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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

CARLA ZAYAC, on behalf of herself and others
similarly situated and as a proxy for the State of
California,

Plaintiff,

vs.

SUTTER VALLEY MEDICAL
FOUNDATION, a California corporation;
SUTTER VALLEY HOSPITALS, a California
corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 34-2021-00293728

*[Assigned for all purposes to Department 28,
Hon. Lauri A. Damrell]*

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

*[Filed concurrently with Declaration of William
L. Marder; Declaration of Dennis S. Hyun;
Declaration of Majed Dakak; Declaration of
Carla Zayac; [Proposed] Order]*

Date: March 17, 2023
Time: 9:00 a.m.
Department: 28

Reservation No.: 2707268
Complaint Filed: February 2, 2021
FAC Filed: March 3, 2021

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

2 **PLEASE TAKE NOTICE** that on March 17, 2023, at 9:00 a.m., or as soon thereafter as the
3 matter may be heard in Department 28 of the above-entitled Court located at 720 9th Street, Sacramento,
4 California 95814, Plaintiff Carla Zayac (hereinafter “Plaintiff”), will and hereby does seek an Order:

- 5 1. approving the Joint Stipulation of Class Action and PAGA Settlement and Release (the
6 “**Agreement**” or “**Settlement Agreement**”) attached as **Exhibit A** to the concurrently filed
7 Declaration of Dennis S. Hyun;
- 8 2. conditionally certifying the following Class for settlement purposes only: all non-exempt
9 employees who have been employed by Defendant in California from August 8, 2016
10 through the date on which the Court enters its Preliminary Approval Order (the “**Class**
11 **Period End Date**”) and who, during that period, recorded paid sick leave in at least one
12 workweek and also received, in that same workweek, nondiscretionary remuneration other
13 than base hourly wages;
- 14 3. appointing Plaintiff as the Class Representative and William L. Marder of Polaris Law
15 Group, Majed Dakak of Kesselman Brantly Stockinger LLP, and Dennis S. Hyun of Hyun
16 Legal APC as Class Counsel;
- 17 4. approving the Agreement on a preliminary basis and finding that the Agreement, the
18 Maximum Settlement Amount in the amount of \$4,750,000.00, the amounts requested for the
19 Settlement Administration Costs, the Class Counsel Award for fees and costs, the Class
20 Representative Service Award, the Private Attorneys General Act (the “PAGA”) Payment to
21 the Labor Workforce Development Agency (the “LWDA”) (of \$356,250.00, which is 75% of
22 \$475,000 allocated to the PAGA Payment), the PAGA Payment to the PAGA-Eligible
23 Employees (of \$118,750.00, which is 25% of \$475,000.00 allocated to the PAGA Payment),
24 and the allocation of the Individual Class Payments appear to be within the range of
25 reasonableness for a settlement that could ultimately be given final approval;
- 26 5. appointing Phoenix Settlement Administrators as the Administrator;
- 27 6. approving the distribution of the Notice of Pendency of Class Action Settlement and Final
28 Hearing attached as **Exhibit 1** to the Agreement; and

1 7. scheduling a Final Approval Hearing.

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

7 The Motion is based on this notice, the memorandum of points and authorities, the Agreement
8 and proposed Notice of Class Action Settlement, the supporting Declarations of William L. Marder,
9 Majed Dakak, Dennis S. Hyun, and Plaintiff Carla Zayac, all pleadings and papers on file herein, and
10 any further oral and documentary evidence as may be presented before or at the hearing of this matter.

11 DATED: February 9, 2023

POLARIS LAW GROUP
KESSELMAN BRANTLY STOCKINGER LLP
HYUN LEGAL APC

13 By: 
14 William L. Marder
15 Majed Dakak
16 Dennis S. Hyun
17 *Attorneys for Plaintiff*
18 CARLA ZAYAC
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MEMORANDUM OF POINTS AND AUTHORITIES

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SUMMARY OF MOTION

This class action alleges Defendant Sutter Valley Hospitals (“Defendant”) violated the Healthy Workplace Healthy Family Act of 2014 (“HWHFA”), Labor Code §§ 201-204, 233, and 245-249, by not paying sick pay wages at the regular rate of pay to Plaintiff Carla Zayac (“Plaintiff”) and Class Members; Defendant derivatively failed to furnish accurate, itemized wage statements to all Class Members in accordance with Labor Code section 226; Defendant is liable to the Class Members for derivative waiting time penalties pursuant to Labor Code section 203; and Defendant violated Labor Code §§ 201, 233, 246, Labor Code § 226, and Labor Code § 2698, *et seq.* Plaintiff thus sues both on a class-wide basis and as a proxy for the State of California pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”) for alleged violations of Business & Professions Code § 17200, *et seq.* Defendant denies the allegations.¹

Based on their own independent investigations and evaluations, the Parties have agreed to a class-wide resolution. The Joint Stipulation of Class Action and PAGA Settlement and Release (“**Agreement**”), which is attached as **Exhibit A** to the concurrently filed Declaration of Dennis S. Hyun (“Hyun Decl.”), requires Defendant to pay \$4,750,000.00 for the class-wide settlement of claims from August 8, 2016, through the Class Period End Date. Agreement ¶¶ 2.Z, 11. Defendant is also required to pay its employer’s share of payroll taxes. Agreement ¶ 19. Plaintiff and her counsel believe the settlement is fair, adequate and reasonable, in that it provides a raw average payment of \$168.63 per Class Member. Here, Plaintiff’s claim is not that Defendant failed to pay or provide sick pay wages altogether, but that Defendant did not pay the sick pay at the higher regular rate of pay by not taking into account shift differentials into the rate calculation. Plaintiff’s expert calculated the actual principal damages for the underpaid sick pay at \$1,184,018. Hyun Decl. ¶ 9. Thus, the Maximum Settlement Amount actually exceeds the actual underlying damages. Moreover, the entire settlement amount is non-reversionary; none of the settlement amount will revert back to Defendant.

27
28

¹ Plaintiff initially asserted a claim for failure to provide meal and rest periods in violation of Labor Code §§ 226.7 and 512. However, because these claims are subsumed by prior-filed and settled class and PAGA actions, the Parties herein are settling the sick pay and derivative claims only. The Parties specifically excluded the meal and rest period claims from the released claims.

1 Although Plaintiff and her counsel are confident that litigation of the claims would result in a
2 class-wide judgment against Defendant, they recognize the inherent risks in litigation, including the
3 specific risks that class certification could be denied, liability could not be established at trial, or the
4 applicable law could change. The Parties and their counsel are of the opinion that the settlement on the
5 terms set forth in the Agreement would be fair, reasonable, and adequate.

6 As the settlement would be in the best interests of the Class, Plaintiff respectfully requests that
7 the Court grant this Motion for Preliminary Approval of Class Action Settlement.

8 **RELEVANT BACKGROUND**

9 Plaintiff Carla Zayac began employment with Defendant in 1992. Plaintiff's last day worked was
10 January 31, 2020. Plaintiff's job title was administrative supervisor. On or about November 25, 2020,
11 Plaintiff sent written notice to Defendant and to the California Labor & Workforce Development
12 Agency ("LWDA") of Defendants' alleged violations of Labor Code §§ 201-204, 226, 226.7, 246, and
13 512, pursuant to Labor Code § 2698, *et seq.* Hyun Decl. ¶ 7. On that basis, on February 2, 2021,
14 Plaintiff filed her initial Class Action and Representative Complaint in this Action in the Sacramento
15 County Superior Court alleging Violation of Labor Code § 201, 233, 246; Violation of Labor Code §
16 226; Violation of Labor Code § 226.7 & 512; Violation of Labor Code § 2698, *et seq.* and Violation of
17 Business & Professions Code § 17200, *et seq.*, against Defendant Sutter Valley Medical Foundation. *Id.*
18 On March 3, 2021, Plaintiff filed a First Amended Complaint solely adding an additional named
19 defendant Sutter Valley Hospitals.²

20 On September 9, 2022, the Parties participated in a full-day, arms-length mediation before
21 Michael J. Loeb of JAMS. Hyun Decl. ¶ 8. With the assistance of the mediator, the Parties were able to
22 come to a settlement of the sick pay claims in the Action, subject to the Court's approval. *Id.* The
23 Parties specifically excluded from their release any meal and rest period claims, as such claims are
24 subsumed in prior settled class and PAGA actions. *Id.* Therefore, the release in this case is narrower
25

26
27 ² Although Plaintiff named Sutter Valley Medical Foundation as a defendant in the case, Plaintiff now
28 understands that Sutter Valley Hospitals was the entity that employed Plaintiff at all times.
Consequently, Plaintiff agreed in the Agreement to voluntarily dismiss the operative Complaint without
prejudice as to all claims against Sutter Valley Medical Foundation. Agreement ¶ 7.

1 than the claims actually pled. *Id.* The settlement was memorialized in a Memorandum of
2 Understanding, subject to later completion of this long-form Agreement. *Id.*

3 Plaintiff propounded Special Interrogatories and Requests for Production of Documents. Hyun
4 Decl. ¶ 9. In response, Defendant’s counsel proposed placing a hold on formal litigation and discovery
5 and instead engaging in private mediation. *Id.* The Parties engaged in a thorough study of the legal
6 principles and facts applicable to the claims Plaintiff alleged and defenses Defendant might assert. *Id.*
7 Defendant provided sick pay payroll data for 14,148 class members. *Id.* Plaintiff’s counsel then retained
8 EconOne, a damages expert, to calculate damages. *Id.* Plaintiff’s expert calculated the underlying
9 damages at \$1,184,018, Labor Code § 203 penalties at \$49,909,406, Labor Code § 226 penalties at
10 \$5,885,800, and PAGA penalties at \$13,202,340, for a total exposure of \$70,181,564. *Id.* The \$4.75
11 million Maximum Settlement Amount therefore represents 6.77% of the total exposure. *Id.* This,
12 however, presupposes that Plaintiff will prevail and that the Court would find willfulness and knowing
13 and intentional violations, as well as award 100% of PAGA penalties. *Id.* Defendant’s willingness to
14 engage in informal discovery enabled Plaintiff to evaluate the full scope of Defendant’s potential
15 liability. *Id.* Ultimately, the Parties were able to negotiate settlement terms as memorialized in the
16 Memorandum of Understanding executed on September 9, 2022.

17 SUMMARY OF PROPOSED SETTLEMENT

18 I. Class Definition

19 The proposed settlement class includes all non-exempt current or former employees of
20 Defendant in the State of California who recorded paid sick leave in at least one workweek and also
21 received, in that same workweek, nondiscretionary remuneration other than base hourly wages during
22 the Class Period. Agreement ¶¶ 2.B, 8. The Class Period is from August 8, 2016 through the Class
23 Period End Date, defined as the date on which the Court enters its Preliminary Approval Order. *Id.* ¶¶
24 2.I, 2.J. Defendant has estimated that the Class consisted of approximately 14,148 unique employees
25 covering the period from August 8, 2016 through December 21, 2021, based on the records available at
26 the time of the mediation in this matter. *Id.* ¶ 49.

II. Settlement Payments

The Agreement requires Defendants to pay a non-reversionary Maximum Settlement Amount of \$4,750,000.00. Agreement ¶ 11. From the Maximum Settlement Amount, the Parties will request that the Court approve allocations for Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Settlement Administration Costs, Attorneys' Fees and Costs Award, and the Class Representative Service Award. *Id.* ¶¶ 2.Z, 11-17. Except for these allocations requiring Court approval, the entirety of the remainder of the Maximum Settlement Amount will be allocated to Class Members. *Id.* ¶¶ 16-17. It is expected that, on average, each Class Member would be allocated \$168.63 (*after* all requested payments from the Maximum Settlement Amount). Hyun Decl. ¶ 9.

III. Released Claims

Plaintiff is subject to a general release. Agreement ¶ 22. Aggrieved Employees are subject to a release of claims for civil penalties for violations during the PAGA Period (from May 31, 2019 through the Class Period End Date (when the Court enters its Preliminary Approval Order)) that were alleged in the Action or that reasonably could have been alleged based on the facts alleged in the Action:

All Participating and Non-Participating Class Members who are PAGA-Eligible Employees shall release the Released Parties from any and all claims for PAGA civil penalties, arising from May 31, 2019 through the Class Period End Date, that were alleged or reasonably could have been alleged based on the facts contained in Plaintiff's operative Complaint, as enumerated in Paragraph 20 above, and/or in Plaintiff's LWDA Notice. This release does not include the meal and rest break claims alleged in Plaintiff's Complaint which, as discussed in Paragraph 23 below, are excluded from this Settlement. It is understood and agreed that PAGA-Eligible Employees will not have the opportunity to opt out of this PAGA Release.

Id. ¶ 21. Settlement Class Members are subject to a release of claims for violations during the Class Period (from May August 8, 2016 through the Class Period End Date (when the Court enters its Preliminary Approval Order)) that were alleged in the Action or that reasonably could have been alleged based on the facts alleged in the Action:

Upon the Effective Date and Defendant's funding of the Maximum Settlement Amount and its share of employer-side payroll taxes, all Participating Class Members will fully, finally and forever release, settle, compromise, relinquish, and discharge all of the Released Parties from any and all claims, rights, demands, liabilities, and causes of action of every nature and description, arising from August 8, 2016 through the Class Period End Date, including statutory, contractual, or common law claims for wages, damages, penalties, liquidated damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief – whether asserted under the California Labor Code, Business and

1 Professions Code §§ 17200 et seq., the applicable wage orders at California Code of
2 Regulations, Title 8, Section 11000 et seq., or otherwise – that arise out of or are
3 reasonably related to the factual allegations that were alleged or could have been alleged
4 in Plaintiff’s Complaint herein, including but not limited to: (a) any and all claims for
5 failure to provide paid sick leave in accordance with the Healthy Workplaces, Healthy
6 Families Act of 2014 (“HWHFA”), Labor Code §§ 245-249, including failure to pay sick
7 leave at the correct regular rate of pay; (b) any and all claims for violation of the “kin
8 care” law, Labor Code § 233; (c) any and all derivative claims for failure to furnish
9 accurate itemized wage statements in accordance with Labor Code § 226 arising out of
10 the above-alleged claims; (d) any and all derivative claims for failure to provide sick
11 leave wages when due upon separation of employment under Labor Code §§ 201-203; (e)
12 any and all derivative claims for “late payment” penalties under Labor Code §§ 204 and
13 210 arising out of the above-alleged claims; (f) any and all derivative claims for violation
14 of California Business and Professions Code §§ 17200 et seq. arising out of the above-
15 alleged claims; (g) any and all claims for violation of the Private Attorneys General Act
16 of 2004, Labor Code §§2698 et seq. arising out of the above-alleged claims; and (h) any
17 and all claims for attorneys’ fees and costs arising out of the above-alleged claims. This
18 release does not include the meal and rest break claims alleged in Plaintiff’s Complaint
19 which, as discussed in Paragraph 23 below, are excluded from this Settlement.

20 *Id.* ¶ 20. Again, as referenced above and expressly in Paragraph 23 of the Agreement, these
21 releases specifically exclude the meal and rest break claims alleged in Plaintiff’s operative
22 Complaint. *Id.* ¶ 23.

23 **LEGAL STANDARD**

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

29 If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its
30 fairness or other obvious deficiencies, such as unduly preferential treatment of class
31 representatives or of segments of the class, or excessive compensation for attorneys, and appears
32 to fall within the range of possible approval, the court should direct that notice ... be given to the
33 class members of a formal fairness hearing, at which arguments and evidence may be presented
34 in support of and in opposition to the settlement.

35 Manual for Complex Litigation (Third) § 30.41.

36 A preliminary approval by the trial court thus is a conditional finding that the settlement does not
37 appear to be unfair. As Professor Newberg comments, “[t]he strength of the findings made by a judge at
38 a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court
39 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 still be approved if a court is satisfied that it is “fair, adequate and reasonable”).

DISCUSSION

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

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

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

While the recommendations of counsel proposing the settlement are not conclusive, the Court can properly take them into account, particularly where, as here, they have been involved in thorough

1 investigation, are experienced with this type of litigation, and agreed to a resolution through arm's
2 length negotiation. *See* Newberg on Class Actions, *supra*, at § 11.47; *National Rural Telecomms. Coop.*,
3 221 F.R.D. at 528 (“So long as the integrity of the arm’s length negotiation process is preserved,
4 however, a strong initial presumption of fairness attaches to the proposed settlement ... and ‘great
5 weight’ is accorded to the recommendations of counsel, who are most closely acquainted with the facts
6 of the underlying litigation.”) (citations omitted). In such circumstances, as here, courts do not
7 substitute their judgment for that of the proponents. *National Rural Telecomms. Coop. v. DIRECTV*,
8 *Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004); *accord Hammon v. Barry*, 752 F. Supp. 1087 (D.D.C.
9 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re Armored Car Antitrust Litig.*, 472 F.
10 Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass’n*, 79 F.R.D. 571
11 (E.D. Pa. 1978).

12 Here, both Plaintiff’s counsel and Defendant’s counsel have a great deal of experience in wage
13 and hour class action litigation. Plaintiff’s counsel have extensive class action and litigation experience
14 and have been approved as class counsel in numerous wage and hour class actions. Declaration of
15 William L. Marder (“Marder Decl.”) ¶¶ 8-14; Hyun Decl. ¶¶ 3-6; Declaration of Majed Dakak (“Dakak
16 Decl.”) ¶¶ 6-8. Each side has apprised the other of their respective factual contentions and legal
17 theories, and each side has considered the other’s contentions and theories. Hyun Decl. ¶ 10.
18 Additionally, Defendant produced sick pay payroll data for 14,148 class members. *Id.* ¶ 9. Plaintiff’s
19 counsel then retained EconOne, a damages expert, to calculate damages. *Id.* Plaintiff’s expert calculated
20 the underlying damages at \$1,184,018, Labor Code § 203 penalties at \$49,909,406, Labor Code § 226
21 penalties at \$5,885,800, and PAGA penalties at \$13,202,340, for a total exposure of \$70,181,564. *Id.*
22 The \$4.75 million Maximum Settlement Amount therefore represents 6.77% of the total exposure. *Id.*
23 This, however, presupposes that Plaintiff will prevail and that the Court would find willfulness and
24 knowing and intentional violations, as well as award 100% of PAGA penalties. As further discussed
25 below, the settlement is the result of extensive arm’s length negotiations between the Parties and their
26 counsel. *Id.* ¶ 10.

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

2 **1. The Settlement Amount Is Reasonable.**

3 The Agreement requires Defendant to pay \$4.75 million. Agreement ¶ 11. Again, this amount
4 far exceeds the actual underlying underpaid sick pay wages, which Plaintiff's expert calculated at
5 \$1,184,018. Hyun Decl. ¶ 9. This means that the Maximum Settlement Amount is 4.1 times greater than
6 the actual principal damages. *Id.* Plaintiff's expert calculated Labor Code § 203 penalties at
7 \$49,909,406, Labor Code § 226 penalties at \$5,885,800, and PAGA penalties at \$13,202,340, for a total
8 exposure of \$70,181,564. *Id.* The \$4.75 million Maximum Settlement Amount therefore represents
9 6.77% of the total exposure. *Id.*

10 As the Court can see, the vast majority of recovery would arise from waiting time and PAGA
11 penalties. *Id.* There is a possibility that this Court may refuse to award waiting time penalties and
12 significantly reduce the PAGA penalties. *Id.* For purposes of exposure analysis, Plaintiff assigns a 75%
13 discount for the risks for the Labor Code §§ 203 and 226 and PAGA penalties. *Id.* This results in a total
14 realistic exposure of \$18,433,405. *Id.* As such, the \$4.75 million settlement comprises approximately
15 25.76% of the realistic exposure, which is consistent with settlements approved by numerous courts.
16 *See, e.g., In re Mego Fin. Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (holding that class action
17 settlement recovering 16% of potential exposure was fair and reasonable; "It is well-settled law that a
18 cash settlement amounting to only a fraction of the potential recovery does not per se render the
19 settlement inadequate or unfair. Rather, the fairness and the adequacy of the settlement should be
20 assessed relative to risks of pursuing the litigation to judgment."); *Bellinghausen v. Tractor Supply Co.*,
21 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015) (holding that class action settlement recovering
22 between 8.5% and 25% of the defendant's potential exposure was fair); *Van Ba Ma v. Covidien Holding*
23 *Inc.*, 2014 WL 2472316, at *3 (C.D. Cal. May 30, 2014) (acknowledging risks of continued litigation
24 and granting preliminary approval of wage and hour class action settlement obtaining 9.1% of projected
25 damages); *Villegas v. J.P. Morgan Chase & Co.*, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012)
26 (holding that gross class action settlement of approximately 15% of the potential recovery was fair and
27 reasonable).

Moreover, Defendant would have contested the merits and denied it was liable for any penalties. Hyun Decl. ¶ 10. Defendant would have argued that there is no private right of action for sick pay wages and that it did not act willfully. Defendant would have further argued that Plaintiff could not have recovered Labor Code § 226 penalties pursuant to *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308, 1337 (2018).

While the Parties disagree on the application of the law to the facts, each Party recognized in negotiations that, if taken to trial, the other Party would at least have reasonable arguments, such that the Maximum Settlement Amount to which the Parties ultimately agreed was reasonable. Hyun Decl. ¶ 10. Ultimately, the Maximum Settlement Amount secures \$168.63 per class member. *Id.* ¶ 9.

Although Plaintiff and her counsel are confident that litigation of the claims would result in a class-wide judgment against Defendant, they recognize the inherent risks in litigation, including the specific risks that class certification could be denied, liability could not be established at trial, or the applicable law could change. Hyun Decl. ¶ 10. The settlement for each participating Class Member is fair, reasonable, and adequate, given the inherent risks of litigation, as well as the potential for appeals and the costs of pursuing litigation. *Id.*

Class Members would not need to do anything to receive their share of settlement funds. This eliminates any burden to Class Members who wish to participate in the class action settlement. Despite the fairness of the settlement terms, should any Class Member wish to pursue his or her own case for the claims proposed to be settled and released, each Class Member has the right to object or to submit a request for exclusion (i.e., opt out) from the settlement.

2. The Settlement Releases Are Appropriate.

As discussed above, Settlement Class Members are only subject to a release of claims for violations of the Healthy Workplace Healthy Family Act of 2014 (“HWHFA”), and for violations of Labor Code §§ 245-249, § 233, § 226, §§ 201-203, §§ 204 and 210, and for any and all derivative claims for violation of California Business and Professions Code §§ 17200 *et seq.*, and any and all claims for violation of the Private Attorneys General Act of 2004, Labor Code §§2698 *et seq.* during the Class Period that were alleged in the Action or that reasonably could have been alleged based on the facts alleged in the Action. Agreement ¶ 20. Similarly tailored, Aggrieved Employees are subject to a release

1 of claims for civil penalties for violations as alleged in Plaintiff’s operative Complaint during the PAGA
2 Period that were alleged in the Action or that reasonably could have been alleged based on the facts
3 alleged in the Action. *Id.* ¶ 21. Finally, only Plaintiff is subject to a general release. *Id.* ¶ 22.

4 The settlement releases are thus appropriate. *E.g., Carter v. City of Los Angeles*, 224 Cal. App.
5 4th 808, 820 (2014) (“A general release—covering ‘all claims’ that were or could have been raised in
6 the suit—is common in class action settlements.”). Moreover, the settlement releases apply to claims
7 arising during the Class Period only (excluding the meal and rest period claims). Agreement ¶¶ 20-23. In
8 sum, because Plaintiff alleged targeted claims in the Action, any settlement releases also are specifically
9 tailored.

10 **3. The Class Notice Is Adequate.**

11 A court has broad discretion in approving appropriate class notice. Code Civ. Proc. § 1781; *Cartt*
12 *v. Superior Court*, 50 Cal. App. 3d 960, 973-74 (1975). Here, the Agreement requires Defendant to
13 provide to the Administrator each Class Member’s name and last known address, among other
14 information (the “Class Data”), within sixty (60) calendar days of a Preliminary Approval Order.
15 Agreement ¶ 29. Within twenty-one (21) calendar days of receiving the Class Data from Defendant, the
16 Administrator would mail the Notice of Pendency of Class Action Settlement and Final Hearing (“Class
17 Notice”) to each Class Member to provide notice of settlement via First Class U.S. Mail, using the last
18 known address for each Class Member, based on Class Data. *Id.* ¶ 30. Any Class Notice returned to the
19 Administrator as undeliverable would be sent promptly via First Class U.S. Mail to the forwarding
20 address affixed thereto within five (5) calendar days. *Id.* ¶ 31. If no forwarding address is provided, the
21 Administrator would promptly attempt to determine the correct address using a single skip-trace search
22 and then promptly send a single re-mailing. *Id.*

23 The deadlines for Class Members to submit written Objections, Requests or Exclusion, or
24 challenges to Compensable Workweeks will be extended an additional 7 calendar days from the date of
25 the re-mailing, even if this results in an extension of the otherwise-applicable 60-day Response
26 Deadline. If these procedures are followed, notice to Class Members shall be deemed to have been fully
27 satisfied, and if the intended recipient of the Settlement Notice does not receive the Class Notice, the
28

intended recipient shall nevertheless remain a Class Member and shall be bound by all terms of the Settlement and the Final Order and Judgment. *Id.*

The Class Notice accurately informs Class Members of the settlement and their rights. Agreement, **Ex. 1**. For example, Class Members are informed of their rights to object or to opt out. The Class Notice is adequate as it “present[s] a fair recital of the subject matter and proposed terms” of the settlement. *E.g., Mendoza v. United States*, 623 F.2d 1338, 1351 (9th Cir. 1980) (quoting *Marshall v. Holiday Magic*, 550 F.2d 1173, 1177 (9th Cir. 1977)). Additionally, the Class Notice explains that even if class members exclude themselves from the class settlement payment, they will still be bound to the PAGA release and receive payment for the same PAGA release. Agreement, **Ex. 1** at p. 2. Lastly, counsel for Defendant has performed diligence and informed counsel for Plaintiff that the Class Members in this matter do not require a Class Notice interpreted in Spanish as they can read and understand English due to their required job duties. Hyun Decl. ¶ 13.

C. The Requested Payments and Allocations Are Reasonable.

The Agreement provides for a Maximum Settlement Amount of \$4,750,000.00. Agreement ¶ 11. From the Maximum Settlement Amount, attorneys’ fees will be no more than thirty-five percent (35%) of the Maximum Settlement Amount (or \$1,662,500.00) and litigation costs are not expected to exceed \$40,000.00. *Id.* ¶ 12. The Class Representative Award will be no more than \$15,000.00. *Id.* ¶ 13. Settlement Administration Costs will be no more than \$62,500.00. *Id.* ¶ 14. Pursuant to statute, 75% of the \$475,000.00 PAGA Payment will be allocated to PAGA civil penalties and would constitute the LWDA PAGA Payment (i.e., \$356,250.00). The remaining 25%, in the amount of \$118,750.00, shall be allocated as Individual PAGA Payments and will be distributed to the PAGA-Eligible Employees. *Id.*³ ¶¶ 15-17.

1. Each Class Member, on Average, Would Receive Approximately \$168.63.

Based on an estimated current class size of 15,500 individuals, each Class Member would receive a raw average of \$168.63 (*after* all requested payments from the Maximum Settlement Amount). Hyun Decl. ¶ 9. The amount paid on average to each Class Member may increase, depending on how

³ Plaintiff files this motion with the Court and with the LWDA via online submission. Hyun Decl. ¶ 15.

1 many Class Members opt out of the class action settlement. *Id.* The amount actually paid to any Class
2 Member may increase or decrease depending on his or her number of Compensable Workweeks during
3 the Class Period. *Id.* After deducting any approved payments for Class Counsels' fees and costs, Class
4 Representative Service Award, Settlement Administration Costs, and the PAGA Payment from the
5 Maximum Settlement Amount, the entire remainder would be allocated among Settlement Class
6 Members based on the number of Compensable Workweeks for each Settlement Class Member.
7 Agreement ¶ 16; *see also* Class Notice.⁴ The Individual PAGA Payments would also be calculated
8 based on the Compensable Workweeks worked by Aggrieved Employees. *Id.* ¶ 17.

9 Individual Settlement Awards shall be allocated as follows: 20% as alleged unpaid wages
10 subject to all applicable tax withholdings; and 80% as alleged unpaid interest and penalties. The
11 Settlement Administrator shall issue an IRS Form W-2 to each Participating Class Member for the
12 portion of each Individual Settlement Award allocated as alleged unpaid wages and subject to all
13 applicable tax withholdings. The Settlement Administrator shall issue an IRS Form 1099 to each
14 Participating Class Member for the remaining portion of each Individual Settlement Award. The
15 Settlement Administrator shall also issue an IRS Form 1099 for the Individual PAGA Payments. The
16 non-wage portions of the Individual Settlement Awards and the entirety of the Individual PAGA
17 Payments will be allocated as non-wage penalties and interest and not be subject to payroll tax
18 withholdings. Agreement ¶ 18. Defendant shall be responsible for paying the employer's share of
19 payroll taxes on the portion of the Individual Settlement Awards that constitute wages. Defendant will
20 pay these taxes, as calculated by the Settlement Administrator, in addition to the Maximum Settlement
21 Amount. *Id.* ¶ 19.

22 None of the settlement funds will revert to Defendant. *Id.* ¶ 46. The principal for any uncashed
23 checks (upon the expiration date of 180 calendar days from issuance) would be paid as a *cy pres* to the
24 Court Appointed Special Advocates of Sacramento County. *Id.* ¶ 47. Counsel for Plaintiff does not have
25 any interest in or relationship with the Court Appointed Special Advocates of Sacramento County.
26 Dakak Decl. ¶ 10.

27 ⁴ 25% of the PAGA Payment would be distributed to the PAGA-Eligible Employees on a pro rata basis
28 based on the number of Compensable Workweeks worked during the PAGA Period. Agreement ¶ 17.

1 **2. The Requested Attorneys’ Fees and Costs Award Is Reasonable.**

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

9 Under California law, the award of attorneys’ fees in common fund wage and hour class action
10 settlements should start with the percentage method. *See Laffitte v. Robert Half Int’l*, 1 Cal. 5th 480, 503
11 (2016) (“We join the overwhelming majority of federal and state courts in holding that when class action
12 litigation establishes a monetary fund for the benefit of the class members, and the trial court in its
13 equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a
14 reasonable fee by choosing an appropriate percentage of the fund created”). Under the percentage of the
15 fund method, a court’s objective remains to “mimic the market” in fixing a reasonable fee. *See Gaskill v.*
16 *Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (Posner, J.) (“When a fee is set by a court rather than by
17 contract, the object is to set it at a level that will approximate what the market will set The judge, in
18 other words, is trying to mimic the market in legal services.”).

19 Attorneys’ fees awards of 35% of the fund are within the expected range in the “market in legal
20 services. *See Fitzpatrick, An Empirical Study of Class Action Settlements and Their Fee Award*, 7 J.
21 *Empirical Leg. Stud.* 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that
22 “[m]ost fee awards were between 25 percent and 35 percent”). An attorneys’ fees award of 35% of the
23 fund mimics the market and “is supported by the fact that typical contingency fee agreements provide
24 that class counsel will recover 33% if the case is resolved before trial and 40% if the case is tried.”
25 *Fernandez v. Victoria Secret Stores LLC*, 2008 WL 8150856, at *16 n.59 (C.D. Cal. July 21, 2008)
26 (citing Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-*
27 *Competitive Fees* (Fall 2003) 81 Wash U. L. Q. 653, 659 n. 11). Indeed, an attorneys’ fees award of 35%

1 of the fund is consistent with “empirical studies [that] show that ... fee awards in class actions average
2 around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008).

3 Here, Plaintiff will request an attorneys’ fees award of thirty-five percent (35%) of the Maximum
4 Settlement Amount. Further, the Parties have agreed to reimbursement of Class Counsel’s litigation
5 costs. Class Counsel have incurred costs at their own risk, for example, for filing the lawsuit, service of
6 process, mediation fees, and payment of other litigation related costs.

7 **3. The Proposed Class Representative Service Award Is Reasonable.**

8 Plaintiff and proposed Class Representative Carla Zayac requests a modest Class Representative
9 Service Award of \$15,000.00. The request is quite reasonable in light of the general release that the
10 Agreement requires of her but not of any other Class Member. Agreement ¶ 22. Independently, the
11 request is appropriate in recognition of Plaintiff’s efforts on behalf of the Class. Declaration of Carla
12 Zayac (“Zayac Decl.”) ¶¶ 2-3.

13 As part of her duties as the Class Representative, Plaintiff provided all necessary information and
14 evidence that resulted in this settlement. Zayac Decl. ¶¶ 2-3. Plaintiff met and conferred with Class
15 Counsel on a number of occasions to discuss the case. *Id.* ¶ 3. She provided information and documents
16 to Class Counsel and made herself available to answer any questions during litigation. *Id.* Ultimately,
17 Plaintiff’s efforts secured an exceptional result for the Class.

18 In addition to the invaluable services that Plaintiff provided, she also took a significant risk, both
19 professionally and monetarily. Zayac Decl. ¶ 4. Because the alleged claims involve the payment of
20 costs to the prevailing party, Plaintiff could have possibly faced paying Defendant’s costs had Defendant
21 prevailed in the action. Marder Decl. ¶ 7. Furthermore, Plaintiff risks prejudice in the future from other
22 potential employers that may be less willing to hire an individual who has filed suit against a prior
23 employer. Plaintiff took this risk upon herself and the whole class benefited. Class Members did not
24 have to file individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did they
25 have to face potential prejudice in future employment.

26 **4. The Administration Costs Are Reasonable.**

27 Phoenix Settlement Administrators, a well-recognized class action settlement administrator, has
28 quoted Settlement Administration Costs not to exceed \$62,500.00 to send notices and administer the

1 settlement. Hyun Decl. ¶ 14. Phoenix Settlement Administrators was the lowest quote received after
2 obtaining quotes from two other established administrators CPT (\$85,923.10) and ILYM (\$76,990). *Id.*
3 The Administration Costs are therefore reasonable and should be approved.

4 **II. The Class Meets All Requirements for Certification.**⁵

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

16 Even under the standard applicable to litigation classes, the allegations in this lawsuit present
17 paradigmatic class action claims that satisfy the elements of class certification.

18 **A. The Class Is Ascertainable and Sufficiently Numerous.**

19 Class Members are identifiable from Defendant’s records. The class definition “is precise,
20 objective and presently ascertainable.” *Sevidal v. Target Corp.*, 189 Cal. App. 4th 905, 919 (2010).
21 Indeed, for the time period of August 8, 2016 through December 21, 2021, there were approximately
22 14,148 Class Members. Agreement ¶ 49. Numerosity thus is sufficiently established. *E.g., Rose v. City*
23 *of Hayward*, 126 Cal. App. 3d 926, 934 (1981) (stating that “[n]o set number is required as a matter of
24 law for the maintenance of a class action” and citing examples in which classes of 10—*Bowles v.*

25
26
27 ⁵ Defendant expressly reserves its objections and does not agree that class certification of any of the
28 claims would be appropriate outside of the settlement context. Plaintiff disagrees but has considered the
inherent risk of class certification motion practice.

1 *Superior Court*, 44 Cal. 2d 574 (1955)—and of 28—*Hebbard v. Colgrove*, 28 Cal. App. 3d 1017
2 (1972)—were upheld).

3 **B. The Class Establishes a Community of Interest.**

4 “The community of interest requirement involves three factors: ‘(1) predominant common
5 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
6 class representatives who can adequately represent the class.’” *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429,
7 435 (2000).

8 **1. Plaintiff’s Claims Are Typical of Those of the Class.**

9 Plaintiff alleges that Defendant failed to pay sick pay wages at the regular rate of pay by not
10 including non-discretionary remuneration into the rate, including shift differentials. With respect to
11 typicality, Plaintiff—exactly like other members of the Class—was not properly paid for days on which
12 she took paid sick leave as required by California law; that her sick leave was paid at the incorrect pay
13 rate; that Plaintiff’s wage statements provided by Defendant did not reflect the correct sick pay rate in
14 pay periods in which she also earned shift differentials and because of this alleged violation, she was not
15 paid all wages owed at termination. Zayac Decl. ¶ 2.

16 **2. Plaintiff’s Claims Raise Common Questions of Law and Fact.**

17 The typical claims raise questions of law and fact common to the class. *See Hanlon v. Chrysler*
18 *Corp.*, 150 F.3d 1011, 1019 (1998) (“The existence of shared legal issues with divergent legal factual
19 predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within
20 the class”). Commonality requires only that some common legal or factual questions exist; the plaintiffs
21 need not show that all issues in the litigation are identical. *See Richmond v. Dart Indus., Inc.*, 29 Cal. 3d
22 462, 473 (1981). Defendant’s conduct is central to the commonality inquiry. *See City of San Jose v.*
23 *Superior Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13 (1971).
24 Where the employer’s conduct is uniformly directed at a class of employees, as it is here, the class wide
25 impact of the Defendant’s policies satisfies the commonality requirement. *See Stephens v. Montgomery*
26 *Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

1 **3. Plaintiff and Her Counsel Adequately Represent the Class.**

2 With respect to adequate representation, Plaintiff does not have any interests adverse to the
3 Class, and no such issues have been raised or presented. Zayac Decl. ¶ 3. Plaintiff has taken all
4 necessary steps to represent the interests of the Class, including by providing information and
5 documents to Class Counsel, making herself available to discuss the claims, providing wage statements
6 that she was issued, reviewing wage statements while the lawsuit was pending, and answering any
7 questions. *Id.* For such reasons, Plaintiff has adequately represented the Class Members and will
8 continue to do so.

9 From the inception of the case, Class Counsel has zealously represented the interests of the
10 Class. The settlement was obtained for the benefit of the Class, as opposed to the individual Class
11 Representative. Class Counsel have been approved as class counsel in a number of prior cases, have
12 litigated numerous other class action cases, and are competent to represent the Class. Marder Decl. ¶¶ 8-
13 14; Hyun Decl. ¶¶ 5-6; Dakak Decl. ¶¶ 6-8.

14 **CONCLUSION**

15 The proposed settlement would result in substantial monetary benefits to class members. It was
16 the result of informed, arm's length negotiations conducted by counsel experienced in wage and hour
17 class action litigation. Its terms appear to be fair, adequate, and reasonable, and there is no reason to
18 believe the proposal is outside the range of reasonableness for such a settlement. Accordingly, for the
19 benefit of the Class, Plaintiff respectfully requests that the Court (i) grant preliminary approval of the
20 settlement, (ii) approve and authorize the mailing of the proposed Class Notice, and (iii) schedule a Final
21 Approval Hearing.

22 DATED: February 9, 2023

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