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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA**

CHUMANI BROWN, individually, and on  
behalf of other members of the general  
public similarly situated, and on behalf of  
other aggrieved employees pursuant to the  
California Private Attorneys General Act;  
OSCAR MORALES, individually, and on  
behalf of other members of the general  
public similarly situated;

Plaintiffs,

vs.

MED ONE GROUP, an unknown  
business entity; MED ONE CAPITAL,  
INC., an unknown business entity; MED  
ONE CAPITAL FUNDING, LLC, an  
unknown business; and DOES 1 through  
100, inclusive,  
Defendants.

Case No.: RG21095229

Honorable Brad Seligman  
Department 22

**CLASS ACTION**

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

[Declaration of Proposed Class Counsel  
(Tara Zabehi); Declaration of Proposed  
Class Representative (Chumani Brown);  
Declaration of Proposed Class  
Representative (Oscar Morales); and  
[Proposed] Order filed concurrently  
herewith]

Reservation ID: A-21095229-001  
Date: October 22, 2024  
Time: 3:00 p.m.  
Department: 22

Complaint Filed: April 6, 2021  
FAC Filed: January 23, 2023  
SAC Filed: July 15, 2024  
Trial Date: None Set

**TO THE HONORABLE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF  
RECORD:**

**PLEASE TAKE NOTICE** that on October 22, 2024, at 3:00 p.m. or as soon thereafter as the matter may be heard before the Honorable Brad Seligman in Department 22 of the Superior Court of California for the County of Alameda, located at 1225 Fallon Street, Oakland, California 94612, Plaintiff Chumani Brown (“Plaintiff Brown”) and Plaintiff Oscar Morales (“Plaintiff Morales”) (collectively, “Plaintiffs” or “Class Representatives”) will, and hereby do, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the First Amended Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 1**” to the Declaration of Tara Zabehe, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Class Counsel’s Fees and Costs to Class Counsel, Class Representative Incentive Payment to Plaintiffs, and Settlement Administration Costs to the Settlement Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Brown and Plaintiff Morales as Class Representatives;
- Preliminarily appointing Lawyers for Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as “**EXHIBIT A**” to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Simpluris, Inc. as the Settlement Administrator; and

- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Class Counsel's Fees and Costs to Class Counsel, Class Representative Incentive Payment to Plaintiffs, and Settlement Administration Costs to the Settlement Administrator.

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

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declarations of Proposed Class Counsel (Tara Zabehi) and Proposed Class Representatives (Chumani Brown and Oscar Morales) in support thereof, the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: September 30, 2024

**LAWYERS for JUSTICE, PC**

By:



Tara Zabehi  
Attorneys for Plaintiffs

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. SUMMARY OF MOTION**

Plaintiff Chumani Brown and Plaintiff Oscar Morales (“Plaintiffs” or “Class Representatives”) seek preliminary approval of the First Amended Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiffs, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendants Med One Group, Med One Capital Funding, LLC, and Med One Capital, Inc. (“Defendants” or “Med One”), on the other hand. Subject to approval by the Court, Plaintiffs and Defendants (collectively, the “Parties”) have agreed to settle the lawsuits for a Gross Settlement Amount of Four Hundred Fifty Thousand Dollars and Zero Cents (\$450,000.00).<sup>1</sup> The Gross Settlement Amount includes the following: (1) Individual Settlement Payments to Participating Class Members which will be distributed from the Net Settlement Amount<sup>2</sup>; (2) the Class Representative Incentive Payment of Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to each Plaintiff<sup>3</sup>; (3) the Class Counsel’s Fees and Costs to Class Counsel, consisting of attorneys’ fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount, or \$157,500.00, and reimbursement of litigation costs and expenses not to exceed Twenty Thousand Dollars (\$20,000.00)<sup>4</sup>; (4) the Settlement Administration Costs to the Settlement Administrator in an amount up to Eight Thousand Dollars (\$8,000.00);<sup>5</sup> and (5) the amount of One Hundred Thousand Dollars and Zero Cents (\$100,000.00) allocated to penalties under the Private Attorneys General Act (“PAGA”), of which 75% (i.e., \$75,000.00) will be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% (i.e., \$25,000.00) will be distributed to PAGA Members as a part of the Employee PAGA Portion.<sup>6</sup>

<sup>1</sup> Settlement Agreement, attached as “**EXHIBIT 1**” to Declaration of Tara Zabehi (“Zabehi Decl.”), ¶ 18.

<sup>2</sup> *Id.*, ¶ 24.

<sup>3</sup> *Id.*, ¶ 30.

<sup>4</sup> *Id.*, ¶ 29.

<sup>5</sup> *Id.*, ¶ 46.

<sup>6</sup> *Id.*, ¶ 24.

Plaintiffs also seeks to provisionally certify the following Class for settlement purposes, which Defendants do not oppose:

(1) all individuals who are current or former hourly-paid, non-exempt employees of Med One who worked in California at any time from April 1, 2020 to May 8, 2022 (“Hourly Class Members”); and<sup>7</sup> (2) all individuals who are current or former salaried customer relations specialists employees of Med One who were classified as “exempt” and worked in California at any time from April 6, 2017 to May 8, 2022 (“Salaried Class Members”).<sup>8</sup>

The Hourly Class Member(s) and Salaried Class Member(s) are collectively referred to as the “Class” or “Class Members.” The Class is estimated to consist of approximately eighty (80) individuals.<sup>9</sup>

Class Members who do not submit a valid and timely request to be excluded from the Settlement (“Participating Class Members”) will receive a share of the Net Settlement Amount (“Individual Settlement Share”) on a *pro rata* basis based upon the number of weeks he or she worked at Med One as an Hourly Class Member or a Salaried Class Member during the Class Period (“Workweeks”).<sup>10</sup>

The Settlement resolves the Released Class Claims and Released PAGA Claims of Plaintiffs, Participating Class Members, and PAGA Members, and the State of California against the Released Parties.<sup>11</sup>

In order to efficiently present the Court with adequate information to determine whether to grant preliminary approval of the Settlement, Plaintiffs also move for an order permitting the filing of this single consolidated memorandum, although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d), instead of filing several separate motions.

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<sup>7</sup> Settlement Agreement, ¶ 5. “Class Period” is defined as the period of time from April 1, 2020 through May 8, 2022 for “Hourly Class Members”, and April 6, 2017 through May 8, 2022 for “Salaried Class Members.” See *id.*, ¶ 6.

<sup>8</sup> *Ibid.*

<sup>9</sup> Zabehe Decl., ¶ 19.

<sup>10</sup> Settlement Agreement, ¶ 19, 32, 47, and 65.

<sup>11</sup> *Id.* at ¶ 40 and 82(a), for the full scope of the “Released Class Claims,” *id.* at ¶ 41 and 82(b) for the full scope of the “Released PAGA Claims, and *id.* at ¶ 42 for the definition of the “Released Parties.”

1     **II.     PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

2             Defendants provide medical equipment leasing, services to medical facilities, and direct  
3     sales to hospitals and other care facilities. Plaintiff Brown is a former employee of Defendants  
4     and Plaintiff Morales is a current employee of Defendants.

5             On April 6, 2021, Plaintiff Brown filed a Complaint for Enforcement Under the Private  
6     Attorneys General Act, California Labor Code § 2698, Et Seq. (“Original Complaint”) in the  
7     Alameda County Superior Court (“Court”), thereby commencing the above-captioned lawsuit  
8     (“Action”).

9             On June 4, 2021, Defendants filed an Answer to Plaintiff Brown’s Original Complaint  
10    and a Motion to Transfer Venue to Sacramento County Superior Court, which Plaintiff Brown  
11    opposed on June 24, 2021. On June 29, 2021, Defendants filed their Reply to Plaintiff Brown’s  
12    Opposition. The Court denied Defendants’ Motion to Transfer Venue on July 8, 2021.

13            On January 23, 2023, Plaintiff Brown filed a First Amended Class Action Complaint for  
14    Damages & Enforcement Under the Private Attorneys General Act, Cal. Labor Code § 2698, Et  
15    Seq.

16            On February 22, 2023, Defendant Med One Capital Funding, LLC filed an Answer to  
17    Plaintiff Brown’s First Amended Class Action Complaint.

18            On July 15, 2024, Plaintiff Brown and Plaintiff Morales filed a Second Amended Class  
19    Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, Cal.  
20    Labor Code § 2698, Et Seq. (“Operative Complaint”).

21            On August 13, 2024, Defendants filed an Answer to Plaintiffs’ Second Amended Class  
22    Action Complaint.

23            Plaintiffs’ core allegation is that Defendants have violated the California Labor Code by  
24    engaging in a uniform practice and procedure, with respect to Plaintiffs, the Class Members, and  
25    the PAGA Members of, *inter alia*, failing to pay all overtime and minimum wages, failing to  
26    provide compliant meal and rest periods and associated premium pay, failing to timely pay  
27    wages during employment and upon termination of employment, failing to provide compliant  
28    wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary

1 business expenses, and thereby engaged in unfair business practices in violation of California  
2 Business and Professions Code section 17200, *et seq.* and conduct that gives rise to penalties  
3 pursuant to PAGA. Plaintiffs contend that they, and the Class Members, are entitled to, *inter*  
4 *alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and  
5 attorneys' fees.

6 Defendants have denied, and continue to deny, any liability and wrongdoing of any kind  
7 associated with any of the allegations in the Action, and further deny that the Action is  
8 appropriate for class treatment or representative adjudication for any purpose other than for  
9 settlement.

10 The Parties have actively litigated the Action since it was commenced on April 6, 2021.  
11 On February 9, 2022, the Parties participated in a formal, full-day mediation conducted by  
12 Jeffrey Krivis, Esq., a well-regarded mediator experienced in mediating complex labor and  
13 employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached  
14 the Settlement described herein to resolve the Action in its entirety.

15 On August 2, 2023, Plaintiff Brown filed a Motion for Preliminary Approval of Class  
16 Action Settlement ("Motion for Preliminary Approval") and supporting documents seeking  
17 approval of the settlement reached by Plaintiff Brown and Defendants.

18 On October 10, 2023, the Court issued a tentative ruling ("October 10, 2023 Tentative  
19 Ruling") by which it raised multiple points of inquiry with regards to Plaintiff Brown's Motion  
20 for Preliminary Approval. On October 12, 2023, the Court issued an Order adopting its October  
21 10, 2023 Tentative Ruling and continuing the hearing on Plaintiff Brown's Motion for  
22 Preliminary Approval to November 14, 2023 at 2:00 p.m. in Department 22 of the above-  
23 captioned Court ("October 12, 2023 Order"). The Court's October 12, 2023 Order sought further  
24 explanation of the investigation performed, the sample size for the sampling of class members,  
25 time period for Defendants' policies, any differences in the policies regarding hourly and  
26 salaried employees, and what, if any violations the records demonstrated.

27 On November 6, 2023, the Court approved the Parties' Joint Stipulation to Continue  
28 Hearing on Plaintiff Brown's Motion for Preliminary Approval of Class Action Settlement, and

1 Deadline to File Supplemental Papers in Support Thereof and entered an Order continuing the  
2 hearing on Plaintiff's Motion for Preliminary Approval to December 5, 2023, at 2:00 p.m. in  
3 Department 22 of the above-captioned Court ("November 6, 2023 Order").

4 On November 28, 2023, Plaintiff Brown filed supplemental briefing in support of his  
5 motion for preliminary approval papers with the Court.

6 On December 5, 2023, the Court issued a minute order wherein the Court raised further  
7 points of inquiry regarding Plaintiff Brown's Motion for Preliminary Approval, and continued  
8 the hearing on Plaintiff's Motion for Preliminary Approval to January 9, 2024, at 2:00 p.m.  
9 ("December 5, 2023 Order").

10 On January 9, 2024, the Court issued a minute order wherein the Court continued the  
11 hearing on Plaintiff Brown's Motion for Preliminary Approval to January 30, 2024 at 2:00 p.m.  
12 ("January 9, 2024 Order").

13 The Court's December 5, 2023 Order and January 9, 2024 Order sought further support  
14 for why Plaintiff Brown has the typicality and adequacy to represent both misclassified salaried  
15 employees and non-exempt employees.

16 On January 23, 2024, Plaintiff Brown filed further supplemental motion for preliminary  
17 approval papers with the Court.

18 On February 14, 2024, the Court issued a tentative ruling ("February 14, 2024 Tentative  
19 Ruling") by which the Court denied Plaintiff Brown's Motion for Preliminary Approval and  
20 raised concerns with regard to Plaintiff Brown's Motion for Preliminary Approval.

21 In light of the Court's tentative ruling, Plaintiff Brown and Defendants went back to  
22 litigating this Action and propounded discovery on Defendants. Ultimately, Plaintiff Brown  
23 amended his complaint to add Plaintiff Morales and his claims to this Action and thus jointly  
24 stipulated to amend the Class Action and PAGA Settlement and Release, Plaintiffs filed a  
25 Second Amended Complaint, and presently file a Renewed Motion for Preliminary Approval of  
26 Class Action Settlement.

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1 **III. SUMMARY OF THE SETTLEMENT TERMS**

2 Under the terms of the Settlement, Defendants will pay a Gross Settlement Amount to  
3 resolve the Released Class Claims of Plaintiffs and the Class Members who do not submit a  
4 valid and timely request to be excluded from the Settlement (i.e., Participating Class Members)  
5 and the Released PAGA Claims of Plaintiffs, the PAGA Members and the State of California  
6 with respect to the Released Parties.<sup>12</sup> Subject to approval by the Court, the Net Settlement  
7 Amount will be calculated by deducting the following amounts from the Gross Settlement  
8 Amount: (1) attorneys' fees in an amount equal to thirty-five percent (35%) of the Gross  
9 Settlement Amount (i.e., \$157,500.00) and reimbursement of costs and expenses in an amount  
10 not to exceed Twenty Thousand Dollars (\$20,000.00) to Class Counsel (collectively referred to  
11 as the "Class Counsel's Fees and Costs"); (2) settlement administration costs, which are  
12 currently estimated not to exceed Eight Thousand Dollars (\$8,000.00) to the Settlement  
13 Administrator ("Settlement Administration Costs"); (3) PAGA Penalties in the amount of One  
14 Hundred Thousand Dollars (\$100,000.00), 75% of which (i.e. \$75,000.00) will be paid to the  
15 LWDA ("LWDA Payment"), and 25% of which (i.e. \$25,000.00) will be paid to the PAGA  
16 Members on a *pro rata* basis, based on their workweeks during the PAGA Period (the  
17 "Employee PAGA Portion"); and (4) payment in the amount of up to Seven Thousand Five  
18 Hundred Dollars (\$7,500.00) each to Plaintiff Brown and Plaintiff Morales ("Class  
19 Representative Incentive Payment").<sup>13</sup> The Parties have agreed to retain Simpluris, Inc.  
20 ("Simpluris" or "Settlement Administrator") to handle the notice and settlement administration  
21 process.

22 The Parties have agreed that the Settlement Administrator will determine each  
23 Participating Class Member's share of the available Net Settlement Amount ("Individual  
24 Settlement Share"), in accordance with the Settlement Agreement and as follows:

- 25 a. The Settlement Administrator will determine the total number of Workweeks for each  
26 Participating Class Member and the total aggregated number of Workweeks worked by  
27 all Participating Class Members during the Class Period. The Settlement Administrator  
will be provided with such information, by Defendants, as is necessary to calculate each

28 <sup>12</sup> Settlement Agreement, ¶ 17.

<sup>13</sup> Zabehi Decl., ¶¶ 24, 29, 30.

Participating Class Member's Workweeks and the aggregated number of Workweeks. The amount that each Participating Class Member will be eligible to receive will be calculated by dividing each Participating Class Member's individual Workweeks by the total Workweeks of all Participating Class Members, and multiplying the resulting fraction by the Net Settlement Amount..<sup>14</sup>

The Parties have agreed that the Settlement Administrator will determine each PAGA Member's share of the Employee PAGA Portion ("Individual PAGA Payment"), in accordance with the Settlement Agreement and as follows:

- a. The Settlement Administrator will determine the total number of PAGA Workweeks for each PAGA Member and the total aggregated number of PAGA Workweeks worked by all PAGA Members during the PAGA Period. The Settlement Administrator will be provided with such information, by Defendants, as is necessary to calculate each PAGA Member's PAGA Workweeks and the aggregated number of PAGA Workweeks. The amount that each PAGA Member will receive will be calculated by dividing each PAGA Member's individual PAGA Workweeks by the total PAGA Workweeks of all PAGA Members, and multiplying the resulting fraction by the Employee PAGA Portion. PAGA Members shall be issued payment of their Individual PAGA Payment regardless of whether they opt out of the Class Settlement.<sup>15</sup>

Each Participating Class Member's Individual Settlement Share will be allocated as follows: thirty-three and one third percent (33.33%) as wages (the "Wage Portion"), which will be reported on an IRS Form W-2; and the remaining sixty-six and two thirds percent (66.66%) as interest, penalties, and other non-wage damages, which will be reported on an IRS Form 1099.<sup>16</sup> Participating Class Members will be issued payment of their Individual Settlement Shares subject to reduction for the employee's share of taxes and withholdings with respect to the wage portion of each Individual Settlement Payment (the net payment is referred to as an "Individual Settlement Payment").<sup>17</sup> Defendants will pay the employer's share of payroll taxes and contributions with respect to the wage portion of Individual Settlement Shares ("Employer Taxes") in addition to the Gross Settlement Amount.<sup>18</sup>

The Individual Settlement Payment checks issued to Participating Class Members and Individual PAGA Payment checks issued to PAGA Members will be negotiable for one hundred eighty (180) calendar days from the date of issuance.<sup>19</sup> Individual Settlement Payment checks

<sup>14</sup> Settlement Agreement at ¶ 65(a).

<sup>15</sup> *Id.* at ¶ 65(b).

<sup>16</sup> *Id.* at ¶ 65(c).

<sup>17</sup> *Id.* at ¶ 80.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Id.* at ¶ 78.

1 and/or Individual PAGA Payment checks that are not negotiated within the 180-day period will  
2 be cancelled.<sup>20</sup> The funds associated with such canceled checks will be transmitted by the  
3 Settlement Administrator after the expiration of the 180-day period, and sent to the Legal Aid  
4 at Work, in the name of the Participating Class Member whose check is canceled and in the  
5 respective amount of the cancelled check.<sup>21</sup>

6 Class Members who wish to be excluded from the Settlement (i.e., opt out) must notify  
7 the Settlement Administrator in writing by sending a letter indicating that they want to exclude  
8 themselves.<sup>22</sup> To be timely, the Class Member must mail the written statement to the Settlement  
9 Administrator, postmarked on or before the date that is sixty (60) calendar from the initial  
10 mailing of the Class Notice (“Response Deadline”).<sup>23</sup> To be valid, a request for exclusion must  
11 contain: (a) the Class Member’s full name, address, telephone number, and the last four (4)  
12 digits of his or her Social Security number, signature, and date; and (b) a clear statement  
13 referencing the case title of the Action and requesting to be excluded from the settlement of the  
14 class claims similar to the following “I wish to exclude myself from the class settlement reached  
15 in the matter of *Chumani Brown v. Med One Group*” (“Request for Exclusion”).<sup>24</sup> Class  
16 Members who submit a valid and timely Request for Exclusion will not be bound by the terms  
17 of the Class Settlement or the Final Approval Order and Judgment as it pertains to the Class  
18 Settlement.<sup>25</sup>

19 Only Class Members who do not exclude themselves from the Class Settlement (i.e.,  
20 Participating Class Members) have standing to object to the Class Settlement.<sup>26</sup> Participating  
21 Class Members who wish to object to the Class Settlement in writing must mail a written  
22 objection to the Settlement Administrator, postmarked on or before the Response Deadline.<sup>27</sup>  
23 The written objection must contain: (a) the Participating Class Member’s full name, address,  
24

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25 <sup>20</sup> Settlement Agreement at ¶ 78.

26 <sup>21</sup> *Ibid.*

27 <sup>22</sup> *Id.*, ¶ 73

28 <sup>23</sup> *Id.*, ¶ 43 and 44.

<sup>24</sup> *Id.*, ¶ 43.

<sup>25</sup> *Id.*, ¶ 75.

<sup>26</sup> *Id.*, ¶ 76.

<sup>27</sup> *Id.*, ¶ 39.

1 telephone number, last four (4) digits of his or her Social Security number, and signature; and  
2 (b) the title of the Action or something similar to the title of the Action (e.g., “*Chumani Brown*  
3 *v. Med One Group et al.*”); (c) a written statement of all grounds for the objection accompanied  
4 by legal support, if any, for such objection; (d) a statement indicating whether or not the  
5 Participating Class Member intends to appear at the Final Approval Hearing, either in person or  
6 through counsel; and (e) if represented by separate counsel, the name, address, bar number, and  
7 telephone number of the Participating Class Member’s representing attorney (“Objection”).<sup>28</sup> In  
8 addition and also as an alternative, a Participating Class Member may object to the Class  
9 Settlement by appearing at the Final Approval Hearing to present his or her objection to the  
10 Class Settlement orally to the Court.<sup>29</sup>

11 Class Members and PAGA Members who wish to dispute the number of Workweeks  
12 credited to them in their Class Notice may do so by mailing a written letter to the Settlement  
13 Administrator on or before the Response Deadline.<sup>30</sup> The letter must contain: (a) the Class  
14 Member’s or PAGA Member’s full name, address, telephone number, the last four (4) digits of  
15 his or her Social Security number, signature, and date; and (c) the title of the Action or something  
16 similar to the title of the Action (e.g. “*Chumani Brown v. Med One Group et al.*”); (c) a clear  
17 statement explaining that the Class Member disputes the number of Workweeks credited to him  
18 or her during the Class Period and/or PAGA Period and the reasons for doing so; and (d) if  
19 available, attach documentation to support the Class member and/or PAGA Member’s  
20 position.<sup>31</sup>

21 **IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION**  
22 **SETTLEMENTS**

23 The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.*  
24 (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). California courts look to  
25 federal authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at  
26

27 <sup>28</sup> *Ibid.*

28 <sup>29</sup> *Id.*, ¶ 76.

<sup>30</sup> *Id.*, ¶ 72.

<sup>31</sup> *Ibid.*

1801, fn.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve or reject a proposed settlement is within the court’s discretion. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35 (“In general, questions whether a settlement was fair and reasonable, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court’s broad discretion.”). Accordingly, a court’s decision to approve a class action settlement may be reversed only upon a strong showing of “clear abuse of discretion.” *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026; *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

Courts review class action settlements in a two-step process: (1) an earlier conditional review by the court; and (2) a later detailed review after the period during which notice is distributed to class members for their comments or objections. Conte & Newberg, *Newberg on Class Actions* § 11.24 (4th Ed. 2002). This procedure, which is commonly utilized by both federal and state courts, assures class members of the protection of procedural due process safeguards and enables a court to fulfill its role as the guardian of the interest of the settlement class.

Preliminary approval of a settlement does not require a court to make a final determination that the settlement is fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after notice of the settlement has been given to the class members and they have had an opportunity to voice their views of the settlement or to exclude themselves from the settlement. Cal. R. Ct. 3.769(g).

In considering a potential class settlement, a court need not reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute and need not engage in a trial on the merits. See *City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 456; *Officers for Justice v. Civil Service Commission of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 625. Neither formal notice nor a hearing is required for the trial court to grant provisional class certification and preliminary approval; the court may grant such relief upon an informal application by the settling parties and may conduct any necessary hearing in court or in chambers, at the court’s discretion. *Newberg*, § 11.25.

V. **THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**

The trial court has broad powers to determine whether a proposed settlement is fair under the circumstances of the case. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. To make this fairness determination, courts must consider several relevant factors, including “the strength of the plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and view of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” *Dunk, supra*, 48 Cal.App.4th at 1801. “The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at 245. Furthermore, courts give “proper deference to the private consensual decision of the parties.” *Hanlon, supra*, 150 F.3d at 1027 (citation omitted).

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba, supra*, 91 Cal.App.4th at 245. “A presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Id.*; *Dunk, supra*, 48 Cal.App.4th at 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151.

A. **The Settlement Resulted from Arm’s-Length Negotiations Based Upon Extensive Investigation and Discovery.**

The Parties have actively litigated the Action since it was commenced on April 6, 2021. Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the matter for class certification and trial.<sup>32</sup>

Prior to engaging in mediation, Class Counsel conducted significant investigation and informal discovery regarding the facts of the cases, including and not limited to, the exchange,

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<sup>32</sup> Zabehe Decl., ¶ 22.

review, and analysis of a large volume of documents and data produced by Defendants.<sup>33</sup> The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiff's personnel records (including records of requests for business expense reimbursement, mileage logs, mileage reimbursement requests, authorization for background investigation, and paystubs, among other information and documents); wage and earnings statements for Plaintiff and redacted wage statements and paystubs for a sampling of Class Members, job descriptions, salary information for various positions at Defendants' locations, timesheets, meal and break information, and overtime information for a sampling of Class Members; Defendants' Meal Period Waiver Agreement; multiple iterations of the Med One Group Employee Handbook; Defendants' policies regarding paid time off, paid holidays, and various forms of leave; Defendants' procedures, including clocking in or out for a shift, payment of overtime, and regular pay periods; Defendants' stated policies regarding appearance and attendance expectations, among other policies and procedures and documents.<sup>34</sup> Class Counsel interviewed Plaintiff and other Class Members to gather facts and to identify potential witnesses.<sup>35</sup> Class Counsel also drafted Plaintiff's pleadings, the mediation brief, and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.<sup>36</sup>

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Jeffrey Krivis, Esq., well-respected mediator experienced in mediating complex labor and employment matters.<sup>37</sup> Prior to and during the mediation and settlement discussions, the Parties exchanged class information and engaged in extensive discussions regarding their evaluations of the cases and various aspects of the case, including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, PAGA representative claims, and wage-and-hour law and

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<sup>33</sup> *Ibid.*

<sup>34</sup> Zabehi Decl., ¶ 22.

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> *Id.*, ¶ 21.

enforcement, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.<sup>38</sup> During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.<sup>39</sup> Arriving at a settlement that was acceptable to both Parties was not easy. Defendants and their counsel felt strongly about their ability to prevail on the merits and at certification and trial.<sup>40</sup> After conducting investigations, significant informal discovery, and extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to the principal claims, as well as the costs and risks to both sides that would attend further litigation.<sup>41</sup>

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the cases might have concluded at certification and trial.<sup>42</sup> The Parties have had the opportunity to interview and obtain information from their respective witnesses.<sup>43</sup> Counsel for the Parties have also reviewed documents and information relating to Plaintiffs' and the Class Members' employment with Defendants and performed significant research into the law concerning class certification, PAGA representative actions, off-the-clock theory, meal and rest periods, wage-and-hour enforcement, Plaintiffs' claims, and Defendants' defenses thereto, as well as facts discovered.<sup>44</sup> The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.<sup>45</sup>

**B. The Settlement Is Fair, Reasonable, and Adequate.**

The Settlement, which provides for a Gross Settlement Amount of Four Hundred Fifty Thousand Dollars and Zero Cents (\$450,000.00), represents a fair, adequate, and reasonable

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<sup>38</sup> *Ibid.*

<sup>39</sup> Zabehi Decl., ¶ 21.

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*

<sup>42</sup> *Id.*, ¶ 27.

<sup>43</sup> *Ibid.*

<sup>44</sup> *Id.*, ¶ 21-23.

<sup>45</sup> *Id.*, ¶ 13-17.

1 resolution of the matter.<sup>46</sup> The Settlement was calculated using the information and data  
2 uncovered during litigation, case investigation, as well as the informal exchange of  
3 information.<sup>47</sup> The Settlement takes into account the potential risks and rewards inherent in any  
4 case and, in particular, in the case at issue.<sup>48</sup> Moreover, considering all of the facts and  
5 circumstances of the lawsuits, the Settlement represents a fair, reasonable, and adequate  
6 recovery for the Class.<sup>49</sup>

7 Assuming that the Class Counsel's Fees and Costs, Class Representative Incentive  
8 Payments, PAGA Penalties, and Settlement Administration Costs are approved by the Court and  
9 paid in the full amounts provided for by the Settlement, the Settlement provides for a Net  
10 Settlement Amount that is currently estimated to be One Hundred Forty Nine Thousand Five  
11 Hundred Dollars and Zero Cents (\$149,500.00).<sup>50</sup> As discussed in Part III, *supra*, the entire  
12 Net Settlement Amount will be fully paid out to the Participating Class Members, and the 25%  
13 Employee PAGA Portion of the PAGA Penalties will be fully paid out to the PAGA Members,  
14 in accordance with the Settlement Agreement. The amount of each Participating Class  
15 Member's Individual Settlement Payment will be calculated based on his or her Workweeks,  
16 and the amount of each PAGA Member's Individual PAGA Payment will be calculated based  
17 on his or her PAGA Workweeks.<sup>51</sup> There is no reason to doubt the fairness of the proposed plan  
18 of allocation of the settlement funds for purposes of preliminary approval. Even at the final  
19 approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant  
20 approval], particularly if recommended by experienced and competent class counsel." *In re*  
21 *American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d  
22 418, 429-30.

23 In light of the foregoing considerations, Class Counsel believes that the Settlement as a  
24 whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.<sup>52</sup>

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25 <sup>46</sup> *Id.*, ¶ 23, 24.

26 <sup>47</sup> Zabehi Decl., ¶¶ 21, 22.

27 <sup>48</sup> *Id.*, ¶¶ 28, 29.

28 <sup>49</sup> *Id.*, ¶¶ 21, 23.

<sup>50</sup> *Id.*, ¶ 24.

<sup>51</sup> Settlement Agreement, ¶ 19 and 65.

<sup>52</sup> Zabehi Decl., ¶¶ 21, 23.

Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and investigation has been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

**C. The Settlement Is of Significant Value.**

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant informal discovery, formal discovery, and exchanged a large volume of documents, data, and information prior to mediation.<sup>53</sup> The information that Class Counsel obtained from Defendants and through other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendants’ defenses thereto.<sup>54</sup> As outlined in the Declaration of Tara Zabehi, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.<sup>55</sup>

**VI. CERTIFICATION OF THE CLASS IS APPROPRIATE**

For settlement purposes, the requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Class for settlement purposes only.<sup>56</sup> California Code of Civil Procedure Section 382 “authorizes class actions when the question is one of a common or general interest, of many persons, or when the Parties are numerous, and it is impracticable to bring them all before the court.” *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies “both [1] an ascertainable class and [2] a well-defined community of interest among class members.” *Id.*

The Class is ascertainable and numerous as to make it impracticable to join all Class Members, and there are common questions of law and fact that predominate over any questions

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<sup>53</sup> Zabehi Decl., ¶¶ 21, 23.

<sup>54</sup> *Id.*, ¶¶ 28, 32.

<sup>55</sup> *Id.*, ¶ 21-23.

<sup>56</sup> Settlement Agreement, ¶ 98.

1 affecting any individual Class Member. Further, Plaintiff Brown and Plaintiff Morales' claims  
2 are typical of the claims of the Class Members, and Class Counsel will fairly and adequately  
3 protect the interests of the Class. Finally, prosecution of separate actions by Individual Class  
4 Members would create the risk of inconsistent or varying adjudications, and a class action is  
5 superior to other available means for the fair and efficient adjudication of the cases. The Class  
6 is amenable to class certification for settlement purposes as discussed below.

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

8 "Ascertainability is required in order to give notice to putative class members as to whom  
9 the judgment in the action will be *res judicata*." *Hicks v. Kaufman & Broad Home Corp.* (2001)  
10 89 Cal.App.4th 908, 914. "A class is ascertainable if it identifies a group of unnamed plaintiffs  
11 by describing a set of common characteristics sufficient to allow a member of that group to  
12 identify himself or herself as having a right to recover based on the description." *Bartold v.*  
13 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be  
14 sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

15 This action involves a class of approximately eighty (80) individuals.<sup>57</sup> This class is  
16 sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35  
17 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is  
18 not practical at that point). Further, all Class Members can and will be identified by Defendants  
19 to the Settlement Administrator through a review of Defendants' employment records regarding  
20 hourly-paid or non-exempt employees and exempt salaried customer relations specialists  
21 employees in California during the Class Period. As such, the Class is ascertainable and  
22 sufficiently numerous.

23 **B. The Class Members Share a Well-Defined Community of Interest.**

24 The community of interest requirement "embodies three factors: (1) predominant  
25 common questions of law or fact; (2) class representative with claims or defenses typical of the  
26 class; and (3) class representative who can adequately represent the class." *Sav-On, supra*, 34  
27 Cal.4th at 326. "[T]he community of interest requirement for certification *does not mandate*

28 <sup>57</sup> Zabehi Decl., ¶ 19.

1 that class members have uniform or identical claims.” *Capitol People First v. Dep’t of*  
2 *Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original). Rather, courts  
3 focus on the Defendant’s internal policies and “pattern and practice . . . in order to assess whether  
4 that common behavior toward similarly situated plaintiff renders class certification appropriate.”  
5 *Id.* (citing *Sav-On, supra*, 34 Cal.4th at 333).

6 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory  
7 of recovery’ is likely to prove compatible with class treatment.” *Capitol People, supra*, 155  
8 Cal.App.4th at 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at 327). Furthermore,  
9 the commonality inquiry centers on the “reasonableness” of the defendant’s labor policies as  
10 applied to the potential class. *Ghazaryan, supra*, 169 Cal.App.4th at 1534.

11 Here, common issues of fact and law predominate as to each of the claims alleged and  
12 asserted in the Operative Complaint. Based on the documents and information obtained through  
13 informal discovery and exchange of information in the cases, Plaintiff Morales contends that  
14 Class Members were subject to the same or similar job duties and uniform operations and  
15 employment practices, policies, and procedures during the time period at issue for hourly paid  
16 non-exempt employees.<sup>58</sup> Plaintiff Brown contends that Class Members were subject to the  
17 same or similar job duties and uniform operations and employment practices, policies, and  
18 procedures during the time period at issue for salaried customer relations specialists  
19 employees.<sup>59</sup> Plaintiffs’ claims arise from Defendants’ alleged uniform policy and systematic  
20 scheme, with respect to Plaintiffs and the Class Members, of, *inter alia*, failing to properly pay  
21 overtime and minimum wages for all hours worked, failing to provide compliant meal and rest  
22 periods and associated premium pay, failing to timely pay wages during employment and upon  
23 termination of employment, failing to provide compliant wage statements, failing to keep  
24 requisite payroll records, and failing to reimburse necessary business-related expenses, as well  
25 as misclassifying positions as “exempt” for purposes of the payment of overtime compensation,  
26 when, in fact, they were “non-exempt,” non-managerial employees according to California law,  
27

28 <sup>58</sup> Zabehi Decl., ¶ 26.

<sup>59</sup> *Id.*

as well as failing to pay them for all regular and/or overtime wages earned and for missed, short, late, or interrupted meal periods and rest breaks in violation of California law.<sup>60</sup>

Plaintiffs also contend that Defendants' payroll and recordkeeping practices with respect to Plaintiffs and the Class Members were substantially the same during the time period at issue.<sup>61</sup> As a result, Plaintiffs claim that all of the Class Members were uniformly not paid all compensation due to them from Defendants during the time period at issue.<sup>62</sup>

Plaintiffs maintain that the outcome of this litigation would be determined by Defendants' alleged uniform operations and employment policies and procedures that applied across their hourly-paid or non-exempt employees and salaried customer relations specialist employees who worked in California during the Class Period. Accordingly, the Court should certify the Class for settlement purposes only.

**C. Plaintiff Morales and Plaintiff Browns' Claims Are Typical of the Claims of the Class Members Part of the Hourly Class Member Class and Salaried Class Member Class, Respectively.**

Under the typicality requirement, the class representatives' claims must be similar to those of the class members: "[I]t has never been the law in California that the class representative must have identical interests with the class members. The only requirements are that the common questions of law and fact predominate and that the class representative be similarly situated." *B.W.I Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 (emphasis in original). Typicality is satisfied where the class representatives' claims arise from the same event or course of conduct that gives rise to the class claims. *Classen v Weller* (1983) 145 Cal.App.3d 27, 47; *see also Jordan v. Los Angeles County* (9th 1982) 669 F.2d 1311, 1321.

Plaintiff Morales began working for Defendants as a driver in October 2021 and currently holds the position of Biomed Technician and Driver. He has always been an hourly-paid, non-exempt employee throughout his entire employment. As an employee of Defendants, Plaintiff Morales was required to work during his meal periods, causing his meal periods to be

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<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

1 short, late, missed or interrupted. Further, Plaintiff Morales was required to work during most  
2 of his rest breaks due to high work demands and urgent tasks and deliveries that needed to be  
3 completed. Moreover, he was often contacted by supervisors or other employees regarding  
4 work-related questions on his personal cell phone yet was never reimbursed for any of these  
5 expenses. Plaintiff Morales also often worked off-the-clock during the week and most weekends  
6 and would often be called by co-workers during weekends he did not work with work-related  
7 questions.

8 Accordingly, the claims of Plaintiff Morales are typical of those held by the Hourly Class  
9 Members that Plaintiff Morales seeks to represent, as the same employment and operations  
10 policies and practices applied to Plaintiff Morales as they did to other Hourly Class Members.  
11 Moreover, Plaintiff Morales' claims center around the exact same events or course of conduct  
12 that gives rise to the other putative class members' claims – Defendants' alleged uniform policy  
13 and systematic scheme of failing to properly account for all time worked by Class Members and  
14 failing to, inter alia, properly pay overtime and minimum wages, provide compliant meal and  
15 rest periods and associated premium pay, timely pay wages during employment and upon  
16 termination and associated waiting time penalties, provide compliant wage statements, maintain  
17 requisite payroll records, and reimburse necessary business expenses

18 Additionally, Plaintiff Brown was employed by Defendants as an exempt Customer  
19 Relations Specialist from approximately December 2019 to approximately October 2020. A key  
20 factor in the determination of whether employees were misclassified as exempt employees is  
21 whether Plaintiff spent more than 50% of her time performing "non-managerial" or  
22 "nonexempt" duties. As an employee of Defendants, Plaintiff Brown performed predominantly  
23 non-exempt and non-managerial activities. Specifically, Plaintiff Brown spent more than 50%  
24 of her time performing non-managerial, non-exempt, administrative duties such as answering  
25 phones, addressing service issues, and preparing weekly logs. She was also expected to check  
26 in with supervisors regarding daily direction as to the performance of tasks and complete reports  
27 and assigned tasks within the timeframes dictated by supervisors, none of which amount to  
28 "managerial" duties and responsibilities, such as training, supervising, directing, overseeing, or

disciplining other employees. Accordingly, the claims of Plaintiff Brown are typical of those held by Salaried Class Members that Plaintiff Brown seeks to represent, as the same employment and operations policies and practices applied to Plaintiff Brown as they did to other Salaried Class Members. Moreover, Plaintiff Brown's claims center around the exact same events or course of conduct that gives rise to the other putative class members' claims – Defendants alleged uniform policy and systematic scheme of failing to properly account for all time worked by Class Members.

**VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR ATTORNEYS' FEES AND COSTS**

Class Counsel has litigated the matter on and off for a combined period of over two years and was actively engaging in formal discovery and preparing the matter for class certification and trial.<sup>63</sup> The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigations into the facts of the case and formal and informal discovery. Class Counsel reviewed a large volume of documents and data<sup>64</sup> and also interviewed and obtained information from Plaintiffs and other Class Members, researched applicable law, undertook damages and valuation calculations, and met and conferred with Defendants' counsel regarding the pleadings, discovery, and the production of documents and data prior to mediation.<sup>65</sup> Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.<sup>66</sup>

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.<sup>67</sup>

The Settlement establishes a Gross Settlement Amount of Four Hundred Fifty Thousand Dollars and Zero Cents (\$450,000.00), and provides for Class Counsel to apply to the Court for Class Counsel's Fees and Costs, consisting of attorneys' fees in an amount not to exceed thirty-

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<sup>63</sup> Zabehi Decl., ¶¶ 21-23.

<sup>64</sup> *Id.*, ¶ 22.

<sup>65</sup> *Ibid.*

<sup>66</sup> *Id.*, ¶ 21.

<sup>67</sup> *Id.*, ¶¶ 13-17.

five percent (35%) of the Gross Settlement Amount (i.e., \$157,500.00) and an amount not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00) for costs and expenses.<sup>68</sup> The attorneys' fees provided for by the Settlement are commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members, and (6) the other cases that Class Counsel had to turn down in order to devote its time and efforts to this matter. The proposed Class Notice provides Class Members with information about the amount allocated toward the Class Counsel's Fees and Costs, and that an award of the Class Counsel's Fees and Costs will be sought, as provided for by the Settlement.<sup>69</sup>

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the "experienced trial judge is the best judge of the value of professional services rendered in his court." *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 (citing *Lealao, supra*, 82 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to a recovery that can be "monetized" with a reasonable degree of certainty, the trial court should "ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation." *Id.* at 50. In cases where class members present claims against a settlement fund and the settlement agreement provides that the defendant agrees to paying the attorneys a percentage of the same, use of that percentage method is appropriate. *Id.* at 32.

The propriety of calculating and awarding attorneys' fees as a percentage of a settlement that has, by litigation, been preserved or recovered for the benefit of others, has been confirmed

<sup>68</sup> Settlement Agreement, ¶ 3 and 60.

<sup>69</sup> Proposed Order in Support of Plaintiffs Motion for Preliminary Approval, Exh. A.

by the California Supreme Court. *Laffitte, supra*, 1 Cal.5th 480 at 486 & 506. The California Supreme Court has taken the position that “[t]rial courts have discretion to conduct a lodestar cross-check on a percentage fee,” “they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee[,]” and “[t]he percentage of fund method survives in California.” *Id.* (internal quotation marks omitted).

Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys’ fees in the amount of 45% of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys’ fees). California courts routinely approve class action attorneys’ fee awards “averag[ing] around one-third of the recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions); *see also Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case No. BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles County Superior Court Case No. BC263646 (Sept. 2006) (wage and hour).

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.<sup>70</sup>

Class Counsel will provide extensive evidence as to the time worked, litigation efforts, and further argument at the time of filing Plaintiffs’ motion for final approval of the Settlement and application for the Class Counsel’s Fees and Costs and at the Final Approval Hearing. Considering the work performed and the risks incurred, the attorneys’ fees provided for by the Settlement and to be requested by Class Counsel are well within the range of reasonableness.

#### **VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE**

California statutory and case law vests the Court with broad discretion in fashioning appropriate class notice. *See* Cal. Code Civ. Proc. § 1781; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 973-74. A class notice is adequate if it “present[s] a fair recital of the subject

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<sup>70</sup> Zabehi Decl., ¶ 29.

1 matter and proposed terms” of the Settlement. *Mendoza v. United States* (9th Cir. 1980) 623  
2 F.2d 1338, 1351 (quoting *Marshall v. Holiday Magic* (9th Cir. 1977) 550 F.2d 1173, 1177).

3 The proposed Class Notice<sup>71</sup> describes the Settlement, the deadlines and procedures to  
4 object to the Settlement, mail a Request for Exclusion from the Settlement, and/or mail a dispute  
5 regarding Workweeks, and the date and time set for the Final Approval Hearing.<sup>72</sup>

6 The proposed Class Notice fulfills the requirement of neutrality in notice procedure.  
7 *Newberg*, at § 8.39. “Sufficient information about the case should be provided to enable class  
8 members to make an informed decision about their participation.” *Manual for Complex*  
9 *Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the  
10 proceedings to date and the terms and conditions of the Settlement in an informative and  
11 coherent manner.<sup>73</sup> The proposed Class Notice recognizes that the Court has not yet granted  
12 final approval of the settlement.<sup>74</sup> The proposed Class Notice also apprises the Class Members  
13 of, *inter alia*, how their Individual Settlement Payment is calculated and the number of  
14 Workweeks credited to them.<sup>75</sup>

15 The proposed Class Notice satisfies all due process requirements and complies with the  
16 standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23(c)(2) and 23(e); *Newberg*,  
17 §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see also *Cartt, supra*, 50 Cal.App.3d at 960 (“The  
18 essentials of due process of law in class suits would appear to be afforded by fair representation  
19 in the assertion of claims of class members against the opposing parties in any lawsuit, and  
20 notice of the pending suit.”). Accordingly, the Court should approve the proposed Class Notice.

21 **IX. APPOINTMENT OF SIMPLURIS, INC. AS THE SETTLEMENT**  
22 **ADMINISTRATOR**

23 The Parties have selected Simpluris, Inc. (“Simpluris” or “Settlement Administrator”) to  
24 administer the Settlement.

25  
26  
27 <sup>71</sup> Proposed Order in Support of Plaintiffs Motion for Preliminary Approval, Exh. A.

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*

<sup>75</sup> *Ibid.*

The Settlement Administrator will mail the Class Notice to each Class Member by First-Class U.S. mail.<sup>76</sup> Any undeliverable Class Notice that is returned to the Settlement Administrator with a forwarding address on or before the Response Deadline, will be re-mailed to the forwarding address within five (5) business days.<sup>77</sup> With respect to any undeliverable Class Notice returned on or before the Response Deadline without a forwarding address, the Settlement Administrator will make reasonable efforts to obtain an updated mailing address, including but not limited to conducting one skip-trace, and re-mail the Class Notice to the Class Member.<sup>78</sup> The Response Deadline to submit a Request for Exclusion, Objection, or dispute regarding Workweeks for Class Members to whom a Class Notice is re-sent, after having been returned as undeliverable to the Settlement Administrator, will be fifteen (15) calendar days after the original Response Deadline.<sup>79</sup> The Settlement Administrator will receive and process Requests for Exclusions, objections, and any disputes regarding Workweeks.<sup>80</sup>

The Settlement Administrator will calculate the amounts of the Individual Settlement Payments, and Individual PAGA Payments; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of Individual Settlement Payments; mail the Individual Settlement Payment checks to Participating Class Members and Individual PAGA Payment checks to PAGA Members; issue W-2 and 1099 forms; calculate and disburse the Class Counsel's Fees and Costs, Class Representative Incentive Payment, and LWDA Payment; and perform such other tasks necessary to effectuate the terms of the Settlement Agreement.<sup>81</sup> The Settlement Administration Costs are currently estimated to be Eight Thousand Dollars (\$8,000.00) and will be paid out of the Gross Settlement Amount, subject to approval by the Court.<sup>82</sup>

Accordingly, Plaintiffs respectfully request that the Court appoint Simpluris, Inc. as the Settlement Administrator and direct the mailing of the Class Notice to the Class Members in the

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<sup>76</sup> Settlement Agreement, ¶ 69.

<sup>77</sup> *Id.*, ¶ 70.

<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid.*

<sup>80</sup> *Id.*, ¶ 67.

<sup>81</sup> *Ibid.*; Zabehi Decl., ¶ 25.

<sup>82</sup> Settlement Agreement, ¶ 46.

manner outlined and based on the proposed deadlines as described herein and set forth in the Settlement Agreement.

**X. PROPOSED DEADLINES FOR THE NOTICE PROCESS**

At this preliminary approval stage, Plaintiffs seek approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendants' records.<sup>83</sup>

Within thirty (30) calendar days after the date on which the Court grants preliminary approval of the Settlement, Defendants will provide the Settlement Administrator with the following information for each Class Member: (1) last known full name; (2) last known mailing address; (3) last known telephone number (if available); (4) Social Security number; (5) start, end and re-hire dates of employment as Class Member during the Class Period; and (6) such other information as is necessary for the Settlement Administrator to be able to calculate individual Class Member Workweeks (collectively, "Class List").<sup>84</sup>

Within fourteen (14) calendar days of receipt of the Class List, the Settlement Administrator will mail the Class Notice to the Class Members via First-Class U.S. Mail.<sup>85</sup> If a Class Notice is returned to the Settlement Administrator with a forwarding address, the Settlement Administrator will re-send the Class Notice to the forwarding address within five (5) business days.<sup>86</sup> If no forwarding address is provided, then the Settlement Administrator will make reasonable efforts to obtain an updated mailing address, including but not limited to conducting one skip-trace, and re-mail the Class Notice to the Class Member.<sup>87</sup> Class Members will have until the applicable Response Deadline to mail a Request for Exclusion, mail a dispute regarding Workweeks, and/or to serve an Objection.<sup>88</sup>

Defendants will make a one-time deposit of the Gross Settlement Amount, together with

<sup>83</sup> Settlement Agreement, ¶ 46 and 62.

<sup>84</sup> *Id.*, ¶ 4.

<sup>85</sup> *Id.*, ¶ 69.

<sup>86</sup> *Id.*, ¶ 70.

<sup>87</sup> *Id.*

<sup>88</sup> Settlement Agreement, ¶ 72, 73, and 76.

an amount sufficient to pay Employer Taxes, into a Qualified Settlement Fund to be established by the Settlement Administrator, within twenty-one (21) calendar days after the Effective Date.<sup>89</sup> Within fourteen (14) calendar days of the funding of the Settlement, the Settlement Administrator will distribute: (1) the Individual Settlement Payments to Participating Class Members and Individual PAGA Payments to PAGA Members; (2) the LWDA Payment to the LWDA; (3) the Court-approved Class Representative Incentive Payments to Plaintiffs; (4) the Court-approved Class Counsel's Fees and Costs to Class Counsel; and (5) the Court-approved Settlement Administration Costs to itself.<sup>90</sup>

The Individual Settlement Payment checks and Individual PAGA Payment checks will remain negotiable for one hundred and eighty (180) calendar days from the date of their issuance.<sup>91</sup> Checks that are not negotiated within the 180-day period will be canceled.<sup>92</sup> The funds associated with such cancelled checks will be tendered by the Settlement Administrator within (10) calendar days after the last day of the 180-day period to the Legal Aid at Work.<sup>93</sup>

**XI. APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR CLASS REPRESENTATIVE SERVICE PAYMENTS**

Plaintiff Chumani Brown and Plaintiff Oscar Morales respectfully request that the Court appoint them as the Class Representatives and preliminarily approve the Class Representative Incentive Payments in an amount up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) each to Plaintiff Brown and Plaintiff Morales.<sup>94</sup> It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the

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<sup>89</sup> *Id.*, ¶ 58.

<sup>90</sup> *Id.*, ¶ 59.

<sup>91</sup> *Id.*, ¶ 78.

<sup>92</sup> *Ibid.*

<sup>93</sup> *Ibid.*

<sup>94</sup> *Id.*, ¶ 61.

class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id.* Further, as discussed in Part VI, *supra*, Plaintiff Morales is an adequate class representative because his claims are typical of the claims of the hourly or non-exempt class members. And Plaintiff Brown is an adequate class representative because her claims are typical of the claims of the exempt salaried customer relations specialist class members.

The Class Representative Incentive 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.<sup>95</sup> 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.<sup>96</sup> Accordingly, it is appropriate and just for Plaintiffs to receive a Class Representative Incentive Payment for their services on behalf of the Class, in addition to any Individual Settlement Payment and/or Individual PAGA Payment to which they may be entitled.

## **XII. CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Lawyers for Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Chumani Brown and Plaintiff Oscar Morales as Class Representatives; appoint Simpluris, Inc. as Settlement Administrator; preliminarily approve the allocations for Class Counsel's Fees and Costs, Class Representative Incentive Payments, LWDA Payment, and Settlement Administration Costs; approve the proposed Class Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; schedule a Final Approval

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<sup>95</sup> Zabehe Decl., ¶ 30; Declaration of Chumani Brown in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Brown Decl."); Declaration of Oscar Morales in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Morales Decl.")

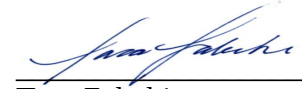
<sup>96</sup> Zabehe Decl., ¶ 30; Brown Decl., ¶ 3-6; Morales Decl., ¶ 3-6.

Hearing to take place in approximately six months; and permit the filing of a memorandum that exceeds the page limit.

Dated: September 30, 2024

**LAWYERS for JUSTICE, PC**

By:



Tara Zabehi  
*Attorneys for Plaintiffs*