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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

NORMAJEAN FERLAND, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

COMPREHENSIVE SPINE AND SPORTS
CENTER, an unknown corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No. 21CV375218

CLASS ACTION

*[Assigned for all purposes to: Hon. Sunil R.
Kulkarni, Dept. 1]*

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

*[Filed concurrently with: Declaration of
Justin F. Marquez in Support of Plaintiff's
Motion for Preliminary Approval of Class
Action Settlement; Declaration of NormaJean
Ferland in Support of Plaintiff's Motion for
Preliminary Approval of Class Action
Settlement; Declaration of LATLC President
Steven Vartazarian; and [Proposed] Order
Granting Plaintiff's Motion for Preliminary
Approval of Class Action Settlement]*

PRELIMINARY APPROVAL HEARING

Date: June 2, 2022

Time: 1:30 p.m.

Dept: 1

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

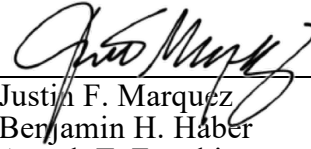
2 PLEASE TAKE NOTICE that on June 2, 2022, at 1:30 a.m., in Department 1 of the Santa
3 Clara County Superior Court, 191 North First Street, San Jose, California 95113-1090, pursuant to
4 Code of Civil Procedure § 382 and California Rules of Court 3.769, *et seq.*, Plaintiff NormaJean
5 Ferland (“Plaintiff”) will move the Court for an Order granting preliminary approval of the
6 proposed class action settlement between Plaintiff and Defendant Navani Pain Management Inc
7 dba Comprehensive Spine and Sports Center. Plaintiff further moves the Court for an Order:

- 8 1. Granting preliminary approval of the Stipulation for Class Action Settlement;
9 2. Certifying a Class for settlement purposes only;
10 3. Approving the Notice and Settlement Information Form (collectively, the “Notice
11 Packet”) and the plan for distribution of the Notice Packet to Settlement Class
12 Members;
13 4. Appointing Plaintiff NormaJean Ferland as Class Representative for settlement
14 purposes only;
15 5. Appointing Plaintiff’s Counsel, Wilshire Law Firm, PLC, as Class Counsel for
16 settlement purposes only;
17 6. Appointing ILYM Group, Inc. as the Settlement Administrator; and
18 7. Scheduling a Final Approval Hearing.

19 The Motion will be based upon this Notice, the attached Memorandum of Points and
20 Authorities, the Declaration of Justin F. Marquez, the Declaration of NormaJean Ferland, the
21 Declaration of LATLC President Steven Vartazarian, filed concurrently herewith, the records and
22 files in this action, and any other further evidence or argument that the Court may properly receive
23 at or before the hearing.

24 Dated: May 10, 2022

WILSHIRE LAW FIRM

25 By: 
26 Justin F. Marquez
27 Benjamin H. Haber
28 Arrash T. Fattahi

Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff NormaJean Ferland (“Plaintiff”) seeks preliminary approval of a proposed \$310,000.00 non-reversionary, wage and hour class action settlement with Defendant Navani Pain Management Inc dba Comprehensive Spine and Sports Center (“Defendant,” and together with Plaintiff, the “Parties”). The Settlement will provide substantial monetary payments to approximately 155 class members. And, as set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law. The Settlement was reached after extensive investigation, discovery, and negotiations. The negotiations were at arms-length and were facilitated by an experienced class action mediator, Lisa Klerman, Esq., over the course of a full day of mediation that was conducted via Zoom. Accordingly, Plaintiff requests that the Court preliminarily approve the proposed Settlement, certify the proposed settlement class for settlement purposes only, approve the proposed notice, and set a Final Approval Hearing.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiff’s Claims

This is a wage and hour class and Private Attorneys General Act (“PAGA”) (Cal. Lab. Code §§ 2699, *et seq.*) representative action. Plaintiff and the putative class members worked in California as hourly-paid, non-exempt employees for Defendant during the class period. Defendant specializes in the treatment and management of spinal cord issues and sports-related injuries with multiple offices throughout the state of California. (Declaration of Justin F. Marquez in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement [“Marquez Decl.”], ¶ 2.)

Plaintiff alleges that Defendant’s payroll, timekeeping, and wage and hour practices resulted in Labor Code violations. Plaintiff alleges that Defendant failed to pay for all hours worked by not recording the actual start and end times of shifts for each workday. Plaintiff further alleges that Defendant failed to include all remuneration in the employees’ overtime rate and meal and rest period premiums. Plaintiff further alleges that Defendant failed to provide employees with legally compliant meal and rest periods. Based on these allegations, Plaintiff

1 asserts claims against Defendant for failure to pay minimum and straight time wages, failure to
2 pay overtime wages, failure to provide meal periods, failure to authorize and permit rest periods,
3 failure to timely pay all final wages at termination, failure to provide accurate itemized wage
4 statements, failure to indemnify employees for expenditures, unfair business practices, and civil
5 penalties under PAGA. (*Id.* at ¶ 3.) Defendant denies all allegations.

6 On January 14, 2021, Plaintiff filed a putative wage-and-hour class action complaint
7 against Defendant for: (1) failure to pay minimum and straight time wages (Cal. Lab. Code §§
8 204, 1194, 1194.2, and 1197); (2) failure to pay overtime wages (Cal. Lab. Code §§ 1194 and
9 1198); (3) failure to provide meal periods (Cal. Lab. Code §§ 226.7 and 512); (4) failure to
10 authorize and permit rest periods (Cal. Lab. Code §§ 226.7); (5) failure to timely pay final wages
11 at termination (Cal. Lab. Code §§ 201-203); (6) failure to provide accurate itemized wage
12 statements (Cal. Lab. Code § 226); (7) failure to indemnify employees for expenditures (Cal.
13 Lab. Code § 2802); and (8) unfair business practices (Cal. Bus. & Prof. Code §§ 17200, *et seq.*).
14 (*Id.* at ¶ 4.) On December 13, 2021, Plaintiff filed a First Amended Class and Representative
15 Action Complaint adding a claim for civil penalties under PAGA. (*Id.*)

16 **B. Discovery and Investigation**

17 Following the filing of the Complaint, the Parties exchanged documents and information
18 before mediating this action. Defendant produced a sampling of timekeeping and payroll
19 records for the putative class members. Defendant also provided documents of their wage and
20 hour policies and practices during the class period, and information regarding the total number
21 of current and former employees in its informal discovery responses. (*Id.* at ¶ 5.)

22 After reviewing the documents regarding Defendant's wage and hour policies and
23 practices and analyzing Defendant's timekeeping and payroll records, Class Counsel was able
24 to evaluate the probability of class certification, success on the merits, and Defendant's
25 maximum monetary exposure for all claims. (*Id.* at ¶ 6.) Class Counsel also investigated the
26 applicable law regarding the claims and defenses asserted in the Litigation. (*Id.*) Class Counsel
27 reviewed these records and utilized an expert to prepare a damages analysis prior to mediation.
28 (*Id.*)

1 **C. Settlement Negotiations**

2 On July 26, 2021 the Parties participated in private mediation with experienced class
3 action mediator, Lisa Klerman, Esq. (*Id.* at ¶ 7.) The mediation was conducted via Zoom. The
4 settlement negotiations were at arm’s length and, although conducted in a professional manner,
5 were adversarial. The Parties went into the mediation willing to explore the potential for a
6 settlement of the dispute, but each side was also prepared to litigate their position through trial
7 and appeal if a settlement had not been reached. (*Id.*)

8 After extensive negotiations and discussions regarding the strengths and weaknesses of
9 Plaintiff’s claims and Defendant’s defenses, the Parties were able to reach a resolution, the
10 material terms of which are encompassed within the Settlement Agreement. (*Id.* at ¶ 8; Ex. 1
11 [Joint Stipulation Re: Class Settlement (“Settlement” or “Settlement Agreement”)].)

12 Class Counsel has conducted a thorough investigation into the facts of this case. Based
13 on the foregoing discovery and their own independent investigation and evaluation, Class
14 Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best
15 interests of the Settlement Class Members in light of all known facts and circumstances, the risk
16 of significant delay, the defenses that could be asserted by Defendant both to certification and
17 on the merits, trial risk, and appellate risk. (Marquez Decl., ¶ 15.)

18 Indeed, the \$310,000.00 Settlement represents **77.1% of the realistic maximum**
19 **recovery of \$402,142.70.** (*Id.* at ¶ 24.) Although Class Counsel estimated that Defendant’s
20 maximum potential liability for all claims was approximately \$2.5 million, when the risk of
21 prevailing at certification and trial are factored into the equation, Class Counsel believes that
22 Defendant’s realistic exposure was \$402,142.70, meaning the Settlement achieves a significant
23 recovery. (*Id.* at ¶¶ 18-24.) Considering the risk and uncertainty of prevailing at class
24 certification and at trial, this is an excellent result for the Class. Indeed, because of the proposed
25 Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an
26 unfavorable judgment.

27 **D. Key Terms of the Proposed Settlement**

28 Under the Settlement, Defendant will pay \$310,000.00 to resolve this Litigation. This

amount is all-inclusive. The Settlement’s key terms include:

1. Settlement Class: For settlement purposes only, the Parties agree to the certification of a class pursuant to California Code of Civil Procedure § 382 defined as: “All persons who worked for Defendant in California as an hourly-paid or non-exempt employee during the Settlement Period (together, collectively referred to as the “Class Members”).” (Settlement, § I (P).)

2. Settlement Period: The Settlement Period means the period from January 14, 2017 through September 26, 2021. (Settlement, § I (R).)

3. PAGA Period: The PAGA Period means the period from January 19, 2020 through September 26, 2021. (Settlement, § I (S).)

4. Gross Settlement Amount: This amount is \$310,000.00, for all claims, including wages, interest, the Class Counsel Award, litigation costs, Settlement Administration Costs, payment to the Labor and Workforce Development Agency (“LWDA”) for the alleged PAGA penalties, all other penalties, and the Class Representative Service Award. (Settlement, § I (O).)

5. No Reversion & *Cy Pres*: This is a non-reversionary settlement. Settlement checks will be valid for 180 days from the date of issuance. No portion of the uncashed funds shall revert back to Defendant. The uncashed amount shall go into a pool of funds to be divided, pro-rata, among all Settlement Class Members who previously cashed their checks. Those settlement checks will be valid for 180 days, and all funds remaining from those uncashed checks after 180 days shall be void. The uncashed amount will be distributed by the Settlement Administrator to the State Controller’s Unclaimed Property Fund. The Settlement Administrator shall provide a declaration of deposit with the State Controller’s Unclaimed Property Fund, which will be served on Class Counsel and Defendant’s Counsel within ten calendar days of payment of the residual to such beneficiary. However, in the event that the Parties agree that the amount of uncashed checks is less than five thousand dollars (\$5,000.00), the funds shall be paid as a *cy pres* award to the Los Angeles Trial Lawyers’ Charities (“LATLC”), 2708 Wilshire Boulevard, Suite 391, Santa Monica, CA 90403. (Settlement, § XI (C).) Neither Plaintiff or Class Counsel have any interest, financial or otherwise, in the proposed *cy pres* recipient. (Marquez Decl., ¶¶ 12-13.) If the Court does not

1 approve the *cy pres* designee, the Parties shall select a new *cy pres* designee, with approval by the
2 Court. If the Court determines that Defendant will be required to pay any interest on the *cy pres*
3 award, there will be no *cy pres* award, and the uncashed amount will instead be distributed by the
4 Settlement Administrator to the State Controller's Unclaimed Property Fund.

5 6. Release as to All Settlement Class Members: The class release is limited to "any
6 and all claims alleged in the Litigation arising during the Settlement Period, and all claims arising
7 in connection with or related to the facts, theories, primary rights, or claims alleged in the Litigation
8 arising during the Settlement Period, including, but not limited to, failure to pay wages; failure to
9 pay minimum wages; failure to pay straight time compensation, overtime compensation, and/or
10 double-time compensation, reporting time compensation, and/or interest; the calculation of the
11 regular rate of pay; missed, late, short or interrupted meal and/or rest periods, including any claim
12 for any alleged failure to pay premiums for missed, late, short or interrupted meal or rest periods,
13 or to pay such premiums at the regular rate of compensation; wages related to time rounding and
14 timekeeping; reimbursement for business expenses or any other claim that Defendant allowed or
15 required employees to bear any of the costs associated with the operation of Defendant's business,
16 including without limitation costs for equipment; payment for all hours worked, including off-the-
17 clock work; inaccurate or otherwise improper wage statements and/or failure to keep or maintain
18 accurate records; unlawful deductions; unlawful payment instruments; failure to timely pay wages
19 upon discharge or quitting; paid sick leave, including that sick leave was calculated at an incorrect
20 rate of pay; any claim for unfair business practices arising out of or related to any or all of the
21 aforementioned claims; any claim for penalties arising out of or related to any or all of the
22 aforementioned claims, including, but not limited to, recordkeeping penalties, wage statement
23 penalties, minimum-wage penalties, and waiting-time penalties; and attorneys' fees and costs. For
24 purposes of clarification, the claims released by the Settlement Class Members include any and all
25 claims that arise out of or in connection with the claims and or facts alleged in the Litigation, and
26 any claims which could have been asserted in the Litigation arising from the alleged facts, claims,
27 theories, and/or primary rights alleged to have been invaded to the fullest extent permitted by law.
28 Without limitation by any other language in [the Settlement Agreement], this Release includes

1 claims against the Released Parties arising during the Settlement Period alleging a violation of the
2 Wage Orders of the California Industrial Welfare Commission; California Code of Civil Procedure
3 § 1021.5; California *Business and Professions Code* Section 17200, *et seq.*; the California Private
4 Attorneys General Act of 2004; and/or alleging a violation of the California Labor Code (including
5 claims under §§ 200, 201, 201.3, 202, 203, 204, 206, 210, 212, 216, 218.5, 218.6, 221, 223, 224,
6 225, 225.5, 226, 226.3, 226.7, 227.3, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2,
7 1197, 1197.1, 1198, 1199, 2698 *et seq.*, 2800 and 2802). Settlement Class Members who endorse
8 their settlement checks waive and release any claims under the Fair Labor Standards Act, 29 U.S.C.
9 § 201 *et seq.* (“FLSA”) arising during the Settlement Period and reasonably related to any or all of
10 the aforementioned claims. This Release excludes the release of claims not permitted to be
11 released by law.” (Settlement, § VII (B).) This Release will be deemed effective upon the date
12 the Court’s Final Approval Order becomes “Final” (as that term is defined in the Settlement
13 Agreement, § I (E)). (Settlement, § VII (B).)

14 7. Release as to the PAGA Claims: the PAGA release is limited to “any and all claims
15 alleged in the PAGA letter to the LWDA and any amendments thereto, any and all claims alleged
16 in the Litigation arising under PAGA during the PAGA Period, and all claims arising from or
17 related to the facts, theories, claims or primary rights as those alleged in the Litigation arising
18 under PAGA during the PAGA Period, and includes all claims under PAGA arising during the
19 PAGA Period associated with all claims against the Released Parties for or arising in connection
20 with (a) unpaid wages, including failure to pay minimum wages; failure to pay straight time
21 compensation, overtime compensation, double-time compensation, reporting time compensation;
22 and/or interest; the calculation of the regular rate of pay; payment for all hours worked, including
23 off-the-clock work; wages related to time rounding and timekeeping; (b) missed, late, short or
24 interrupted meal and/or rest periods, including any claim for any alleged failure to pay premiums
25 for missed, late, short or interrupted meal or rest periods, or to pay such premiums at the regular
26 rate of compensation; (c) reimbursement for business expenses or any other claim that the Released
27 Parties allowed or required employees to bear any of the costs associated with the operation of the
28 Released Parties’ business; (d) inaccurate or otherwise improper wage statements and/or failure to

1 keep or maintain accurate records; (e) failure to timely pay wages upon discharge or quitting; (f)
2 any claim for unfair business practices arising out of or related to any or all of the aforementioned
3 claims; (g) any claim for penalties arising out of or related to any or all of the aforementioned
4 claims, including, but not limited to, recordkeeping penalties, wage statement penalties, minimum-
5 wage penalties, and waiting-time penalties; and (h) attorneys' fees and costs. For purposes of
6 clarification, the claims released by the Aggrieved Employees and the LWDA include any and all
7 claims under the PAGA that arise out of or in connection with the claims and or facts alleged in
8 the Litigation, and any claims which could have been asserted in the Litigation arising from the
9 alleged facts, claims, theories, and/or primary rights alleged to have been invaded to the fullest
10 extent permitted by law. Without limitation by any other language in [the Settlement Agreement],
11 the Release includes claims against the Released Parties arising under PAGA during the PAGA
12 Period alleging violation of the Wage Orders of the California Industrial Welfare Commission;
13 and/or alleging violation of the California Labor Code (including claims under §§ 200, 201, 201.3,
14 202, 203, 204, 206, 210, 212, 216, 218.5, 218.6, 221, 223, 224, 225, 225.5, 226, 226.3, 226.7,
15 227.3, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698
16 et seq., 2800 and 2802). This Release excludes the release of claims not permitted to be released
17 by law." (Settlement, § VII (C).) This Release will be deemed effective upon the date the Court's
18 Final Approval Order becomes "Final" (as that term is defined in the Settlement Agreement, § I
19 (E)). (Settlement, § VII (C).)

20 8. PAGA Allocation: The settlement includes \$10,000.00 allocated to Plaintiff's
21 claims under PAGA, with 75% of which (\$7,500.00) being paid to the LWDA and 25% (\$2,500.00)
22 being paid to the Aggrieved Employees (on a pro-rata basis based on the number of pay periods
23 worked). (Settlement, § XVI.) Class Counsel submitted the proposed settlement to the LWDA
24 before filing this Motion for Preliminary Approval. (Marquez Decl., ¶ 9.)

25 9. Net Settlement Fund: The "Net Settlement Fund" or "Net Settlement Amount" is
26 the amount that remains and that shall be paid to Settlement Class Members after the following
27 amounts are subtracted: (1) attorneys' fees and Litigation costs, (2) Administrative Costs, (3)
28

enhancement to the Named Plaintiff, and (4) the penalties recoverable pursuant to the PAGA. (Settlement, § I (K).)

10. Distribution Formula: Members of the Settlement Class not opting out will receive a lump sum payment as good and valuable consideration for the waiver and release of claims as set forth in Section D (6), above, in an amount determined by the Settlement Administrator in accordance with the provisions as outlined in Section XI of the Settlement Agreement.

11. Tax Allocation: Any settlement money paid to Settlement Class Members will be allocated as 33% wages and 67% penalties and interest. (Settlement, § XV.) The tax allocation breakdown comports with Plaintiff's *Kullar* analysis, as detailed in Justin F. Marquez's Declaration. (Marquez Decl., ¶¶ 18-24; *Kullar v. Foot Locker Retail, Inc.*, (2008) 168 Cal.App.4th 116, 128.)

12. Class Representative Service Award: Subject to Court approval, Plaintiff shall be paid an enhancement award not to exceed \$7,500.00. (Settlement, § XIV.) This amount is for Plaintiff's time and effort in bringing and presenting the action, and in exchange for a general release of all claims, known or unknown, pursuant to Civil Code Section 1542. (Settlement, § VII (A).) If the Court approves a lesser enhancement, then the unapproved portion or portions shall revert into the Net Settlement Amount to be distributed between the participating Settlement Class Members on a pro-rata basis. (Settlement, § XIV.)

13. Attorneys' Fees and Costs: The Settlement provides that Defendant will not oppose a fee application of up to 33 1/3% (\$103,333.33) of the Gross Settlement Amount, plus out-of-pocket costs not to exceed \$15,000.00. (Settlement, § XIII.) At this time, Class Counsel's costs are approximately \$12,029.64. (Marquez Decl., ¶ 39.)

14. Notice of Proposed Class Action Settlement: The Notice sets forth in plain terms, a statement of the case, the terms of the Settlement Agreement, the approximate amount of attorneys' fees, costs, and service award being sought, and an explanation of how the settlement allocations are calculated. (Settlement, Ex. A.) The Notice also includes an opt-out form that class members can complete in the event they decide to not participate in the settlement. (*Id.*) Class Members will be notified by first-class mail of the settlement. (Settlement, § IX (A).) ILYM Group, Inc.,

1 the proposed Settlement Administrator, will undertake its best efforts to ensure that the notice is
2 provided to the current addresses of class members, including conducting a national change of
3 address search and re-mailing the notice to updated addresses. (*Id.*) Notice will be provided in
4 English and Spanish. (Marquez Decl., ¶ 11; Ex. 2 [Settlement Administrator Bid].)

5 15. Workweek Dispute Form: The Workweek Dispute Form sets forth each class
6 member's total workweeks and permits class members to dispute their number of workweeks by
7 following the procedures as outlined in the Workweek Dispute Form. (Settlement, Ex. B.)

8 **III. DISCUSSION**

9 To prevent fraud, collusion, or unfairness to the class, the settlement of a class action
10 requires court approval. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-01.) This
11 Court has wide discretion to determine whether the proposed settlement is fair. (*Mallick v. Super.*
12 *Ct.* (1979) 89 Cal.App.3d 434, 438.) Fairness is presumed when: (1) the settlement is reached
13 through arm's-length bargaining; (2) investigation is sufficient to allow counsel and the court to
14 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors
15 is small. (*Dunk*, 48 Cal.App.4th at p. 1800.)

16 In considering whether a settlement is reasonable, the trial court should consider relevant
17 factors, which may include the strength of Plaintiff's case, the risk, expense, complexity and likely
18 duration of further litigation, the risk of maintaining class action status through trial, the amount
19 offered in settlement, the extent of discovery completed and the stage of the proceedings, the
20 experience and views of counsel, the presence of a governmental participant, and the reaction of
21 the class members to the proposed settlement. (*Kullar, supra*, 168 Cal.App.4th at p. 128.) In order
22 to approve a class action settlement, the court must satisfy itself that the class settlement is within
23 the "ballpark" of reasonableness. (*Id.* at p. 133.) The record need not contain an explicit statement
24 of the maximum theoretical recovery. (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*
25 (2010) 186 Cal.App.4th 399, 408-9 [holding that *Kullar* does not require "an explicit statement of
26 the maximum amount the plaintiff class could recover if it prevailed on all its claims", but instead,
27 only an "understanding of the amount that is in controversy and the realistic range of outcomes of
28 the litigation."].)

As discussed below, Class Counsel has provided information exceeding the threshold required to provide this Court with materials and information necessary to determine that the proposed settlement is fair, adequate, and reasonable.

A. The Settlement Is Fair, Reasonable, Adequate, and the Product of Investigation, Litigation, and Negotiation

1. The Settlement Is the Product of Discovery, Investigation, and Informed and Non-Collusive Arm's-Length Negotiations

Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered; thus, there is a presumption here that the negotiations were conducted in good faith. (Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 11.51.) Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh v. Super. Ct.* (1976) 62 Cal.App.3d 231, 236; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447 [“The fact that a plaintiff might have received more if the case had been fully litigated is no reason not to approve the settlement.”].)

The Settlement was reached following extensive negotiations following a full day of mediation with experienced employment mediator Lisa Klerman, Esq. (Marquez Decl., ¶¶ 7-8.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their or its position through trial and appeal if a settlement had not been reached. (*Id.*)

Prior to reaching this settlement, Class Counsel conducted informal discovery concerning the claims set forth in the Litigation, such as a sample of class member timekeeping and payroll records, Defendant's policies and procedures concerning the payment of wages, the provision of meal and rest breaks, issuance of wage statements, and providing all wages at separation, as well as information regarding the number of putative class members and the mix of current versus former employees, the wage rates in effect, and the amount of meal and rest period premium wages paid to class members. (*Id.* at ¶¶ 5-6.) In conjunction with their extensive factual investigation, Class Counsel investigated the applicable law regarding the claims and defenses asserted in the

1 Litigation. (*Id.*) Thus, Plaintiff and her counsel were able to act intelligently and effectively in
2 negotiating the proposed Settlement. (*Id.*)

3 Class Counsel also has considerable experience and has demonstrated competence with
4 litigating wage and hour class actions. (*Id.* at ¶¶ 40-50.) Again, this supports the position that the
5 terms of the Settlement are premised on objective evidence that has been considered and weighed
6 in light of the risks, expenses, and time consumption to both sides of continued litigation of this
7 action.

8 **2. The Settlement Is Fair and Reasonable in Light of the Parties’**
9 **Respective Legal Positions**

10 A settlement is not judged against what might Plaintiff recover had she prevailed at trial,
11 nor does the settlement have to provide 100% of the damages sought to be fair and reasonable.
12 (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250 [“Compromise is inherent
13 and necessary in the settlement process...even if the relief afforded by the proposed settlement is
14 substantially narrower than it would be if the suits were to be successfully litigated, this is no bar
15 to a class settlement because the public interest may indeed be served by a voluntary settlement in
16 which each side gives ground in the interest of avoiding litigation.”].)

17 This settlement avoids the risks and the accompanying expense of further litigation.
18 (Marquez Decl., ¶ 26.) While Plaintiff is confident in the merits of her claims, a legitimate
19 controversy exists as to each cause of action. (*Id.* at ¶ 25.) Plaintiff also recognizes that proving
20 the amount of wages due to each class member would be an expensive, time-consuming, and
21 uncertain proposition. (*Id.*)

22 The proposed settlement of \$310,000.00 therefore represents a substantial recovery when
23 compared to Plaintiff’s reasonably forecasted recovery. (*Id.* at ¶¶ 17-28.) Because of the proposed
24 Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an
25 unfavorable judgment. When considering the risks of litigation, the uncertainties involved in
26 achieving class certification, the burdens of proof necessary to establish liability, the probability
27 of appeal of a favorable judgment, it is clear that the settlement amount of \$310,000.00 is within
28 the “ballpark” of reasonableness, and preliminary settlement approval is appropriate. (*Id.*) **Indeed,**

1 *each Settlement Class Member is eligible to receive an average net benefit of approximately*
2 *\$1,060.66. (Id. at ¶ 27.)*

3 **3. Class Counsel Has Extensive Experience in Class Action Litigation**

4 The settlement negotiations were conducted by highly capable and experienced counsel.
5 Class Counsel have a strong record of vigorous and effective advocacy for their clients and are
6 experienced in handling complex wage and hour class action litigation. (Marquez Decl., ¶¶ 40-
7 50.) Although Plaintiff and her counsel were prepared to litigate the claims alleged in the litigation,
8 they support the proposed Settlement as being in the best interests of the class.

9 **B. The Proposed Class Notice of Settlement Should Be Approved**

10 The Notice of Proposed Class Action Settlement and Workweek Dispute Form, in the form
11 attached to the Settlement Agreement as Exhibits A and B, should be approved for dissemination
12 to the class. The Notice and Workweek Dispute Form inform the class of the terms of the
13 settlement and of their rights to be excluded from the settlement. And if there are class members
14 who wish to object to this proposed class action settlement, they will have the opportunity to file
15 their objections and be heard at the Final Approval Hearing. Accordingly, the proposed Notice
16 and Workweek Dispute Form meet all the requirements of Rule 3.769(f) of the California Rules of
17 Court.

18 **C. The Proposed Attorneys' Fees and Costs Are Reasonable**

19 Under the Settlement, subject to the Court's approval, Defendant agrees to pay Class
20 Counsel reasonable attorneys' fees in amount of \$103,333.33, which is 33 1/3% of the gross
21 Settlement Amount, and up to \$15,000.00 in costs. These amounts are disclosed to all class
22 members in the Notice of Proposed Class Action Settlement and are reasonable.

23 **1. Class Counsel Request an Award of Fees Based on the "Common**
24 **Fund" Method**

25 California courts have long awarded attorneys' fees as a percentage of the benefit created
26 by counsel in pursuing claims on behalf of a class. The California Supreme Court held that "when
27 a number of persons is entitled in common to a specific fund, and an action brought by a plaintiff
28 or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff

1 or plaintiffs may be awarded attorneys' fees out of the fund." (*Serrano v. Priest* (1977) 20 Cal.3d
2 25, 34, quoting *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1.)

3 Class Counsel seek an award of attorneys' fees on the "percentage of recovery/common
4 fund" theory. The purpose of this approach is to "spread litigation costs proportionally among all
5 the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent*,
6 *supra*, 557 F.2d at p. 769.) In *Quinn v. State of California* (1995) 15 Cal.3d 162, the California
7 Supreme Court stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund
8 from which others derive benefits may require those passive beneficiaries to bear a fair share of
9 the litigation costs." (*Id.* at p. 167.) Similarly, in *City and County of San Francisco v. Sweet*
10 (1995) 12 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine
11 has been applied "consistently in California when an action brought by one party creates a fund in
12 which other persons are entitled to share." (*Id.* at p. 110.)

13 The California Supreme Court recently affirmed in *Laffitte v. Robert Half Int'l Inc.* (2016)
14 1 Cal.5th 480 that, "when class action litigation establishes a monetary fund for the benefit of the
15 class members, and the trial court in its equitable powers awards class counsel a fee out of that
16 fund, the court may determine the amount of a reasonable fee by choosing an appropriate
17 percentage of the fund created." (*Id.* at p. 503.) The court explained: "The recognized advantages
18 of the percentage method—including relative ease of calculation, alignment of incentives between
19 counsel and the class, a better approximation of market conditions in a contingency case, and the
20 encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging
21 the litigation—convince us the percentage method is a valuable tool that should not be denied our
22 trial courts." (*Id.* [internal citations omitted].)

23 **2. The Requested Fee Award Is in Line with Typical Cases**

24 According to a leading treatise on class actions, "No general rule can be articulated on what
25 is a reasonable percentage of a common fund. Usually, 50% of the fund is the upper limit on a
26 reasonable fee award from a common fund in order to assure that the fees do not consume a
27 disproportionate part of the recovery obtained for the class, although somewhat larger percentages
28 are not unprecedented." (*See Conte & Newberg, Newberg on Class Actions* (3rd Ed.) § 14.03.)

Attorneys' fees that are fifty percent of the fund are typically considered the upper limit, with thirty to forty percent commonly awarded in cases where the settlement is relatively small. (*Id.*; see also *Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F.Supp. 294 [stating that most cases where 30-50 percent was awarded involved "smaller" settlement funds of under \$10 million].)

Here, Plaintiff requests attorneys' fees equal to 33 1/3% of the Settlement Amount, which is in line with the prevailing guidelines established in California case law and academic literature and is consistent with awards in California. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 ["Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."].) Accordingly, Plaintiff respectfully requests that the Court approve the attorneys' fees as negotiated by the Parties and requested herein.

3. This Matter Involves A "Fee-Shifting" Provision of the Labor Code

Labor Code § 1194(a) provides for the recovery of "minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit." Under this section, Plaintiff would be permitted to recover her actual attorneys' fees, even if those fees were larger than the total class recovery at the conclusion of this case. This settlement is beneficial in that it limits the risk of continued expenses and consumption of time, energy, and resources facing Defendant while at the same time rewarding Class Counsel for their decision to assume risk by taking on this matter. In fact, prosecution of this action involved significant financial risk for Class Counsel. (Marquez Decl., ¶¶ 35-38.) Class Counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.*) Once counsel undertook this litigation on behalf of the Class, Class Counsel committed to pursue it to its conclusion, placing its fiduciary duty to the Class ahead of all other concerns.

4. The Experience, Reputation and Ability of Class Counsel Support the Requested Fee Award

As demonstrated by their past experience in pursuing class actions on behalf of consumers and employees, Class Counsel possess considerable expertise in litigating class actions. (Marquez

Decl., ¶¶ 40-50.) Class Counsel has been involved as lead counsel or co-counsel in several class actions that resulted in millions in recovery. (*Id.*) Because it is reasonable to compensate class counsel commensurate with their skill, reputation and experience, Class Counsel’s requested fee award is supported here.

Class Counsel’s experience in wage and hour class actions was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of the settlement. Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and federal), as well as the procedural law of class action litigation. Based on these and other factors, Class Counsel has frequently received fee awards of this percentage from the gross recovery for the class. Therefore, the requested fee award is reasonable and fair.

D. The Service Award to Named Plaintiff Is Reasonable

Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to compensate them for the expense or risk they have incurred in conferring a benefit on other members of the class.” (*Munoz, supra*, 86 Cal.App.4th at p. 412.) Courts routinely grant approval of class action settlement agreements containing enhancements for the class representatives, which are necessary to provide incentive to represent the class, and are appropriate given the benefit the class representatives help to bring about for the class. (*See Rodriguez v. W. Publ’g Corp.* (9th Cir. 2009) 563 F.3d 948, 958-59.)

Service awards are particularly important to plaintiffs in wage and hour cases because they promote the important public policies underlying the wage and hour laws. This strong policy is codified in California Labor Code section 90.5, which provides, “it is the policy of this state to vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions....”). Nonetheless, the California Supreme Court has noted that “retaliation against employees for asserting statutory rights under the Labor Code is widespread,” despite anti-retaliation statutes designed to protect employees. (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460-61.) In this context, class representatives should

1 be rewarded for assuming the risk of retaliation for the sake of class members. (*See Frank v.*
2 *Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

3 Under the Settlement Agreement, subject to the Court’s approval, Defendant agreed to pay
4 a Service Award in the amount of \$7,500.00 to Plaintiff. This amount is also in exchange for
5 Plaintiff’s general release of all claims against Defendant. Class Counsel represent that Plaintiff
6 devoted a great deal of time and work assisting counsel in the case, communicated with counsel
7 very frequently for litigation and to prepare for mediation, and was frequently in contact with Class
8 Counsel during the mediation. (Marquez Decl., ¶¶ 29-33; Declaration of NormaJean Ferland in
9 Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement [“Ferland
10 Decl.”], ¶¶ 4-8.) This amount is reasonable particularly in light of the substantial benefits Plaintiff
11 generated for all class members. (*Id.*) Indeed, in *Karl Adams, III, et al. v. MarketStar Corporation,*
12 *et al.*, No. 2:14-cv-02509-TLN-DB, Class Counsel Justin F. Marquez helped negotiate a \$2.5
13 million class action settlement for 339 class members, and the court approved a \$25,000.00 class
14 representative incentive award for each named plaintiff. (Marquez Decl., ¶ 33)

15 When compared with the amounts awarded in typical class action cases, the amount
16 requested here is particularly reasonable. Indeed, a **2006** study examining the average incentive
17 award given to class action plaintiffs from **1993 to 2002** found that the “average award per class
18 representative was \$15,992 and the median award per class representative was \$4,357.” (Theodore
19 Eisenberg & Jeffrey P. Miller, “Incentive Awards to Class Action Plaintiffs: An Empirical Study”,
20 53 UCLA L. Rev. 1303, 1308 (2006).) That same study found that named plaintiffs in employment
21 discrimination class actions received an average award of \$69,850 and a median award of \$31,081,
22 while named plaintiffs in other employment class actions received an average award of \$12,121
23 and a median award of \$13,059. (*Id.* at p. 1334.) The authors of the study found that higher awards
24 in employment cases reflected the “courts’ wish to make representative plaintiffs whole by
25 compensating them for the high costs of their service to the class, including risks of stigmatization
26 or retaliation on the job.” (*Id.* at p. 1308.)

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28 ///

1 **E. There is Good Cause for Selecting Los Angeles Trial Lawyers’ Charities As**
2 **the Cy Pres Recipient**

3 A *cy pres* award allows for “aggregate calculation of damages, the use of summary claim
4 procedures, and distribution of unclaimed funds to indirectly benefit the entire class.” (*Six Mexican*
5 *Workers v. Arizona Citrus Growers* (9th Cir. 1990) 904 F.2d 1301, 1305.) “To ensure that the
6 settlement retains some connection to the plaintiff class and the underlying claims, however, a *cy*
7 *pres* award must qualify as ‘the next best distribution’ to giving the funds directly to class
8 members.” (*Dennis v. Kellogg Co.* (9th Cir. 2012) 697 F.3d 858, 865, quoting *Six Mexican*
9 *Workers*, 904 F.2d at 1308.)

10 Moreover, in the class action context, California Code of Civil Procedure permits unpaid
11 cash residues in a class action settlement to be distributed to a *cy pres* recipient “in a manner
12 designed either to further the purposes of the underlying class action or causes of action, or to
13 promote justice for all Californians.” (Cal. Civ. Proc. Code § 384.)

14 Here, under the terms of the Settlement Agreement, in the event the Parties agree that the
15 amount of uncashed checks is less than five thousand dollars (\$5,000.00), those funds shall be
16 donated to Los Angeles Trial Lawyers’ Charities as a *cy pres* beneficiary. (Settlement, § XI (C).)
17 In the past, LATLC has been the *cy pres* recipient in several wage and hour class action settlements.
18 (Declaration of LATLC President Steven R. Vartazarian [“Vartazarian Decl.”], ¶ 5.) “In
19 connection with this *cy pres* wage and hour award, LATLC will allocate the award to specific
20 charitable efforts specifically related to employment and professional development and monitor
21 those charitable efforts to ensure the *cy pres* funds are indeed utilized for the earmarked purposes.”
22 (*Id.* at ¶ 7.) “Since it began in 2006, LATLC has donated \$2,778,784.69 to organizations helping
23 people seek employment and promoting educational and professional opportunities.” (*Id.* at ¶ 8.)

24 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS WARRANTED**

25 **A. Legal Standard**

26 The proposed Settlement Class is well suited for class certification. All of the claims derive
27 from a core set of alleged violations of California’s wage and hour laws and regulations. For the
28 reasons set forth more fully below, for purposes of settlement only, the Class satisfies the

1 prerequisites for certification under Code of Civil Procedure § 382. Section 382 provides: “when
2 the question is one of a common or general interest, of many persons, or when the parties are
3 numerous, and it is impracticable to bring them all before the court, one or more may sue or defend
4 for the benefit of all.” (Code Civ. Proc., § 382.) There are two requirements to section 382: “(1)
5 There must be an ascertainable class; and (2) there must be a well-defined community of interest
6 in the questions of law and fact involved affecting the parties to be represented.” (*Daar v. Yellow*
7 *Cab Co.* (1967) 67 Cal. 2d 695, 704 [citations omitted].) To clarify these requirements, the
8 California Supreme Court has looked to Federal Rule of Civil Procedure 23 to explain that the
9 community-of-interest requirement itself embodies three factors: “(1) predominant questions of
10 law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class
11 representatives who can adequately represent the class.” (*Richmond v. Dart Indus., Inc.* (1981) 29
12 Cal. 3d 462, 470.)

13 California law and policy favor the fullest and most flexible use of the class action device.
14 (*Id.* at pp. 469-73.) Indeed, “Courts long have acknowledged the importance of class actions as a
15 means to prevent a failure of justice in our judicial system” particularly where the rights of
16 consumers are at issue. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 434.) Any doubt as to
17 the appropriateness of class treatment should be resolved in favor of certification. (*Richmond,*
18 *supra*, 29 Cal.3d at pp. 473-75.)

19 **B. Plaintiff Maintains That the Criteria for Class Certification Are Satisfied for**
20 **Settlement Purposes**

21 **1. The Class is Ascertainable and Numerous**

22 The proposed class that Plaintiff seeks to represent is easily ascertainable, and includes
23 approximately 155 employees of Defendant.

24 Plaintiff maintains that there is an easily ascertainable class, defined by objective and
25 precise criteria. Because class members are identified using specific criteria in the regular business
26 records of Defendant (i.e., job position), the class is ascertainable. (*Wilner v. Sunset Life Ins. Co.*
27 (2000) 78 Cal.App.4th 952, 959-60 [class membership defined by ownership of product that is the
28 subject of the lawsuit is sufficient to make the class ascertainable].)

1 “The requirement of Code of Civil Procedure section 382 that there be ‘many’ parties to a
2 class action suit is indefinite and has been construed liberally.” (*Rose v. City of Hayward* (1981)
3 126 Cal.App.3d 926, 934.) “Where a question is of common interest to ‘many’ persons, an action
4 may be maintained as a class action even where the parties are numerous and it is in fact practicable
5 to join them all.” (*Id.*) “No set number is required as a matter of law for the maintenance of a
6 class action.” (*Id.*) “Thus, our Supreme Court has upheld a class representing the 10 beneficiaries
7 of a trust in an action for removal of the trustees.” (*Id.*, citing *Bowles v. Super. Ct.* (1955) 44 Cal.2d
8 574; see also, *Collins v. Rocha* (1972) 7 Cal.3d 232 [upholding a 35 member class.]) Therefore,
9 Plaintiff contends that numerosity is plainly satisfied.

10 **2. There are Many Common Issues of Law and Fact Which Predominate**

11 The Court should grant conditional class certification for settlement purposes here on the
12 grounds that questions of law and fact common to all class predominate over any individual
13 questions. This inquiry tests whether proposed classes are sufficiently cohesive to warrant
14 adjudication by representation. (*See, e.g., Clothesrigger, Inc. v. GTE Corp.* (1987) 191
15 Cal.App.3d 605.)

16 Here, the employment practices at issue are: whether Defendant had legally compliant
17 policies and practices for all hours worked, including overtime wages; whether Defendant had
18 legally compliant policies and practices to provide employees with meal periods; whether
19 Defendant had legally compliant policies and practices authorizing and permitting its employees
20 to take rest periods; whether final payment of wages was untimely and excluded unpaid wages,
21 including meal period premium and rest period premium wages; whether the wage statements were
22 consequently non-compliant; and whether Defendant adequately reimbursed employees for
23 business expenditures. Plaintiff contends that the factual and legal issues are the same for all of
24 the identified class members, including Plaintiff. Further, all class members suffered from, and
25 seek redress for, the same alleged injuries. Defendant denies all allegations.

26 **3. Plaintiff's Claims Are Typical of the Claims of the Class**

27 The typicality requirement does not focus on the individual characteristics or circumstances
28 of the representative plaintiff compared to those of the remainder of the class, but rather upon the

1 typicality of the proposed representative’s claims as they relate to the defendant’s conduct and
2 activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 [“[t]he only requirements are that
3 common questions of law and fact predominate and that the class representative be similarly
4 situated” vis-à-vis the class.].) A representative plaintiff’s claims are typical of the class if they
5 arise from the same event, practice or course of conduct, and if the claims rest on the same legal
6 theories. (*Id.*) That is precisely the case here. Plaintiff is a former employee of Defendant; as
7 such, she alleges that she was subject to the same policies and practices as other similarly situated
8 employees.

9 **4. Plaintiff and Her Counsel Meet the Adequacy Requirement**

10 The adequacy of representation requirements is met by fulfilling two conditions: first, a
11 named plaintiff must be represented by counsel qualified to conduct the pending litigation; second,
12 a named plaintiff’s interests cannot be antagonistic to those of the class. (*McGhee v. Bank of*
13 *America* (1976) 60 Cal.App.3d 442, 451.)

14 All of these requirements are met here for settlement purposes. Plaintiff retained counsel
15 with extensive experience in prosecuting complex class actions, including similar class actions that
16 previously settled. (Marquez Decl., ¶¶ 40-50.) Class Counsel unquestionably is “qualified,
17 experienced and generally able to conduct the proposed litigation.” (*Miller v. Woods* (1983) 148
18 Cal.App.3d 862, 875.) In addition, Plaintiff has no conflicts, and Plaintiff has, with counsel,
19 litigated this case and diligently reviewed the settlement terms, showing their dedication.
20 Plaintiff’s willingness to serve as a representative demonstrates her serious commitment to
21 bringing about the best results possible for the class. (*McGhee, supra*, 60 Cal.App.3d at p. 451.)

22 **5. A Class Action is Superior to a Multiplicity of Litigation**

23 Finally, in making its class certification decision, the Court must determine that a class
24 action would be superior to alternative means for the fair and efficient adjudication of the litigation.
25 By consolidating many potential individual actions into a single proceeding, this Court’s use of the
26 class action device enables it to manage this Litigation in a manner that serves the economics of
27 time, effort and expense for the litigants and the judicial system. Absent class treatment, similarly-
28 situated employees with small but nevertheless meritorious claims for damages would, as a

1 practical matter, have no means of redress because of the time, effort and expense required to
2 prosecute individual actions. (*Gentry v. Super. Ct.* (2007) 42 Cal. 4th 443, 457-62; *Leyva v.*
3 *Medline Ind.* (9th Cir. 2013) 716 F.3d 510, 515.) Moreover, in the context of settlement, the
4 superiority concerns are essentially non-existent.

5 **V. THE PROPOSED NOTICE IS CONSTITUTIONALLY SOUND**

6 **A. The Proposed Notice Plan Satisfies Due Process**

7 Notice requirements are set forth in the California Rules of Court. (Cal. Rules of Court,
8 Rule 3.766 (e) and (f).) California law vests the Court with broad discretion in fashioning an
9 appropriate notice program. (*Cartt v. Super Ct.* (1975) 50 Cal.App.3d 960, 973-74.) There is no
10 statutory or due process requirement that all class members receive actual notice, but in this matter,
11 the class members will receive direct mailed notice. As the Court of Appeals has explained, “[t]he
12 notice given should have a reasonable chance of reaching a substantial percentage of the Class
13 Members” (*Id.* at p. 974.) In this case, notice of the proposed settlement will be provided by
14 direct mailing, the best possible form of notice.

15 **B. The Notice is Accurate and Informative**

16 The Notice of Proposed Class Action Settlement should be approved. It will be
17 disseminated through direct U.S. first-class mail to the last known address for each Class Member.
18 It informs the Class Members of the terms of the Settlement and their right to be excluded from
19 the Settlement. And if there are Class Members who wish to object to this proposed class action
20 settlement, they will have the opportunity to file their objections and be heard at the Final Approval
21 Hearing.

22 The Notice also fulfills the requirement of neutrality in class notices. (Conte & Newberg,
23 Newberg on Class Actions (3rd Ed.) § 8.39.) It summarizes the proceedings to date and the
24 terms and conditions of the Settlement Agreement, in an informative and coherent manner. It
25 makes clear that the Settlement Agreement does not constitute an admission of liability by the
26 Defendant, who deny all liability, and it recognizes that this Court has not ruled on the merits
27 of the action. It also states that the final settlement approval decision has yet to be made.
28 Accordingly, the Notice complies with the standards of fairness, completeness, and neutrality

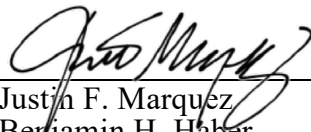
1 required of a combined settlement-certification class notice.

2 **VI. CONCLUSION**

3 For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary
4 approval of the proposed Settlement and set a Final Approval Hearing in November 2022, or the
5 first available date thereafter.

6 Dated: May 10, 2022

WILSHIRE LAW FIRM

7
8 By: 
Justin F. Marquez
Benjamin H. Haber
Arrash T. Fattahi

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10 Attorneys for Plaintiff
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Ferland v. Comprehensive Spine and Sports Center, et al.
21CV375218

I, Ashley Narinyans, state that I am employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 3055 Wilshire Blvd., 12th Floor, Los Angeles, California 90010. My electronic service address is minjee@wilshirelawfirm.com.

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(X) **BY UPLOAD:** I hereby certify that the documents were uploaded by my office to the State of California Labor and Workforce Development Agency Online Filing Site.

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

I declare under the penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on **May 10, 2022**, at Los Angeles, California.

Ashley Narinyans
Type or Print Name

Signature _____