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

WENDIE BRANDT, as an individual and on
behalf of all others similarly situated, and as a
private attorney general,

Plaintiff,

vs.

KIDS CARE DENTAL & ORTHODONTICS, a
California corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 34-2021-00296816

[Assigned for all purposes to Department 25,
Hon. Jill H. Talley]

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

*[Filed concurrently with Declaration of Larry W.
Lee; Declaration of Simon L. Yang; Declaration
of Kelsey A. Webber; Declaration of Wendie
Brandt; [Proposed] Order]*

Date: May 5, 2023
Time: 9:00 a.m.
Department: 25

Complaint Filed: March 18, 2021

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

2 **PLEASE TAKE NOTICE** that on May 5, 2023, at 9:00 a.m., or as soon thereafter as the matter
3 may be heard in Department 25 of the above-entitled court located at 720 9th Street, Sacramento,
4 California 95814, Plaintiff, Wendie Brandt, will and hereby does move for an Order:

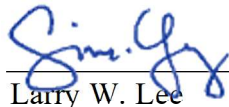
- 5 1. approving the Joint Stipulation of Class Action and PAGA Settlement (the “Agreement”)
6 attached as Exhibit 1 to the concurrently filed Declaration of Simon L. Yang;
- 7 2. conditionally certifying the following Class for settlement purposes only: all current and
8 former non-exempt employees of Defendant, Reeves. D.D.S. and Lavalley, D.D.S., a Dental
9 Corporation d/b/a Kids Care Dental & Orthodontics in the State of California at any time
10 from September 16, 2016, through September 26, 2022 (the “Class Period”) who did not sign
11 a separation agreement during the Class Period.
- 12 3. appointing Plaintiff as the Class Representative and Larry W. Lee and Simon L. Yang of
13 Diversity Law Group, P.C. and Kelsey A. Webber of Webber Law Group as Class Counsel;
- 14 4. approving the Agreement on a preliminary basis and finding that it, the total Gross
15 Settlement Amount in the amount of \$800,000.00, the amounts requested for the
16 Administration Costs, Attorneys’ Fees and Costs Award, Class Representative Award,
17 PAGA Penalty Fund, and the allocation of payments to Class Members appear to be within
18 the range of reasonableness for a settlement that could ultimately be given final approval;
- 19 5. appointing Phoenix Settlement Administrators as the Administrator;
- 20 6. approving the distribution of the Notice of Class Action Settlement attached as Exhibit A to
21 the Agreement; and
- 22 7. scheduling a Final Approval Hearing.

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

1 The Motion is based on this notice, the memorandum of points and authorities, the Agreement
2 and proposed Notice of Class Action Settlement, the supporting Declarations of Larry W. Lee, Simon L.
3 Yang, Kelsey A. Webber, and Wendie Brandt, all pleadings and papers on file herein, and any further
4 oral and documentary evidence as may be presented before or at the hearing of this matter.

5 DATED: April 12, 2023

DIVERSITY LAW GROUP, P.C.

6 By: 
7 Larry W. Lee
8 Simon L. Yang
9 Attorneys for Plaintiff
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MEMORANDUM OF POINTS AND AUTHORITIES

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1 **SUMMARY OF MOTION**

2 On a classwide basis and as a proxy for the State of California pursuant to the Labor Code
3 Private Attorneys General Act of 2004 (“PAGA”), Plaintiff, Wendie Brandt, sues Defendant, Reeves.
4 D.D.S. and Lavalley, D.D.S., a Dental Corporation d/b/a Kids Care Dental & Orthodontics, for alleged
5 underpayments of various wages, unreimbursed business expenses, and noncompliant wage statements.

6 Based on their own independent investigations and evaluations, the Parties have agreed to a
7 classwide resolution. The Joint Stipulation of Class Action Settlement (“Agreement”), which is attached
8 as Exhibit 1 to the concurrently filed Declaration of Simon L. Yang, requires Defendant to pay
9 \$800,000.00 for the classwide settlement of claims through September 26, 2022. Plaintiff and her
10 counsel believe the settlement is an exceptional result for the Class. On average, each of approximately
11 1,277 Class Members will receive nearly about \$347.95 (*after* all requested payments from the Gross
12 Settlement Amount). Significantly, the entire settlement amount is non-reversionary; none of the
13 settlement amount will revert back to Defendant.

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

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

21 **RELEVANT BACKGROUND**

22 On March 18, 2021, Plaintiff initiated this class action on behalf of a putative class of current
23 and former non-exempt employees of Defendant in the State of California. Declaration of Simon L.
24 Yang (“Yang Decl.”) ¶ 2. On April 19, 2021, Plaintiff filed an amended complaint to also allege PAGA
25 claims. *Id.* Based on discovery, Plaintiff met and conferred with Defendant about a second amended
26 complaint. The operative complaint pursues class action and representative action claims for
27 Defendant’s alleged failures to pay all minimum wages and overtime, to pay an additional hour of
28

1 regular rate wages for failures to provide meal and rest breaks, to furnish accurate itemized wage
2 statements, and to reimburse business expenses. *Id.*

3 Throughout the litigation, Plaintiff and Defendant met and conferred about the alleged claims.
4 Yang Decl. ¶ 3. Defendant provided Plaintiff with information about various defenses, including for
5 example some based on arbitration agreements and others based on factual disputes regarding Plaintiff's
6 allegations. *Id.* The Parties engaged in an extensive exchange of information pursuant to informal
7 methods to assist the Parties in exploring the possibility of a mediated resolution. *Id.* Plaintiff continued
8 investigating the alleged claims and also analyzed any defenses raised by Defendant. *Id.* Plaintiff met
9 and conferred with Defendant regarding additional claims based on Plaintiff's investigation. *Id.*
10 Defendant agreed to informally provide information related to the additional claims as well. *Id.*
11 Defendant's willingness to engage in extensive informal discovery enabled Plaintiff to evaluate the
12 extent of Defendant's potential liability. *Id.* Ultimately, the Parties agreed to schedule a mediation. *Id.*

13 On September 26, 2022, the Parties attended a mediation with Tripper Ortman, an experienced
14 mediator knowledgeable of both the wage and hour laws and class and representative action claims at
15 issue. Yang Decl. ¶ 4. With the mediator's assistance and based upon the mediator's proposal, the
16 Parties were able to agree to settlement terms, which were negotiated in light of all known facts and
17 circumstances—including the uncertainty associated with litigation, the risks of significant delay, and
18 numerous potential appellate issues. *Id.* The settlement terms were memorialized in the Joint Stipulation
19 of Class Action and PAGA Settlement. *Id.* Ex. 1 (the "Agreement").

20 SUMMARY OF PROPOSED SETTLEMENT

21 I. Class Definition

22 The proposed settlement class of "Class Members" includes all current and former non-exempt
23 employees of Defendant in the State of California during the Class Period who did not sign a separation
24 agreement during the Class Period. Agreement § 1.5. The Class Period is from September 16, 2016,
25 through September 26, 2022. *Id.* § 1.7. There are approximately 1,277 Class Members. *Id.* § 1.5.¹

26
27 ¹ The settlement also defines a group of PAGA Employees, which includes all current and former non-
28 exempt employees of Defendant in the State of California during the PAGA Period. Agreement § 1.17.
The PAGA Period is from September 16, 2019, through September 26, 2022. *Id.* § 1.18.

II. Settlement Payments

The Agreement requires Defendant to pay a non-reversionary Gross Settlement Amount of \$800,000.00. Agreement § 5.1. From the Gross Settlement Amount, the Parties will request that the Court approve payments for a PAGA Penalty Fund and LWDA Payment, Administration Costs, Attorneys' Fees and Costs Award, and Class Representative Award. *Id.* § 5.1.1-4. Except for these allocations requiring Court approval, the entirety of the remainder of the Gross Settlement Amount will be allocated to Class Members. *Id.* § 5.2. It is expected that, on average, each Class Member would be allocated \$347.95 (*after* all requested payments from the Gross Settlement Amount). Yang Decl. ¶ 7.

III. Released Claims

Plaintiff is subject to a general release (apart from currently pending claims). Agreement § 6.3. Settlement Class Members release any and all claims “that were pled in the operative complaint in the Action, or which could have been pled in the operative complaint in the Action based on the factual allegations therein, that arose during the Class Period.” *Id.* § 6.1. The LWDA releases any and all PAGA claims that are based on the Labor Code violations pled in the operative complaint in the Action or which could have been pled in the operative complaint in the Action based on the factual allegations therein, that arose during the PAGA Period. *Id.* § 6.2.

LEGAL STANDARD

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

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

Manual for Complex Litigation (Third) § 30.41.

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

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

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

13 4 Newberg on Class Actions, at § 11.26. Indeed, “pre-certification settlements are routinely approved if
14 found to be fair and reasonable.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001);
15 accord *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1803 (1996) (explaining that a settlement
16 before any “adversary certification” may still be approved if a court is satisfied that it is “fair, adequate
17 and reasonable”).

18 DISCUSSION

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

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

21 A trial court must determine and approve a class action settlement is fair to “prevent fraud,
22 collusion or unfairness to the class” through settlement and dismissal of the class action.” *Consumer*
23 *Advocacy Grp., Inc. v. Kintetsu Enters. of America*, 141 Cal. App. 4th 46, 60 (2006). Courts presume the
24 absence of fraud or collusion in the negotiation of settlement unless there is evidence to the contrary.
25 *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars Steel Corp. v. Continental Illinois Nat’l*
26 *Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In re Chicken Antitrust Litig.*, 560 F. Supp. 957,
27 962 (N.D. Ga. 1980). Indeed, a presumption of fairness exists where (i) the settlement is reached
28 through arm’s length bargaining; (ii) investigation is sufficient to allow counsel and the court to act

intelligently, (iii) counsel is experienced in similar litigation, and (iv) the percentage of objectors is small. *Wershba*, 91 Cal. App. 4th at 245 (citing *Dunk*, 48 Cal. App. 4th at 1802).

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

Here, both Plaintiff's counsel and Defendant's counsel have a great deal of experience in wage and hour class action litigation. Plaintiff's counsel have extensive class action and litigation experience and have been approved as class counsel in numerous wage and hour class actions. Declaration of Larry W. Lee ("Lee Decl.") ¶¶ 5-8; Yang Decl. ¶¶ 9-13; Declaration of Kelsey A. Webber ("Webber Decl.") ¶¶ 3-8. Each side has apprised the other of their respective factual contentions and legal theories, and each side has considered the other's contentions and theories. Defendant provided its written policies and a sample of class pay and time data, among other things—enabling Plaintiff to assess the value of Class Members' claims and further enabling negotiations to take place between the Parties. Yang Decl. ¶ 3. As further discussed below, the settlement is the result of extensive arm's length negotiations between the Parties and their counsel. *Id.* ¶ 9.

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

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

3 The Agreement requires Defendant to pay \$800,000.00—or approximately \$626.47 gross, on
4 average, per Class Member. Yang Decl. ¶ 5. This amounts to approximately 9.45% of Defendant’s
5 potential liability and is an excellent result for Class Members. *Id.*

6 To wit, while Plaintiff admits that the alleged underpaid wages, overtime, and additional hours of
7 regular rate wages amount to comparatively smaller sums, Plaintiff contends that such underpayments
8 result in Labor Code section 203 penalties of up to 30 days wages. Yang Decl. ¶ 5.² Plaintiff also
9 contends that class claims under Section 226(e) result in a \$50 penalty for the first non-compliant wage
10 statement to each Class Member and a \$100 penalty for each additional non-compliant wage statement
11 to the Class Member, up to a maximum of \$4,000 per Class Member. *Id.* Plaintiff additionally contends
12 that Defendant would be liable for actual Class Member expenses under Section 2802. *Id.* Moreover,
13 under PAGA, Plaintiff contends that Defendant also would be liable for an additional \$100 per pay
14 period under Section 2699(f). *Id.*

15 Defendant contested the merits and denied it was liable at all. Yang Decl. ¶ 6. Moreover, even if
16 Plaintiff prevailed on the merits, Defendant contested the extent of liability. *Id.* For example, with
17 respect to liability for underpaid wages, overtime, and additional hours of regular rate wages, Defendant
18 contended that it would not be subject to Section 203 penalties, based on a good faith defense. *Id.*
19 Likewise, with respect to wage statement liability, Defendant contended that liability under Section
20 226(e) would be subject to additional defenses requiring proof of injuries resulting from knowing and
21 intentional violations. *Id.* Finally, with respect to PAGA penalties, Defendant contended that PAGA
22 penalties in any event be subject to discretionary reductions. *Id.*

23 While the Parties disagree on the application of the law to the facts, each Party recognized in
24 negotiations that, if taken to trial, the other Party would at least have reasonable arguments, such that the
25 Gross Settlement Amount to which the Parties ultimately agreed was reasonable. Yang Decl. ¶ 7.
26 Ultimately, based on data at mediation, Plaintiff argued that the potential total recovery amounted to
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² Except as otherwise noted, all “Section” references are to the Labor Code.

1 approximately \$8,467,366.56—which included approximately \$3,941,242.20 under Section 203,³
2 approximately \$2,259,800.00 under Section 226(e),⁴ approximately \$6,524.36 under Section 2802,⁵ and
3 approximately \$2,259,800.00 under Section 2699(f).⁶ *Id.* Plaintiff contends that the Gross Settlement
4 Amount of \$800,000.00—approximately 9.45% of the potential total recovery of \$8,467,366.56—is an
5 excellent result. *Id.*

6 Numerous courts have held that gross settlement amounts of less than 20%—and as little as
7 8%—of a defendant’s potential exposure are fair and reasonable. *See, e.g., In re Mego Fin. Corp. Secs.*
8 *Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (holding that class action settlement recovering 16% of
9 potential exposure was fair and reasonable; “It is well-settled law that a cash settlement amounting to
10 only a fraction of the potential recovery does not per se render the settlement inadequate or unfair.
11 Rather, the fairness and the adequacy of the settlement should be assessed relative to risks of pursuing
12 the litigation to judgment.”); *Bellinghausen v. Tractor Supply Co.*, 2015 WL 1289342, at *6 (N.D. Cal.
13 Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of the
14 defendant’s potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, 2014 WL 2472316, at *3
15 (C.D. Cal. May 30, 2014) (acknowledging risks of continued litigation and granting preliminary
16 approval of wage and hour class action settlement obtaining 9.1% of projected damages); *Villegas v.*
17 *J.P. Morgan Chase & Co.*, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class
18 action settlement of approximately 15% of the potential recovery was fair and reasonable).

19 Although Plaintiff and her counsel are confident that litigation of the claims would result in a
20 classwide judgment against Defendant, they recognize the inherent risks in litigation, including the
21 specific risks that class certification could be denied, liability could not be established at trial, or the
22 applicable law could change. Yang Decl. ¶ 8. The settlement for each participating Class Member is fair,
23 reasonable, and adequate, given the inherent risks of litigation, as well as the potential for appeals and
24 the costs of pursuing litigation. *Id.*

25
26 ³ 815 former employees x 7.6 hours per day x \$21.21 per hour x 30 days.

27 ⁴ 22,598 wage statements x \$100 per wage statement.

28 ⁵ This is based on Class Members’ actual purchase histories from Defendant’s store.

⁶ 22,598 pay periods x \$100 per pay period.

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

6 **2. The Settlement Releases Are Appropriate.**

7 As discussed above, only Plaintiff is subject to a general release. Agreement § 6.3. Settlement
8 Class Members are only subject to a release of claims during the Class Period “that were pled in the
9 operative complaint in the Action, or which could have been pled in the operative complaint in the
10 Action based on the factual allegations therein.” *Id.* § 6.1. The LWDA releases any and all PAGA
11 claims during the PAGA Period that are based on the Labor Code violations pled in the operative
12 complaint in the Action or which could have been pled in the operative complaint in the Action based on
13 the factual allegations therein. *Id.* § 6.2.

14 Plaintiff alleged targeted claims in the Action, and any settlement releases also are specifically
15 tailored to the facts alleged. The settlement releases are thus appropriate. *E.g., Carter v. City of Los*
16 *Angeles*, 224 Cal. App. 4th 808, 820 (2014) (“A general release—covering ‘all claims’ that were or
17 could have been raised in the suit—is common in class action settlements.”).

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

19 A court has broad discretion in approving appropriate class notice. Code Civ. Proc. § 1781; *Cartt*
20 *v. Superior Court*, 50 Cal. App. 3d 960, 973-74 (1975). Here, the Agreement requires Defendant to
21 provide to the Administrator each Class Member’s last known address, among other information (the
22 “Class Data”), within 14 business days of a Preliminary Approval Order. Agreement § 3.2. Within seven
23 days of receipt of the Class Data, the Administrator would mail the Notice of Class Action Settlement
24 (“Class Notice”) to each Class Member to provide notice of settlement via First Class U.S. Mail, using
25 the last known address for each Class Member, based on the Class List. *Id.* § 3.3. Any Class Notice
26 returned to the Administrator as undeliverable would be sent promptly via First Class U.S. Mail to the
27 forwarding address affixed thereto. *Id.* If no forwarding address is provided, the Administrator would
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promptly attempt to determine the correct address using a single skip-trace search and then promptly send a single re-mailing. *Id.*

The Class Notice accurately informs Class Members of the settlement and their rights. Agreement Ex. A. For example, Class Members are informed of their rights to object or to opt out. The Class Notice is adequate as it “present[s] a fair recital of the subject matter and proposed terms” of the settlement. *E.g., Mendoza v. United States*, 623 F.2d 1338, 1351 (9th Cir. 1980) (quoting *Marshall v. Holiday Magic*, 550 F.2d 1173, 1177 (9th Cir. 1977)).

C. The Requested Payments and Allocations Are Reasonable.

The Agreement provides for a Gross Settlement Amount of \$800,000.00. Agreement § 5.1. From the Gross Settlement Amount, attorneys’ fees will be no more than 33⅓% of the Gross Settlement Amount (or \$266,666.67) and litigation costs of up to \$20,000. *Id.* § 5.1.1. The Class Representative Award will be no more than \$10,000.00. Agreement § 5.1.2. Administration Costs will be no more than \$14,000.00. *Id.* § 5.1.3. The PAGA Penalty Fund will be \$60,000.00, and pursuant to statute, 75% of the PAGA Penalty Fund (or \$45,000.00) would constitute the LWDA Payment, and 25% of the PAGA Penalty Fund shall be payable to PAGA Employees on a pro rata basis. *Id.* §§ 5.1.4, 5.3.1.⁷

1. Each Class Member, on Average, Would Receive Nearly \$350.

It is expected that, on average, each Class Member would be allocated approximately \$347.95 (*after* all requested payments from the Gross Settlement Amount). Yang Decl. ¶ 7. The amount paid on average to each Class Member may increase, depending on how many Class Members opt out of the class action settlement. *Id.* The amount actually paid to any Class Member may increase or decrease depending on his or her number of relevant workweeks during the Class Period. *Id.*

After deducting any approved payments for an Attorneys’ Fees and Costs Award, Class Representative Award, Administration Costs, and PAGA Penalty Fund from the Gross Settlement Amount, the entire remainder would be allocated among Settlement Class Members on a pro rata basis, based on the number of relevant workweeks they worked. Agreement § 5.3.2. 10% of these allocations shall be classified for tax reporting purposes as wages. *Id.*

⁷ Plaintiff files this motion with the Court and with the LWDA via online submission. Yang Decl. ¶ 14.

1 None of the settlement funds will revert to Defendant. Agreement § 5.1. The principal for any
2 uncashed checks (upon the expiration date) would escheat to the State Controller Unclaimed Property
3 Fund in the name of the Class Member. *Id.* § 5.6.

4 **2. The Requested Attorneys' Fees and Costs Award Is Reasonable.**

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

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

22 Attorneys' fees awards of 35% of the fund are within the expected range in the "market in legal
23 services. *See Fitzpatrick, An Empirical Study of Class Action Settlements and Their Fee Award*, 7 J.
24 *Empirical Leg. Stud.* 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that
25 "[m]ost fee awards were between 25 percent and 35 percent"). An attorneys' fees award of 35% of the
26 fund mimics the market and "is supported by the fact that typical contingency fee agreements provide
27 that class counsel will recover 33% if the case is resolved before trial and 40% if the case is tried."
28 *Fernandez v. Victoria Secret Stores LLC*, 2008 WL 8150856, at *16 n.59 (C.D. Cal. July 21, 2008)

(citing Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-Competitive Fees* (Fall 2003) 81 Wash U. L. Q. 653, 659 n. 11). Indeed, an attorneys' fees award of 35% of the fund is consistent with "empirical studies [that] show that ... fee awards in class actions average around one-third of the recovery." *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008).

Here, Plaintiff will request an attorneys' fees award of 33⅓% of the Gross Settlement Amount. Further, the Parties have agreed to reimbursement of Class Counsel's litigation costs. Class Counsel have incurred costs at their own risk, for example, for filing the lawsuit, service of process, mediation fees, and payment of other litigation related costs.

3. The Proposed Class Representative Award Is Reasonable.

Proposed Class Representative Wendie Brandt requests a modest Class Representative Award of \$10,000.00. The request is reasonable in light of the general release (apart from pending claims) that the Agreement requires of Plaintiff but not of any other Class Member. Independently, the request is appropriate in recognition of Plaintiff's efforts on behalf of the Class. Declaration of Wendie Brandt ("Brandt Decl.") ¶¶ 2-3.

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

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

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

2 Phoenix Settlement Administrators, a well-recognized class action settlement administrator, has
3 quoted Administration Costs not to exceed \$14,000.00 to send notices and administer the settlement.
4 Agreement §§ 3.1, 5.1.3. The Administration Costs are reasonable and should be approved.

5 **II. The Class Meets All Requirements for Certification.⁸**

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

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

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

20 Class Members are identifiable from Defendant’s records. The class definition “is precise,
21 objective and presently ascertainable.” *Sevidal v. Target Corp.*, 189 Cal. App. 4th 905, 919 (2010).
22 Indeed, there are approximately 1,277 Class Members. Agreement § 1.5. Numerosity thus is sufficiently
23 established. *E.g., Rose v. City of Hayward*, 126 Cal. App. 3d 926, 934 (1981) (stating that “[n]o set
24 number is required as a matter of law for the maintenance of a class action” and citing examples in
25 which classes of 10—*Bowles v. Superior Court*, 44 Cal. 2d 574 (1955)—and of 28—*Hebbard v.*
26 *Colgrove*, 28 Cal. App. 3d 1017 (1972)—were upheld).

27
28

⁸ Defendant expressly reserve its objections to class certification outside of the settlement context.

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

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

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

7 Plaintiff alleges that Defendant, as a matter of their corporate policy, practice, or procedure,
8 underpaid sick pay and overtime, failed to provide meal and rest periods, and furnished unlawful wage
9 statements. With respect to typicality, Plaintiff—exactly like other members of the Class—was paid on
10 an hourly basis as a non-exempt employee. Brandt Decl. ¶ 2. Plaintiff was required to purchase work
11 uniform with the Company’s logo and to maintain and clean the work uniform on her own time and at
12 her own expense. *Id.* Plaintiff was not reimbursed for the costs of purchasing, maintaining, or cleaning
13 the work uniform. *Id.* Plaintiff also was paid pursuant to the same pay policies as others.

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

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

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

26 With respect to adequate representation, Plaintiff does not have any interests adverse to the
27 Class, and no such issues have been raised or presented. Brandt Decl. ¶ 3. Plaintiff has taken all
28 necessary steps to represent the interests of the Class, including by providing information and

documents to Class Counsel, making herself available to discuss the claims, and answering any questions. *Id.* Moreover, Plaintiff is willing to devote her time to the lawsuit for the benefit of the Class and to act as a fiduciary for the Class. *Id.* For such reasons, Plaintiff has adequately represented the Class Members and will continue to do so.

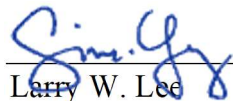
From the inception of the case, Class Counsel has zealously represented the interests of the Class. The settlement was obtained for the benefit of the Class, as opposed to the individual Class Representative. Class Counsel have been approved as class counsel in a number of prior cases, have litigated numerous other class action cases, and are competent to represent the Class. Lee Decl. ¶¶ 2-9; Yang Decl. ¶¶ 9-13; Webber Decl. ¶¶ 3-8.

CONCLUSION

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

DATED: April 12, 2023

DIVERSITY LAW GROUP, P.C.

By: 

Larry W. Lee

Simon L. Yang

Attorneys for Plaintiff

1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3
4 STATE OF CALIFORNIA]
5]ss.
6 COUNTY OF LOS ANGELES]

7 I am employed in the County of Los Angeles, State of California. I am over the age of 18
8 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250,
9 Los Angeles, California 90071.

10 On April 13, 2023, I served the following document(s) described as:

- 11 **1. PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY**
12 **APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF**
13 **POINTS AND AUTHORITIES IN SUPPORT**
14 **2. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S MOTION**
15 **FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
16 **3. DECLARATION OF SIMON L. YANG IN SUPPORT OF PLAINTIFF'S**
17 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**
18 **SETTLEMENT**
19 **4. DECLARATION OF KELSEY A. WEBBER IN SUPPORT OF PLAINTIFF'S**
20 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**
21 **SETTLEMENT**
22 **5. DECLARATION OF WENDIE BRANDT IN SUPPORT OF PLAINTIFF'S**
23 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**
24 **SETTLEMENT**
25 **6. [PROPOSED] ORDER GRANTING MOTION FOR APPROVAL OF CLASS**
26 **ACTION SETTLEMENT**

27 on the interested parties in this action as follows:

28 Maureen K. Bogue Noah Levin PACIFIC EMPLOYMENT LAW, INC. 260 California Street, Suite 500 San Francisco, CA 94111 maureen@pacificemploymentlaw.com noah@pacificemploymentlaw.com <i>Attorneys for Defendant Kids Care Dental & Orthodontics</i>	Kelsey A. Webber Shaelyn A. Stewart Webber Law Group, P.C. 1610 R. Street, Suite 300 Sacramento, California 95811 Kelsey.Webber@webberlawgroup.com Shaelyn.Stewart@webberlawgroup.com <i>Attorneys for Plaintiff</i>
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BY ELECTRONIC MAIL: by personally sending a true and correct copy of
the above-described document(s) to the party(ies) listed above or on the attached mailing list
from the e-mail server diversitylaw.com, to the electronic transmission address of the recipient(s)

1 indicated above or on the attached mailing list. I certify that said electronic transmission was
2 completed and that all pages were received by the party(ies) identified herein or on the attached
3 mailing list.

4 I declare under penalty of perjury under the laws of the State of California that the above
5 is true and correct. Executed on April 13, 2023, at Los Angeles, California.

6 
Erika Mejia