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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

JESSICA MALDONADO, individually, and
on behalf of other members of the general
public similarly situated

Plaintiff

v.

RADY CHILDREN'S PHYSICIAN
MANAGEMENT SERVICES, INC., a
California Corporation; RADY
CHILDREN'S HOSPITAL-SAN DIEGO, a
California Corporation; RADY
CHILDREN'S HOSPITAL AND HEALTH
CENTER, a California Corporation; and
DOES 1-10, inclusive.

Defendants

CASE NO. 37-2021-00014090-CU-OE-CTL

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S UNOPPOSED MOTION FOR
CONDITIONAL CERTIFICATION OF
SETTLEMENT CLASS AND
PRELIMINARY APPROVAL OF GOOD
FAITH DETERMINATION OF CLASS
ACTION SETTLEMENT**

Date: August 26, 2022
Time: 9:00 a.m.
Dept: C-73
Judge: Hon. Joel R. Wohlfeil

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I. SUMMARY OF MOTION

This matter is a “Wage and Hour” representative (*i.e.* “PAGA”) and *proposed* class action. Plaintiff JESSICA MALDONADO and claimant VALENCIA PLOOY, (collectively “Plaintiffs”) bring Labor Code claims against Defendants RADY CHILDREN’S PHYSICIAN MANAGEMENT SERVICES, INC., RADY CHILDREN’S HOSPITAL-SAN DIEGO, and RADY CHILDREN’S HOSPITAL AND HEALTH CENTER (hereinafter, “Defendants” or “RADY”).

After approximately 1 and ½ years of extensive litigation, exchanges on at least 24 sets of formal discovery devices, and a full day Mediation, the parties have agreed to the terms of a proposed class action settlement. The parties have drafted and executed a Joint Stipulation of Class and PAGA Action Settlement (the “Agreement”), lodged as **Exhibit A**¹ to the declaration of Eric Yaeckel. Briefly, the parties’ settlement figures are estimated as follows:

Approximate size of class:	7,500 individuals
Gross settlement amount (“GSA”):	\$3,980,000.00
Claims administration:	\$30,000.00 (or less)
Costs/expenses of litigation:	\$20,000.00 (or less)
Claims Period:	30 days from Mailing of Notice
Class representative incentive:	\$10,000 (\$5,000 for each representative)
LWDA payment:	\$150,000.00 (75% Share of \$200,000 allocation)
Attorney's fees:	1/3 of GSA (\$1,326,666.67)

Estimated average payment (before taxes) to each Class Member based on the above figures will be **\$325.78**. These estimates are an “average” only, and do not account for the fact that class members will receive more or less than an “average” share, as the amounts owed are calculated based on the number of workweeks each individual worked for Defendants during the class period.

Please Note: This is a **non reversionary** settlement, in that the entire net settlement amount, after the awarded costs, taxes and fees are deducted, will be automatically disbursed to all class members who do not file a request to “opt-out” of participation in the lawsuit. (**Exhibit A** at ¶ 49).

¹ This Memorandum incorporates by reference the definitions in the Agreement and the terms used herein are intended to have the same meaning as set forth in the Agreement.

1 The parties now move the Court for an order: **(1)** provisionally certifying the proposed class;
2 **(2)** preliminarily approving the proposed class action settlement; **(3)** directing that Notice (defined
3 below) of the proposed settlement be provided to Class Members; and **(4)** scheduling a hearing for
4 final approval of the proposed settlement and entry of the parties' proposed Final Order Approving
5 Class Action Settlement.

6 **II. FACTUAL AND PROCEDURAL HISTORY**

7 The putative class is comprised of Defendant's California-based, nonexempt employees. The
8 relevant procedural history is set forth below.

9 **1. The Operative Claims, Investigation and Informal Discovery Conducted**

10 On March 30, 2021, Plaintiff Maldonado filed the Complaint in this matter. The original
11 Complaint alleged class action claims, under the California Labor code involving, inter alia, (1) Meal
12 and Rest Period violations; (2) Minimum wage violations; (3) Overtime violations; (4) Wage statement
13 violations; (5) Failure to reimburse business expenses; and (6) Failure to pay wages upon separation.
14 (Yaeckel Decl. ¶ 3; ROA # 1.)

15 On April 6, 2021, Plaintiff filed a First Amended Complaint, which added representative
16 California Private Attorney General Act ("PAGA") claims were based on same underlying Labor
17 Code violations in the original Complaint. (Yaeckel Decl. ¶ 4; ROA # 7).

18 On September 15, 2021, Plaintiff filed a Second Amended Complaint, that provided further
19 specificity on the claims at issue. The Second Amended Complaint is the operative pleading for
20 purposes of this proposed settlement. (Yaeckel Decl. ¶ 5; (ROA # 290.)

21 On May 5, 2021, Plaintiff propounded discovery requests on each of Defendants, including
22 requests for admission, special interrogatories, requests for production of documents, and general and
23 employment form interrogatories. (Yaeckel decl. ¶ 6). Through these requests, Plaintiff sought, among
24 other information and documents, the identities of putative class members, Defendants' compensation
25 policies, meal and rest period policies, employee handbooks, wage statements, payroll records, time
26 records, job descriptions, and reimbursement policies. (*Id*).

27 Defendants provided discovery responses, documents, and objections to Plaintiff's requests.
28 After a lengthy meet and confer processes and several Motions to Compel (including motions filed by

1 both Parties), Defendants produced, *inter alia*, Plaintiff's time and wage records, copies of the relevant
2 employee handbooks, copies of all other relevant employee policies, the contents of Plaintiff's
3 employee file, Plaintiff's time records, and itemized wage statements. (Yaeckel decl. ¶ 7).

4 Defendant also propounded several sets of written discovery on Plaintiff. In total it appears
5 there were at least 24 sets of written discovery exchanged between the parties. (Yaeckel decl. ¶ 7).

6 Following substantive discovery, Defendants (through its counsel), reached out to attempt to
7 explore early resolution of this matter. As part of the settlement discussions, Defendants agreed to
8 voluntarily produce and verify thousands of pages of documents. The production included all relevant
9 policies and procedures. It also included large electronic sampling of other class members' time and
10 wage data. (Yaeckel decl. ¶ 8).

11 Plaintiff also requested Defendants provide additional informal discovery so that the parties
12 could experience a meaningful mediation. (Yaeckel decl. ¶ 9). Defendants provided informal discovery
13 which consisted of, *inter alia*, the number of current and former employees who worked for
14 Defendants during the limitations period, meal and rest period premiums paid, pay periods at issue,
15 a redacted sampling of employee time records and wage statements, as well as confirmation that
16 various policies and agreements were standard as to the class. (*Id.*).

17 **2. Settlement Discussions**

18 On June 2, 2022, the Parties attended a full day mediation before the experienced "Wage and
19 Hour" mediator, Lisa Klerman. (Yaeckel decl. ¶ 10). Prior to the mediation, counsel for both parties
20 agreed to the informal exchange of information pertinent to a class-wide settlement. Both parties
21 prepared and exchanged detailed mediation briefs. (*Id.*). At the conclusion of mediation, the parties
22 agreed on the key terms of a settlement that would globally resolve all class and representative wage
23 and hour claims asserted in the operative Complaint in this Action. (*Id.*).

24 The parties continued negotiation over final settlement terms. As of July 21, 2022, the parties
25 agreed on all final terms of the settlement which was memorialized in the Agreement, which is
26 attached to the declaration of Eric K. Yaeckel as **Exhibit A**. The parties now seek the Court's
27 preliminary approval of the Agreement.

28 ///

III. SETTLEMENT TERMS

The Agreement includes the following key terms:

1. **Contingent Nature of the Settlement**

The parties entered into the Agreement exclusively for the purpose of resolving the action and facilitating the negotiated settlement. Should the Court, for any reason, not preliminarily and/or finally approve the Agreement, or if the Agreement is terminated for any reason, then the parties have agreed that the Agreement will be null and void and this action will revert to its status with respect to any and all matters as they existed prior to the parties signing the Agreement. (**Ex. A** at ¶ 40).

2. **Description of the Settlement Classes**

Solely for the purposes of the Agreement, the parties have agreed that the term “Class Member” is defined as:

all current and former hourly non-exempt persons employed by Defendant Rady Children’s Physician Management Services, Inc.; Rady Children’s Hospital-San Diego; and Rady Children’s Hospital and Health Center, in the State of California between February 12, 2019 through the date of preliminary approval of the settlement (**Exhibit A** at ¶ 14).

The parties agree that the Settlement Class consists of approximately seven thousand five hundred (7,500) individuals, as determined by Defendant’s employment records. (**Ex. A** at ¶ 48).

3. **Appointment of Settlement Administrator**

The parties agreed to use CAC Services, LLC, as the “Settlement Administrator” for purposes of providing the Notice to Settlement Class Members, issuing payments pursuant to the Agreement, and to administer the claims. (**Ex. A** at ¶¶ 52-61). CAC’s sole business has been the administration of class action settlements and class action notices, and has extensive experience. (Yaeckel decl.¶ 11).

4. **Scope of the Release**

For purposes of the Agreement, Class Members release all “Wage and Hour” claims that are either or both: (1) alleged in the Second Amended Complaint; or (2) or which relate to or arise out of the allegations and claims asserted in the Second Amended Complaint and could have been alleged in the complaint relating in any way to violations of the wage and hour provisions of the California Labor Code or the California Wage Orders, or any other wage and hour provisions of California law. The precise release language is reflected in **Exhibit A** at ¶ 30.

1 **5. Cash Payment and Allocation**

2 The Agreement provides for an automatic cash payment to the members of the Class. No
3 claims need be submitted. Class Members will be entitled to an average share of approximately
4 **\$325.78**. (Yaeckel Decl. ¶12.) The actual share will depend on the amount of pay periods they were
5 employed during the limitations period. The Cash Payment will be allocated as follows: twenty-five
6 percent (25%) constitutes wages (subject to withholdings and deductions and reported as wage income
7 on a Form W-2) and seventy-five percent (75%) constitutes non-wage penalties, and interest.
8 **(Exhibit A at ¶ 67).**

9 **6. Proposed Settlement and Notice Program**

10 Subject to Court approval, the Parties agree that, within fifteen (15) days after the Court enters
11 any Order granting preliminary approval of the Settlement, Defendant will provide to the Settlement
12 Administrator the following information for each Settlement Class Member in a reasonable format
13 requested by the Settlement Administrator: class member names and last known home addresses,
14 telephone numbers, social security numbers, weeks worked with Defendant based on Defendant's
15 records, and last known mailing addresses for each member of the Class. (See **Exhibit A** at ¶ 53). The
16 Settlement Administrator will perform address updates and verifications, as necessary, prior to the first
17 mailing. Within 10 days of receipt of the Class List, the Settlement Administrator will mail the Class
18 Notice ("Notice") to each Class Member, by first class mail. (See **Exhibit A**, at ¶ 54-55). The Notice
19 is attached to the declaration of Eric Yaeckel as **Exhibit B**.

20 The Notice is designed to provide Class Members with detailed information about the lawsuit,
21 the Agreement, their rights and the settlement benefits, and how to participate, exclude themselves,
22 or object. (See **Exhibit B**.) From the date the Notices are mailed, the Class Members will have thirty
23 (30) calendar days to request to be excluded, or file objections. (See Exhibit "A," at ¶ 34; **Exhibit B**.)

24 The Class members will be given notice of the release and information about their expected
25 settlement amount based on the workweeks they were employed with Defendants during the Class
26 period. If they wish to receive a share of the Settlement, class members need not take any additional
27 action. Class Members are also given instructions on how to exclude themselves, file objections, or
28 appear at the final approval hearing to state objections. (**Exhibit A** at ¶ 57 and **Exhibit B**).

1 The Notice program also has additional safeguards. For instance, for Notices returned as non-
2 deliverable, the Class Administrator will perform a skip-trace and mail or re-mail Notice to an updated
3 address (if any), upon receipt of the returned mail. (See **Exhibit A** at ¶ 57). It is the intent of the parties
4 that all reasonable means be used to locate Class Members.

5 The Notice will inform Class Members of the number of weeks worked during the Class Period
6 (according to Defendant's records) and their estimated settlement amounts. (See **Exhibit A** at ¶ 57).
7 Class members will have the opportunity to dispute the workweek calculation by submitting written
8 documentation to the Claims Administrator. (**Exhibit B** at § IV(D)).

9 PAGA Members do not require notice prior to a settlement nor may they opt out of the PAGA
10 penalty portion of the settlement. *Robinson v. S. Ctys. Oil Co.*, (2020) 53 Cal. App. 5th 476, 482–83,
11 review denied (Nov. 24, 2020). However, all PAGA members are also Class Members and can opt-out
12 to retain their individual claims. This is explained in the Class Notice. (**Exhibit B** at § IV(F)).

13 **7. Contingent Costs**

14 Defendant agrees to pay One Million Three Hundred and Twenty Six Thousand Six Hundred
15 and Sixty Six Dollars and Sixty Five Cents (\$1,326,666.67) in attorneys' fees, which is thirty-three
16 and one-third (33 1/3%) of the total settlement, and up to Twenty Thousand and Dollars (\$20,000.00)
17 in litigation costs. (See **Exhibit A** at ¶ 43). For costs incurred in administrating the settlement,
18 Defendant will pay no more than Thirty Thousand Dollars (\$30,000.00). (See **Exhibit A** at ¶ 45).

19 Defendant also agrees to allocate Two Hundred Thousand Dollars (\$200,000.00) to Plaintiffs'
20 PAGA claims with 75% of the amount, or \$150,000.00, being paid to the LWDA, and 25%, or
21 \$50,000.00, being distributed amongst the class members. (See **Exhibit A** at ¶ 46).

22 Defendant also agrees to pay Plaintiff Maldonado and Claimant Plooy Five Thousand Dollars
23 (\$5,000.00) each, as an enhancement award in consideration for their services as Class
24 Representatives. (See **Exhibit A** at ¶ 44). The enhancement awards were decided pursuant to good
25 faith negotiations and is intended to recognize that it was the class representatives who initiated the
26 lawsuit, initiated the PAGA claims, provided critical documents and witnesses to her attorneys, and
27 worked with her attorney to propound and prepare written discovery, all in an effort to obtain moneys
28 allegedly owed not only to herself, but to hundreds of other employees. (Yaeckel Decl. ¶14).

IV. SUMMARY OF CLAIMS AND ESTIMATES OF POTENTIAL DAMAGES

Counsel hereby submits estimates and calculations for the total potential value of all claims so this Court may evaluate if the amount to be paid to the class ultimately could be determined to be fair and reasonable when balanced against the probable outcome of the future litigation. *Kullar v. Foot Locker Retail, Inc.*, (2008) 168 Cal. App. 4th 116, 133.

Concerning the strength of the plaintiff's case, the California Court of Appeal has said that the "merits of the underlying class claims are not a basis for upsetting the settlement of a class action; the operative word is 'settlement.'" *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1150 [citing, *inter alia*, *City of Detroit v. Grinnell Corp.* (2d Cir. 1974) 495 F.2d 448,455 ("The fact that a proposed settlement may only amount to a fraction the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved"); see also *Linney v. Cellular Alaska P'ship.* (9th Cir. 1998) 151 F.3d 1234, 1242 ("This court has aptly held that 'it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements'"); *Officers for Justice v. Civil Servo Com.* (9th Cir. 1982) 688 F.2d 615, 625 ("The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.")]

Each of the primary claims also had risks to obtaining both class certification and a finding of liability. If Defendants' asserted defenses were successful, the class would not receive anything. As is set forth below, Plaintiff submits that the most realistic "best case" scenario would be an average recovery per class member of approximately \$844.47 and a worst case scenario would be a recovery of \$0, by way of denial of class certification or defense verdict.

A. **FAILURE TO PAY ALL COMPENSATION CLAIMS**

Plaintiff 'unpaid wages (and unpaid overtime) claims were based on the allegation that employees were performing unpaid work (1) due to the RADY standard timekeeping system which "rounded" employee time entries and caused other loses due to certain alleged "transitional math errors" caused by the payroll system. Plaintiffs alleged this resulted in regular time and overtime pay being owed where Defendants were on notice of work being performed without pay.

Defendants argued that rounding of total hours worked has been recognized under California

1 law. Defendants also denied that any unpaid work occurred, and even if some did occur, RADY
2 claimed it was not on notice of these alleged Labor Code violations and had a strict written prohibition
3 against off-the-clock work and a mandate that all time worked must be accurately recorded. RADY
4 asserted proof of these alleged violations would require individualized inquiries, which could preclude
5 class certification and make any PAGA claims unmanageable. (Yaeckel decl. ¶ 27.)

6 Based on Class Counsels' analysis, this claim was worth as little as \$0 (a defense verdict or
7 denial of class certification) or as much as \$863,460.00. (Yaeckel decl. ¶ 18.)

8 **B. MEAL AND REST PERIOD CLAIMS**

9 Plaintiffs were able to identify hundreds of examples of missing or late meal periods without
10 the provision of a meal period penalty payment. However, Defendants argued that these records do
11 not conclusively show whether (1) RADY actually failed to provide the meal period, (2) there was a
12 voluntary waiver, (3) employees forgot to clock out, or (4) employees voluntarily chose to skip or take
13 them late even though they were provided. Additionally, in light of RADY's written meal period policy
14 and the wide variations in alleged violations and departments at the hospital, Defendants contended
15 there was no uniform policy or practice, requiring individualized inquiries that would preclude class
16 certification and make any PAGA claims unmanageable. (Yaeckel decl. ¶ 28.)

17 Plaintiffs also alleged the RADY written policies improperly restricted class members from
18 leaving the premises during their rest breaks. Defendants pointed out that the policy contained no such
19 restriction and argued that witness testimony would demonstrate that in practice, no such "leave the
20 premises" restriction was ever enforced. Defendants also contended individualized inquiries will
21 abound as to why individual employees may have failed to take appropriate meal periods or rest
22 breaks. (Yaeckel decl. ¶ 29.)

23 While there are time records to support the existence of meal period violations, there are no
24 corresponding rest period records, making this aspect of the claim much harder to prove. Some Courts
25 have been disinclined to accept survey evidence that may have been needed to help establish rest
26 period violations. See e.g. *Duran v. U.S. Bank National Assn.* (2018) 19 Cal.App.5th 630.

27 Based on counsels' analysis, this claim was worth as little as \$0 (a defense verdict or denial
28 of class certification) or as much as \$5,756,400.00. (Yaeckel decl. ¶ 18.)

1 **C. PLAINTIFF’S WAGE STATEMENT CLAIMS**

2 Plaintiffs acknowledge that these claims are largely derivative, in that both the gross and net
3 wages could be found to be inaccurate, due to the above-referenced claims.

4 RADY argued that the failure to list gross and net wages are derivative of other claims that may
5 ultimately fail and as a result there is no “knowing and intentional failure” to list information, which
6 triggers liability under Labor Code §226(e). (Yaeckel decl. ¶ 30.)

7 The California Supreme Court has recently held that the failure to pay meal and rest period
8 premiums *may* give rise to a claim for inaccurate wage statements (or waiting time penalties).
9 However, such derivative liability is not automatic and the Plaintiff still must show a “knowing and
10 intentional” or “wifful” failure to comply with the Labor Code. See *Naranjo v. Spectrum Security*
11 *Services, Inc.*, (2022) 2022 Cal. LEXIS 2878. Defendants (as with the underlying meal and rest period
12 claims) maintained individualized inquires would abound as to why breaks were missed and whether
13 meal period premiums should have been paid in the first place, requiring individualized inquiries that
14 would preclude class certification and make any PAGA claims unmanageable. (Yaeckel decl. ¶ 31.)

15 As is broken down further in the declaration of Eric K. Yaeckel, this claim was valued at as
16 little as \$0.00 and as much as \$2,808,000.00. (Yaeckel decl. ¶ 18.)

17 **D. PLAINTIFF’S REIMBURSEMENT CLAIMS**

18 Plaintiffs contend that RADY violated Labor Code section 2802 by failing to reimburse its
19 employees for certain costs, including cellular phone costs, work supplies and mileage.

20 RADY countered that it has a comprehensive written policy for expense reimbursements in its
21 employee handbook. The majority of RADY employees were not able to do remote work due the
22 nature of the work involving direct patient care. RADY further contended that Maldonado’s (and
23 others’) positions did not require the use of a cell phone.

24 As is broken down further in the declaration of Eric K. Yaeckel, this claim was valued at as
25 little as \$0.00 and as much as \$75,000.00. (Yaeckel decl. ¶ 18.)

26 **E. OTHER DERIVATIVE CLAIMS (PAGA, LABOR CODE SECTION 203)**

27 The remaining claims are derivative in that PAGA and Labor Code § 203 penalties would only
28 be permissible if the above claims are proven.

1 The parties agreed to allocate \$200,000 to the PAGA claims, which is 5.03% of the total
2 settlement. This PAGA allocation is in the range routinely approved by California Courts. *See Garcia*
3 *v. Gordon Trucking, Inc.* (E.D. Cal., Oct. 31, 2012, No. 1:10-CV-0324 AWISKO) 2012 WL 5364575,
4 at *7 (approving \$10,000 PAGA penalty for a California class with a \$3.7 million gross settlement
5 payment); *Syed v. M-I, L.L.C.* (E.D. Cal., Feb. 22, 2017, No. 112CV01718DADMJS) 2017 WL
6 714367, at *13 (approving 2.53% of the estimated \$3.95 million gross settlement amount allocated
7 to the California class); *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No.
8 15-CV-02198-EMC) 2016 WL 5907869 (approving allocation of \$20,000 to the PAGA claim (**0.15%**
9 of its total value of \$12,952,000) as reasonable in the context of the settlement as a whole); *In re Uber*
10 *FCRA Litigation* (N.D. Cal., June 29, 2017, No. 14-CV-05200-EMC) 2017 WL 2806698 (approving
11 a settlement agreement of \$7.5 million, where the amount allocated to the PAGA claims was only
12 \$7,500 – .01% of the total settlement amount).

13 Based on Class Counsel's analysis, the PAGA and Labor Code § 203 claims were worth as little
14 as \$0 (a PAGA defense verdict or denial of certification of the § 203 claim) or as much as
15 \$10,530,000.00 and \$16,974,000.00 respectively. (Yaeckel decl. ¶ 18.)

16 **F. CASE LAW SUPPORTS A FURTHER REDUCTION ON ANY RECOVERY**

17 Plaintiff concedes he would be highly unlikely to ever be awarded an amount approaching the
18 maximum damages set forth above. To wit, the majority of the recovery would be "derivative"
19 penalties under PAGA, Labor Code § 203 and Labor Code § 226. The Court would have great
20 discretion to mitigate any penalties awarded. *Thurman v. Bayshore Transit Management, Inc.* (2012)
21 203 Cal.App.4th 1112, 1135 (disapproved on other grounds).

22 In a recent trial involving Class Counsel, the Court found liability, but then significantly
23 reduced the PAGA penalties, down to \$5 a violation. See *Carrington v. Starbucks Corp.* (2018) 30
24 Cal.App.5th 504; See accord *Fleming v. Covidien, Inc.*, No. ED-CV-10-1487-RGK(OPx), 2011 WL
25 7563047 at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by over 82%, in part because
26 employer was "not aware" of violations). And in *Carrington*, the Court also noted that other trial courts
27 have declined to "stack" (impose multiple) penalties based on the same underlying Labor Code
28 violation. See *Ruelas v. Costco Wholesale Corporation* (N.D. Cal. 2014) 67 F.Supp.3d 1137.

1 Class Counsel believes a mitigation of the damages and potential PAGA penalties would be
2 warranted here. As in the *Carrington* case, there was evidence that RADY attempted to provide meal
3 and rest periods in practice, and the written policies contained no facially non-compliant terms.

4 Given this, it is likely that some of the violations by RADY were not "willful." Finally, given
5 the defenses raised by Defendants, there was a significant risk that many of the claims would not have
6 been certified or, if they were, certification could not have been maintained through trial and appeal.

7 The Parties agree the failure to pay "ex employees" under § 203 is derivative of the other
8 claims. As RADY asserts a "good faith dispute" for withholding any unpaid wages, it would be
9 difficult to establish any liability for a "willful" failure to pay wages owed.

10 Based on the above, it would be likely that PAGA penalties would be reduced to approximately
11 \$5 per violation and the Court would find no basis for imposing Labor Code §§ 203 or 226 penalties.
12 If this occurred, the average class member's pre-tax share of a realistic best case recovery would be
13 \$844.47. (Yaeckel decl. ¶ 25.)

14 Accordingly, Class Counsel submits the **\$325.78** average recovery secured via this Settlement,
15 is a reasonable compromise and is in the best interests of the Class given all the risks of continued
16 litigation. (Yaeckel decl. ¶¶ 25-32.)

17 **V. PROVISIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE**

18 Under California law, a class action is appropriate when the class is ascertainable and there is
19 "a well defined community of interest in the questions of law and fact involved affecting the parties
20 to be represented." Cal. Code Civ. Proc. § 382; *Sav-on Drug Stores, Inc. v. Superior Court* (2004) 34
21 Cal. 4th 319, 341. State law requirements under California Code of Civil Procedure § 382 for class
22 certification mirror those of federal law under Rule 23 of the Federal Rules of Civil Procedure:
23 numerosity, typicality of the class representatives' claims, adequacy of representation, predominance
24 of common issues, and superiority. See Fed. R. Civ. P. 23(a); see also *Hanlon v. Chrysler Corp.* (9th
25 Cir. 1998) 150 F.3d 1011, 1019. Thus, for settlement purposes, each of these elements must be
26 present. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 237-38.

27 **A. THE PROPOSED SETTLEMENT CLASS IS ASCERTAINABLE**

28 The proposed class is ascertainable because all Class Members currently or formerly worked

1 for Defendant as a nonexempt employee and will be identified through Defendant's employment
2 records. See *Rose v. City of Hayward*, 126 Cal.App.3d 926 (1981) (finding that "Class Members are
3 'ascertainable' where they may be readily identified without unreasonable expense or time by reference
4 to official records"). Thus, the ascertainability requirement is met.

5 **B. THE PROPOSED SETTLEMENT CLASS IS SUFFICIENTLY NUMEROUS**

6 The numerosity requirement is met if the class is so large that joinder of all members would
7 be impracticable. *In re Tobacco II Cases* (2009) 46 Cal. 4th 298, 318. Here, Defendant's records
8 show that approximately **7,500 class members** worked for the company during the limitations period.
9 (Yaeckel decl. ¶ 33). Thus, joinder of all members of the class would be impracticable.

10 **C. THE COMMONALITY REQUIREMENT WAS MET**

11 The commonality requirement is met if there are questions of law and fact common to the class.
12 See *Hanlon, supra*, 150 F.3d at 1019.

13 Here, for purposes of the Settlement, the parties agree the claims of Class Members all involve
14 the same questions of law and fact. (See Ex. A at ¶ 39; and section IV *supra*,). Namely, all class
15 members were subject to the same employment policies and practices of Defendant. (Yaeckel decl.
16 ¶ 35). The common question exists as to whether the policies and practices Class Members were
17 subjected to are illegal. Under these circumstances, the commonality requirement is satisfied. See
18 *Hanlon, supra*, 150 F.3d at 1019-20.

19 **D. THE TYPICALITY REQUIREMENT IS MET**

20 The typicality requirement is met if the class representatives and class counsel have no interests
21 adverse to the interests of the proposed Class Members and are committed to vigorously prosecuting
22 the case on behalf of the class. See *Wehner v. Syntex Corp.*, 117 F.R.D. 641, 644 (N.D. Cal. 1987).

23 Here, there are no such adverse interests. Plaintiffs have claims substantially the same as all
24 the other Class Members. (Yaeckel decl. ¶ 35). Factual differences may exist between the class
25 representatives and the Class Members so long as the claims arise from the same events or course of
26 conduct and are based on the same legal theories. See *Hanlon*, 150 F.3d at 1020; see also 1 *Newberg*
27 § 53.13 at 3-76-77 ("When it is alleged that the same unlawful conduct was directed at or affected both
28 the named plaintiff and the class sought to be represented, the typicality requirement is usually met

irrespective of varying fact patterns which underlie individual claims.”) Thus, the typicality requirement is also satisfied.

E. THE ADEQUACY REQUIREMENT IS MET

The adequacy of representation component of the community of interest requirement for class certification “comes into play when the party opposing certification brings forth evidence indicating widespread antagonism to the class suit.” *Capitol People First v. Dep’t of Develop. Servs.* (2007) 155 Cal. App. 4th 676, 696-97. The adequacy inquiry “serves to uncover conflicts of interest between named parties and the class they seek to represent.” *Id.* To assure “adequate” representation, the “class representative’s [...] claim must not be inconsistent with the claims of other members of the class.” *Id.*

Here, no such “inconsistencies” exist. Each Plaintiff will be compensated based on the same “pay period” formula as all other members of the Class. (Yaeckel decl. ¶ 35).

Additionally, any Class Member who wishes to “opt out” of the Settlement may do so and retain all of their individual rights. (Yaeckel decl. ¶ 36). There is therefore no conflict of interest between the Class Representatives and the Class Members. (*Id.*) Thus, at least for settlement purposes, the adequacy prong is met. (*Id.*)

F. COMMON ISSUES PREDOMINATE AND CLASS-WIDE SETTLEMENT IS SUPERIOR TO OTHER AVAILABLE METHODS OF RESOLUTION

Class certification is authorized where common questions of law and fact predominate over individual questions, and where class-wide treatment of a dispute is superior to individual litigation. See *Richmond v. Dart Indus., Inc.*, 29 Cal.3d 462, 469 (1981).

The proposed class in this case is sufficiently cohesive because, for purposes of the Settlement only, the parties have stipulated that all class certification elements are met. (**Exhibit A** at ¶39). All members of the Class worked under the same conditions and experienced the same policies and practices of Defendant. (See section IV, *supra*). Thus, the class is sufficiently cohesive.

Further, it would be preferable to resolve all of the Class Members’ claims by means of a class-wide settlement than to require each Class Member to litigate individual claims. (Yaeckel decl. ¶ 37).

VI. PRELIMINARY APPROVAL OF THE CLASS ACTION SETTLEMENT IS PROPER

The trial court has broad discretion to determine whether a class action settlement is fair and

1 reasonable. *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723. Fairness is presumed where
2 (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are
3 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
4 litigation; and (4) the percentage of objectors is small. *Chaves v. Netflix, Inc.* (2008) 162 Cal.App.4th
5 43, 52; *Dunk v. Ford Motor Co.*(1996) 48 Cal.App.4th 1794, 1802. But, even where it appears the
6 settlement is fair, the court must still determine on the record before it whether the settlement should
7 be approved after considering "the strengths and weaknesses of the claims and risks of the particular
8 litigation." *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129. The courts will
9 consider: (i) the strength of the plaintiff's case; (ii) the risks, expense, complexity and likely duration
10 of further litigation; (iii) the risk of maintaining class action status throughout the trial; (iv) the amount
11 offered in settlement; (v) the extent of discovery completed; (vi) the stage of the proceedings; (vii) the
12 experience and views of counsel; (viii) the presence of a governmental participant; and (ix) any
13 reaction of putative class members to the proposed settlement. *Dunk*, 48 Cal.App.4th, at 1800-1801;
14 *In re Microsoft I-V Cases*, 135 Cal.App.4th, at 723.

15 When evaluating these factors, the court "must stop short of the detailed and thorough
16 investigation that it would undertake if it were actually trying the case," but nonetheless it "must
17 eschew any rubber stamp approval in favor of an independent evaluation." *Kullar*, 168 Cal.App.4th,
18 at 130. Ultimately, the court approves the proposed class action settlement when the settlement is fair
19 and falls "within the range of reasonableness." *Hernandez v. Vitamin Shoppe Indus., Inc.* (2009) 174
20 Cal.App.4th 1441, 1446.

21 **A. FAIRNESS OF THE SETTLEMENT**

22 For preliminary approval purposes, a proposed class action settlement is *presumed* to be fair
23 where, as here, (1) the settlement is reached through arm's-length bargaining; (2) investigation and
24 discovery are sufficient to allow counsel and the court to act intelligently; and (3) counsel is
25 experienced in similar litigation. *Chaves, supra*, 162 Cal.App.4th at 52.

26 The proposed settlement in this action meets these criteria, and merits preliminary approval.
27 As discussed above, the parties only entered into the Agreement after engaging in a full day of
28 mediation with experienced an mediator who routinely handle "wage and hour" class action litigation,

1 Lisa Klerman. (Yaeckel Decl. ¶¶ 9-10). The mediation was preceded by substantial discovery, motion
2 work, investigation into the claims at issue, interviews of numerous Class Members, disclosure and
3 review of documents detailing company-wide policies and practices, informal information exchanges
4 for mediation purposes, and ongoing discussions about the merits between the parties' counsel during
5 the span of the litigation. (Yaeckel Decl. ¶¶ 5-10). Thereafter, the parties memorialized the details of
6 this settlement via the Agreement. (**Ex. A**).

7 When negotiating the settlement, both sides took into account the strengths and weaknesses
8 of their opponent's positions as pointed out by Lisa Klerman, the data available to evaluate liability
9 and damages, the lack of data or evidence on certain issues, and the substantial and evolving law
10 applicable to the merits of the claims. The Agreement was only agreed to after extensive arms-length
11 negotiations resulting in a unique compromise that permits all parties to move forward and bring this
12 action to close. In spite of a mutual desire to resolve this action, the negotiations remained at all times
13 adversarial. (Yaeckel Decl. ¶ 38).

14 As set forth below in section H, *infra.*, counsel for both parties have extensive experience in
15 litigating wage and hour class action lawsuits. Based on this experience, counsel have determined that
16 the settlement is fair, adequate, and reasonable. (Yaeckel decl. ¶ 32).

17 **B. STRENGTH OF PLAINTIFFS' CASE**

18 The most important factor courts consider when evaluating the fairness of the class action
19 settlement is the strength of the plaintiffs' case balanced against the amount offered in settlement.
20 *Kullar*, 168 Cal.App.4th, at 130.

21 All of Plaintiff's claims – individual, PAGA, and class claims – presented hurdles including
22 obtaining class certification, in addition to a substantial risk of a defense verdict by way of summary
23 judgment motion or at trial. (Yaeckel Decl. ¶¶ 26-31).

24 The exchange of mediation briefs, the assistance of an experienced “wage and hour” mediator,
25 and the parties' ongoing negotiations all helped the parties realize the strengths and weaknesses of
26 their case, as well as the risks and expenses of continuing litigation.

27 Additionally, as trial approaches, each party's monetary risk increases significantly as
28 substantial additional attorney hours and expert witness hours would have to be devoted to this case

1 by each party. Each party bears a real risk at trial, and considering the balance of the strengths of
2 Plaintiff's claims versus the risks inherent in trial and the consideration given to settle now, the
3 settlement reflects a fair and adequate resolution to this action.

4 **C. THE RISK, EXPENSE, COMPLEXITY, AND LIKELY DURATION OF FURTHER**
5 **LITIGATION**

6 Plaintiff's Counsel's effectiveness in prosecuting this case has translated into tangible monetary
7 and non-monetary benefits for the Settlement Class Members in the following respects: (1) a
8 guaranteed favorable result; (2) guaranteed monetary recovery over a reasonably short period of time,
9 as opposed to possibly waiting additional years for a potentially worse result; and (3) significant
10 savings in attorneys' fees and costs, which would have increased had the case progressed through trial
11 and possible appeals. (Yaeckel decl. ¶ 39).

12 Without entering into the Agreement, there existed a significant chance that Defendant would
13 prevail on the merits of some or all claims and that Class Members would receive nothing. Through
14 the Agreement, participating Class Members receive guaranteed cash, and this action has also been
15 the catalyst for programmatic relief. (Yaeckel decl. ¶ 40).

16 If the litigation were to proceed in lieu of settlement, additional and substantial attorneys fees
17 and costs, expert witnesses fees would quickly accumulate. Given the numerous claims being litigated,
18 the parties may be required to hire multiple experts each (as many as 8 total). This would result in not
19 only the production of eight expert reports, but eight depositions as well. And, based on previous
20 discussions between counsel regarding the remaining claims (including the PAGA claims), the parties
21 anticipated at least one motion to compel, a motion for class certification and two dueling motions for
22 summary judgment / adjudication (one from each side). (Yaeckel decl. ¶ 41).

23 Importantly, even after engaging in all of the potential continued and protracted litigation set
24 forth above, the putative class would continue to have no guarantee of success on any of the claims
25 advanced in this case. Thus, the parties and their counsel believe in good faith that the proposed
26 resolution is a fair, reasonable, and adequate compromise. (Yaeckel decl. ¶ 42).

27 **D. THE RISK OF MAINTAINING CLASS ACTION STATUS THROUGH THE TRIAL**

28 Plaintiffs had not filed a Motion for Class Certification at the time settlement was reached.

1 (Yaeckel decl. ¶ 43). Defendants presented multiple different defenses to certification during
2 mediation and throughout litigation. Even assuming Plaintiff did obtain class certification of the
3 claims, each claim is subject to substantial risk of a Defense verdict at trial. (*Id.*)

4 Regarding the representative (PAGA) claims, there is also a substantial risk that, at trial,
5 Plaintiffs will either fail to obtain a favorable judgment on one or more of these claims, or that a
6 favorable award on one or more PAGA claims may be reduced. *See Thurman v. Bayshore Transit*
7 *Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reversed on other grounds).

8 **E. THE AMOUNT OFFERED IN THE SETTLEMENT**

9 After deduction from the total “Settlement Amount” of the projected costs of administration,
10 proposed class representative service awards, potential attorney fees and costs, the “Net Settlement
11 Amount (“NSA”) will be distributed to all Class Members who do not file a request for exclusion.
12 Participating Class Members will receive their share of the NSA based on the total pay-periods they
13 worked during the Class Period. (**Exhibit A**, ¶ 37).

14 Based on the current proposed figures, each Participating Class Member will receive an
15 average of **\$325.786**, although the actual amount will vary based on the amount of pay periods s they
16 were employed. The Class Notice will list each individual class member’s actual expected share. (See
17 **Ex. B.**) Plaintiffs’ counsel maintains this recovery was significant in light of the circumstances of the
18 case. (Yaeckel Decl. ¶32).

19 **F. THE EXTENT OF DISCOVERY COMPLETED**

20 Plaintiffs propounded 15 sets of separate written discovery devices on Defendants, including
21 requests for admission, special interrogatories, requests for production of documents, and general and
22 employment form interrogatories. (Yaeckel Decl. ¶ 5.) Through these requests, Plaintiffs sought,
23 among other information and documents, the identities of putative class members, Defendants’
24 compensation policies, meal and rest period policies, employee handbooks, wage statements, time
25 records, job descriptions, and reimbursement policies. *Id.*

26 Defendant provided detailed substantive responses detailing all relevant employment policies,
27 in addition to producing thousands of pages of responsive documents. The document production also
28 included a large sampling of other putative class members time and wage records. (Yaeckel Decl. ¶

6-8).

Defendant also propounded 9 of its own separate sets of written discovery that Plaintiff was required to respond to. (Yaeckel Decl. ¶ 7).

Plaintiffs' counsel has also interviewed at least 12 Class Members in the course of investigating and litigating this matter. (Yaeckel decl. ¶ 44). Counsel has also reviewed thousands of pages of documents produced by Defendants, Plaintiffs, and Class Members. (*Id.*)

This information, along with documents and information obtained through formal discovery and from Class Members, allowed Plaintiffs' counsel to prepare a detailed Mediation Brief. (*Id.*) The Brief was provided to opposing counsel and contained a breakdown of potential damages based on all of the information obtained. (*Id.*) RADY also provided a detailed mediation brief, outlining its defenses to both class certification and liability. (*Id.*)

Thus, sufficient discovery, both formal and informal, has been conducted to allow the parties to participate in an informed, arms-length negotiation process.

G. THE STAGE OF THE PROCEEDINGS

Plaintiff already had possession of all written discovery needed for a class certification motion. Depositions would have followed and then a motion for class certification would have been filed. Depending on that motion, Plaintiff may have lost her ability to negotiate a class-wide or representative settlement agreement on certain issues. Alternatively, Defendants stood to lose a key negotiating tool in the event the Motions were decided in Plaintiff's favor. Therefore, the parties achieved a settlement agreement at a point when neither side had a stated advantage in the litigation.

H. THE EXPERIENCE AND VIEWS OF COUNSEL

Class Counsel has considerable experience in wage and hour and class action litigation. William Sullivan has over 28 years of experience, 27 years of which has been devoted to both prosecuting and defending class action litigation. Mr. Yaeckel has over 11 years of experience in "class litigation." (Yaeckel Decl. ¶ 45).

Plaintiff's counsel considers the Agreement to represent a fair, adequate and reasonable settlement that is well within the accepted range of recoveries for similar cases. Counsel further believes the Agreement is in the best interests of the Settlement Class Members. (Yaeckel Decl. ¶ 46).

1 **I. PRESENCE OF A GOVERNMENTAL ACTOR**

2 Although the State is not directly involved in this action, Plaintiff “stands in the shoes” of the
3 Labor and Workforce Development Agency (“LWDA”) by bringing his PAGA action. Consideration
4 has been made to compensate to Labor Workforce Development Agency (“LWDA”) in the amount
5 of \$150,000, even though the LWDA declined to prosecute the claims itself. (*See* Exhibit “A,” at ¶46).
6 To confirm, 75% of the total allocation of \$200,000 amount, or **\$150,000.00**, is being paid to the
7 LWDA, and 25%, or **\$50,000.00**, being distributed amongst the class members. (*Id.*, at ¶46). Counsel
8 for the parties believe this is a fair, reasonable, and adequate allocation. (Yaeckel Decl. ¶ 47).

9 **J. REACTION OF THE CLASS MEMBERS TO THE PROPOSED SETTLEMENT**

10 Prior to preliminary approval, what can be said of the reaction the class members is limited.
11 However, Plaintiff’s counsel has spoken to some Class Members since the parties reached a proposed
12 settlement agreement, and all were in favor of the settlement. (Yaeckel Decl. ¶ 48).

13 As explained in the Agreement, the Settlement Claims Administrator will send a Notice to the
14 Settlement Class Members. (*See* Exhibit A at ¶ 57). The negotiated Notice form is attached to the
15 declaration fo Eric K. Yaeckel as Exhibit B.

16 The proposed Notice Packet advises the Settlement Class Members of their anticipated
17 recovery under the Agreement, how they can object, how they can exclude themselves, the amount of
18 fees and costs sought by Settlement Class Counsel, the amount of enhancement payment sought on
19 behalf of the class representative, and the date of the final approval hearing. (*See* Exhibit “B.”) Thus,
20 the proposed Notice complies with the notice requirements set forth in CRC Rule 3.766(d) and Rule
21 3.769(f).

22 **VII. PROPOSED TIMELINE OF EVENTS AND FINAL APPROVAL**

23 Assuming the Settlement merits Preliminary Approval from the Court, Plaintiffs request that
24 the Court set a Final Approval Hearing in accordance with the chronology of events set forth in the
25 Agreement:

- 26 • Within 15 calendar days of the Court’s Preliminary Approval: RADY will provide to the
27 Settlement Administrator the Class List including Class Members’ names, last known
28 addresses, social security numbers, and the dates of employment during the Class Period;

- Within 7 calendar days after receipt of the class list: Settlement Administrator will mail the Notice Packets to Class Members;
- 30 Calendar Days After Settlement Administrator has mailed the Notice Packets to Class Members: Deadline for Class Members to postmark and submit all disputes of pay period information, Requests for Exclusion, or to file written objections to the settlement;
- Approximately 5 Calendar days after the conclusion of the Notice and Claims Period: Plaintiffs will file a Motion for Final Approval; and
- 16 Court days after the filing of the Final Approval motion: the Court can conduct the Final Approval Hearing.

Based on this timeline, Plaintiff requests a Final Approval hearing that is approximately 80 days (or the first available court date thereafter) after the date the Court enters an Order granting preliminary approval of the Settlement. Assuming Preliminary Approval is granted at the currently scheduled hearing, **Plaintiff requests November 18, 2022 for the Final Approval hearing.**

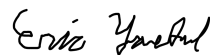
VI. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that the Court issue an Order:

- i. Certifying the Proposed Settlement Class;
- ii. Preliminarily approving the settlement as set forth in the Agreement; and
- iii. Approving the proposed Notice Packet to be directed to the Settlement Class.

Dated: July 27, 2022

SULLIVAN & YAECKEL LAW GROUP, APC



Eric K. Yaeckel

Ryan T. Kuhn

Attorneys for Plaintiff JESSICA MALDONADO in a representative capacity, and on behalf of the general public similarly situated