

Kane Moon (SBN 249834)
kane.moon@moonyanglaw.com
H. Scott Leviant (SBN 200834)
scott.leviant@moonyanglaw.com
Mariam Ghazaryan (SBN 341119)
mariam.ghazaryan@moonyanglaw.com

MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125

Attorneys for Plaintiff LIANA GONZALEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

LIANA GONZALEZ, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

COMMUNITY HEALTH SYSTEMS, INC., a
California corporation; and DOES 1 through 10,
inclusive,

Defendants

Case No.: CIVDS2015678

[Assigned for All Purposes to The Honorable
David Cohn, Dept. S26]

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: June 29, 2022
Time: 10 a.m.
Courtroom: Dept. S26
Judge: Hon. David Cohn

Action Filed: July 28, 2020
Trial Date: Not Set

1 TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on June 29, 2022, at 10 a.m., or as soon thereafter as the matter
3 may be heard, in Department S26 of the above-captioned Court, located at 247 West 3rd Street, San
4 Bernardino, California 92415-0210, Plaintiff LIANA GONZALEZ (“Plaintiff”) will and hereby does
5 move this Court for an order:

6 1. Granting class certification of the Class, solely for settlement purposes pursuant to
7 Code of Civil Procedure § 382;

8 2. Finally approving the JOINT STIPULATION OF CLASS ACTION
9 SETTLEMENT (“Settlement” or “Agreement”);

10 3. Appointing counsel for Plaintiff, Moon & Yang, APC, as Class Counsel;

11 4. Appointing Plaintiff as the Class Representative;

12 5. Confirming the sufficiency of the notice process;

13 6. Approving CPT Group Class Action Administrators as the third-party administrator
14 and approving its costs of administration;

15 7. Ruling that Settlement Class Members who did not timely submit requests for
16 exclusion from the settlement as set forth in the Agreement have released their claims against
17 Defendant and the other releasees as set forth in the Agreement;

18 8. Ruling that Settlement Class Members who did not timely object to the settlement
19 pursuant to the terms set forth in the Agreement are barred from prosecuting or pursuing any
20 appeal of the Court’s Order;

21 9. Awarding the sums requested in the Motion;

22 10. Directing that the clerk of the Court enter Final Judgment after entry of the Court’s
23 Order granting final approval; and,

24 11. Without affecting the finality of the final judgment, reserving continuing
25 jurisdiction over the parties for the purposes of implementing, enforcing and/or administering
26 the settlement as set forth in the Agreement or enforcing the terms of the Final Judgment.

27 Good cause exists to grant this Motion because:

28 1. The Class meets all of the requirements for class certification for settlement

1 purposes under Code of Civil Procedure § 382;

2 2. The Settlement Agreement is a fair, adequate, and reasonable compromise of the
3 disputed wage and hour claims asserted by Plaintiff;

4 3. Plaintiff and Class Counsel are adequate to represent the Class;

5 4. The completed notice procedures and related forms complied with California Rules
6 of Court 3.766(d) and (e), and adequately apprised Class Members of their rights and fully
7 comport with due process.

8 This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court,
9 which require approval by the Court of a class action settlement and permit the Court to extend the page
10 limit for memoranda.

11 This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points
12 and Authorities, the Declarations of H. Scott Leviant, Plaintiff, and the Settlement Administrator in
13 support thereof, all papers and pleadings on file with the Court in this action, all matters judicially
14 noticeable, and on such oral and documentary evidence as may be presented in connection with the
15 hearing on the Motion.

16 Respectfully submitted,

17 Dated: June 6, 2022

MOON & YANG, APC

18
19 By: _____

Kane Moon
H. Scott Leviant
Mariam Ghazaryan

20
21 Attorneys for Plaintiff LIANA GONZALEZ
22
23
24
25
26
27
28

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	iii
I. INTRODUCTION	1
II. THE NOTICE PROCESS WAS SUCCESSFULLY COMPLETED AFTER PRELIMINARY APPROVAL	1
III. THE MAJOR TERMS OF SETTLEMENT	2
IV. FACTUAL AND PROCEDURAL BACKGROUND	5
A. Plaintiff's Claims	5
B. Pre-Mediation Data Production and Analysis.....	6
C. Settlement.....	6
V. CLASS DEFINITION	7
VI. DISCUSSION.....	7
A. The Court Should Conditionally Certify the Class Because It Meets All the Requirements for Certification for Settlement Purposes Under CCP § 382.....	7
B. The Court Should Approve the Settlement Because It Is a Fair, Adequate, and Reasonable Compromise of Disputed Wage Claims in View of Defendant's Potential Liability Exposure and the Risks of Continued Litigation	9
1. Class Action Settlements Are Subject to Review and Approval.	9
2. The Parties Reached the Settlement Through Arms' Length Negotiations Between Experienced Counsel with the Assistance of a Highly Qualified Mediator After Sufficient Data Was Exchanged to Evaluate Settlement.	10
3. The Settlement Represents a Fair, Adequate, and Reasonable Compromise of Class Members' Claims Based on Defendant's Estimated Liability Exposure Given the Risks Continued Litigation Would Entail.	11
4. The Proposed Method for Allocating Settlement Funds Is Fair, Adequate, and Reasonable.	15

1	5.	The Proposed Enhancement Awards to Plaintiff Is Fair, Adequate, and	
2		Reasonable and Warrants Approval.....	15
3	6.	The Proposed Award of Attorneys’ Fees and Costs Is Also Fair, Adequate,	
4		and Reasonable and Merits Approval.	16
5	a)	Plaintiff’s Counsel Should be Awarded Fees Based on a Percentage of the	
6		Fund Recovered, Consistent with the Common Fund Method.....	16
7	b)	Class Counsel Is Entitled to Attorneys’ Fees and Costs under the	
8		California Labor Code and California’s Private Attorney General Statute	17
9	c)	A Lodestar Cross Check Confirms that Class Counsel’s Requested	
10		Attorneys’ Fees Are Reasonable.....	18
11	d)	Class Counsel’s Costs Are Reasonable.....	21
12	7.	The Proposed Payment to the Administrator Is Fair and Reasonable.....	22
13	8.	The PAGA Allocation is Reasonable.....	22
14	VII.	CONCLUSION	24

TABLE OF AUTHORITIES

DECISIONAL AUTHORITY

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> , 85 Cal. App. 4th 1135 (2000).....	10
<i>Amaral v. Cintas Corp.</i> , 163 Cal. App. 4th 1157 (2008).....	23
<i>Bell v. Farmers Ins. Exchange</i> , 115 Cal. App. 4th 715 (2004).....	15
<i>Chavez v. Netflix, Inc.</i> , 162 Cal. App. 4th 43 (2008)	17, 20
<i>City and County of San Francisco v. Sweet</i> , 12 Cal. 4th 105 (1995).....	16
<i>Dunk v. Ford Motor Co.</i> 48 Cal. App. 4th 1794 (1996).....	passim
<i>Duran v. US Bank Nat’l Ass’n</i> , 59 Cal. 4th 1 (2014).....	11
<i>Glendora Community Redevelopment Agency v. Demeter</i> , 155 Cal. App. 3d 465 (1984)	20
<i>Global Minerals & Metals Corp. v. Superior Court</i> , 113 Cal. App. 4th 836 (2003)	8
<i>Graham v. DaimlerChrysler Corp.</i> , 34 Cal. 4th 553 (2004).....	18
<i>In re Consumer Privacy Cases</i> , 175 Cal. App. 4th 545 (2009).....	16
<i>Jaimez v. Daiohs USA, Inc.</i> 181 Cal. App. 4th 1286 (2010).....	8
<i>Ketchum v. Moses</i> , 24 Cal. 4th 1122 (2001).....	20
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal. App. 4th 116 (2008)	9
<i>Laffitte v. Robert Half Intern. Inc.</i> , 1 Cal. 5th 480 (2016)	17
<i>Lealao v. Beneficial California, Inc.</i> , 82 Cal. App. 4th 19 (2000).....	16, 20, 21
<i>Linderv. Thrifty Oil Co.</i> , 23 Cal. 4th 429 (2000).....	8
<i>Malibu Outrigger Bd. of Governors v. Superior Court</i> , 103 Cal. App. 3d 573 (1980).....	9
<i>Mallick v. Superior Court</i> , 89 Cal. App. 3d 434 (1979).....	10, 22
<i>MBNA American Bank, N.A. v. Gorman</i> , 147 Cal. App. 4th 1 (2006)	20
<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> , 186 Cal. App. 4th 399 (2010)	10
<i>Murphy v. Kenneth Cole Productions, Inc.</i> , 40 Cal. 4th 1094 (2007).....	18
<i>Nightengale v. Hyundai Motors America</i> , 31 Cal. App. 4th 99 (1994).....	19
<i>PLCM Group, Inc. v. Drexler</i> , 22 Cal. 4th 1084 (2000).....	20
<i>Press v. Lucky Stores</i> , 34 Cal. 3d 311 (1983).....	18

1	<i>Quinn v. State of California</i> , 15 Cal. 3d 162 (1975).....	16
2	<i>Ramos v. Countrywide Home Loans, Inc.</i> , 82 Cal. App. 4th 615 (2000)	18, 19
3	<i>Ryan v. California Interscholastic Federation</i> , 94 Cal. App. 4th 1033 (2001)	18
4	<i>San Bernardino Valley Audubon Soc. v. County of San Bernardino</i> , 155 Cal. App. 3d 738 (1985)	20
5	<i>Sav-on Drug Stores, Inc. v. Superior Court</i> , 34 Cal. 4th 319 (2004).....	8
6	<i>Serrano v. Priest</i> , 20 Cal. 3d 25 (1977)	16, 19, 20
7	<i>Stambaugh v. Superior Court</i> , 62 Cal. App. 3d 231 (1976)	9
8	<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224 (2001)	11, 19, 20
9		
10	FEDERAL DECISIONAL AUTHORITY	
11	<i>Air Line Stewards & Stewardesses Ass’n, Local 550 v. American Airlines, Inc.</i> ,	
12	455 F.2d 101 (7th Cir. 1972).....	11
13	<i>Alaniz v. California Processors, Inc.</i> , 73 F.R.D. 269 (N.D. Cal. 1976)	9
14	<i>Cotter v. Lyft, Inc.</i> , 176 5 F. Supp. 3d 930 (N.D. Cal. 2016).....	22, 23
15	<i>In re Drexel Burnham Lambert Group, Inc.</i> , 960 F.2d 285 (2d Cir. 1992),	
16	cert. dismissed, 506 U.S. 1088, 122 L. Ed. 497, 113 S. Ct 1070 (1993).....	8
17	<i>Jordan v. Multnomah County</i> , 815 F.2d 1258 (9th Cir. 1987).....	19
18	<i>Miller v. CEVA Logistics U.S.A., Inc.</i> , 2015 WL 729638 (E.D. Cal. Feb. 19, 2015)	14
19	<i>Moreno v. City of Sacramento</i> , 534 F.3d 1106 (9th Cir. 2008).....	19
20	<i>O’Connor v. Uber Technologies, Inc.</i> , 201 F.Supp.3d 1110 (N.D. Cal. 2016)	22
21	<i>Officers for Justice v. Civil Serv. Comm’n of San Francisco</i> , 688 F.2d 615 (9th Cir. 1982).....	10
22	<i>Parkinson v. Hyundai Motor America</i> , 796 F.Supp.2d 1160 (C.D. Cal. 2010).....	20
23	<i>Rodriguez v. West Publishing Corp.</i> , 563 F.3d 948 (9th Cir. 2000)	14
24	<i>Van Vranken v. Atlantic Richfield Co.</i> , 901 F.Supp. 294 (N.D. Cal. 1995)	15
25	<i>Viceral v. Mistras Group</i> , 2016 WL 5907869 (N.D. Cal. 2016)	22
26	<i>Willis v. Xerox Bus. Servs., LLC</i> , 2013 WL 6053831 (E.D. Cal. 2013)	23

STATUTES

Code of Civil Procedure § 1021.5	18
Code of Civil Procedure § 382	7, 9, 24
Labor Code § 2699	12

RULES

Rules of Court, Rule 3.769	9
----------------------------------	---

TREATISES

Newberg on Class Actions (3d ed. 1991) § 11.27	9
--	---

OTHER AUTHORITIES

<i>Findings of the Study of California Class Action Litigation</i> , 2000-2006	14
Manual for Complex Litigation, 2d (1993) § 30.45	9

1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court, Rules 3.769(d) and (e), Plaintiff respectfully requests that
3 this Court finally approve the proposed class action settlement set forth in the JOINT STIPULATION
4 OF CLASS ACTION SETTLEMENT (“Settlement” or “Agreement”) with Defendant COMMUNITY
5 HEALTH SYSTEMS, INC. (“Defendant”).

6 After informal discovery, the exchange of documents, and an arm’s-length mediation session
7 with an experienced mediator, Steven Serratore, Plaintiff and Defendant (collectively referred to herein
8 as the “Parties”) reached a proposed class action settlement with a gross settlement amount (“GSA”) of
9 **\$500,000.00** in compromise of disputed claims asserted on behalf of the below-defined Class consisting
10 of approximately **555** members. Plaintiff believes that this settlement is a fair, adequate, and reasonable
11 compromise of the disputed claims for alleged unpaid wage and hour violations and penalties asserted in
12 this case. The Class response supports the conclusion that the Settlement is reasonable; there were no
13 objections or exclusion requests.

14 Plaintiff now submits this Motion for Final Approval of Class Action Settlement, along with the
15 Settlement (attached to the Declaration of H. Scott Leviant [“Leviant Decl.”], Exhibit 1 thereto). For the
16 Court’s convenience, below is a summary of the key provisions of the Settlement.

17
18 **II. THE NOTICE PROCESS WAS SUCCESSFULLY COMPLETED AFTER**
19 **PRELIMINARY APPROVAL**

20 Plaintiff and Defendant have fulfilled the class notice procedures set forth in the Settlement. The
21 Settlement Administrator, CPT Group, Inc. (“CPT”), sent individual Notices to 557 Class Members on
22 April 5, 2022. (Declaration of Erin La Russa [“La Russa Decl.”], ¶¶ 3-7.) Of the Notices that were
23 mailed, 18 were returned after mailing. (La Russa Decl., ¶ 8.) Skip tracing found new addresses for 14
24 Class Members. Including forwarding addresses, 17 Notices were remailed with updated addresses. (La
25 Russa Decl., ¶ 9.) Ultimately, only 3 notice packets are considered undeliverable. (La Russa Decl., ¶ 9.)
26 One Class Member requested to be excluded from the Settlement, and no Class Members objected in
27 writing. (La Russa Decl., ¶¶ 10-11.) There were no work week disputes. (La Russa Decl., ¶ 12.)

28 **PAYMENTS:** For 554 participating Class Members, the average **gross** payment per Class

Member is **\$904.52**. The Net Settlement Amount (including PAGA) is estimated to be at least **\$254,333.33**, resulting in an average **net** payment per Class Member of at least **\$459.08**, before any tax withholdings (excluding PAGA, the average net is \$431.23). (Settlement, ¶ 26(g).) The highest net payment (excluding PAGA) is estimated to be **\$1,444.65**. (La Russa Decl., ¶ 15.) In addition, there are 418 Class Members who worked 12,157 work weeks during the PAGA Period. The average payment to these individuals is **\$27.03**, and the highest individual PAGA payment is estimated to be **\$81.43**. (La Russa Decl., ¶ 16.)

III. THE MAJOR TERMS OF SETTLEMENT

The provisions of the proposed Settlement include the following:

- Defendant agrees not to oppose certification of a Class for purposes of Settlement only (Settlement, ¶ 19);
- Class: All individuals employed by Defendant in California and classified as “non-exempt” at any time during the Class Period (the “Class Period” is July 28, 2016 through the date upon which the Court grants preliminary approval of this Settlement). “Settlement Class Members” are those Class Members who do not submit timely exclusion requests to the Settlement Administrator. (Settlement, ¶¶ 3-4.)
- Settlement Amount: Defendant will pay a maximum of **\$500,000.00**, referred to as the Gross Settlement Amount (or GSA herein), resulting in an estimated average **gross** payment per Class Member of **\$904.52** (Settlement, ¶ 26(c));
- Class Size: **554** individuals who worked approximately 47,547 workweeks. (Leviant Decl., ¶ 18; La Russa Decl., ¶ 15.)
- PAGA Group Size: about **418** individuals who worked approximately 12,157 pay periods (Leviant Decl., ¶ 18; La Russa Decl., ¶ 16.)
- Escalator Clause: The number of Class Members is approximately five hundred sixteen (516) and the number of workweeks worked in the Class Period for those Class Members is approximately fifty thousand one hundred seventy-eight (50,178). If it is later determined that, on the date of preliminary approval, the number of actual workweeks during the Class

1 Period exceeds 10% of the estimated workweeks on November 16, 2021 (i.e., exceeds
2 55,195 workweeks), Defendant will increase the Gross Settlement Amount by a pro-rata
3 dollar value equal to the number of workweeks in excess of 55,195 (the “Escalator Clause”).
4 (Settlement, ¶ 26(d));

- 5 • Kullar/Munoz Analysis: Plaintiff addresses the claims analysis herein, at Part V.B.3, and in
6 more detail the Declaration of Leviant, at Paragraph 18;
- 7 • No Reversion: The Settlement is a **non-reversionary** settlement (Settlement, ¶ 26(e));
- 8 • Certification: Plaintiff addresses certification below, at Part V.A., and in the *previously-*
9 *filed* Declaration of H. Scott Leviant in Support of Plaintiff’s Motion for Preliminary
10 Approval, at Paragraphs 34-40. Certification was discussed in greater detail in the Motion
11 for Preliminary Approval.
- 12 • No Claim Form: No claim form is required (Settlement., ¶ 26(f));
- 13 • Class Release: The Settlement will release specified wage-and-hour claims for Class
14 Members (those Class Members who do not opt out of the Settlement) as defined by the
15 First Amended Complaint (Settlement, ¶ 37);
- 16 • PAGA Release: The Class Members will release the PAGA Claims set forth in this Action,
17 that were identified in the Complaint and Plaintiff’s LWDA Notice Letter, regardless of
18 whether they opt out of the class portion of the Settlement (Settlement, ¶¶ 11, 14, 15 and
19 37(c)(3));
- 20 • Release Effective Date: The Release is not active until Defendant tenders all payments
21 required under the Settlement to the Settlement Administrator (Settlement, ¶ 37(b));
- 22 • Net Settlement Amount Available to the Class: After deducting Class Counsel’s attorneys’
23 fees and costs, service payment to Plaintiff, administration costs, and the payment to the
24 LWDA, the remainder will be available for distribution to Class Members who do not opt
25 out, with each Class Member receiving a share based on the number of workweeks each
26 Class Member worked for a Defendant within the Class Period. The Net Settlement
27 Amount is estimated to be at least **\$254,333.33**, resulting in an average **net** payment per
28 Class Member of at least **\$459.08**, before any tax withholdings. (Settlement, ¶ 26(g));

- 1 • Tax Allocation: The amounts distributed to Class Members will be characterized as 10%
2 alleged unpaid wages, 45% to penalties and 45% to interest, and PAGA Settlement
3 Payments will be allocated as 100% penalties. (Settlement, ¶ 26(k));
- 4 • Employer's Portion of Payroll Taxes Paid Separately: Defendant's portion of payroll taxes
5 (e.g., FICA, FUTA, etc.) owed on any settlement payments to Class Members that
6 constitute wages will be paid separate and apart from the GSM (Settlement, ¶ 26(h));
- 7 • Settlement Administrator: The notice portion of the Settlement was administered by a
8 third-party Administrator, CPT Group, Inc., and the Parties estimated that the costs of
9 administration would not reasonably exceed \$20,000.00. CPT Group, Inc.'s low bid for
10 settlement administration services in the amount of **\$11,500.00** was selected as the lowest
11 bid from a competitive bidding process. (Settlement, ¶ 26(p));
- 12 • Class Data for Administration: The Settlement Administrator received the Class List, used
13 the NCOA database to update the Class List, and then used skip tracing on returned Notices
14 (Settlement, ¶ 32(a));
- 15 • Notice: The Notice describes how to dispute workweeks, submit and objection in writing,
16 in person, or through an attorney, or request exclusion (Settlement, ¶ 26(s)).
- 17 • Notice Language: Notice issued in English and Spanish (Settlement, ¶ 26(t));
- 18 • Objections: Objections can be submitted in person, through an attorney, or in writing to the
19 Settlement Administrator, with no pre-requisite to being heard (Settlement, ¶ 26(x));
- 20 • Exclusion Requests: The procedure for exclusion requests, mailing a request to the
21 Settlement Administrator, is the same as the procedure for submitting a writing objection
22 (Settlement, ¶¶ 26(w) and 26(x));
- 23 • PAGA Allocation: From the GSA, **\$60,000** will be allocated to settle claims brought
24 pursuant to the California Private Attorneys General Act, Labor Code § 2699 *et seq.*
25 ("PAGA"), and seventy-five percent (75%), or **\$45,000**, will be paid to the California Labor
26 & Workforce Development Agency. (Settlement, ¶ 9.)
- 27 • Notice to LWDA: Notice was provided prior to the filing of this Motion. Evidence is
28 attached to the Leviant Declaration.

- Enhancement/Service Awards to Plaintiff: Defendant will not oppose the application for Class Representative Service Payment of up to **\$7,500.00** for Plaintiff, to be paid from the GSA (Settlement, ¶ 26(n));
- Fees and Costs: Defendant will not oppose Class Counsel’s application for fees not to exceed 33 1/3% of the GSA (**\$166,666.67**), and actual costs, in an amount not to exceed **\$15,000**, to be paid out of the GSA (Settlement, ¶ 26(m)).
- Check Void Period: Settlement checks will be valid for 180 days (Settlement, ¶ 34);
- Uncashed Checks: Any settlement checks that are mailed to the Class Members and remain uncashed after 180 days of the date of issuance will be cancelled, and the moneys will be directed to the California State Controller’s Office for Unclaimed Property in the name of each Class Member who failed to cash their Settlement Payment (Settlement, ¶¶ 34-35);
- Judgment Notice: Judgment will be posted on the Settlement Administrator’s website after entry (Settlement, ¶ 30);
- Confidentiality Provisions: The Settlement permits Class Counsel to discuss the Settlement with Class Members (Settlement ¶ 58).

(Leviant Decl., ¶¶ 11-12 and Exhibit 1 thereto.)

IV. FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiff’s Claims

On July 28, 2020, Plaintiff filed a putative Class Action alleging the following labelled causes of action: (1) Failure to Pay Minimum and Straight Time Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197]; (2) Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198]; (3) Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512]; (4) Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7]; (5) Failure to Indemnify Necessary Business Expenses [Cal. Lab. Code § 2802]; (6) Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203]; (7) Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226]; and (8) Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, *et seq.*]. (The “Action.”) In the Complaint, Plaintiff sought to represent all persons that worked for Defendant in California as an hourly-paid, non-exempt employee at

1 any time during the period beginning four years before the filing of the initial complaint and ending
2 when Notice to the Class is sent. (Leviant Decl., ¶ 4.)

3 Plaintiff satisfied the administrative exhaustion requirement that is a prerequisite to filing a claim
4 for Civil Penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et
5 seq.] (“PAGA”). On February 23, 2021, Plaintiff filed a First Amended Complaint adding a cause of
6 action for Civil Penalties Under PAGA [Cal. Lab. Code § 2699, et seq.]. (Leviant Decl., ¶ 5.)

7 **B. Pre-Mediation Data Production and Analysis**

8 The Parties have conducted informal discovery and investigation of the facts and law. Such
9 discovery and investigation have included, inter alia, the exchange of informal data and discoverable
10 information in preparation for the mediation session. (Leviant Decl., ¶ 6.) The Parties have analyzed
11 payroll and other data pertaining to Plaintiff and the Class during the relevant Settlement Period,
12 including but not limited to the numbers of former and current members of each purported subclass
13 within the Class, average workweeks, and average rate of hourly pay. (*Id.*) In addition, Defendant also
14 provided documents reflecting their wage and hour policies and practices during the Settlement Period
15 and information regarding the total number of current and former employees in the Class. (*Id.*)

16 After reviewing documents regarding Defendant’s wage and hour policies and practices and
17 other information obtained during the informal exchange of discovery, Class Counsel were able to
18 evaluate the probability of class certification, success on the merits, and the reasonably obtainable
19 maximum monetary exposure for all claims. Class Counsel reviewed these records and prepared a
20 damage analysis prior to mediation. Class Counsel also investigated the applicable law regarding the
21 claims and defenses asserted in the litigation. (Leviant Decl., at ¶ 7.)

22 **C. Settlement**

23 On November 16, 2021, the Parties mediated before Steven Serratore, who is a highly
24 experienced and well-regarded mediator for wage and hour class action litigation. (Leviant Decl., ¶ 8.)
25 At the mediation, the Parties discussed at length the burdens and risks of continuing with the litigation as
26 well as the merits of the claims and defenses. (*Id.*) The Parties agreed to the basic terms of a proposed
27 settlement and ultimately signed a Memorandum of Understanding (“MOU”) regarding the substantive
28 terms of a class-wide settlement, pending the Parties’ agreement on a long-form class settlement

1 agreement. (*Id.*) The Parties then signed a long form settlement agreement (the Agreement). (*Id.*)

2 Plaintiff and Class Counsel are aware of the burdens of proof necessary to establish liability for
3 the claims asserted in the Action, both generally and in response to Defendant’s defenses thereto.

4 (Leviant Decl., ¶ 9.) Plaintiff and Class Counsel have also taken into account Defendant’s agreement to
5 enter into a Settlement that confers substantial relief upon the Class.

6 Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement set forth
7 in this Agreement is a fair, adequate, and reasonable Settlement and is in the best interests of the Class.

8 (Leviant Decl., ¶ 10.) Solely for the purpose of settling this case, the parties agree that the requirements
9 for establishing class action certification with respect to this class have been met and are met. (*Id.*) If
10 this Settlement is not approved by the Court for any reason, Defendant reserves its rights to contest class
11 certification. (*Id.*) This Settlement, if approved by the Court, will result in the termination with
12 prejudice of the litigation through the entry of the Judgment and the release of all Released Claims for all
13 Class Members, including all within the class definition who have not elected to exclude themselves
14 from the Class. (*Id.*)

15 **V. CLASS DEFINITION**

16 The Class is defined as follows:

17 All individuals employed by Defendant in California and classified as “non-exempt” at
18 any time during the Class Period (the “Class Period” is July 28, 2016 through January
19 28, 2022 [date of preliminary approval].) “Settlement Class Members” are those Class
Members who do not submit timely exclusion requests to the Settlement Administrator.
(Settlement, ¶¶ 3-4.)

20 (Leviant Decl., ¶ 34 and Exhibit 1.)

21 The PAGA Employees are defined as follows:

22 All Class Members that worked at any time during the PAGA Period (the “PAGA
23 Period” is July 28, 2019 through January 28, 2022 [date of preliminary approval].) All
24 PAGA Employees are “aggrieved employees” as defined pursuant to PAGA. PAGA
Employees cannot opt out of the settlement of the PAGA claim. (Settlement, ¶¶ 10-11.)

25 **VI. DISCUSSION**

26 **A. The Court Should Conditionally Certify the Class Because It Meets All the** 27 **Requirements for Certification for Settlement Purposes Under CCP § 382**

28 Under Code of Civil Procedure § 382, class certification is warranted so long as there is a

1 numerous and ascertainable class with a well-defined community of interest among its members and that
2 a “class action proceeding is superior to other means for a fair and efficient adjudication of the
3 litigation.” *See, e.g., Sav-on Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 326, 332 (2004). Any
4 doubts as to the appropriateness of class treatment must be resolved in favor of certification, subject to
5 later modification. *Richmond v. Dart Indus. Inc.*, 29 Cal. 3d 462, 473-475 (1981). For purposes of this
6 Settlement only, Defendant has agreed not to oppose conditional certification of the proposed class
7 action. (Settlement ¶ 26.)

8 “The certification question is ‘essentially a procedural one that does not ask whether an action is
9 legally or factually meritorious.’” *Id.*, at 326, quoting *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440
10 (2000). Indeed, the certification question simply asks whether the theory of recovery advanced by the
11 plaintiff is likely to prove amenable to class treatment. *See, e.g., Jaimez v. Daiohs USA, Inc.*, 181 Cal.
12 App. 4th 1286, 1298 (2010). In ruling on certification, a trial court’s task is to determine “whether ... the
13 issues which may be jointly tried, when compared with those requiring separate adjudication, are so
14 numerous or substantial that the maintenance of a class action would be advantageous to the judicial
15 process and to the litigants.” *Id.* Thus, “[t]he relevant comparison lies between the costs and benefits of
16 adjudicating plaintiffs’ claims in a class action and the costs and benefits of proceeding by numerous
17 separate actions” *See, e.g., id.*

18 “[I]t is also well established that trial courts should use different standards to determine the
19 propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard
20 of scrutiny is used for settlement cases.” *Global Minerals & Metals Corp. v. Superior Court*, 113 Cal.
21 App. 4th 836, 859 (2003), citing *Dunk v. Ford Motor Co.* 48 Cal. App. 4th 1794, 1807 n. 19 (1996). As
22 the court noted in *Dunk*, although certification requirements are intended “to protect the interests of the
23 non-representative class members,” that concern is “protected by the trial court’s fairness review of the
24 settlement.” *Dunk*, 48 Cal. App. 4th at 1807 n.19.

25 Indeed, numerous courts have certified settlement classes. For example, the court in *In re Drexel*
26 *Burnham Lambert Group, Inc.*, 960 F.2d 285 (2d Cir. 1992), cert. dismissed, 506 U.S. 1088, 122 L. Ed.
27 497, 113 S. Ct 1070 (1993), addressed settlement before a class was certified. After a hearing, the
28 “district court issued an order certifying the class and approving the settlement agreement.” *Id.* at 289;

1 *see also Alaniz v. California Processors, Inc.*, 73 F.R.D. 269, 278 (N.D. Cal. 1976) ("the use of the
2 tentative settlement class procedure was appropriate in this case"), *aff'd*, 572 F.2d 657 (9th Cir.), cert.
3 denied, 439 U.S. 837 (1978). Certification of a settlement class is a regular feature of class action
4 litigation and an approved procedure which ought to be followed in this case. *See Newberg on Class*
5 *Actions* (3d ed. 1991) § 11.27, pp. 11-40 to 11-56; *Manual for Complex Litigation*, 2d (1993) § 30.45.

6 In view of these standards, *as discussed more thoroughly as part of the preliminary approval*
7 *motion already granted by the Court*, the Settlement Class should be certified for purposes of settlement.
8 Code Civ. Proc. § 382; Rules of Court, Rule 3.769(c).

9 **B. The Court Should Approve the Settlement Because It Is a Fair, Adequate, and**
10 **Reasonable Compromise of Disputed Wage Claims in View of Defendant's**
11 **Potential Liability Exposure and the Risks of Continued Litigation**

12 California courts favor settlement. *See, e.g., Stambaugh v. Superior Court*, 62 Cal. App. 3d 231,
13 236 (1976). Unlike most settlements, class action settlements involve a court approval process that exists
14 to prevent fraud, collusion, and unfairness to class members. *Malibu Outrigger Bd. of Governors v.*
15 *Superior Court*, 103 Cal.App.3d 573, 578-579 (1980). This approval process consists of preliminary
16 settlement approval, notice being given to class members, and a final fairness and approval hearing being
17 held at which class members may be heard with respect to the settlement. *Id.* For the reasons discussed
18 below, this Court should finally approve the Settlement and enter Judgment.

19 **1. Class Action Settlements Are Subject to Review and Approval.**

20 Any settlement of class litigation must be reviewed and approved by the presiding court. Rules
21 of Court, Rule 3.769(a). Approval occurs in two steps: (1) an early (preliminary) review by the trial
22 court and (2) a subsequent (final) review after notice has been distributed to the class members. The
23 Preliminary Approval Hearing and Final Approval Hearing coincide with these two steps. The present
24 motion seeks *final approval* and the entry of a Judgment.

25 To evaluate a settlement, the trial court must receive "basic information about the nature and
26 magnitude of the claims in question and the basis for concluding that the consideration being paid for the
27 release of those claims represents a reasonable compromise." *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.
28 App. 4th 116, 133 (2008). However, the record need *not* contain an explicit statement of the maximum

1 theoretical amount that the class could recover:

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

6 *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 409 (2010).

7 **2. The Parties Reached the Settlement Through Arms’ Length Negotiations**
8 **Between Experienced Counsel with the Assistance of a Highly Qualified**
9 **Mediator After Sufficient Data Was Exchanged to Evaluate Settlement.**

10 A settlement is presumptively fair where it is reached through arms’ length bargaining, based on
11 sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is
12 experienced in similar litigation, and the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at 1802;
13 *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *7-Eleven Owners for Fair Franchising v.*
14 *Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000). In deciding whether to approve a settlement, a
15 trial court has broad powers to determine whether it is fair under the circumstances of the case. *See, e.g.,*
16 *Mallick v. Superior Court*, 89 Cal. App. 3d 434, 438 (1979). In exercising these powers, the overriding
17 concern is to ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk*, at 1801,
18 quoting *Officers for Justice v. Civil Serv. Comm’n of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

19 Relevant factors in making this determination, include, but are not limited to:

20 [T]he complexity and likely duration of further litigation, the risk of maintaining class
21 action status through trial, the amount offered in settlement, the extent of discovery
22 completed and the state of the proceedings, the experience and views of counsel, the
presence of a governmental participant, and the reaction of the class members to the
proposed settlement.

23 *Id.* These factors require balancing, are non-exhaustive, and, as such, trial courts should tailor the factors
24 considered to each case and give due regard to “what is otherwise a private consensual agreement
25 between the parties.” *Id.*

26 Here, the Settlement resulted from thorough, arms’ length negotiations between experienced
27 counsel with the assistance of highly-regarded mediator. (Leviant Decl., ¶¶ 8-10.) With respect to the
28 claims at issue in this case, Plaintiff obtained data from Defendant and then carefully reviewed that

1 information. Counsel for Plaintiff also examined relevant policies and interviewed witnesses in detail
2 about their work experiences and Defendant's practices.

3 Based on the totality of that review, Plaintiff estimated the potential exposure and then estimated
4 risk factors to adjust the reasonable expected outcome. The investigation and discovery that Plaintiff's
5 counsel conducted were sufficient to provide them with enough information to intelligently evaluate the
6 estimated exposure in this action for purposes of negotiating the Settlement in view of the risks discussed
7 below and are also sufficient to allow this Court to do the same. *See, e.g., Wershba v. Apple Computer,*
8 *Inc.*, 91 Cal. App. 4th 224, 245 (2001).

9 Finally, no Class Member objected or requested exclusion. (La Russa Decl., ¶¶ 8-10.)

10 **3. The Settlement Represents a Fair, Adequate, and Reasonable Compromise**
11 **of Class Members' Claims Based on Defendant's Estimated Liability**
12 **Exposure Given the Risks Continued Litigation Would Entail.**

13 A settlement is not judged against what might have been recovered had a plaintiff prevailed at
14 trial and does not have to provide 100% of damages sought to be fair and reasonable. "In the context of a
15 settlement agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the
16 complaint, but rather whether the settlement is reasonable under all of the circumstances." *Wershba*, 91
17 Cal.App.4th at 250. Accordingly, because settlements involve compromise, even one that provides for
18 substantially narrower relief than would likely be obtained if the suit were successfully litigated can be
19 reasonable given that "the public interest may indeed be served by a voluntary settlement in which each
20 side gives ground in the interest of avoiding litigation." *Id.*, quoting *Air Line Stewards & Stewardesses*
21 *Ass'n, Local 550 v. American Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir. 1972).

22 With respect to the claims asserted on behalf of the Class in this case, there are serious risks that
23 support the reduced compromise amount. These risks include, but are not limited to: (i) the risk that
24 Plaintiff would be unable to establish liability for unpaid straight time or overtime wages, *see Duran v.*
25 *US Bank Nat'l Ass'n*, 59 Cal. 4th 1, 39 & n. 33 (2014) ("*Duran*"), citing *Dilts v. Penske Logistics, LLC*
26 2014 WL 205039 (S.D. Cal. 2014) (dismissing certified off-the-clock claims based on proof at trial); (ii)
27 the risk that Defendant's meal and rest period policies might not ultimately support class certification or
28 a class-wide liability finding, *see Duran*, 59 Cal. 4th at 14, n. 28 (citing Court of Appeal decisions

1 favorable on class certification issue without expressing opinion as to ultimate viability of proposition);
2 (iii) the risk that uncertainties pertaining to the ultimate legality of Defendant's policies and practices
3 could preclude class-wide awards of statutory penalties under Labor Code §§ 203 and 226(e); (iv) the
4 risk that individual differences between Class Members could be construed as pertaining to liability and
5 not solely to damages, *see Duran*, 59 Cal. 4th at 19; (v) the risk that any civil penalties award under the
6 PAGA could be reduced by the Court in its discretion, *see* Labor Code § 2699(e)(1); (vi) the risk that
7 class treatment could be deemed improper as to one or more claims, except for settlement purposes; and,
8 (vii) the risk that appellate litigation could ensue. (Leviant Decl., ¶ 16.) These risks are non-exhaustive.

9 In light of the uncertainties of protracted litigation, the settlement amount reflects a fair and
10 reasonable recovery for the Class Members. (Leviant Decl. ¶¶ 13-20.) The settlement amount is, of
11 course, a compromise figure. (Leviant Decl. ¶ 17.) By necessity it took into account risks related to
12 liability, damages, and the defenses asserted by Defendant. (*Id.*) Moreover, each Class Member will be
13 given the opportunity to opt-out of the Settlement, allowing those who feel they have claims that are
14 greater than the benefits they can receive under this Settlement to pursue their own claims. (*Id.*) For the
15 approximately **555** members of the Class, the average **gross** recovery is at least **\$904.52** per class
16 member, and the estimated average **net** recovery for each Class Member is approximately **\$459.08**. (*Id.*)
17 Given that Defendant could challenge certification and liability, this is a significant sum to have achieved
18 in settlement. Moreover, a Class Member who worked a greater number of weeks for Defendant will
19 receive a larger share of the Settlement than a Class Member who worked for a shorter amount of time
20 during the class period. (*Id.*)

21 The maximum calculated plausible exposure is **\$3,199,404.60**, including PAGA penalties.
22 (Leviant Decl., ¶ 18.) However, after analyzing the claims in this matter, Plaintiff has concluded that the
23 Gross Settlement Amount of **\$500,000.00** is about 70% of the **\$717,687.54** estimate of *risk-adjusted*
24 recovery (excluding interest) at this stage in the litigation. (*Id.*) This assessment is based on a carefully
25 constructed model of the current fair value of the case, using estimated risks, average wage rates,
26 numbers of employees, and the amount of time covered by the class period. (*Id.*)

- 27 • A reasonably estimated exposure for unpaid wages due to off-the clock work was calculated,
28 with the assistance of an expert, to be approximately **\$116,578.60**. However, with the risk

factor discounts for certification and liability proof, the value of that claim is estimated by Plaintiff's counsel to be approximately **\$14,572.33**, assuming certification probability of 50% and merits success at 25%.

- The reasonably estimated exposure for rest break violations over the class period was calculated at **\$405,834.50**, but with low chances of certification and proof of liability (75% and 75% respectively) for a risk-adjusted exposure of **\$228, 281.91** (based on the deficient rest break policy not allowing the Class to leave the work premises).
- The reasonably estimated exposure for meal break violations over the class period was calculated at **\$471,350.20**, with chances of certification and liability risks (40% and 40% respectively) resulting in a risk-adjusted exposure of **\$75,416.03**.
- Risk-adjusted penalty recoveries for wage statement and Labor Code § 203 penalties were estimated to be approximately **\$500,725.00** and **\$373, 705.50**, respectively, on maximum exposures of **\$75,108.75** and **\$56,055.83**, respectively (50% and 30% respectively).
- The reasonably estimated exposure for unreimbursed expenses over the class period was estimated to be **\$40, 210.80**, but with chances of certification and proof of liability 50% and 50% respectively for a risk-adjusted exposure of **\$10,052.70**.
- Performing risk-adjusted valuations for all claims yields a total value in the range of **\$459,487.54**, excluding PAGA.¹ (*Id.*)
- PAGA penalties were calculated as having a maximum realistic exposure of **\$1,291,000.00**, but a risk adjusted value of **\$258,200.00**, after factoring in risks of reduction in penalties pursuant to Court discretion and the high risk of the inability to prove violations for all aggrieved employees.

The concurrently-filed Declaration of H. Scott Leviant sets forth claim valuation in additional detail. (*See*, Leviant Decl., ¶ 18.)

¹ In a sense, it is nonsensical to assign specific percentages to future events, but it does provide a specific method for attempting to reduce the concept of "very high risk" or "high risk" to a quantifiable amount. Certification of a claim is typically a binary event. One does not obtain a 20% certification; a claim is either certified or it is not. But the current expected value is best quantified by applying a risk reduction, based on the total experience of counsel.

1 This result here is fully supportable as reasonable. First, it is important to recognize the
2 wilfulness finding required for Labor Code §§ 203 and 226 is challenging to establish. (Leviant Decl., ¶
3 19.) Second, rest break and meal period claims have been challenging to certify for many years, even
4 after *Brinker*. (Leviant Decl., ¶ 19.) Third, the certification rates in California are lower than
5 conventional wisdom holds. See, H. Scott Leviant, *Second Interim Report on class actions in California*
6 *sheds new light on certification* (February 19, 2010), www.thecomplexlitigator.com, available at
7 [http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-](http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html)
8 [california-sheds-n.html](http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html); see also, *Findings of the Study of California Class Action Litigation, 2000-2006*,
9 available at <http://www.courtinfo.ca.gov/reference/documents/class-action-lit-study.pdf> (finding, at page
10 5, and in Table 9, at page 15, that only 21.4% of all class actions were certified either as part of a
11 settlement *or* as part of a contested certification motion).

12 Here, the estimated certification probabilities are *above* the average rate at which cases were
13 certified in California over the study years, based upon data available through the California Courts
14 websites. (Leviant Decl., ¶ 19.) In sum, well *under* 20% of all cases filed as proposed class actions are
15 ultimately certified by way of a *contested* motion. (*Id.*) The recovery is roughly **15.6%** of the maximum
16 theoretical recovery (estimated to be approximately **\$3,199,404.60**, including PAGA), which falls within
17 the expected outcome under the likelihood of success metric. (*Id.*) It would also be appropriate to
18 evaluate the result by examining only the premium wages at issue (approximately \$993,763.30, with no
19 risk reduction), excluding penalties and interest; the settlement is well over 31% of the premium wages
20 (unpaid wages, meal period premiums, and rest break premiums) at maximum realistic exposure value.²
21 This Settlement achieves the goals of the litigation.

22
23
24
25 ² The exclusion of interest and penalties from the fairness evaluation is proper because, first, PAGA
26 penalties are discretionary (see Lab. Code § 2699(e)(2) (the court in its discretion “may award a lesser
27 amount than the maximum civil penalty amount specified by this part...”), and, second, courts evaluate
28 the strength of a proposed settlement without taking potential penalties or interest into consideration. See
Rodriguez v. West Publishing Corp., 563 F.3d 948, 955 (9th Cir. 2000); see also *Miller v. CEVA*
Logistics U.S.A., Inc., 2015 WL 729638, at *7 (E.D. Cal. Feb. 19, 2015) (court utilized calculation of a
defendant’s exposure exclusive of interest and penalties to determine whether the settlement fell within
the range of possible approval).

1 **4. The Proposed Method for Allocating Settlement Funds Is Fair, Adequate,**
2 **and Reasonable.**

3 The proposed method of allocating the Settlement Fund to Class Members also is fair and
4 reasonable. As noted, the parties agreed to allocate the Settlement Fund between all Class Members
5 based on time worked by the Class Member during the Class Period, in relation to the total amount of
6 time worked by all participating Class Members collectively during the class period. This proposed
7 method is fair and reasonable because each Class Member's actual potential damages vary based on the
8 number of workweeks he or she actually worked (e.g., Lab. Code § 226.7 provides for an extra hour of
9 pay at the employee's regular rate of pay for each violation, resulting in a higher potential damage when
10 a higher number of incidents occur). A Class Member who worked a greater number of weeks for
11 Defendant will receive a larger payment under the Settlement than a Class Member who worked for a
12 shorter amount of time during the relevant period. (Leviant Decl., ¶¶ 11, 17.)

13 **5. The Proposed Enhancement Awards to Plaintiff Is Fair, Adequate, and**
14 **Reasonable and Warrants Approval.**

15 The proposed enhancement payments to Plaintiff is intended to recognize the substantial
16 initiative and significant efforts on behalf of the Class. Courts routinely approve incentive awards to
17 compensate named plaintiffs for the services they provide and the risks they incur during class action
18 litigation, often in much higher amounts than that sought here. *See, e.g., Bell v. Farmers Ins. Exchange*,
19 115 Cal. App. 4th 715, 726 (2004) (upholding "service payments" to named plaintiffs for their efforts in
20 bringing the case); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D.Cal. 1995) (approving
21 a \$50,000 enhancement award). Plaintiff contributed time to the prosecution of this matter, including
22 assistance prior to the mediation with information and substantial time conferring with counsel over the
23 course of this litigation and before it was filed. (Gonzalez Decl., ¶¶ 5-20; Leviant Decl., ¶ 33.) The
24 enhancement also recognizes the considerable risks Plaintiff undertook on behalf of the Class to be
25 personally liable for all costs incurred regardless of the success of the litigation or class certification, as
26 well as the personal risk of facing intrusive discovery and potential disclosure to future employers that
27 Plaintiff sued a former employer, making future employment prospects uncertain.
28

1 **6. The Proposed Award of Attorneys’ Fees and Costs Is Also Fair, Adequate,**
2 **and Reasonable and Merits Approval.**

3 a) *Plaintiff’s Counsel Should be Awarded Fees Based on a Percentage of*
4 *the Fund Recovered, Consistent with the Common Fund Method*

5 The request for attorneys’ fees as a percentage of the settlement fund is supported by the
6 “common fund theory,” where “one who expends attorneys’ fees in winning a suit which creates a fund
7 from which others derive benefits, may require those passive beneficiaries to bear a fair share of the
8 litigation costs.” *Serrano v. Priest*, 20 Cal. 3d 25, 35 (1977). The lodestar may be cross-checked against
9 the percentage-of-recovery. *See In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-58 (2009).

10 The purpose of the common fund approach is to “spread litigation costs proportionally among all
11 the beneficiaries so that the active beneficiary does not bear the entire burden alone.” *Vincent v. Hughes*
12 *Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977). Thus, the common fund doctrine has been applied
13 “consistently in California when an action brought by one party creates a fund in which other persons are
14 entitled to share.” *City and County of San Francisco v. Sweet*, 12 Cal. 4th 105, 110 (1995); *see Quinn v.*
15 *State of California*, 15 Cal. 3d 162, 167 (1975) (“[O]ne who expends attorneys’ fees in winning a suit
16 which creates a fund from which others derive benefits may require those passive beneficiaries to bear a
17 fair share of the litigation costs.”).

18 The California Supreme Court removed any lingering doubt about the use of the percentage of
19 the fund method to award attorney’s fees in California Courts:

20 We join the overwhelming majority of federal and state courts in holding that when
21 class action litigation establishes a monetary fund for the benefit of the class members,
22 and the trial court in its equitable powers awards class counsel a fee out of that fund, the
23 court may determine the amount of a reasonable fee by choosing an appropriate
24 percentage of the fund created. The recognized advantages of the percentage method—
25 including relative ease of calculation, alignment of incentives between counsel and the
26 class, a better approximation of market conditions in a contingency case, and the
27 encouragement it provides counsel to seek an early settlement and avoid unnecessarily
28 prolonging the litigation (See pt. I, *ante*; *Lealao, supra*, 82 Cal.App.4th at pp. 48–49, 97
 Cal.Rptr.2d 797; *Rawlings v. Prudential–Bache Properties, Inc., supra*, 9 F.3d at p.
 516)—convince us the percentage method is a valuable tool that should not be denied
 our trial courts.

1 *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016).³ Thus, this Court may and, as strongly
2 encouraged by the California Supreme Court, *should* award attorney’s fees to Plaintiff’s counsel based
3 upon the percentage of the fund methodology.

4 Setting *Laffitte* aside, whether the once-again-confirmed percentage of the fund or the lodestar
5 method is used, the outcome is roughly the same: “Empirical studies show that, regardless whether the
6 percentage method or the lodestar method is used, fee awards in class actions average around one-third
7 of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 47 n. 11 (2008). This is also consistent
8 with Plaintiff’s counsels’ experience in these types of cases. Here, Plaintiff’s attorneys request attorneys’
9 fees of **\$166,666.67** (one-third of the GSA), and costs of **\$15,000.00** (actual costs exceed the cap of
10 \$15,000), which includes payment for mediation, filing fees, legal research fees, and other standard
11 expenses, including the costs that will be incurred in filing this motion and appearing for the hearing.
12 (Leviant Decl., ¶ 32.) Given the efforts and risks in this case, as well as the results achieved, these
13 amounts are within the range of reasonableness and warrant *final approval*.

14 *b) Class Counsel Is Entitled to Attorneys’ Fees and Costs under the*
15 *California Labor Code and California’s Private Attorney General Statute*

16 Class Counsel is entitled to recover fees under Labor Code § 1194, which provides, in part:

17 [A]ny employee receiving less than the legal minimum wage or the legal overtime
18 compensation applicable to the employee is entitled to recover in a civil action the
19 unpaid balance of the full amount of this minimum wage or overtime compensation,
including interest thereon, reasonable attorney’s fees, and costs of suit.

20 Lab. Code § 1194.

21 As this litigation culminated in a Settlement that provides for a recovery of unpaid wages,
22 including unpaid minimum and overtimes wages, Plaintiff is entitled to recover reasonable attorneys’
23 fees and costs under the Labor Code.

24 Class Counsel is also entitled to a fee under California’s private attorney general statute, Code of
25

26 ³ The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing
27 doubt about the use of the percentage method: “The *Dunk* court, while finding the percentage method
28 inapplicable to the settlement before it due to the lack of a readily valued common fund, did not purport
to bar its usage generally in common fund cases.” *Laffitte*, 1 Cal. 5th at 501.

1 Civil Procedure § 1021.5. “The award of attorney’s fees is proper under section 1021.5 if ‘(1) plaintiffs’
2 action ‘has resulted in the enforcement of an important right affecting the public interest,’ (2) ‘a
3 significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a
4 large class of persons’ and (3) ‘the necessity and financial burden of private enforcement are such as to
5 make the award appropriate.’” *Press v. Lucky Stores*, 34 Cal. 3d 311, 317-318 (1983). The objective of
6 the statute is “to encourage suits enforcing public policies by providing substantial attorneys’ fees to
7 successful litigants in such cases.” *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 565 (2004).

8 The Action resulted in the enforcement of an important right affecting the public interest, as
9 Plaintiff sought to enforce Class Members’ rights to recover statutory wages arising from Defendant’s
10 failure to pay all wages and failure to provide meal and rest breaks. *See Murphy v. Kenneth Cole*
11 *Productions, Inc.*, 40 Cal. 4th 1094, 1113 (2007) (noting that “health and safety concerns” are what
12 motivated the Industrial Wage Commission to adopt mandatory meal and rest periods).

13 The Action also conferred a significant benefit on a class of persons who worked for Defendant
14 during the Class Period and were, according to allegations, not properly compensated for all hours
15 worked and were not provided meal and rest periods or compensation therefor.

16 Finally, the necessity and financial burden of private enforcement render an award appropriate.
17 Without the incentive of an attorneys’ fee award, Plaintiff could not have afforded to hire counsel to
18 pursue this case, as the cost of litigating this matter far outweighed Plaintiff’s potential recovery. *See*
19 *Ryan v. California Interscholastic Federation*, 94 Cal. App. 4th 1033, 1044 (2001) (“As to the necessity
20 and financial burden of private enforcement, an award is appropriate where the cost of the legal victory
21 transcends the claimants’ personal interest; in other words, where the burden of pursuing the litigation is
22 out of proportion to the plaintiff’s individual stake in the matter.”).

23 c) *A Lodestar Cross Check Confirms that Class Counsel’s Requested*
24 *Attorneys’ Fees Are Reasonable*

25 Plaintiff’s fee application is also reasonable based on Class Counsel’s lodestar. Under the
26 lodestar method, the court considers a compilation of the time spent and a reasonable hourly
27 compensation of each attorney to evaluate the reasonableness of the fee requested. *Ramos v.*
28 *Countrywide Home Loans, Inc.*, 82 Cal. App. 4th 615, 622 (2000). The moving party meets its burden in

1 this regard by submitting “declarations evidencing the reasonable hourly rate for their services and
2 establishing the number of hours spent working on the case” as “California case law permits fee awards
3 in the absence of detailed time sheets.” *Wershba*, 91 Cal. App. 4th at 254-55; *Dunk*, 48 Cal. App. 4th at
4 1810; *Nightengale v. Hyundai Motors America*, 31 Cal. App. 4th 99, 103 (1994). The hours spent and
5 the reasonable hourly compensation are computed to arrive at a “lodestar” figure which may then be
6 augmented or diminished by the court taking into account various “multiplier” factors. *See Ramos*, 82
7 Cal. App. 4th at 622 (citing *Serrano*, 20 Cal. 3d at 48-49).

8 Here, Class Counsel’s billed lodestar exceeds \$131,223.50 which is based on approximately
9 **137.8 billed** hours (not including final estimated hours) at the attorneys’ customary hourly rates (and
10 omitting about 10 hours of time that were not billed by Mr. Leviant). (Leviant Decl., ¶ 32.) The actual
11 lodestar is estimated to exceed **\$98,212.00**. (Leviant Decl., ¶ 32.) Application of a positive multiplier is
12 appropriate, based on the contingent risk incurred by Class Counsel, the difficulty of the questions
13 involved, the benefit conferred on the class as a result of the Settlement, and the skill displayed by Class
14 Counsel. Thus, Class Counsel’s request for **\$166,666.67** in attorneys’ fees, which is just **1.84** times the
15 final *billed* lodestar and **1.69** times the estimated final lodestar, is reasonable under the lodestar method.

16 (1) Class Counsel’s Hours Are Reasonable

17 In determining whether the number of hours expended on the litigation was reasonable, the court
18 must determine that “the time spent was reasonably necessary and that [] counsel made ‘a good faith
19 effort to exclude from the fee request hours that are excessive, redundant, or otherwise unnecessary.’”
20 *Jordan v. Multnomah County*, 815 F.2d 1258, 1263 n.8 (9th Cir. 1987). The court “should defer to the
21 winning lawyer’s professional judgment as to how much time he was required to spend on the case.”
22 *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008) (noting that “[l]awyers are not likely
23 to spend unnecessary time on contingency fee cases in the hope of inflating their fees. The payoff is too
24 uncertain, as to both the result and the amount of the fee.”).

25 Here, Class Counsel expended a prudent amount of time litigating the case to achieve the
26 excellent result on behalf of the class. (Leviant Decl. ¶ 32.)

27 (2) Class Counsel’s Hourly Rates Are Reasonable

28 The reasonable hourly rate is that prevailing in the community for similar work. *PLCM Group*,

1 *Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000). “[I]n assessing a reasonable hourly rate, the trial court is
2 allowed to consider the attorneys’ skill as reflected in the quality of work, as well as the attorneys’
3 reputation and status.” *MBNA American Bank, N.A. v. Gorman*, 147 Cal. App. 4th 1, 3 (2006). The trial
4 court may also “find hourly rates reasonable based on evidence of other courts approving similar rates.”
5 *Parkinson v. Hyundai Motor America*, 796 F.Supp.2d 1160, 1172 (C.D. Cal. 2010).

6 Class Counsel are experienced litigators who specialize in employment law, with a substantial
7 wage and hour class action practice. (Leviant Decl. ¶¶ 21-27.) A number of courts, including this Court,
8 have approved Class Counsel’s hourly rates. (Leviant Decl. ¶ 27.) Given the skill and experience of
9 Class Counsel, and the excellent result achieved, Class Counsel’s hourly rates are reasonable.

10 (3) Application of a Positive Multiplier Would Be Appropriate

11 The lodestar may be adjusted by applying a multiplier. *See Serrano*, 20 Cal. 3d at 49. In
12 California, “[m]ultipliers can range from *two to four or even higher*” and are routinely applied in the
13 range requested by Class Counsel. *Wershba*, 91 Cal. App. 4th at 254; *see also Chavez*, 162 Cal. App.
14 4th at 66 (upholding **2.5 multiplier**); *Glendora Community Redevelopment Agency v. Demeter*, 155 Cal.
15 App. 3d 465 (1984) (affirming a fee award that included a **12.0 multiplier**); Some factors a trial court
16 considers when determining whether to apply a multiplier are: “(1) the novelty and difficulty of the
17 questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the
18 litigation precluded other employment by the attorneys, (4) the contingent nature of the fee award.” *See*
19 *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132 (2001) (citations omitted). The ultimate goal is “to entice
20 competent counsel to undertake difficult public interest cases.” *San Bernardino Valley Audubon Soc. v.*
21 *County of San Bernardino*, 155 Cal. App. 3d 738, 755 (1985). Fee awards that are too small “chill the
22 private enforcement essential to the vindication of many rights....” *Lealao v. Beneficial California, Inc.*,
23 82 Cal. App. 4th 19, 53 (2000).

24 In *Ketchum*, the California Supreme Court held that fee enhancement in contingency cases is
25 necessary to (1) fully compensate counsel for the “loan” of legal services in light of the inherent high risk
26 of “default” posed by losing the case, and (2) encourage competent counsel to take on fee award cases.
27 *Ketchum*, 24 Cal. 4th at 1132-1133. As the court noted, “A lawyer who both bears the risk of not being
28 paid and provides legal services is not receiving the fair market value of his work if he is paid only for

1 the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee
2 award cases.” *Id.* at 1133 (citations omitted). Application of a positive multiplier is appropriate, based
3 on the contingent risk incurred by Class Counsel, the difficulty of the questions involved, the benefit
4 conferred on the class as a result of settlement, and the skill displayed by Class Counsel. Here, a modest
5 multiplier of **1.69** is required to align the final estimated lodestar with the requested fee. Class Counsel
6 will have been litigating this case for over two years before receiving any reimbursement, expending
7 resources which could have been directed elsewhere. Class Counsel agreed to litigate on a contingent
8 basis, and in the process assumed considerable risk. (Leviant Decl. ¶ 28.)

9 Class Counsel’s efficiency and skill in bringing the case to an early resolution should not be used
10 to justify refusal to award the requested fees. As the court explained in *Lealao*:

11 [T]he promptness of settlement cannot be used to justify the refusal to apply a multiplier
12 to reflect the size of the class recovery without exacerbating the disincentive to settle
13 promptly inherent in the lodestar methodology. Considering that our Supreme Court
has placed an extraordinarily high value on settlement ... it would seem counsel should
be rewarded, not punished, for helping to achieve that goal....

14 *Lealao*, 82 Cal. App. 4th at 52 (citations omitted).

15 Given the contingent risk incurred by Class Counsel, the issues involved, the substantial benefit
16 conferred on the class and State as a result of the Settlement, and the skill displayed by Class Counsel,
17 application of a modest positive multiplier would be appropriate. Thus, Plaintiff respectfully requests
18 that the Court award Class Counsel the requested fees of **\$166,666.67** under the common fund theory
19 with a lodestar cross-check or, alternatively, based on Class Counsel’s lodestar with application of a
20 modest multiplier based upon the agreed-upon cap on fees.

21 *d) Class Counsel’s Costs Are Reasonable*

22 The Settlement Agreement provides for reimbursement of costs not to exceed **\$15,000.00**. To
23 date, Moon & Yang, APC has already incurred actual costs in the amount of \$16,492.36. These costs *do*
24 *not* include future motion filing charges not entered at the time the report was prepared, attorney service
25 costs, and CourtCall fees to appear for the hearing of this Motion. (Leviant Decl. ¶ 32.) These costs were
26 reasonably incurred in prosecuting the Action on behalf of the Class Members and should be approved
27 by the Court. Accordingly, Class Counsel respectfully requests the Court approve costs in the amount of
28 **\$15,000.00**, the capped amount pursuant to the Agreement.

1 **7. The Proposed Payment to the Administrator Is Fair and Reasonable**

2 In deciding whether to approve a proposed settlement, a trial court must determine if the
3 proposed settlement is fair under the circumstances of the case. *Mallick*, 89 Cal.App.3d at 438. In
4 exercising this power, the overriding concern is to ensure that a proposed settlement is “fair, adequate,
5 and reasonable.” *Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted). CPT Group Class Action
6 Administrators, which has been selected due to its competitive bid, estimates that administration can be
7 performed for **\$11,500.00**. In counsel’s experience, based on similar wage-and-hour actions, an
8 estimated cost of **\$11,500.00** is a fair and reasonable amount for administration fees and should be
9 approved. (Leviant Decl., ¶ 34.)

10 **8. The PAGA Allocation is Reasonable**

11 “In determining whether the proposed settlement falls within the range of reasonableness,
12 perhaps the most important factor to consider is plaintiffs’ expected recovery balanced against the value
13 of the settlement offer.” *Cotter v. Lyft, Inc.*, 176 5 F. Supp. 3d 930, 935 (N.D. Cal. 2016) (internal
14 quotation omitted). Significantly, the ultimate decision as to the amount of penalties is always up to the
15 discretion of the Court. Labor Code § 2699(e)(2) states: “In any action by an aggrieved employee
16 seeking recovery of a civil penalty available under subdivision (a) or (f), a court may award a lesser
17 amount than the maximum civil penalty amount specified by this part if, based on the facts and
18 circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and
19 oppressive, or confiscatory.”

20 The PAGA allocation is reasonable because the settlement of the underlying wage and hour
21 claims is robust and serves the deterrent purpose of the PAGA statute. *O’Connor v. Uber Technologies,*
22 *Inc.*, 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016) (“By providing fair compensation to the class members
23 as employees and substantial monetary relief, a settlement not only vindicates the rights of class
24 members as employees, but may have a deterrent effect upon the defendant employer and other
25 employers, an objective of PAGA.”); *see also Visceral v. Mistras Group*, 2016 WL 5907869 *9 (N.D.
26 Cal. 2016) (“Applying O’Connor’s sliding scale approach, settlement of the PAGA claim may be
27 substantially reduced below its standalone settlement value without sacrificing its statutory purposes
28 because the non PAGA settlement is relatively substantial.”)

1 In addition, there is no evidence that a court or a commissioner had informed Defendant that its
2 conduct violated the Labor Code. *Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157, 1209 (2008); *Willis v.*
3 *Xerox Bus. Servs., LLC*, 2013 WL 6053831, *7-8 (E.D. Cal. 2013) (“Under California law, courts have
4 held that employers are not subject to heightened penalties for subsequent violations until and unless a
5 court or commissioner notified the employer that it is in violation of the Labor Code.”) And in *Cotter*,
6 the court found a significant reduction of the PAGA claim would be appropriate because “[t]his does not
7 appear to be a case where a company has deliberately sought to evade the law.” *Cotter*, 176 F. Supp. 3d
8 at 941. Here, Defendant can state a strong case that, as the Court concluded in *Cotter*, its efforts to
9 devise compliant operational policies do not indicate an organization that has deliberately sought to
10 evade the law. This is a very significant risk factor.

11 To assess the fairness, adequacy, and reasonableness of a class action settlement, the court should
12 also consider the expense, complexity and likely duration of further litigation. *Dunk*, 48 Cal. App. 4th at
13 1801. Here, the expense, complexity and likely duration of future litigation was to some extent an
14 unknown. However, what is certain is that to adequately establish the foundational violations that would
15 support a substantial penalty award, tremendous time and expense would be invested. To adequately
16 establish that aggrieved employees experience the alleged violations, and at what frequency, most of the
17 aggrieved employees would need to be interviewed in a systematic fashion and their testimony cataloged
18 in way sufficiently meaningful to permit the submission of summary evidence at trial, such as via survey.
19 *First*, the burdensome nature of such a process would be expensive and time-consuming. *Second*, the
20 individuals already interviewed confirmed substantial risk that the Court would either substantially
21 reduce any penalty ultimately awarded *or* conclude that the conduct was insufficient to support a penalty
22 award. *Third*, it would be essentially impossible to formulate an objectively reliable means of
23 summarizing testimonial experiences, other than by an extraordinarily detailed survey. And formulating
24 such a survey would have been important, since frequency of violations would need to be established
25 before any penalties could be recovered. At least as to claims such as meal period and rest break
26 violations, the decisions of aggrieved employees are a major factor in assessing liability. In sum, the
27 evidence collected to date leads Plaintiff to conclude that, to the extent violations occurred, a fact which
28 Defendant disputes, the violations were **not** systematic and **not** uniform across all of Defendant’s

1 estimated **415** employees who worked during the PAGA period. Alternatively, direct testimony would
2 have been required from as many of the **415** aggrieved employees as could be obtained, which would be,
3 at best, very difficult. Proof of this sort gives rise to a manageability argument that could substantially
4 reduce the size of the aggrieved employee group.

5 Finally, the PAGA allocation is fair. The LWDA is receiving **\$45,000**. The Class is receiving,
6 net, an estimated \$254,333.33 for the releases for nine theories of recovery (including the \$15,000 as the
7 aggrieved employees' share of the PAGA Allocation). The proportion is tipped slightly in favor of the
8 Class Members, but not markedly so. An allocation to the LWDA equal to 17.7% of the Net Settlement
9 Amount is not unfair and satisfies the policies underlying California's wage and hour laws.

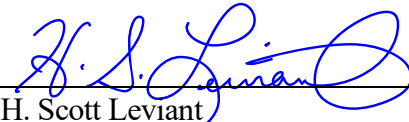
10 **VII. CONCLUSION**

11 For all the foregoing reasons, because the Class meets the requirements for certification, because
12 the Settlement bears all requisite indicia of fairness, reasonableness, and adequacy, and because the
13 proposed notice procedure and forms comport with Rule 3.766 and due process, this Court should grant
14 this Motion for Final Approval and enter Judgment thereon.

15 Respectfully submitted,

16 Dated: June 6, 2022

MOON & YANG, APC

17 By: 
18 H. Scott Leviant

19 Attorneys for Plaintiff LIANA GONZALEZ
20
21
22
23
24
25
26
27
28

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party
4 to the within suit; my business address is 1055 W. 7th Street, Suite 1880, Los Angeles, CA 90017.

5 On the date indicated below, I served the document described as: **PLAINTIFF'S NOTICE OF**
6 **MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT;**
7 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** on the interested parties in
8 this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as
9 stated on the attached service list:

10 Richard R. Clouse
11 Erin A. Halas
12 CLOUSESPANIAC ATTORNEYS
13 8038 Haven Ave, Suite E
14 Rancho Cucamonga, CA 91730
15 eahalas@csattys.com
16 service@csattys.com

17 *Attorney for Defendant Community Health Systems, Inc.*

18 ☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in
19 the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's
20 practice of collection and processing correspondence for mailing. Under that practice, sealed
21 envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business
22 with postage thereon fully prepaid at Los Angeles, California.

23 ☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail
24 delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in
25 this action.

26 ☐ **BY ELECTRONIC SERVICE:** Pursuant to the Court's Order directing Electronic Service, the
27 above-named document(s) has (have) been electronically served on counsel of record by an approved
28 electronic service provider. The transmission of these documents was reported complete and a copy of
the service confirmation will be maintained, along with the original document(s) and proof of service
in our office.

☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the
offices of the addressee(s) named herein.

☐ **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of collection and
processing correspondence for overnight delivery. Under that practice, overnight packages are
enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are
picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California and the United States that the
foregoing is true and correct. Executed this **June 6, 2022** at Los Angeles, California.

26 H. Scott Leviant
27 Type or Print Name

26 
27 Signature