) for civil penalties resulting from Defendant’s violations of the
25 applicable sections of the California Labor Code. (Declaration of Brian R. Short (“Short Decl.”) ¶10.)

26 At the outset and during the course of the action, Plaintiff conducted comprehensive research
27 regarding the application of the 2019 Assembly Bill 5, which codified the decision of California Supreme
28 Court in *Dynamex Operations West, Inc. v. Superior Court*, 4 Cal. 5th 903 (2018) to the instant matter and

1 whether Defendant can carry its burden of meeting all prongs under PAWC the *Dynamex* ABC test¹ and,
2 consequently, prove Plaintiff and other putative Class Members are properly classified as independent
3 contractors. Plaintiff also performed an extensive investigation of the business operations and practices of
4 companies that provide administrative, billing, and credentialing to individual mental health providers in
5 order to refute Defendant’s key defense that the putative Class Members perform work outside the “usual
6 course of the hiring entity’s business” (prong “B” of the *Dynamex* “ABC Test”). To support her position
7 that PAWC is indeed engaged in providing mental services to patients, Plaintiff also conducted exhaustive
8 research regarding the requirements set by the California statutes and administrative regulations for
9 professional corporations, such as PAWC to render professional services to the public. The various laws
10 related directly to the medical services presented several novel arguments for the parties compared to the
11 preeminent recent case law regarding misclassification of independent contractors. (Short Decl. ¶13.)

12 Once the case was commenced, Plaintiff served upon Defendant her first set of discovery
13 requests seeking standard class information pertaining to the merits of her claims, defendant’s potential
14 affirmative defenses as well as information necessary for Plaintiff to seek certification of the class
15 including commonality of facts, numerosity, and typicality of Plaintiff’s claims. Subsequently, Defendant,
16 through its counsel [“Defense Counsel”] approached Plaintiff’s counsel to discuss the merits of the case
17 and to suggest that the parties consider engaging in mediation. During the pre-mediation discussions that
18 ensued, Plaintiff’s counsel requested, and Defendant agreed to provide, a set of targeted informal
19 discovery in lieu of the entirety of the requested voluminous formal discovery that would allow a thorough
20 evaluation of the claims and defenses at mediation. In addition, the parties agreed to take depositions of
21 Plaintiff and Defendant’s PMKs regarding Payroll and Billing Practices, Policies and Procedures; Services
22 Provided to PAWC’s Patients; Defendant’s Business Operations; and Classification of Marriage and
23 Family Therapists as Independent Contractors to evaluate the strengths and weaknesses of their cases
24 before their mediation. (Short Decl. ¶¶ 14-16.)

25 ¹ L.C. Sec. 2775 provides that unless employer demonstrates that a person is (A) free from the control and
26 direction of the hiring entity in connection with the performance of the work, both under the contract for
27 the performance of the work and in fact; and (b) performs work that is outside the usual course of the
28 hiring entity’s business; and (c) is customarily engaged in an independently established trade, occupation,
or business of the same nature as that involved in the work performed,” a person providing labor or
services for remuneration shall be considered an employee rather than an independent contractor.

1 After completion of the depositions, the parties exchanged numerous email correspondence and
2 participated in multiple phone calls to discuss further the underlying merits of the claims and affirmative
3 defenses. Through numerous pre-mediation conversations and emails, the Parties' attorneys were able to
4 narrow the scope of the contested matters and rationally evaluate the merits and defenses which could be
5 presented at the mediation. They also agreed to use experienced wage and hour mediator Steve
6 Vartabedian and mutually agreed upon a mediation date. (Short Decl. ¶ 17.)

7 Prior to mediation and after thorough review of the relevant case law and statutes, the significant
8 amount of documents and records provided by Defendant during formal and informal discovery, and
9 information provided by the named Plaintiff, Plaintiff also prepared a comprehensive damage analysis in
10 order to assess the potential damages as well as the risks involved with the probable outcomes in this
11 litigation. (Short Decl. ¶¶ 18-19.)

12 On May 7, 2021, the parties engaged in a full-day remote mediation with mediator Mr. Steve
13 Vartabedian who is a highly experienced neutral in wage and hour class actions and was able to lend his
14 significant experience to the parties in their efforts to mediate the case. Although the Parties previously
15 had multiple discussions and shared emails with respect to the strength of certain claims, Defendant
16 vehemently denied that any act or omission on its part created any liability to the Class Members for any
17 of the claims alleged. Conversely, Plaintiff firmly believes in the merits of her claims and the strong
18 potential that the class could be certified. Therefore, after a full day of negotiations, information exchanges
19 conducted through the mediator, the parties made significant progress towards isolating the most-
20 important claims and defenses which permitted the parties to make a large step towards resolving the
21 claims asserted in Plaintiff's action. With this additional framework, the parties continued their settlement
22 discussions shortly after mediation and after several months of protracted negotiations reached an
23 agreement to settle this matter upon the terms and conditions set forth in the Agreement for which they
24 now seek preliminary approval. (Short Decl. ¶¶ 20-21.)

25 **IV. THE PROPOSED SETTLEMENT**

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

27 *"All current and former Marriage and Family Therapists, Licensed Clinical*
28 *Social Workers and workers with similar job titles and/or job duties who*
worked for Defendants in the State of California at any time between August
25, 2016, through the date the court enters an order granting preliminary

1 *approval of the settlement (the "Class Period"), or 30 days after the motion*
2 *for preliminary approval is filed, whichever is earlier."*

3 The class is estimated to consist of approximately 60 current and former employees of Defendant
4 in California. The identification of the defined settlement class is easily determined based on a review of
5 the Defendant's personnel records. (Agreement Sec. 5.03 (a)).

6 The Agreement provides for an individualized notice to each Class Member. The proposed notice
7 will be sent via first-class mail, postage pre-paid, and it will advise Class Members about the lawsuit and
8 settlement no later than 24-days after preliminary approval. (Agreement Sec. 5.03 (a)-(b)). The
9 Agreement provides for a multi-layer address verification procedure that will ensure Class Members
10 receive the Notice even if they have moved since leaving their employment with Defendant. (Agreement
11 Sec. 5.03 (b)). These additional address verification measures are intended to guarantee that the
12 maximum number of Class Members will be informed of the settlement and to ensure Class Member
13 settlement funds are received in a timely manner. Additionally, the proposed notice will provide Class
14 Members with information, including the anticipated individual settlement payment and methodology
15 for computation of that sum so that they will know how settlement payments will be computed.
(See Class Notice attached to Short Decl. ¶ 2 Ex. 2).

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

26 Defendant has agreed to pay \$1,050,000 to settle this matter on a class-wide basis, which is the
27 total and all-inclusive maximum amount Defendant shall be obligated to pay under the settlement
28 embodied by this Agreement. The settlement sum includes Class Counsel's attorney's fees of not more

1 than one-third of the settlement amount or Three Hundred and Fifty Thousand Dollars (\$350,000) and
2 litigation costs not to exceed Ten Thousand Dollars (\$10,000), a Service Award for Representative
3 Plaintiff of not more than Seven Thousand and Five Hundred Dollars (\$7,500), a PAGA penalty
4 payment of Twenty Five Thousand Dollars (\$25,000), which includes the payment of Eighteen
5 Thousand Seven Hundred Fifty Dollars (\$18,750) to the LWDA, the Claims Administration Costs
6 anticipated to be not more than Five Thousand Dollars (\$5,000).

7 In order to provide an equitable distribution of the settlement funds, each settlement Class
8 Member will receive a payment equal to their pro rata amount of monies earned during the Class Period
9 as compared to the total amount of monies paid to all Class Members during the same period. (Agreement
10 Sec. 5.06 (c)(1)). Using this formulation, the settlement results in an average payment of \$10,875 to each
11 and every Class Member on a non-reversionary basis, assuming 100% participation of all 60 individuals.
12 However, class members with longer tenure or paid more will receive a higher settlement amount
13 consistent with their higher proportion of estimated damages based on the claims asserted in this action.
14 If less than 100% of Class Members participate in the settlement, the participating Class Members' portion
15 will increase pro rata until the settlement fund is fully exhausted. *Id.* Importantly, Defendant has also
16 agreed to conduct a thorough investigation into its internal corporate policies to ensure compliance with
17 California wage and hour laws going forward. (Agreement Sec. 5.06(b)(6)). This additional prospective
18 relief is additional valuable consideration that, although difficult to value in numeric terms, significantly
19 advances the interests of current employees and weighs heavily in favor of the reasonable nature of the
20 settlement's terms.

21 Upon the Effective Date of the Judgment, all settlement Class Members will be deemed to have,
22 and by operation of the Judgment will have, released all Released Claims as defined in the agreement.
23 (Agreement Sec. 7.02) This release is specifically tailored to be as narrow as possible and is limited to the
24 release of wage and hour claims based on the facts alleged in the operative complaint. *Id.* Class members
25 who do not wish to be a part of the settlement Class and do not wish to be subject to the Judgment may
26 request exclusion from the class action settlement. Those Class Members who submit a request to be
27 excluded from the class action settlement will not be subject to the Judgment and will be deemed to have
28 never participated in this action. (Agreement Sec. 5.04 (a)). Class Members are also permitted to object

1 to the settlement terms if desired. (Agreement Sec. 5.04 (b)). All Class Members who do not timely request
2 exclusion will become members of the settlement Class and will be subject to the Judgment and its
3 associated release regardless of whether they become Participating Claimants by cashing their settlement
4 checks. *Id.*

5 In addition to making payments to Participating Claimants, and subject to Court approval,
6 Defendant will pay up \$350,000 for attorney's fees and up to \$10,000 for reimbursement of litigation costs
7 to Plaintiff's Counsel for their costs advanced prosecuting this case on behalf of the putative class. These
8 payments will reimburse Ms. Donboli and her attorneys for all attorney's fees, costs and other litigation
9 expenses incurred in this case. (Agreement Sec. 5.06 (b)(1)). As will be set forth in further detail in
10 Plaintiff's Motion for Approval of Attorney's Fees and Costs, which will be submitted to be heard in
11 conjunction with the Motion for Final Approval, this maximum attorney fee payment represents a
12 reasonable reimbursement for the Plaintiff's attorney's lodestar accrued during the litigation of the action
13 and recognizes the dedicated efforts of experienced Counsel who obtained this significant result for the
14 Class Members at the expense of other guaranteed potential hourly work and without a guarantee
15 of payment for the work performed. (Short Decl. ¶¶ 3-8.) This payment will be paid after the
16 judgment becomes final along with payments made to settlement Class Members.

17 Under the terms of the settlement, the cost of the professional claims administration fees,
18 including the cost of mailing the notice, reminder postcards and settlement payments, will be allocated
19 from the settlement amount. Class Counsel received an estimate for \$5,000. Any excess of the allotted
20 funds will be used to resolve any potential issues in the claims administration process and any unused
21 portion will be reallocated wholly to the class in order to increase Class Members' settlement share.
22 (Agreement Sec. 5.06.e).

23 Finally, as to Ms. Donboli's compensation for her unique efforts, the significant risks undertaken
24 by bringing about this litigation in the internet age when her lawsuit may easily be discovered by other
25 employers via Google and used as an "unstated" excuse to refuse to hire her, and in exchange for a much
26 broader general release pursuant to California Civil Code section 1542, Defendant will pay the
27 Representative Plaintiff a service award in the amount of up to \$7,500. (Agreement at Sec. 5.06 (b)
28 (3); Short Decl. ¶¶ 35-37.)

1 **V.LEGAL ARGUMENT**

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

3 Courts should grant class certification if “the question is one of a common or general interest, of
4 many persons, or when the parties are numerous, and it is impracticable to bring them all before the court,
5 one or more may sue or defend for the benefit of all.” C.C.P. §382. Specifically, courts will approve
6 certification of a class action if there is (a) an ascertainable class and (b) a well-defined community of
7 interest with common questions of law or fact. *Id.* The community of interest prong embodies three factors:
8 (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical
9 of the class; and (3) class representatives who can adequately represent the class.” *Id.*

10 When considering whether to grant such certification, courts apply a “lesser standard of scrutiny”
11 in the context of a stipulated settlement than they do for a contested motion for class certification. *Dunk*
12 *v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1807 fn. 19 (1996). Here, Plaintiff handily surpasses her
13 certification burden in this settlement context. Moreover, California courts strongly favor settlement.
14 *Ferguson v. Lieff, Cabraser, Heimann & Bernstein*, 30 Cal. 4th 1037, 1054 (2003) (Kennard, J.,
15 concurring and dissenting) (“[p]ublic policy favoring settlement is especially weighty for class actions”).
16 Based on this standard and the public policy in support of settlement, the proposed class should be certified
17 for settlement purposes.

18 As to the first prong, the class is readily ascertainable from the Defendant’s own internal records.
19 To the extent a Class Member’s contact information is outdated, the Class Administrator has reliable
20 methods to find updated information for those Class Members. As to the second prong, the very foundation
21 of this case presents common questions of law and fact as to all Class Members - whether Defendant is
22 liable to Class Members for their misclassification, unpaid wages, unreimbursed expenses, failure to
23 provide meal and rest breaks, improper wage statements, etc. Moreover, Ms. Donboli’ claims are 100%
24 typical of the absent Class Members, and she has no divergent or competing interests. Likewise, as set
25 forth in the accompanying declaration of Brian R. Short filed in support of the instant motion, Ms. Donboli
26 is adequate to represent the class and has proven her adequacy through her vigilant and zealous
27 participation in this case. In short, the requirements for certification are met here and preliminary approval
28 should be determined on a class wide basis.

1 Plaintiff's Counsel also request that they be appointed as Class Counsel in this matter. As detailed
2 in the attached declaration of Brian Short, Plaintiff's Counsel have significant experience in complex
3 matters, have vigorously and exhaustively litigated this case, and are adequate to represent this Class.
4 (Short Decl. ¶¶ 3-8.).

5 **B. Preliminary Approval of the Settlement is Warranted Here.**

6 The purpose behind the preliminary approval process is for the Court to make an initial
7 determination of whether the settlement is fair, reasonable, adequate, and within the range of possible
8 approval. West's Manual for Complex Litigation (Federal Judicial Center 4th ed. 2008) § 21.632; See
9 also, Newberg on Class Actions, Class Actions in State Courts, Preliminary Approval (4th ed. 2002) §
10 13:64. In making this determination, courts must understand the amount in controversy and the realistic
11 range of outcomes of the litigations. *Kullar*, 168 Cal. App. 4th 116; *Clark v. Am. Residential Serv. LLC*,
12 175 Cal. App. 4th 785, 806 (2009). There is no doubt that this settlement meets this standard since it
13 provides certainty and real value for the Class Members in a case with complex legal issues.

14 The trial court has broad discretion in determining whether a proposed settlement is fair and
15 reasonable. When making this analysis, the court will consider factors such as: the strength of plaintiff's
16 case; the risk, expense, complexity and duration of continued litigation; the amount offered in settlement;
17 the extent of discovery completed and the stage of the proceedings; the experience of Counsel; and the
18 reaction of the Class Members to the proposed settlement. *Nordstrom Com. Cases*, 186 Cal. App. 4th 576,
19 581 (2010). The trial court will also consider whether the settlement was the product of fraud or collusion
20 between the parties. *Id.*

21 Evaluation of these factors further indicates that the present settlement is fair and reasonable.
22 Although the Representative Plaintiff certainly believes in the strength of her case, Defendant presented
23 valid arguments to the contrary at the full-day mediation before Mr. Vartabedian. The realities associated
24 with the risks of protracted litigation and a potential appeal, even if successful at trial, was appropriately
25 considered during the mediation and ultimately aided in Plaintiff's decision to accept the instant
26 settlement. Moreover, Defendant has claimed that a lengthy litigation in the uncertain current economic
27 environment of the pandemic could put the company under financial stress and result in potential financial
28 difficulties to satisfy a judgment in this matter, particularly in the amount estimated by Plaintiff's Counsel,
which is why obtaining payment now for the Class Members is all the more valuable. Plaintiff's Counsel

1 analyzed this settlement amount very carefully and realized that settling now for the amount offered meant
2 a recovery for the Class Members and weighted it against a prolonged litigation leading to a trial and a
3 possibility of uncollectible judgment. Though it may be tempting for an advocate to insist that their
4 position will ultimately prevail, Plaintiff and her Counsel cannot ignore the value of minimizing risk
5 for the Class Members, particularly when an attractive alternative is available. (Short Decl. ¶¶ 22-28.)

6 This case also involves highly complex issues and required analysis of multiple nuanced and novel
7 legal issues involving the mental health medical field and the relevant laws and policies that apply
8 specifically to this field. These factors create additional complexity and therefor trial could potentially be
9 complicated and arduous, and require the input of multiple experts who are well-versed in industry-
10 specific issues. (Short Decl. ¶ 27.) Each of these factors increase the risk that Plaintiff may be less
11 successful at trial than the value brought in the current proposed settlement. Moreover, Plaintiff's Counsel
12 have already invested significant time and money in their prosecution of this case, and continuing litigation
13 would require a substantial amount more investment of resources and expenses and would likely increase
14 the risks that the allegations would be subject to procedural and substantive challenges. In addition to the
15 time and expense of what would surely have been an extensive discovery battle, there would have been
16 travel to conduct depositions of potential witnesses who are scattered throughout the State of California,
17 the retention of field-specific experts, meetings with those experts, expert depositions, not to mention the
18 vast amount of time Counsel would have devoted to class certification and trial preparation. Although
19 Class Counsel is happy to make the investment on behalf of the Class, there is always a risk that well-
20 funded Defendants will "out-spend" its adversary, both from a time and money value. Alternatively,
21 settling now and guaranteeing that the Class Members will receive a significant value for their claims
22 vastly outweighs continued litigation. (Short Decl. ¶28.)

23 Importantly, the amount offered in settlement is fundamentally fair because it provides real and
24 immediate value to the Class Members. Assuming a claims rate of 100% and dividing equally among the
25 class, each Class Member would be entitled to an average of **\$10,875** to compensate them for their claims.
26 However, in an effort to make the payment more accurately reflect each Class Members' potential
27 damages, Plaintiff requested, and Defendant agreed, to make the reward proportional with each Class
28 Members' wages earned during the Class Period. In other words, the settlement of each Class Member's
claims for wage and hour violations, failure to reimburse all expenses, failure to provide an accurate wage

1 statement, *inter alia*, will also accurately reflect the amount of time and effort each Class Member put into
2 his or her job. (Short Decl. ¶ 31.) In addition, part of the settlement includes Defendant's agreement to
3 conduct a thorough review of its internal policies to ensure compliance with California's laws going
4 forward. This benefit, insisted upon by the Representative Plaintiff, will result in significant immediate
5 and tangible proof to the Class Members that their interests have been protected. In sum, this settlement
6 is an ideal result for the Class Members. (Short Decl. ¶ 29.)

7 Finally, as to Counsel's experience, Plaintiff's attorneys boast more than 20 (years of experience
8 in class and complex actions and was utilized to reach this favorable result for the class. Mr. Short has
9 practiced complex class action litigation for more than 16 years and has been exclusively specializing in
10 complex class action and PAGA wage and hour employment litigation for the past 12 years while
11 Associate Dorota James has represented employees in wage and hour class actions for more than 10 years,
12 both as an attorney and previously as a licensed paralegal. (Short Decl. ¶¶ 3-8.) All attorneys representing
13 the Class Members' interests spent considerable time and effort analyzing these complex legal issues, pre
14 and post filing, and developing novel legal arguments in an effort to ensure that all possible arguments
15 were presented as effectively as possible. (Short Decl. ¶¶ 12-18.) Without their efforts, along with those
16 of the Representative Plaintiff, the Class Members would be without recourse.

17 Based on the foregoing, preliminary approval is appropriate here because the proposed settlement
18 certainly falls "within the range of possible approval." *Id.*; see also *In re General Motors Corp.*, supra,
19 594 F .2d at p. 1124. This settlement was reached by arm's length negotiations, using an experienced
20 neutral, and a thorough review of Defendant's relevant documents.

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

22 Cal. Rule of Court, Rule 3.769(f) sets forth the standard under which approval of the form and
23 contents of notice will be approved. Plaintiff has fulfilled this standard since the Notice contains "an
24 explanation of the proposed settlement and procedures for Class Members to follow in filing objections
25 to it and in arranging to appear at the settlement hearing[.]" [See generally, Exhibit 2]

26 The proposed Notice contains detailed information regarding how each Class Member may make
27 his or her claim, including the precise documents which may be provided in support. It also summarizes,
28 in detail and including deadlines and how a Class Member may object to or opt-out of the settlement.
[Exh. 2 to Short Decl.] The proposed Notice will be sent by first class mail to the mailing address for each

1 Class Member. Since the class consists of current and former employees of Defendant, Defendant's
2 records will be utilized to contact each Class Member at his/her last known mailing address. For any
3 mailings that are returned, the Claims administrator will perform a skip trace to ensure each Class Member
4 is apprised of his or her rights. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 618-620 (1997)
5 (individual mailing to each Class Member is considered adequate notice.) Moreover, the Notice provides
6 information on how class members may access court-filed documents via a dedicated website so that they
7 may easily review these documents without the need to pay and fees to the court's own system.

8 **D. The Proposed Incentive Payments To The Representative Plaintiff Is Reasonable, Justified,
9 And Routinely Awarded.**

10 Service payments to representative plaintiffs in class action settlements are intended to recognize
11 the representative's level of risk, time expended, and the efforts he or she undertook. *Clark v. American*
12 *Residential Services LLC*, 175 Cal. App. 4th 785 (2009). "Courts routinely approve incentive awards to
13 compensate named plaintiffs for the services they provide and the risks they incurred during the course of
14 the class action litigation." *See Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001). *See*
15 *also* Manual § 30.42 n. 763 (noting that such awards "may sometimes be warranted for time spent meeting
16 with class members or responding to discovery.") In the *Coca-Cola* case, *supra*, the Court approved
17 incentive awards of \$300,000 to each named plaintiff in recognition of the services they provided to the
18 class by responding to discovery, participating in the mediation process and taking the risk of stepping
19 forward on behalf of the class. *See Ingram*, 200 F.R.D. at 694; *See also Van Vranken v. Atlantic Richfield*
20 *Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving a \$50,000 participation award). *See also Clark*, 175
21 Cal. App. 4th at 806. ("[T]he rationale for making enhancement awards to named plaintiffs is that they
22 should be compensated for the expense or risk they have incurred in conferring a benefit on other members
23 of the class.") The requested incentive payment is particularly justified here where Plaintiff brought this
24 action as a current employee of Defendant and thereby risked the potentiality that she could be terminated
25 under some pre-textual reason in retaliation for filing this action.

26 Here, the parties agreed to pay the Plaintiff service awards in an amount not to exceed \$7,500
27 because of her extensive contribution during the case, the valuable information she was able to provide
28 both prior to and at the mediation she attended, and the risks that she incurred by serving as a named
representative in a public class action lawsuit. Ms. Donboli expended a significant amount of time, both
pre and post-filing, assisting with this litigation. Her assistance and copious and detailed record keeping

1 provided several items of evidence which were pivotal to proving her claims. Moreover, Ms. Donboli’
2 documentation and detailed reprisal of events provided her attorneys with the details to craft a unique and
3 comprehensive complaint based on multiple theories of liability. Ultimately, it was Ms. Donboli’ effort,
4 assistance, and bravery which achieved this result for her fellow Class Members. (Short Decl. ¶¶ 35-37.)

5 Prior to and throughout the litigation, the Plaintiff repeatedly spoke with Counsel, forwarded
6 countless emails, poured over numerous documents, and aided her Counsel in litigating this case.
7 Moreover, Ms. Donboli attended her deposition and made herself available remotely for the full-day
8 mediation in May 2021, taking time out of her busy work schedule to support her fellow Class Members.
(Short Decl. ¶ 35.)

9 Accordingly, Plaintiff’s Counsel has requested, and Defendant has agreed to pay, Ms. Donboli
10 \$7,500 as an incentive for her work done on behalf of the class in obtaining this significant result. The
11 requested enhancement is justified and reasonable and Plaintiff respectfully requests approval of this
12 incentive payment in conjunction with the settlement approval. *In re Cellphone Fee Termination Cases*,
13 186 Cal. App. 4th 1380, 1394 (2010) (affirming the trial court’s award to each named plaintiff of \$10,000
14 as incentive payment.)

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

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

22 Counsel intends to request one-third of the gross settlement amount (\$350,000) for their attorneys’
23 fees and reimbursement for up to \$10,000 in costs at the final approval hearing. As will be demonstrated
24 at the final approval hearing and in Class Counsel’s fee submission, their lodestar certainly supports this
25 fee request, as does the tremendous result obtained for the absent Class Members. In addition to the
26 substantial monetary settlement amount obtained for Class Members, Plaintiff negotiated a significant and
27 highly beneficial provision that requires that Defendant undertake a review of their employment policies
28 to bring them into compliance with California law. While not measurable in terms of monetary value, this

1 provision benefits the class greatly and should be considered as part of the value conferred as a result of
2 the settlement and the work performed by Class Counsel. ShortLegal, APC spent significant time and
3 resources ascertaining the viability of these claims, researching and analyzing the unique issues
4 surrounding a misclassification claim in this particular field, performing the extensive discovery that set
5 the case up to the point where class certification could be filed if necessary, analyzing the potential
6 damages for mediation and engaging in protracted and in-depth settlement discussions regarding the
7 valuation of the claims that brought about this settlement. (Short Decl. ¶¶ 12-18) In addition, Plaintiff
8 drafted a first amended complaint and extensive discovery requests, prepared for and attended Plaintiff's
9 and Defendant's PMKs depositions, and ultimately, spent a tremendous amount of time reviewing and
10 analyzing Defendant's documents, drafting the mediation brief, and attending the mediation. Importantly,
11 Class Counsels' efforts will not stop here as they have a significant amount of work ahead of them in
12 drafting the final papers, working with the Claims Administrator, and dealing with any other post-
settlement issues that may arise.

13 Finally, Class Counsel undertook this case knowing that they may have to set aside other work
14 where the client would otherwise immediately pay the hourly-fees generally charged for legal services.

15 As will be more fully demonstrated in their request for reasonable attorneys' fees and costs which
16 will be made in anticipation of the final approval hearing, Plaintiff's Counsel believes the Court will find
17 their request to be reasonable, appropriate and subject to approval. (Short Decl. ¶ 33-34.)

18 **VI. CONCLUSION**

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

24 Dated: September 27, 2021

SHORTLEGAL, APC

25
26 By:



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