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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF SAN BERNARDINO**

EVELYN MARTINEZ and SANDY ACOSTA, as  
individuals and on behalf of all others similarly  
situated, and as private attorneys general,

Plaintiffs,

vs.

CITY OF HOPE NATIONAL MEDICAL CENTER,  
a California corporation; CITY OF HOPE, a  
California corporation; CITY OF HOPE MEDICAL  
FOUNDATION, a California corporation; and DOES  
1 through 50, inclusive,

Defendants.

Case No. CIVDS2015729

[Hon. David Cohn, Department S26]

**PLAINTIFFS' NOTICE OF MOTION AND  
MOTION FOR PRELIMINARY APPROVAL  
OF CLASS ACTION AND PAGA  
SETTLEMENT; MEMORANDUM OF  
POINTS AND AUTHORITIES IN SUPPORT  
THEREOF**

*[Filed concurrently with Declaration of Larry W.  
Lee; Declaration of Simon L. Yang; Declaration of  
Edwin Aiwazian; Declaration of Evelyn Martinez;  
Declaration of Sandy Acosta; [Proposed] Order]*

Date: June 21, 2022  
Time: 10:00 a.m.  
Department: S26

Complaint Filed: August 4, 2020  
FAC Filed: September 28, 2021  
SAC Filed: April 7, 2022

1 **TO THE COURT, DEFENDANT, AND ITS COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that at 10:00 a.m. on June 21, 2022, in Department S26 of the above-  
3 entitled court located at 247 West Third Street, San Bernardino, California 92415, Plaintiffs Evelyn Martinez  
4 and Sandy Acosta will and do move for an Order:

- 5 1. approving the Stipulation of Class Action and PAGA Settlement (“Agreement”) attached as  
6 Exhibit 1 to the concurrently filed Declaration of Larry W. Lee, which provides for the settlement  
7 and resolution of all Class Released Claims (“Class Settlement”) and settlement and resolution of  
8 all PAGA Released Claims (“PAGA Settlement”);
- 9 2. conditionally certifying the following Settlement Class:  
10 All non-exempt employees of City of Hope, City of Hope National Medical Center, and City of  
11 Hope Medical Foundation who were employed at any time between July 23, 2016 to March 31,  
12 2022 in the State of California, with the exception of individuals whose entire employment by  
13 Defendants during the period July 23, 2016 to March 31, 2022 is covered by the settlement in  
14 *Jordan A. Seper v. City of Hope National Medical Center*, Los Angeles Superior Court Case  
15 No. BC630925 (“*Seper* Settlement”).
- 16 3. appointing Plaintiffs Evelyn Martinez and Sandy Acosta as Class Representatives and Larry W.  
17 Lee and Simon L. Yang of Diversity Law Group, P.C. and Edwin Aiwazian, Arby Aiwazian, and  
18 Joanna Ghosh of Lawyers *for* Justice, PC as Class Counsel;
- 19 4. approving the Class Settlement on a preliminary basis and finding that it, the Gross Settlement  
20 Amount, Class Representative Service Awards, Fees and Costs Awards, Administration Costs, and  
21 allocation of payments to Participating Settlement Class Members appear to be within the range of  
22 reasonableness for a settlement that could ultimately be given final approval;
- 23 5. approving the PAGA Settlement and finding that it, the PAGA Penalties, and the allocation of  
24 payments to the Labor and Workforce Development Agency and PAGA Aggrieved Employees are  
25 fair, reasonable, and adequate;
- 26 6. approving the distribution of the Notice of Class Action Settlement attached as Exhibit A to the  
27 Agreement;
- 28 7. appointing Simpluris, Inc. as the Settlement Administrator; and

1 8. scheduling a Final Approval Hearing.

2 The Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which  
3 allows the Court to preliminarily certify a class for settlement purposes and to approve a class action settlement,  
4 and which permit the Court to extend the page limit for memoranda. The basis for the Motion is that the  
5 proposed settlement is fair, adequate, and reasonable, and the procedures proposed by the Parties are adequate  
6 to ensure class members are able to participate in, opt out of, or object to the settlement.

7 The Motion is based on this notice, accompanying memorandum of points and authorities, the  
8 Agreement and proposed Notice of Class Action Settlement, the supporting Declarations of Larry W. Lee,  
9 Simon L. Yang, Edwin Aiwarzian, Evelyn Martinez, and Sandy Acosta, all pleadings and papers on file herein,  
10 and any further oral and documentary evidence as may be presented before or at the hearing of this matter.

11 DATED: April 7, 2022

DIVERSITY LAW GROUP, P.C.

12 By: 

13 Larry W. Lee

14 Simon L. Yang

Attorneys for Plaintiff Martinez

15 DATED: April 7, 2022

LAWYERS FOR JUSTICE, P.C.

16 By: /s/ Joanna Ghosh

17 Edwin Aiwarzian

18 Joanna Ghosh

Attorneys for Plaintiff Acosta

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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## SUMMARY OF MOTION

Evelyn Martinez and Sandy Acosta (together, “Plaintiffs”) allege that Defendants City of Hope National Medical Center, City of Hope, and City of Hope Medical Foundation (together, “Defendants”) have violated the California Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders by engaging in a uniform practice and procedure with respect to Plaintiffs and the Settlement Class, failing to properly pay regular, reporting time pay, overtime, and minimum wages for all hours worked (including and not limited to, arising from off-the-clock work (e.g., for alleged time spent in or on prior to clocking in and after clocking out, including and not limited to, COVID-19 screenings and/or donning and doffing), reporting time, rounding, and incorrect regular rate calculations), failing to provide a day of rest, failing to provide compliant meal period and rest periods and associated premium pay, failing to timely pay wages and associated waiting time penalties, failing to provide compliant wage statements, failing to keep requisite payroll records and produce personnel records, and failing to reimburse business expenses. Plaintiffs further allege that Defendants have thereby engaged in unfair business practices in violation of the California Business and Professions Code section 17200 *et seq.* and conduct giving rise to civil penalties recoverable pursuant to the Labor Code Private Attorneys General Act of 2004, California Labor Code section 2698 *et seq.* (“PAGA”).

After nearly two years of litigation, **Plaintiffs have secured a class and PAGA resolution that requires Defendants to pay \$5,500,000.00.**<sup>1</sup> The entire settlement amount is non-reversionary; no claims need be made, and no monies will revert back to Defendant. Pursuant to the settlement’s terms, it is estimated that no less than approximately \$3,122,500.00 would be distributed to Settlement Class Members (*after* all requested payments for PAGA penalties, administration costs, attorneys’ fees and costs, and service awards).

Based on their independent investigations and evaluations, the Parties and their respective counsel are of the opinion that the settlement terms in the Stipulation of Class Action and PAGA Settlement (“Agreement”) attached as Exhibit 1 to the concurrently filed Declaration of Larry W. Lee are not only fair, reasonable, and adequate, but in the best interests of the Settlement Class, State of California, and PAGA Aggrieved Employees in light of all known circumstances.

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<sup>1</sup> If the number of pay periods as of December 22, 2021 exceeds 385,000, the Gross Settlement Amount will increase *pro rata* to the extent the pay periods exceed 385,000. Agreement § 5(d).

## RELEVANT BACKGROUND

### I. Plaintiff Martinez's Lawsuit

On July 14, 2020, and July 26, 2021, Plaintiff Martinez, submitted letters to the Labor and Workforce Development Agency ("LWDA") and Defendant City of Hope National Medical Center, regarding her intent to seek civil penalties for violations of the California Labor Code on behalf of all similarly situated aggrieved employees within California. Declaration of Simon L. Yang ("Yang Decl.") ¶ 2; *see generally* Compl.

On August 4, 2020, Plaintiff Martinez initiated this class and representative PAGA action. Yang Decl. ¶ 3; *see generally* Compl. On behalf of non-security guard, non-exempt employees, the initial complaint alleged class and PAGA claims based on failures to furnish lawful wage statements. *Id.* The *Martinez* parties proceeded with discovery, and Plaintiff Martinez conferred with Defendants about additional classwide Labor Code violations. *Id.*

On July 27, 2021, the *Martinez* parties attended mediation with Jeffrey A. Ross. Yang Decl. ¶ 4. The mediation did not result in a resolution. *Id.* On September 28, 2021, Plaintiff Martinez filed an amended complaint to add claims based on failures to provide compliant meal and rest breaks and unfair business practices under California Business and Professions Code section 17200 *et seq.* *Id.*; *see generally* First Amended Class and Representative Action Complaint. The *Martinez* parties continued engaging in formal discovery, which included both written discovery and the deposition of Defendants' corporate designee. *Id.*

### II. Plaintiff Acosta's Separate Lawsuits

Meanwhile, on January 14, 2021, Plaintiff Acosta submitted a letter to the Labor and Workforce Development Agency and Defendants, regarding her intent to seek civil penalties for violations of the California Labor Code and Industrial Welfare Commission Wage Orders, on behalf of alleged aggrieved employees who are current and former hourly-paid or non-exempt employees of Defendants within the State of California. Declaration of Edwin Aiwazian ("Aiwarzian Decl.") ¶ 9.

On February 4, 2021, Plaintiff Acosta separately filed a class action complaint against Defendants in Los Angeles County Superior Court. Aiwazian Decl. ¶ 8. On behalf of current and former hourly-paid or non-exempt employees of Defendants, the lawsuit designated Case No. 21STCV04440 ("*Acosta* Class Action"), alleged nine (9) causes of action under the California Labor Code and one (1) cause of action under California Business and Professions Code section 17200 *et seq.*, for numerous alleged violations of the California Labor

Code and IWC Wage Orders, based on Defendants’ failing to properly pay wages for all hours (including and not limited to, regular, overtime, and minimum wages), failing to provide compliant meal period and rest periods and associated premium pay, failing to timely pay wages during employment, failing to timely pay wages upon termination and associated waiting time penalties, failing to provide compliant wage statements, failing to keep requisite payroll records, and failing to reimburse business expenses. *Id.*

On March 22, 2021, Plaintiff Acosta also commenced a separate representative action under PAGA against Defendants in Los Angeles County Superior Court, designated Case No. 21BBCV00284 (“*Acosta* PAGA Action”), which alleged a single cause of action for PAGA penalties for numerous alleged violations of the California Labor Code and IWC Wage Orders, including and not limited to those alleged in the *Acosta* Class Action. *Id.* The *Acosta* parties engaged in formal discovery, which included written discovery, the deposition of George Vukazich (Executive Director of Employee and Labor Relations of City of Hope National Medical Center), Plaintiff Acosta’s deposition, and the completion of the *Belaire-West* notice process and production of putative class contact information to Plaintiff Acosta’s counsel. *Id.* ¶ 10.

### **III. The Global Mediation and Settlement**

In November of 2021, Plaintiff Martinez, Plaintiff Acosta, and Defendants agreed to schedule a second mediation. Yang Decl. ¶ 5. In addition to providing relevant policies and other documents, Defendants also produced a sampling of approximately 25% of non-exempt employee data in advance of the mediation. *Id.* On December 23, 2021, the Parties attended mediation with Paul Grossman, Esq., a mediator with extensive knowledge and experience with wage-and-hour class and representative action litigation. *Id.* Following extensive settlement negotiations, the Parties were ultimately able to agree to settlement terms described in the Agreement.

On February 4, 2022, Plaintiff Martinez filed a notice of settlement. As part of the terms of the global resolution, the Parties agreed to file an amended complaint in this matter, which, *inter alia*, adds Plaintiff Acosta and her allegations asserted in her separate lawsuits, in order to implement the settlement. On February 10, 2022, the Court granted leave to file the operative Second Amended Complaint, which was filed on April 7, 2022.

## SUMMARY OF PROPOSED SETTLEMENT

### I. Class Definition

The proposed Settlement Class includes: all non-exempt employees of City of Hope, City of Hope National Medical Center, and City of Hope Medical Foundation who were employed at any time between July 23, 2016 to March 31, 2022 in the State of California, with the exception of individuals whose entire employment by Defendants during the period July 23, 2016 to March 31, 2022 is covered by the settlement in *Jordan A. Seper v. City of Hope National Medical Center*, Los Angeles Superior Court Case No. BC630925 (“*Seper* Settlement”). Agreement § 1. Similarly, “PAGA Aggrieved Employees” include all non-exempt employees of City of Hope, City of Hope National Medical Center and City of Hope Medical Foundation who were employed at any time between May 28, 2019 to March 31, 2022 in the State of California. *Id.* § 2.

Based on data available at mediation, it was estimated that there were at least 6,500 Settlement Class Members and PAGA Aggrieved Employees. Yang Decl. ¶ 6.

### II. Settlement Payments

The Agreement requires Defendants to pay a Gross Settlement Amount of \$5,500,000.00. Agreement § 5. From the Gross Settlement Amount, the Parties will request that the Court approve allocations for PAGA Penalties, Settlement Administration Costs, a Fees and Costs Award, and Class Representative Service Awards. *Id.* § 5(c). Except for these allocations requiring Court approval, the entirety of the remainder of the Gross Settlement Amount (i.e., the Net Settlement Amount) will be allocated to Participating Settlement Class Members.<sup>2</sup> In addition to payments from the Net Settlement Amount, Settlement Class Members who are PAGA Aggrieved Employees also will be entitled to their share of PAGA Penalties. *Id.* §§ 5(c)(5), 6(c).

Individual Settlement Payment and Individual PAGA Payment checks will be valid of 180 days, and thereafter, will expire; funds associated with expired checks will be directed to a Court-approved cy pres (parties have proposed California Rural Legal Assistance as the cy pres recipient). *Id.* § 6(i). No portion of the Gross Settlement Amount will revert to Defendants. *Id.* § 5(c)(6).

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<sup>2</sup> For example, employer payroll taxes are not to be paid from the Gross Settlement Amount, which Defendants will separately pay. Agreement § 5(c)(1).

1           **A.       Individual Settlement Payments & Individual PAGA Payments**

2           Settlement Class Members do not need to do anything should they wish to receive their share of the  
3 settlement funds. Participating Settlement Class Members will receive an Individual Settlement Payment and  
4 each PAGA Aggrieved Employee will receive an Individual PAGA Payment without any need to submit a  
5 claim form. Agreement § 6. Each Participating Settlement Class Members's Individual Settlement Payment  
6 will be calculated based upon the number of pay periods in which the Participating Settlement Class Member  
7 was employed by Defendants in the State of California during the Class Settlement Period but excluding pay  
8 periods covered by the *Seper* Settlement ("Pay Periods"). *Id.* § 6(b).

9           The Agreement provides that \$400,000.00 of the Gross Settlement Amount are designated PAGA  
10 Penalties. Agreement § 5(c)(5). Pursuant to statute, 75% of the PAGA Penalties are to be paid to the LWDA.  
11 The remaining 25% of the PAGA Penalties, which is \$100,000, will be entirely distributed to PAGA  
12 Aggrieved Employees. *Id.* Individual PAGA Payments will be allocated to PAGA Aggrieved Employees based  
13 upon the number of Pay Periods they worked during the PAGA Settlement Period. *Id.* § 6(c).

14           The amount actually paid to any Settlement Class Member depends on his or her number of Pay  
15 Periods. Agreement § 6(b). The allocation of Individual Settlement Payments and Individual PAGA Payments  
16 is fair, as it allocates recoveries to Settlement Class Members based on their duration of employment by  
17 Defendants, and in turn, the periods during which they could have suffered alleged wage and hour violations.  
18 The Individual Settlement Payment paid on average to each Settlement Class Member may increase, depending  
19 on how many Settlement Class Members opt out of the Class Settlement.<sup>3</sup> *Id.* Pursuant to the settlement's  
20 terms, it is estimated that no less than approximately \$3,022,500.00 would be distributed to Participating  
21 Settlement Class Members (in addition to Individual PAGA Payment allocations). Agreement § 5; *see also*  
22 Yang Decl. ¶ 6.

23           **B.       Attorneys' Fees and Costs & Class Representative Service Awards**

24           As part of the settlement, Plaintiffs may request that the Court approve an award of attorneys' fees of  
25 up to 35% of the Gross Settlement Amount, i.e., \$1,925,000.00. Agreement § 5(c)(4). Plaintiffs will further  
26 request that the Court approve reimbursement of Plaintiffs' litigation costs of up to \$85,000.00. Agreement §  
27

28           

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<sup>3</sup> See Footnote 1, *infra*.

5(c)(4). Finally, each Plaintiff will request that the Court approve a Class Representative Service Award of \$15,000.00. *Id.* § 5(c)(3). Any portion of the requested payments not approved by the Court shall remain allocated to the Net Settlement Amount for the benefit of the Participating Settlement Class Members. *Id.*

### C. Administration Costs

The Agreement provides for the payment of the fees and expenses incurred by the Settlement Administrator, not to exceed \$37,500.00. Agreement §§ 5(c)(2), 9. Any Settlement Administration Costs not approved by the Court (or approved but not actually incurred) shall remain allocated to the Net Settlement Amount for the benefit of Participating Settlement Class Members. *Id.*

### III. Released Claims

Plaintiffs are subject to a general release. Agreement § 4(c). Settlement Class Members are not. Instead, Participating Settlement Class Members only release claims which were “alleged in the Second Amended Complaint or which could have been pled based on the factual allegations in the Second Amended Complaint arising between July 23, 2016 and the date of the entry of the order granting preliminary approval of the Settlement”:

All Participating Settlement Class Members will fully release and discharge Released Parties, of all causes of action, claims, demands, rights, charges, complaints, damages, penalties, liquidated damages, expenses, attorneys’ fees and costs, interest, obligations and liabilities of any and every kind alleged in the Second Amended Complaint or which could have been pled based on the factual allegations in the Second Amended Complaint arising between July 23, 2016 and the date of the entry of the order granting preliminary approval of the Settlement, including without limitation claims under the Industrial Welfare Commission Wage Orders and California Labor Code sections, including but not limited to California Labor Code sections 201, 202, 203, 204, 210, 218, 218.5, 218.6, 226, 226.3, 226.7, 432, 510, 512, 551, 552, 1174, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2800, 2802, and Industrial Welfare Commission Wage Orders, including, *inter alia*, Wage Order Nos. 4-2001 and 5-2001, for failure to pay wages for all hours worked (including, and not limited to, regular, minimum, and overtime wages, wages for alleged failure to calculate regular rate of pay correctly, wages for alleged off the clock work (e.g., for alleged time spent in or on work activities prior to clocking in and after clocking out, including and not limited to, COVID-19 screenings and/or donning and doffing), wages unpaid due to rounding of time, and reporting time pay); failure to provide a day of rest; failure to provide compliant meal periods and/or to pay meal period premiums; failure to provide compliant rest periods and/or to pay rest period premiums; failure to pay meal and rest premiums at the correct rate; failure to provide compliant wage statements; failure to pay wages timely during employment; failure to pay wages timely upon termination of employment; failure to pay waiting time penalties; failure to keep complete and accurate payroll records; failure to provide and/or allow inspection and copying of personnel, payroll and/or wage records; failure to reimburse business expenses; and all claims for unfair business practices under the California Business & Professions Code that could have been premised on the facts, claims, causes of action or legal theories described above, as well as, for the Participating Settlement Class Members who negotiate their Individual Settlement Payment check, claims arising out of the facts alleged in the Lawsuits that could have been brought under the Fair Labor Standards Act (“FLSA”).

Agreement § 4(a).

PAGA Aggrieved Employees release “claims under the Private Attorneys General Act, California Labor Code section 2698 et seq. alleged in the Second Amended Complaint and the PAGA Notices or which could have been pled based on the factual allegations in the Second Amended Complaint and PAGA Notices, arising between May 28, 2019 and the date of entry of the order granting preliminary approval”:

Separate and apart from the Class Release specified above, all PAGA Aggrieved Employees and the State of California will fully release and discharge the Released Parties of all claims under the Private Attorneys General Act, California Labor Code section 2698 et seq. alleged in the Second Amended Complaint and the PAGA Notices or which could have been pled based on the factual allegations in the Second Amended Complaint and PAGA Notices, arising between May 28, 2019 and the date of entry of the order granting preliminary approval of the Settlement, including all claims for civil penalties under the PAGA, California Labor Code section 2698 et seq., under the Industrial Welfare Commission Wage Orders and California Labor Code sections, including but not limited to California Labor Code sections 201, 202, 203, 204, 210, 218, 226, 226.3, 226.7, 432, 510, 512, 551, 552, 558, 1174, 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 2800, 2802, and Industrial Welfare Commission Wage Orders, including, inter alia, Wage Order Nos. 4-2001 and 5-2001, failure to pay wages for all hours worked (including, and not limited to, regular, minimum, and overtime wages, wages for alleged failure to calculate regular rate of pay correctly, wages for alleged off the clock work (e.g., for alleged time spent in or on work activities prior to clocking in and after clocking out, including and not limited to, COVID-19 screenings and/or donning and doffing), wages unpaid due to rounding of time, and reporting time pay); failure to provide compliant meal periods and/or to pay meal period premiums; failure to provide compliant rest periods and/or to pay rest period premiums; failure to pay meal and rest premiums at the correct rate; failure to provide compliant wage statements; failure to pay wages timely during employment; failure to pay wages timely upon termination of employment; failure to pay waiting time penalties; failure to keep and to provide complete and accurate payroll records; failure to provide and/or allow inspection and copying of personnel, payroll and/or wage records; and failure to reimburse business expenses.

Agreement § 4(b).<sup>4</sup>

### LEGAL STANDARD

Any settlement of a class action lawsuit must be reviewed and approved by the trial court. This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after notice has been distributed to class members for their comment or objections. As the Manual for Complex Litigation (Third) explains, in the first step “counsel submits the proposed terms of settlement and the court makes a preliminary fairness evaluation”:

If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of class representatives or of segments of the class, or excessive compensation for attorneys, and appears to fall within the range of

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<sup>4</sup> Upon filing of this motion with the Court, Plaintiffs will be submitting the motion papers to the LWDA via online submission in LWDA Case Numbers LWDA-CM-796998-20 and LWDA-CM-818750-21. Yang Decl. ¶¶ 15-16.

possible approval, the court should direct that notice ... be given to the class members of a formal fairness hearing, at which arguments and evidence may be presented in support of and in opposition to the settlement.

Manual for Complex Litigation (Third) § 30.41.

A preliminary approval by the trial court thus is a conditional finding that the class action settlement does not appear to be unfair. As Professor Newberg comments, “[t]he strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court may find that the settlement proposal contains some merit, is within the range of reasonableness required for a settlement offer, or is presumptively valid subject only to any objections that may be raised at a final hearing.” 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002).

The parties also may, at the preliminary approval stage, request that the court provisionally approve certification of the class—conditioned upon final approval of the settlement. As further explained by Professor Newberg:

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

4 Newberg on Class Actions, at § 11.26. Indeed, “pre-certification settlements are routinely approved if found to be fair and reasonable.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001); accord *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1803 (1996) (explaining that a settlement before any “adversary certification” may be approved if it is “fair, adequate and reasonable”).

While “[a] PAGA claim asserted on a non-class representative basis ... is not considered a class action but a law enforcement action[,]” and does not have to meet the requirements of a class action, the settlement of a PAGA action requires court approval. *Arias v. Superior Court*, 46 Cal. 4th 969, 980-88 (2009); Lab. Code § 2699(l)(2). Notice to unnamed employees is not required, nor do they have the ability to opt out of a PAGA claim. A court reviewing a PAGA settlement need only “ensur[e] that a negotiated resolution is fair to those affected.” *Williams v. Superior Court*, 3 Cal. 5th 531, 549 (2017) (citing Lab. Code § 2699(l)(2)).

1 **DISCUSSION**

2 **I. The Proposed Settlement Is Fair, Adequate, and Reasonable.**

3 **A. The Settlement Is Entitled to a Presumption of Fairness.**

4 A trial court must determine and approve a class action settlement is fair to “prevent fraud, collusion or  
5 unfairness to the class” through settlement and dismissal of the class action.” *Consumer Advocacy Grp., Inc. v.*  
6 *Kintetsu Enters. of America*, 141 Cal. App. 4th 46, 60 (2006). Courts presume the absence of fraud or collusion  
7 in the negotiation of settlement unless there is evidence to the contrary. *Priddy v. Edelman*, 883 F.2d 438, 447  
8 (6th Cir. 1989); *Mars Steel Corp. v. Continental Illinois Nat’l Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir.  
9 1987); *In re Chicken Antitrust Litig.*, 560 F. Supp. 957, 962 (N.D. Ga. 1980). Indeed, a presumption of fairness  
10 exists where (i) the settlement is reached through arm’s length bargaining; (ii) investigation is sufficient to  
11 allow counsel and the court to act intelligently, (iii) counsel is experienced in similar litigation, and (iv) the  
12 percentage of objectors is small. *Wershba*, 91 Cal. App. 4th at 245 (citing *Dunk*, 48 Cal. App. 4th at 1802).

13 While the recommendations of counsel proposing the settlement are not conclusive, the Court can  
14 properly take them into account, particularly where, as here, they have been involved in formal and informal  
15 investigation and negotiations, are experienced with this type of litigation, and arrived at a resolution through  
16 arm’s length negotiations. See Newberg on Class Actions, *supra*, at § 11.47; *National Rural Telecomms. Coop.*  
17 *v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) (“So long as the integrity of the arm’s length  
18 negotiation process is preserved, however, a strong initial presumption of fairness attaches to the proposed  
19 settlement ... and ‘great weight’ is accorded to the recommendations of counsel, who are most closely  
20 acquainted with the facts of the underlying litigation.”). In such circumstances, which are applicable here,  
21 courts do not substitute their judgment for that of the proponents. *Rural Telecomms. Coop.*, 221 F.R.D. at 528;  
22 *accord Hammon v. Barry*, 752 F. Supp. 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y.  
23 1979); *In re Armored Car Antitrust Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln*  
24 *Federal Sav. & Loan Ass’n*, 79 F.R.D. 571 (E.D. Pa. 1978).

25 **1. The settlement was the result of arms’ length negotiations between experienced**  
26 **wage and hour counsel through experienced wage and hour mediators.**

27 The settlement is a result of arms’ length negotiations. Both Plaintiffs and Defendants’ counsel have a  
28 great deal of experience in wage and hour class action litigation. Plaintiffs’ counsel have extensive class action

1 and litigation experience and have been approved as class counsel in numerous wage and hour class actions.  
2 Declaration of Larry W. Lee (“Lee Decl.”) ¶¶ 5-8; Yang Decl. ¶¶ 10-14; Aiwazian Decl. ¶ 4-7.

3 Each side has apprised the other of their respective factual contentions and legal theories, and each side  
4 has considered the other’s contentions and theories. Yang Decl. ¶¶ 3-8; Aiwazian Decl. ¶ 13. Even with the  
5 assistance of an experienced wage and hour mediator, the *Martinez* parties were unable to agree on a resolution  
6 at an initial mediation which took place in July 2021, and a second mediation took place with Paul Grossman,  
7 Esq. on December 23, 2021. Yang Decl. ¶¶ 3-5. Before, during, and after the second mediation, the Parties  
8 spoke at length about the strengths and weaknesses of each sides’ claims and defenses, whether the claims  
9 could be certified, and the scope of Defendants’ liability. Yang Decl. ¶¶ 3-8; Lee Decl. ¶ 3; Aiwazian Decl. ¶  
10 13. After conducting investigations, significant formal and informal discovery and exchange of information,  
11 extensive settlement negotiations (which included, collectively, two mediation sessions), with the aid of Mr.  
12 Grossman’s evaluation, the Parties ultimately reached an agreement for a global resolution of the Action. Yang  
13 Decl. ¶¶ 3-8. Parties have agreed that the matter is well-suited for settlement given the legal issues relating to  
14 Plaintiffs’ principal claims, as well as the costs and risks to both sides that would attend further litigation.

15 **2. The Parties engaged in significant investigation and discovery.**

16 The Parties actively litigated the cases since the *Martinez* Action was commenced on August 4, 2020.  
17 Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and  
18 Class Counsel were actively preparing the cases for class certification and trial. Yang Decl. ¶¶ 2-3; Aiwazian  
19 Decl. ¶ 8-14.

20 Prior to reach the settlement, the Parties conducted significant investigation and formal and informal  
21 discovery regarding the facts of the cases, including and not limited to, the exchange, review, and analysis of a  
22 large volume of documents and data obtained from Defendants, Plaintiffs, and other sources. Yang Decl. ¶¶ 3-  
23 8; Aiwazian Decl. ¶ 10-14. Plaintiffs and Defendants engaged in extensive formal and informal discovery in  
24 the cases, including and not limited to, written discovery, depositions, subpoenas for production of business  
25 records, and a *Belaire-West* process that resulted in production of contact information for 5,248 putative class  
26 members. Aiwazian Decl. ¶ 10; Yang Decl. ¶ 4.

1           **B.       The Settlement Obtains an Excellent Result for the Settlement Class.**

2                   **1.       The settlement amount is reasonable in light of litigation risks.**

3           Prior to and during the mediation and settlement discussions, the Parties exchanged class information  
4 and engaged in an intensive discussion regarding their evaluations of the cases and various aspects of the cases,  
5 including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with  
6 class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest  
7 periods, wage-and-hour enforcement, and PAGA representative claims, as well as the evidence produced and  
8 analyzed, and the possibility of appeals, among other things.. Yang Decl. ¶ 7; Aiwazian Decl. ¶¶ 10-17. The  
9 settlement is fair, reasonable, and adequate, given the risks of continued litigation, as well as the potential for  
10 appeals and the costs of pursuing litigation. *Id.*

11           Despite the Parties’ disagreements on the application of the law to the facts, each party recognized in  
12 negotiations that, if taken to trial, the other party would at least have reasonable arguments, such that the Gross  
13 Settlement Amount to which the Parties ultimately agreed at mediation was fair. Approval of a class action  
14 settlement requires the proposed settlement to be within the “ballpark” of reasonableness. *Kullar v. Foot Locker*  
15 *Retail, Inc.*, 168 Cal. App. 4th 116, 133 (2008). The Parties conducted significant formal and informal  
16 discovery and exchanged thousands of pages of documents, data, and information during the litigation and  
17 mediation process. The discovery and information that Class Counsel obtained from Defendants and through  
18 other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and  
19 merit of the claims, and perform a complete evaluation of Defendants’ defenses thereto. Yang Decl. ¶ 5;  
20 Aiwazian Decl. ¶ 17. Class Counsel performed an extensive analysis of each and every claim pursuant to  
21 *Kullar* prior to entering into the Settlement. *Id.*

22           Here, the agreed-upon resolution obtaining \$5,500,000.00 on behalf of the Settlement Class, State of  
23 California, and PAGA Aggrieved Employees is an excellent result.

24                   **2.       The settlement release is appropriately limited.**

25           Participating Settlement Class Members settlement and release all Class Released Claims, which are  
26 defined as those claims alleged in the Second Amended Complaint or which could have been pled based on the  
27 factual allegations in the Second Amended Complaint, arising between July 23, 2016 and through the date of  
28 preliminary approval. Agreement § 4(a). PAGA Aggrieved Employees settle and release all PAGA Released

1 Claims which are defined as those claims under PAGA alleged in the Second Amended Complaint and the  
2 PAGA notice of which could have been pled based on the factual allegations in the Second Amended  
3 Complaint and PAGA Notices, arising between May 28, 2019 and through the date of preliminary approval. *Id.*  
4 § 4(b). The releases are properly tailored to the Second Amended Complaint and PAGA Notices.

5 **3. The proposed Class Notice is adequate.**

6 California statutory and case law vests the Court with broad discretion in fashioning appropriate class  
7 notice. See Code Civ. Proc. § 1781; *Cartt v. Superior Court*, 50 Cal. App. 3d 960, 973-74 (1975). A class notice  
8 is adequate if it “present[s] a fair recital of the subject matter and proposed terms” of the Settlement. *Mendoza v.*  
9 *United States*, 623 F.2d 1338, 1351 (9th Cir. 1980) (quoting *Marshall v. Holiday Magic*, 550 F.2d 1173, 1177  
10 (9th Cir. 1977)). “Sufficient information about the case should be provided to enable class members to make an  
11 informed decision about their participation.” *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004).

12 The proposed Notice of Class Action Settlement (“Class Notice”) fulfills the requirement of neutrality in  
13 notice procedure. *Newberg*, at § 8.39. It summarizes the proceedings to date and the terms and conditions of the  
14 Settlement (including, and not limited to, the releases of claims) in an informative and coherent manner, and  
15 apprises the Settlement Class Members of, *inter alia*, the date and time set for the Final Approval Hearing, how  
16 their payments under the Settlement are calculated, and the number of Pay Periods credited to them.<sup>5</sup> It also  
17 describes the deadlines and procedures for Settlement Class Members to submit an objection to the Class  
18 Settlement, a request for exclusion from the Class Settlement, and/or a dispute of the number of Pay Periods  
19 credited to them.<sup>6</sup>

20 The proposed Class Notice satisfies all due process requirements and complies with the standards of  
21 fairness, completeness, and neutrality. FED. R. CIV. P. 23(c)(2) and 23(e); *Newberg*, §§ 8.21, 8.39; *Manual*, §§  
22 21.311, 21.312. Accordingly, the Court should approve the proposed Class Notice.

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<sup>5</sup> *Ibid.*

28 <sup>6</sup> Agreement, Ex. A.

## II. The Settlement Class Meets All Requirements for Certification.<sup>7</sup>

For purposes of settlement approval, a detailed analysis of the elements required for class certification is not required. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 620, 622-27 (1997). The trial court can appropriately utilize a lesser standard of scrutiny to determine the propriety of a settlement class as opposed to a litigation class. *Dunk*, 48 Cal. App. 4th at 1807 n.19; *see also Wershba*, 91 Cal. App. 4th at 240 (explaining there is no “ironclad requirement” to conduct an evidentiary hearing to satisfy the prerequisites for class certification). Because a settlement eliminates the need for a trial, when considering whether to certify a settlement class, the court is not faced with the case management issues present in certification of a litigation class. *Global Mins. & Metals Corp. v. Superior Court*, 113 Cal. App. 4th 836, 859 (2003) (“[I]t is well established that trial courts should use different standards to determine the propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases.”) (citing *Dunk*, 48 Cal. App. 4th at 1807 n.19).

### A. The Settlement Class Is Ascertainable and Sufficiently Numerous.

“[A] class [i]s ascertainable when it is defined ‘in terms of objective characteristics and common transactional facts’ that make ‘the ultimate identification of class members possible when that identification becomes necessary.’” *Noel v. Thrifty Payless, Inc.*, 7 Cal. 5th 955, 980 (2019). Here, Settlement Class Members are identifiable from Defendants’ records and *Seper* Settlement records, and the class definition “is precise, objective and presently ascertainable.” *Sevidal v. Target Corp.*, 189 Cal. App. 4th 905, 919 (2010). As there are more than 6,500 Settlement Class Members, numerosity thus is also sufficiently established. *E.g.*, *Rose v. City of Hayward*, 126 Cal. App. 3d 926, 934 (1981) (stating that “[n]o set number is required as a matter of law for the maintenance of a class action”); *see also Villalpando v. Excel Direct Inc.*, 303 F.R.D. 588, 605-06 (N.D. Cal. 2014) (explaining numerosity generally is satisfied with 40 or more class members).

### B. Plaintiffs’ Claims Are Typical and Raise Common Questions of Law and Fact.

“The community of interest requirement involves three factors: ‘(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives

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<sup>7</sup> Defendants have expressly reserved their objections and do not agree that class certification of any of the claims would have been appropriate outside of the settlement context. Plaintiffs have considered the inherent risk of class certification motion practice in evaluating the Settlement.

1 who can adequately represent the class.” *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 435 (2000). Defendants’  
2 conduct is central to the commonality inquiry. *See City of San Jose v. Superior Court*, 12 Cal. 3d 447, 460  
3 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13 (1971). Here, Plaintiffs’ claims are based on  
4 Defendants’ common policies and practices.

5 With respect to commonality, there are questions of law and fact common to the class. *See Hanlon v.*  
6 *Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) (“The existence of shared legal issues with divergent legal factual  
7 predicates is sufficient, as is a common core of salient facts couple with disparate legal remedies within the  
8 class”). Commonality requires only that some common legal or factual questions exist; the plaintiffs need not  
9 show that all issues in the litigation are identical. *See Richmond v. Dart Indus., Inc.*, 29 Cal. 3d 462, 473 (1981).  
10 Where the employer’s conduct is uniformly directed at a class of employees, as it is here, the class wide impact  
11 of the employer’s policies satisfies the commonality requirement. *See Stephens v. Montgomery Ward & Co.*,  
12 193 Cal. App. 3d 411, 421 (1987).

13 Here, common issues of fact and law predominate as to each of the claims alleged and asserted in the  
14 Second Amended Complaint. Based on the documents and information obtained through formal and informal  
15 discovery and exchange of information in the cases, Plaintiffs contend that Settlement Class Members were  
16 subject to the same or similar job duties and uniform operations and employment practices, policies, and  
17 procedures during the time period at issue. Yang Decl. ¶ 7; Aiwazian Decl. ¶ 15. Plaintiffs’ claims arise from  
18 Defendants’ alleged uniform policy and systematic scheme, with respect to Plaintiffs and the Settlement Class  
19 Members, of, *inter alia*, failing to properly pay wages for all hours worked, failing to provide a day of rest,  
20 failing to provide compliant meal period and rest periods and associated premium pay, failing to timely pay  
21 wages and associated waiting time penalties, failing to provide compliant wage statements, failing to keep  
22 requisite payroll records and produce personnel records, and failing to reimburse business expenses. *Id.*  
23 Plaintiffs contend that substantially the same employment, operations, payroll, and recordkeeping practices  
24 applied with respect to Plaintiffs and Settlement Class Members during the time period at issue. *Id.* As a result,  
25 Plaintiffs claim that they and Settlement Class Members were not paid all compensation due to them from  
26 Defendants during the time period at issue. *Id.*

27 Plaintiffs maintain that the outcome of this litigation would be determined by Defendants’ alleged  
28 uniform operations, employment, payroll, and recordkeeping policies, practices, and procedures that applied to

1 Plaintiffs and other non-exempt employees who worked in California during the Class Settlement Period.  
2 Accordingly, Plaintiffs' claims are typical of the claims of the Class Members and common questions of law  
3 and fact predominate, such that it is appropriate for the Court to certify the Settlement Class for settlement  
4 purposes.

5 **C. Plaintiffs and Class Counsel Have Adequately Represented the Class.**

6 Plaintiffs do not have any interests adverse to the Settlement Class, nor have any such issues been  
7 raised or presented. Martinez Decl. ¶ 3; Acosta Decl. ¶¶ 2-9. Plaintiffs have taken all necessary steps to  
8 represent the interests of the Settlement Class, State of California, and Aggrieved Employees, including by  
9 providing information and documents, making themselves available to discuss and answer questions regarding  
10 the claims, responding discovery served upon them, and appearing for any noticed depositions. *Id.* For such  
11 reasons, Plaintiffs have adequately represented the Settlement Class, State of California, and PAGA Aggrieved  
12 Employees, and will continue to do so.

13 From the inception of the cases, Class Counsel has zealously represented the interests of the Settlement  
14 Class. Further, Class Counsel have been approved as class counsel in a number of prior cases, have litigated  
15 numerous other class action cases, and are competent to represent the Class. Lee Decl. ¶¶ 5-8; Yang Decl. ¶¶  
16 10-14; Aiwarzian Decl. ¶ 7. Class Counsel are well-experienced in wage-and-hour class action litigation and  
17 used that experience to obtain a great settlement recovery.

18 **III. The Court Should Preliminarily Approve the Proposed Allocations for Payments to Class**  
19 **Counsel, Class Representatives, and the Settlement Adminsitrator.**

20 **A. The Proposed Attorneys' Fees and Costs Should Be Preliminarily Approved.**

21 California state and federal courts have recognized that an appropriate method for determining award  
22 of attorneys' fees is based on a percentage of the total value of settlement benefits to Settlement Class  
23 Members. *E.g., Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977); *Wershba*, 91 Cal. App. 4th at 254; *Boeing Co. v.*  
24 *Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997).  
25 The purpose of the equitable doctrine is to "spread litigation costs proportionally among all the beneficiaries so  
26 that the active beneficiary does not bear the entire burden alone" so as to avoid unjust enrichment. *Vincent*, 557  
27 F. 2d at 769. Under California law, the award of attorneys' fees in common fund wage and hour class action  
28 settlements should start with the percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503

(2016). Under the percentage of the fund method, a court’s objective remains to “mimic the market” in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (Posner, J.). Attorneys’ fees awards of 35% of the fund are within the expected range in the “market in legal services. *See Fitzpatrick, An Empirical Study of Class Action Settlements and Their Fee Award*, 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that “[m]ost fee awards were between 25 percent and 35 percent”); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008).

The Parties have agreed to a maximum attorneys’ fees award within the range of reasonableness for the market in legal services of 35% of the settlement. Agreement ¶ 64(i). The Parties’ agreement should be presumed to be fair. Further, the Parties have agreed to reimbursement of Class Counsel’s litigation costs. Class Counsel have incurred costs at their own risk, for example, for filing the lawsuits, service of process, mediation fees, and payment of other litigation related costs. *Id.*

**B. The Proposed Service Awards Should Be Preliminarily Approved.**

Plaintiffs each request a Class Representative Service Award of \$15,000.00. Agreement § 5(c)(3). The contemplated payments are fair and appropriate. Plaintiffs spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations. Martinez Decl. ¶ 3; Acosta Decl. ¶¶ 2-7. Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain and provide information that would facilitate the pursuit of the class and PAGA claims. *Id.* In sum, as part of their duties as Class Representatives, Plaintiffs provided invaluable information, evidence, and documents that resulted in this settlement. *Id.* ¶¶ 2-3. Accordingly, it is appropriate and just for Plaintiffs to each receive a service award for their services on behalf of the Settlement Class, State of California, and PAGA Aggrieved Employees, in addition to their Individual Settlement Payments and Individual PAGA Payments.

**C. The Proposed Settlement Administration Costs Should Be Preliminarily Approved.**

Simpluris, Inc., has been selected to perform the notice and settlement administration duties in connection with the settlement, and the Agreement allocates an amount not to exceed \$37,500.00 for payment to the Settlement Administrator for its services. Agreement ¶¶ 40, 64(k). The Settlement Administrator will, *inter alia*, mail the proposed Class Notice, calculate settlement payments, process objections and requests for exclusion from the Class Settlement, process Pay Periods disputes, deduct and transmit applicable state and

1 federal taxes in connection with the wages portion of the settlement payments, and perform such other tasks  
2 necessary to effectuate the terms of the Agreement. Simpluris, Inc. is a well-recognized class action settlement  
3 administrator. The Court is respectfully requested to preliminarily appoint Simpluris, Inc. as the Settlement  
4 Administrator, and preliminarily approve the Settlement Administration Costs, which are reasonable for the  
5 scope of services to be performed by the Settlement Administrator.

### 6 CONCLUSION

7 For the foregoing reasons, Plaintiffs respectfully request that the Court grant the motion for preliminary  
8 approval. As discussed above, the proposed settlement will result in substantial monetary benefits for  
9 Settlement Class Members. It was achieved as the result of informed, extensive, and arms-length negotiations  
10 conducted by parties who are represented by counsel experienced in wage and hour class action litigation. Its  
11 terms are fair, adequate, reasonable, and within the range of reasonableness for such a settlement. Accordingly,  
12 the Court should (i) grant preliminary approval of the settlement, conditionally certify the Settlement Class for  
13 settlement purposes, preliminarily appoint Plaintiffs as Class Representatives and Plaintiffs' Counsel as Class  
14 Counsel, (ii) approve and authorize the mailing of the Class Notice, and (iii) schedule a date for a Final  
15 Approval Hearing.

16 DATED: April 7, 2022

DIVERSITY LAW GROUP, P.C.

17 By: 

18 Larry W. Lee  
19 Simon L. Yang  
Attorneys for Plaintiff

20 DATED: April 7, 2022

LAWYERS FOR JUSTICE, P.C.

21 By: /s/ Joanna Ghosh

22 Edwin Aiwarzian  
23 Joanna Ghosh  
24 Attorneys for Plaintiff Acosta  
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27  
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