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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

RICHA AHUJA, individually, on behalf of
herself and all other similarly situated
employees,

Plaintiff,

vs.

INSURANCE MEDICAL SERVICES,
INC, AND DOES 1-5

Defendants.

Case No. RG21106403

Assigned For All Purposes to Judge Brad
Seligman, Department 23

Reservation No. 309789114219

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

[Filed concurrently with Notice of Motion and
Motion for Preliminary Approval of Class Action
Settlement; Declaration of Alexei Kuchinsky; and
[Proposed] Order Granting Preliminary Approval
of Class Action Settlement]

Hearing Date: November 8, 2022
Time: 3:00 p.m.
Dept.: 23, Fourth Floor,
Judge: Hon. Brad Seligman

Complaint Filed: July 21, 2021
Trial Date: None Set

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1 **I. INTRODUCTION**

2 On behalf of herself and similarly situated individuals, plaintiff Richa Ahuja (“Plaintiff”)
3 hereby submits this motion seeking preliminary approval of a proposed settlement involving
4 class-wide and representative causes of action against Defendant Insurance Medical Services,
5 Inc. (“IMS” or Defendant”). The parties executed a Stipulation and Class Settlement Agreement¹
6 (“Settlement Agreement”) providing for payment of \$75,000 to 24 Class Members.

7 The proposed Settlement meets the standards for preliminary approval. It is a non-
8 reversionary class settlement in which the Settlement Class Members do not need to file a claim
9 to receive a settlement payment because all of them will automatically receive a payment unless
10 they affirmatively opt out. There are approximately 24 Class Members, and the average payment
11 to participating Class Members is projected to be approximately \$1,290. This proposed
12 Settlement is a particularly favorable result given the class claims arise from a project-based
13 work where some class members worked only a few shifts per month.

14 Plaintiff now moves this Court for an order preliminarily approving the parties’
15 Settlement Agreement. The Court should issue an order (1) preliminarily approving the
16 Settlement Agreement as being within the range of acceptable settlements; (2) provisionally
17 certifying the Class under California Rules of Court, Rules 3.764(e) and 3.769(d) for settlement
18 purposes only; (3) preliminarily approving the form, manner, and content of the Class Notice; (4)
19 appointing Plaintiff as the Class Representative; (5) appointing Kuchinsky Law Office, P.C. as
20 counsel for the Class (“Class Counsel”); and (6) setting the date and time of the final approval
21 hearing.

22 **II. FACTUAL AND PROCEDURAL BACKGROUND**

23 This is a wage-and-hour class action brought by Plaintiff on behalf of herself and the
24 class of all other similarly situated current and former “misclassified employees” of Defendant
25 for various Labor Code violations. Plaintiff also seeks to recover civil penalties under the Private
26 Attorneys General Act of 2004, California Labor Code section 2698 *et. seq.* (“PAGA”).

27 _____
28 ¹ The Settlement Agreement is attached as Exhibit 1 to the Declaration of Alexei Kuchinsky (filed
herewith).

(Kuchinsky Decl. ¶ 2.) The gravamen of Plaintiff’s complaint is that Defendant misclassified Plaintiff and other mobile examiners as independent contractors and, as a result, failed to comply with certain wage-and-hour requirements of California Labor Code.

A. Nature of the Action

IMS is a small California corporation headquartered in Fremont that provides lead generation for mobile examiners and facilitates pre-underwriting services, medical records retrieval, risk assessment services, and other services for life insurance companies. (Kuchinsky Decl. ¶ 3) In January 2020, Defendant hired Plaintiff Ahuja as a mobile examiner to perform health exams for individuals who applied for life or health insurance. Her duties included drawing blood from patients, checking blood pressure, measuring body mass index, and registering patients. She worked on a project-based basis. For each exam, she was paid a flat fee based on the type of exam performed.

On July 21, 2021, Plaintiff filed a class action in Alameda Superior Court pursuant to California Code of Civil Procedure Section 382, on behalf of all persons similarly situated and defined as:

All persons who are or have been employed by Defendants as mobile examiners, field technicians, and/or similar positions related to performing mobile exams or similar services, and who were improperly classified as “independent contractors” in California at any time commencing four years prior to the filing of this Complaint, to the final disposition of this case. (Complaint ¶42)

Plaintiff’s complaint seeks to recover (1) minimum wage for all hours worked; (2) unreimbursed work-related expenses; (3) unlawful deductions; (4) waiting time penalties; (5) statutory penalties for failure to provide accurate wage statements; (6) and all applicable civil penalties. Plaintiff alleges that due to misclassification, IMS failed to pay Plaintiff and other mobile examiners minimum wage for non-exam “non-productive” work, failed to reimburse for work-related expenses, including vehicle related expenses. Plaintiff also claims that IMS made deductions from Plaintiff’s compensation for administrative fees. (Kuchinsky Decl. ¶ 5)

Defendant denies any liability and maintains that all mobile examiners were properly classified as independent contractors because they are covered by at least two statutory

1 exemptions from the ABC test (*i.e.*, referral agency exemption, Cal. Lab. Code §2777, and
2 underwriting inspections Cal. Lab. Code §2783).

3 Prior to filing her complaint, on March 30, 2021, Plaintiff sent a letter to the California
4 Labor and Workforce Development Agency (“LWDA”) and Defendant (“PAGA Notice”), in
5 accordance with the requirements of Labor Code section 2699.3(a), to provide notice of alleged
6 violations. (Kuchinsky Decl. ¶ 6)

7 **B. Investigation and Settlement Negotiations**

8 In June 2020, due to the small class size of only 24 potential class members, the Parties
9 agreed to stay all discovery and, instead, focus on a private settlement discussion. As part of
10 negotiations, Defendant agreed to provide Plaintiff’s counsel with class data to evaluate the full
11 value of each class claim. (Kuchinsky Decl. ¶7) Specifically, Defendant disclosed to Plaintiff’s
12 counsel each class member’s service period, number of jobs performed, and number of
13 workdays. *Id.* Before engaging in any settlement discussions, Plaintiff’s counsel reviewed and
14 analyzed class data, as well as related service agreements, invoices, and pay records of Plaintiff.
15 (*Id.* at ¶ 8)

16 From February 2022 to July 2022, the Parties attempted to resolve this matter through
17 continued arms-length negotiations. (Kuchinsky Decl. ¶ 9) They made considerable headway
18 through robust discussions of the risks and rewards of continued litigation, risks associated with
19 proving misclassification liability and certifying class, and made several rounds of offers and
20 counterproposals. *Id.* Ultimately, Plaintiff and IMS reached a tentative settlement pursuant to
21 which IMS agreed to pay \$75,000.

22 **III. TERMS OF THE PROPOSED SETTLEMENT AGREEMENT**

23 The essential Settlement terms are as follows:

24 **A. Conditional Certification of the Class**

25 The Parties have agreed to a conditional certification of the Class for settlement purposes
26 only, defined as:

27 all persons who worked for Defendant as mobile examiners, field
28 technicians, and/or similar positions related to performing mobile
exams or similar services, and who were classified as “independent

1 contractors” in California at any time commencing four years prior
2 to the filing of this Complaint through preliminary approval.
3 (Kuchinsky Decl., Ex. 1, ¶ 5, (hereinafter “Settlement”))

4 It is estimated there are 24 Class Members.

5 **B. Settlement Sum**

6 The Parties have agreed to settle the lawsuit for the Settlement Sum of \$75,000. The
7 Settlement Sum is to be paid by Defendant and is the sole and maximum amount that Defendant
8 shall be required to pay under this Agreement, including attorneys’ fees and costs, PAGA civil
9 penalties, incentive payments to the Class Representative, and settlement administration costs.
10 (Settlement, ¶¶ 17, 22, 26, 57, 64, and 65)

11 **C. Distribution of the Net Class Settlement Fund**

12 This is a non-reversionary class settlement in which the Net Class Settlement Amount
13 will be distributed pro rata among the Settlement Class Members who do not opt out based on
14 the number of qualified jobs performed during the Class Period. (Settlement, ¶ 59.) The
15 Settlement Class Members will not need to file a claim to receive the class settlement payment.
16 Any check that is not negotiated within 180 days of being mailed to a Class Member or that is
17 undeliverable will be sent to the *cy pres* beneficiary – Centro Legal de la Raza. (*Id.* ¶ 62)

18 **D. Attorneys’ Fees, Costs, and Class Representative Incentive Award**

19 Subject to the Court’s approval, at the Final Approval Hearing, Plaintiff will apply for an
20 award of Class Counsel’s fees in the amount of \$25,000 (or up to one third of the Settlement
21 Sum), litigation costs up to \$3,000 (Settlement, ¶64), and a class representative incentive
22 payment of up to \$7,500 to Plaintiff for her additional participation in the lawsuit (*Id.* Ex. 1, ¶
23 65). Any amount of attorneys’ fees, costs, and incentive award requested by Class Counsel but
24 unapproved by the Court will be allocated to the Net Settlement Amount. (*Id.*)

25 **E. Settlement Administration**

26 The parties have agreed that the cost of administering the Settlement will be deducted
27 from the Settlement Sum. The settlement administrator mutually selected by the parties; Phoenix
28 Settlement Administrators has provided the parties with an anticipated cost of administration of
the Settlement of approximately \$4,000. (Settlement, ¶ 64, Ex. 2.)

1 **F. PAGA Civil Penalties**

2 The Settlement Agreement apportions \$6,000 from the Settlement Sum to civil penalties
3 recoverable under the PAGA, Labor Code § 2699, et seq., with 75% to be paid to California’s
4 Labor and Workforce Development Agency (“LWDA”) and 25% to be distributed among all
5 Settlement Class Members (regardless of whether they opt out) pro rata based on the gross
6 compensation earned during the Class Period. (Settlement, ¶ 26)

7 **G. Released Claims**

8 Under the proposed Class Settlement, the release by Class Members is limited to those
9 claims that were alleged or could have been alleged in the Complaint.

10 **1. Class Release**

11 Paragraph 36 of the Settlement defines “Released Class Claims” as follows:

12 any and all claims, known or unknown, that were asserted or that could have
13 been asserted in any and/or all of the complaints in the Action and/or the PAGA
14 Letter (including any subsequently amended complaints or letters), for work
15 performed during the Class Period, including, but not limited to, claims for: (1)
16 failure to pay minimum wage for all hours worked (Cal. Lab. Code §§ 1194,
17 226.2, 1197.1, 2699 and the applicable Wage Order); (2) failure to reimburse
18 work-related expenses (Cal. Lab. Code §2802, and 2699 and the applicable Wage
19 Order); (3) failure to provide accurate itemized wage statements (Cal. Lab.
20 Code §§ 226, 226.3, and 2699 and the applicable Wage Order, Sections 7); (4)
21 claim for unlawful deductions (Cal. Lab. Code §§ 221-224, 225.5, and 2699 and
22 the applicable Wage Order, Sections 8); (5) failure to pay earned wages upon
23 discharge - waiting time penalties (Cal. Lab. Code §§201-203, and 2699); ((6)
24 PAGA Claim release is below); (7) Willful Misclassification as Independent
Contractors (Cal. Lab. Code § 226.8 (a-c); (8) unfair competition related to any
or all of the foregoing; (9) potential claims reasonably arising out of or
reasonably relating to the same set of operative facts and/or factual allegations
pled therein; (10) any unpaid wages or compensation related to any or all of the
foregoing, which are based on the facts alleged in the Actions; (11) restitution
related to any or all of the foregoing which are based on the facts alleged in the
Actions; and (12) any penalties, including statutory or civil penalties, related to
any or all of the foregoing. (Settlement, ¶ 36.)

25 **2. PAGA Release**

26 Under this Settlement, each Class Member will also release all PAGA claims, which are
27 defined as:
28

1 all claims for civil penalties under the Private Attorneys General Act, California
2 Labor Code section 2698, et. seq. (and any related interest, attorneys' fees, and/or
3 costs), that were asserted or that could have been asserted any and/or all of the
4 complaints in in the Action and/or the PAGA Letter (including any subsequently
amended complaints or letters), arising out of or related to services to or work
performed for Defendant during the PAGA Period. (Settlement, ¶ 37.)

5 **IV. THE LEGAL STANDARD FOR PRELIMINARY APPROVAL OF THE** 6 **CLASS ACTION AND PAGA SETTLEMENT**

7 **A. Approval of the Class Settlement**

8 A class action may not be dismissed, compromised, or settled without approval of the
9 Court. *See* Civ. Code § 1781(f); Cal. R. Ct. 3.769. Proper review and approval of a class action
10 settlement requires three steps: (1) preliminary approval of the proposed settlement after
11 submission of a written motion; (2) dissemination of mailed and/or published notice of the
12 settlement to all class members; and (3) a formal fairness hearing, or final settlement approval
13 hearing, at which class members may be heard regarding the settlement, and at which evidence
14 and argument concerning the fairness, adequacy, and reasonableness of the settlement is
15 presented. Rule of Court 3.769; *Manual for Complex Litigation* (4th ed. 2004) § 21.61. This
16 procedure protects class members' procedural due process rights and allows the Court to perform
17 its role as the guardian of class members' interests. *See Newberg on Class Actions* (4th ed. 2002)
18 §§ 11.22 et. seq.

19 **B. Approval of the Release of a PAGA Claim**

20 The settlement of a PAGA claim requires court approval pursuant to the operative PAGA
21 statute, which states that the "[t]he superior court shall review and approve any settlement of any
22 civil action filed pursuant to this part." *See* Cal. Lab. Code § 2699(l).

23 In reviewing a PAGA settlement, the courts must determine whether the proposed
24 settlement is "fair, reasonable, and adequate in relation to "PAGA's purposes to remediate
25 present labor law violations, deter future ones, and to maximize enforcement of state labor laws."
26 maximize enforcement of state labor laws. *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56, 60
27 (2021).
28

1 **V. CONDITIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE**

2 Class certification is appropriate when (1) the class is ascertainable and (2) there is a
3 well-defined community of interest in the questions of law and fact involved affecting the parties
4 to be represented. *Sav-On*, 34 Cal. 4th at 326; *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 435
5 (2000). The “community of interest” element embodies three factors: (1) predominant common
6 questions of law or fact; (2) a class representative with claims or defenses typical of the class;
7 and (3) a class representative who can adequately represent the class. *Sav-On*, 34 Cal. 4th at 326.
8 Finally, the court must determine that a class action proceeding is the superior means of fair and
9 efficient adjudication of the litigation. *Id.*; *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1806
10 (1996). For settlement purposes, each of these prerequisites must be met.² *See Wershba*, 91 Cal.
11 App. 4th at 237–38.

12 Here, each of the requirements for class certification is met. For settlement purposes only,
13 Defendant does not oppose Plaintiff’s contentions regarding provisional certification of a Class.

14 **A. The Proposed Class is Ascertainable**

15 The Class Members are ascertainable through Defendant’s compensation records. *See*
16 *Rose v. City of Hayward*, 126 Cal. App. 3d 926, 932 (1981) (finding that “[c]lass members are
17 ‘ascertainable’ where they may be readily identified without unreasonable expense or time by
18 reference to official records”). Defendant IMS has agreed to disclose to the Settlement
19 Administrator the total number of qualified jobs performed by each Class Member, their most
20 current known mailing address, and social security number. (Settlement, ¶ 69.)

21 The ascertainability requirement is thus met.

22 **B. The Proposed Class is Sufficiently Numerous**

23 The numerosity requirement is met if the class is so large that joinder of all members
24 would be impracticable. *See Gay v. Waiters’ & Dairy Lunchmen’s Union*, 489 F. Supp. 282
25 (N.D. Cal. 1980), *affd.*, 694 F.2d 531 (9th Cir. 1982). While “[n]o set number is required as a

26 _____
27 ² State law class certification requirements under Code of Civil Procedure section 382 mirror the federal
28 law requirements under Federal Rule of Civil Procedure 23 of numerosity, typicality of the class
representative’s claims, adequacy of representation, predominance of common issues, and superiority. *See*
Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir. 1998).

1 matter of law for the maintenance of a class action, case law indicates that on the lower end, 10–
2 40 class members satisfy the numerosity requirement because at that point, joinder is not
3 practical. *Rose v. City of Hayward*, 126 Cal. App. 3d 926, 934 (1981) (See, e.g., *Bowles v.*
4 *Superior Court*, 44 Cal.2d 574, 587 (1955) (class of 10 trust beneficiaries in action to remove
5 trustee), *Hendershot v. Ready to Roll Transportation, Inc.*, 228 Cal. App. 4th 1213, 1223 (9
6 class members could be sufficient for numerosity purposes provided joinder is impracticable)
7 (*Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, 1030 (28 class members held sufficient
8 number to maintain a class action).

9 Defendant’s records show that there will be approximately 24 Class Members, which is
10 sufficiently large.

11 **C. The Commonality Requirement is Met**

12 The commonality requirement is met when there are questions of law and fact common to
13 the class. *See Sav-On*, 34 Cal. 4th at 326–27; *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019
14 (9th Cir. 1998). Commonality requires only that common legal or factual questions predominate;
15 the Plaintiff need not show that all issues in the litigation are identical. *See Sav-On*, 34 Cal. 4th at
16 328, 332–33.

17 The commonality requirement is satisfied because all Mobile Examiners were classified
18 as independent contractors and were subject to the same business practices. The key common
19 questions include the following:

- 20 • Whether Mobile Examiners were properly classified as independent contractors;
- 21 • Whether IMS violated minimum wage laws for failing to pay for non-productive
22 hour (Cal. Lab. Code §1194);
- 23 • Whether IMS subjected its Mobile Examiners to unlawful deductions when it
24 applied administrative fees (Cal. Lab. Code §§ 221-224);
- 25 • Whether IMS violated California Labor Code sections 201–202 by failing to pay
26 Plaintiff and the Class Members all wages due at the time of the termination; and
- 27 • Whether IMS violated California Labor Code section 226(a) by failing to provide
28 its Mobile Examiners with semimonthly itemized statements.

1 • Whether IMS violated California Labor Code section 2802 by failing to reimburse
2 vehicle- and work-related expenses. (Kuchinsky Decl. ¶ 28.)

3 These common factual and legal issues predominate over any individual issues because
4 Plaintiff and members of the Class will rely on common evidence to establish that under the
5 applicable test³, Defendant misclassified its mobile examiners as independent contractors. *Id.*
6 Because common issues predominate over any individual issues Defendant might raise,
7 certification is appropriate. *See Hicks v. Kaufman & Broad Home Corp*, 89 Cal. App. 4th 908,
8 916 (2001).

9 **D. The Typicality Requirement is Met**

10 A class representative's interest need not be identical to other class members; for it to be
11 typical, Plaintiff and class members need only be similarly situated. *B.W.I. Custom Kitchen v.*
12 *Owens-Illinois, Inc.*, 191 Cal. App. 3d 1345, 1347 (1987). The typicality requirement does not
13 focus on the personal characteristics of the representative plaintiff or her individual
14 circumstances with respect to the class, but rather upon the typicality of the proposed
15 representative's claims as they relate to the Defendant's conduct and activities. *See Classen v.*
16 *Weller*, 24 Cal. App. 3d 27, 46 (1983) ("The only requirements are that common questions of
17 law and fact predominate and that the class representative be similarly situated" vis-à-vis the
18 class). A representative plaintiff's claim is typical if it arises from the same event, practice, or
19 course of conduct that gives rise to the claims of other class members and if her or her claims are
20 based on the same legal theory. *Id.*

21 Plaintiff meets the typicality requirement because she, like all other class members, was
22 classified as an independent contractor and was allegedly injured by the same pay policies.
23 Plaintiff's legal claims are typical of those of the Class as a whole because they arise under the
24 same legal theories and the same policies and practices of Defendant. (Kuchinsky Decl. ¶ 29)

25 **E. The Adequacy Requirement is Met**

26 A plaintiff can adequately represent the class when he or she is represented by qualified

27 ³ *S.G. Borello & Sons, Inc. v. Department of Industrial Relations*, (1989) 48 Cal.3d 342 ("*Borello*"); the
28 "ABC" test set forth California Labor Code §2775.

1 counsel and has interests aligned with the class. *McGhee v. Bank of Am.*, 60 Cal. App. 3d 442,
2 450 (1976). Vigorous prosecution of class claims also supports a showing of adequacy. *Soc.*
3 *Servs. Union, Local 535 v. Cty. of Santa Clara*, 609 F.2d 944, 946–47 (9th Cir. 1979).

4 Plaintiff has shown herself to be a more-than-adequate representative of the Class, as she
5 shares interests with the Class and has pursued those interests vigorously. She has devoted time
6 and effort to prosecuting the class claims, including gathering and organizing detailed time and
7 pay records, assisting counsel with investigating the case, and participating in settlement
8 discussions. (Kuchinsky Decl. ¶ 30)

9 The law office seeking to represent the Settlement Class is well qualified to do so.
10 Plaintiff’s counsel is a seasoned attorney with considerable experience in wage-and-hour
11 representative and class actions, as set out in the Declaration of Alexei Kuchinsky. Kuchinsky
12 Law Office, P.C. has been previously appointed as class counsel in multiple state and federal
13 cases in which he represented thousands of workers. (Kuchinsky Decl. ¶¶ 10–12)

14 The adequacy of representation requirement is thus met.

15 **F. Common Issues Predominate and Class-wide Settlement is Superior to Other**
16 **Available Methods of Resolution**

17 Class certification is authorized where common questions of law and fact predominate
18 over individual questions and where class-wide treatment of a dispute is superior to individual
19 litigation. *See Sav-On*, 34 Cal. 4th at 326; *Richmond*, 29 Cal. 3d at 469. The test is whether the
20 proposed classes are sufficiently cohesive to warrant adjudication by representation. *See Hanlon*,
21 150 F.3d at 1022. The Settlement Class in this case is sufficiently cohesive, since all members
22 share a “common nucleus of facts and potential legal remedies.” *See id.*

23 As more fully discussed above, common questions of law and fact predominate because
24 the liability determination is the same for all class members: whether the Class Members were
25 unlawfully misclassified as independent contractors. Common evidence and common application
26 of the ABC test will establish the unlawfulness of Defendant’s compensation policies and
27 practices.

28 Notably, in the settlement context, class resolution is superior to other available methods

1 for the fair and efficient adjudication of the controversy. *See Dunk*, 48 Cal. App. 4th at 1807
2 n.19. Here, class certification will provide substantial benefits to the litigants and the Court. The
3 alternative to class certification is 24 individual litigations that could lead to inconsistent
4 adjudications of similar issues and claims. Rather than having multiple proceedings, all involving
5 substantially the same issues and evidence, a class action allows these matters to be resolved
6 once on behalf of all claimants. *Id.*

7 For all these reasons, the Settlement Class should be certified.

8 **VI. THE PROPOSED SETTLEMENT IS FAIR, REASONABLE, AND**
9 **ADEQUATE, AND THEREFORE QUALIFIES FOR PRELIMINARY**
10 **APPROVAL**

11 Plaintiff requests that this Court take the first step in the settlement approval process and
12 grant preliminary approval of the Proposed Class Settlement. The purpose of the Court’s
13 preliminary evaluation of the settlement is to determine “whether a settlement was fair and
14 reasonable, whether notice to the class was adequate, whether certification of the class was
15 proper, and whether the attorney fee award was proper.” *Wershba*, at 234–35.

16 In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008), the court laid
17 out several factors that should be analyzed in determining whether a class action settlement
18 should be approved. These factors include (1) the strength of plaintiff’s case; (2) the risk,
19 expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class
20 action status through trial; (4) the amount offered in settlement; (5) the extent of discovery
21 completed and stage of the proceedings; (6) the experience and views of counsel; (7) the
22 presence of a governmental participant; and (8) the reaction of the class members to the proposed
23 settlement.

24 Here, the proposed settlement is fair, reasonable, and adequate in light of the risk of
25 further litigation.

26 **A. The Strength of Plaintiff’s Case Against the Risk of Further Litigation**

27 A determination that the relative strength of the case supports settlement approval will be
28 upheld where the parties have provided a “substantiated explanation of the strengths and

1 weaknesses of the class’s claims, as well as the potential total recovery by the class under
2 various damage theories.” *Nordstrom Comm’n Cases*, 186 Cal. App. 4th 576, 588 (2010); *Dunk*,
3 48 Cal. App. 4th at 1802. The Court should review the factors discussed above and, in its final
4 analysis, ensure that the proposed settlement represents a reasonable compromise given the
5 magnitude and apparent merit of the claims being released, discounted by the risks and expenses
6 of attempting to establish and collect on those claims by pursuing the litigation. *Kullar*, 168 Cal.
7 App. 4th at 129.

8 **1. Misclassification Liability**

9 The misclassification liability is highly contested. (Kuchinsky Decl. ¶34.) Plaintiff’s
10 misclassification claim proceeds under the ABC test as articulated in *Dynamex Operations W. v.*
11 *Super. Ct.* (2018)) 4 Cal. 5th 903 and later codified by A.B. 5 at Lab. Code § 2775. Under
12 section 2775(b)(1), all mobile examiners are presumed to be employees, with all the protections
13 and rights California law provides. However, Defendant can lawfully classify them as
14 independent contractors if it can prove each of three prongs of the ABC test⁴. Plaintiff maintains
15 that Defendant cannot satisfy its burden of proof. For example, Plaintiff contends that Defendant
16 is in business of offering mobile health exam services to insurance providers and Class Members
17 performed services that are not outside the usual course of, but are in fact integral to,
18 Defendant’s business and Defendant retained and exercises all necessary control over Plaintiff
19 and Class Members. (*Id.*)

20 Defendant contends that all mobile examiners were properly classified as independent
21 contractors under the *Borello* test. (Kuchinsky Decl. ¶35) Defendant maintains that *Borello*
22

23
24 ⁴ A worker is considered an employee unless the hiring entity establishes all three of these prongs:
25 A) The person is free from the control and direction of the hiring entity in connection with the
26 performance of the work, both under the contract for the performance of the work and in fact;
27 (B) The person performs work that is outside the usual course of the hiring entity’s business; and
28 (C) The person is customarily engaged in an independently established trade, occupation, or
business of the same nature as that involved in the work performed. (*Cal. Lab. Code* §
2775(b)(1)(A-C))

governs the determination of independent contractor status under at least two exceptions to the ABC test: (1) Section 2783(a), as Plaintiff and putative class are/were “persons who provide underwriting inspections” for the life insurance industry and (2) Section 2777, as IMS is a referral agency and mobile examiners are service providers. (*Id.*) With respect to *Borello*’s multi-factor tests, Defendant argues that all mobile examiners executed an independent contractor agreement; they set their own rates; they run their own independent business, as Plaintiff here owns an independent company named Medichack Health & Wellness that provides health testing and similar services. Defendant also argues that mobile examiners, including Plaintiff, typically work with two or three lead generation companies, like IMS, for referrals. Plaintiff, not IMS, supplied the instrumentalities and tools for the paramedical exams. Plaintiff disagrees with Defendant and maintains that Defendant retained the right to control mobile examiners and often disciplined them for not following IMS’ policies and practices. (*Id.*)

Because the misclassification is highly contested, the fact finder could reasonably find for either party. (Kuchinsky Decl. ¶36.)

2. Plaintiff’s Claims and Theoretical Maximum Recovery

On behalf of the purported class members, Plaintiff seeks to recover (1) unpaid minimum wage for non-productive administrative work and travel time, (2) unreimbursed vehicle-related expenses, (3) unlawful deductions of administrative fees (4) statutory damages for wage statement violations; and (5) waiting time penalties for failure to pay wages due at separation. Plaintiffs’ PAGA claims for civil penalties and UCL claims are derivative claims based on the same underlying violations as the class claims.

Assuming a 100% liability rate, based on a review of class data, Plaintiff’s counsel estimated that the **theoretical** maximum potential recovery for 24 class claims is approximately \$211,306 This estimate is calculated as follows:

Theoretical Maximum Recovery	
Failure to Pay Minimum for Non-Productive Administrative Work (Cal. Lab. Code §1194)	\$20,371
Failure to Pay Minimum for Travel Time (Cal. Lab. Code §1194)	\$33,296
Failure to Reimburse Vehicle Related Expenses (Cal. Lab. Code §2802)	\$38,180

Unlawful Deductions of Administrative Fees (Cal. Lab. Code §§221-224)	\$13,340
Failure to Provide Itemized Wage Statements Records (Cal. Lab. Code § 226(e))	\$38,000
Waiting Time Penalties (Cal. Lab. Code § 203)	\$52,192
Total:	\$211,306

A detailed analysis of each class claim and computation of maximum potential recovery is set forth in the Declaration of Alexei Kuchinsky, Paragraphs 37-55.

B. Plaintiff's Realistic or Expected Maximum Recovery

The estimated \$211,306 is just a theoretical number that does not consider (1) the risks associated with proving the threshold issue of misclassification (2) underlying liability and damages, and (3) the risk of maintaining class action status through trial. For settlement purposes, Plaintiff's counsel estimates that the realistic or expected value of Plaintiff's class claims is approximately \$77,744,⁵ which is based on the discounts discussed below.

3. The Risk Associated with Proving Defendant's Liability

Plaintiff's claims are strongly disputed and proving Defendant's liability involves great risk due to various legal uncertainties.

i. Unpaid Minimum Wage for Non-Productive Administrative Work and Travel time

Plaintiff alleges that due to misclassification, Defendant failed to pay mobile examiners minimum wage for all hours worked in violation of Section 1194. Specifically, Plaintiff claims that IMS failed to pay mobile examiners for the time they spent driving between two exam sites and the hours spent doing administrative work (i.e. pre- and post-screening paperwork, preparing and sending out blood samples)

Defendant contends that assuming all mobile examiners were employees, Defendant paid them more than the required minimum wage rate of \$10-14 because for each job performed

⁵ Plaintiff's realistic claim valuation is not intended to be viewed as precise damage calculations that are normally presented by experts at trial. It is presented to the Court as Plaintiff's potential maximum recovery for settlement purposes only. *See Gallucci v. Gonzales*, 603 F. App'x 533, 535 (9th Cir. 2015) (stating that "we have never required courts 'to estimate the range of possible outcomes and ascribe a probability to each point on the range'"); *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) (settlement approval is "nothing more than an amalgam of delicate balancing, gross approximations and rough justice").

1 mobile examiners were paid at least \$35 and it took less than two hours to do each job, including
2 the alleged travel time and administrative pre- and post-exam work. Plaintiff rejects this
3 argument as under *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 48-49,
4 Defendant is prohibited from averaging mobile examiners' total compensation for the specific
5 pay period to satisfy the requirements of California's minimum wage regulations. Rather, mobile
6 examiners must receive the minimum wage for each hour worked during the payroll period, even
7 if the agreed-upon compensation exceeds the minimum wage for the total hours worked.
8 (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 323.)

9 Plaintiff's counsel estimates that the realistic or expected value of Plaintiff's minimum
10 wage claim is approximately \$19,725, which is based on a 60%⁶ discount of the maximum
11 recovery of \$49,313. (Kuchinsky Decl. ¶¶ 50-51) The 60% discount is based on discounts for the
12 risks associated with proving misclassification (40%) and minimum wage liability (10%) and the
13 uncertainty and delay of litigation (10%).

14
15 *ii. Failure to Reimburse for Vehicle-Related Expenditures*

16 Plaintiff alleges that due to misclassification, IMS violated Section 2802, when it failed
17 to indemnify all mobile examiners for all necessary expenditures or losses that mobile examiners
18 incurred in direct consequence of the discharge of their duties. Cal. Lab. Code § 2802.

19 In response, Defendant maintains that the \$35 fee earned by mobile examiners per job
20 included reimbursement for any "necessary expenditures." See *Gattuso v. Harte-Hanks*
21 *Shoppers, Inc.*, 42 Cal. 4th 554, 558–59 (2007) ("[A]n employer may satisfy its statutory
22 reimbursement obligation by paying employees enhanced compensation in the form of increases
23 in base salary or increases in commission rates."). Although Plaintiff disagrees with this

24
25 ⁶ Plaintiff's counsel recognizes that assigning a precise percentage to each discount based
26 on the probability of recovery is a challenging task. These discounts are for the purposes of this
27 approval motion only. See *Aarons v. BMW of N. Amer., LLC*, 2014 WL 4090564, at *11 (C.D.
28 Cal. Apr. 29, 2014) (noting that while settlements will not make most class members completely
whole, class members will "discount their claims to obtain a certain and timely recovery, rather
than bear the significant risk and delay associated with further litigation").

argument because Defendant did not expressly indicate that the flat fee included expenses, it is conceivable that it would convince a jury, thus precluding recovery under section 2802.

For settlement purposes, Plaintiff's counsel estimates that the realistic or expected value of Plaintiff's reimbursement claim is approximately \$15,272, which is based on a 60% discount of the theoretical maximum recovery of \$38,180. (Kuchinsky Decl. ¶53) The same discounts apply here for risks associated with proving misclassification (40%) and underlying violation (10%), and the uncertainty and delay of litigation (10%) as more fully discussed above, in the section addressing Plaintiff's minimum wage claim valuation.

iii. Unlawful Deductions

Plaintiff alleges that due to misclassification, IMS violated Section 221-224 when it deducted from mobile examiners' earnings approximately \$1.85 per exam. Plaintiff's counsel estimates that the realistic or expected value of this claim is approximately \$6,670⁷, which is based on the same discounts for the risks associated with proving misclassification (40%) and the uncertainty and delay of litigation (10%). (*Id.* at ¶ 54)

iv. Wage Statement and Waiting Time Claims

For settlement purposes, Plaintiff's counsel estimates that the realistic value of Plaintiff's wage statement claim is approximately \$15,200 and \$20,876 for waiting time penalties.

With respect to Plaintiff's derivative claims for failure to issue accurate wage statements (Cal. Lab. Code § 226(a)) and waiting time penalties (Cal. Lab. Code § 203), Defendant contends that that Plaintiff is not entitled to collect waiting time penalties because any alleged violations, if proven, were not "willful" and their practices were based on a reasonable and good-faith belief that all mobile examiners were properly classified as independent contractors. (Kuchinsky Decl. ¶56) California courts regularly hold that when an employer fails to pay wages due to good-faith reliance on an equitable defense, an employee is not entitled to waiting time penalties. *See, e.g., Barnhill v. Robert Saunders & Co.*, 125 Cal. App. 3d 1 (Cal. App. 1st Dist. 1981). Plaintiff's counsel recognizes that the Court may not find the alleged misclassification as

⁷ \$13,340 x 50%

1 “willful.” See *Dalton v. Lee Publications, Inc.*, 2011 WL 1045107, at *5 (S.D. Cal. Mar. 22,
2 2011) (granting summary judgment on claims under Sections 203, 226 and 1174 on the basis that
3 there was a good faith dispute as to whether defendant had properly classified plaintiffs as
4 independent contractors rather than employees); *Harris v. Vector Mktg. Corp.*, 656 F. Supp. 2d
5 1128, 1146 (N.D. Cal. 2009) (granting summary judgment on claims under Sections 203 and 226
6 on the basis that there was good faith dispute as to whether defendant had properly classified
7 plaintiffs as independent contractors rather than employees); *Reber v. AIMCO/Bethesda*
8 *Holdings, Inc.*, 2008 WL 4384147, at *9 (C.D. Cal. Aug. 25, 2008) (granting summary judgment
9 in favor of defendant on claims under Sections 203 and 226 on the basis that there was a good
10 faith dispute as to whether defendant had properly classified plaintiffs as administrative
11 employees).

12 Given these disputed issues, for settlement purposes, Plaintiff’s counsel believes a 50%
13 discount is warranted for each of the above derivate claims. With an additional 10% discount for
14 the avoidance of uncertainty and delay, the wage statement claim is valued at \$15,200, (*i.e.*,
15 \$38,000 x 40%) and the claim for waiting time penalties is valued at \$20,876.80 (*i.e.*, \$52,192 x
16 40%).

17 **4. The Risk of Maintaining Class Action Status Through Trial**

18 Absent a settlement, class certification will be hotly contested. This risk also supports the
19 Settlement. The Settlement was reached before Plaintiff filed her motion for class certification.
20 (Kuchinsky Decl. ¶ 57.) To certify a class, the parties would need to complete written discovery,
21 conduct multiple depositions, including those of the Plaintiff and Defendant’s representative
22 most knowledgeable about various employment policies. *Id.* There is uncertainty for both sides
23 about evidence obtained from written and oral discovery and whether this evidence will support
24 class certification. *Id.* While Plaintiff is confident of her class certification success, certifying a
25 misclassification class for trial purposes is always a hard-fought battle and subject to judicial
26 discretion. Moreover, decertification is always a possibility. *Id.* Defendant will argue that all
27 claims are not suitable for adjudication on a class-wide basis and that certain individual issues
28 will predominate over any potential common issues and will require an individualized finding of

1 liability for each Class Member. Therefore, there is a risk that a trial of this magnitude would
2 become unmanageable due to various individual issues; therefore, Plaintiff's counsel believes an
3 additional discount is warranted.

4 **C. The Amount Offered in Settlement**

5 "In the context of a settlement agreement, the test is not the maximum amount Plaintiff
6 might have obtained at trial on the complaint, but rather whether the settlement is reasonable
7 under all of the circumstances." *Wershba*, 91 Cal. App. 4th at 250. Here, because of the risks
8 associated with proving Defendant's liability, and the risk of non-certification, Plaintiff's counsel
9 believes that the amount offered in this settlement is fair, reasonable, and adequate and
10 represents the best outcome for the Settlement Class members.

11 As more fully discussed above, Plaintiff's counsel estimates that while Plaintiff's
12 theoretical maximum potential recovery is approximately \$211,306, the realistic figure is
13 approximately \$77,744. Here, Defendant agreed to pay to the common fund of \$75,000, which
14 represents approximately 96.5% of the realistic maximum recovery or 35.5% of the theoretical
15 maximum recovery. On average, a class members will receive approximately \$1,290 after
16 attorneys' fees, costs, incentive payment, administrative costs, and civil penalties to the LWDA
17 are deducted. This recovery compares favorably to similar wage-and-hour settlements approved
18 by California courts involving claims of unpaid wages.⁸ (Kuchinsky Decl. ¶58)

19 **D. The Settlement is the Product of Informed, Arm's-length Negotiations**

20 Exhaustive, protracted, and costly discovery need not be conducted in a class action
21 before a settlement can be reached. *7-Eleven Owners for Fair Franchising v. Southland Corp.*,
22 85 Cal. App. 4th 1135, 1150 (2000) (holding that a class action settlement may be upheld as fair
23 even if only minimal or informal discovery has been conducted). In other words, "[i]n the

24 ⁸ See *York v. Starbucks Corp.*, No. 2:08-cv-07919-GAF-PJW (C.D. Cal. Oct. 29, 2013) (\$16.85 average
25 recovery approved); *Gould v. Motel 6, Inc.*, No. 2:09-cv-08157-CAS-FMO (C.D. Cal., Nov. 5, 2013)
26 (\$28.52 average recovery approved); *Munoz v. Cent. Parking Sys., Inc.*, 2:12-cv-07929-PA-RZ (C.D. Cal.
27 Aug. 26, 2013) (\$144.50 average recovery approved); *Clesceri v. Beach City Investigations & Protective*
28 *Servs., Inc.*, 2:10-cv-03873-JLS-RZ (C.D. Cal. June 10, 2011) (\$233.47 average recovery approved). See
also *Garcia v. Gordon Trucking, Inc.*, 2012 WL 5364575, at *6 (E.D. Cal. Oct. 31, 2012) (stating that
average pretax recovery to each class member of \$1,626 "represents a very favorable result in a wage and
hour case involving [workers] who are typically at the lower end of the earnings spectrum").

1 context of class action settlements, ‘formal discovery is not a necessary ticket to the bargaining
2 table’ where the parties have sufficient information to make informed decision about
3 settlements.” *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1238 (9th Cir.1998).

4 Here, the proposed Settlement Agreement is a product of arm’s-length negotiations.
5 Negotiations, while cordial, were adversarial. The parties engaged in substantial informal
6 discovery, which permitted Plaintiff’s counsel to make an informed assessment of the likelihood
7 of succeeding on Plaintiff’s claims. (Kuchinsky Decl. ¶¶ 59.) The information informally
8 provided for each of 24 class members was sufficient for Plaintiff’s counsel to fully evaluate the
9 value of each claim.

10 **E. Plaintiff’s Counsel is Experienced in Similar Wage-And-Hour Litigation**

11 Plaintiff’s counsel is experienced in wage-and-hour class actions.⁹ Numerous state and
12 federal courts have certified him as an adequate and competent class counsel in such class
13 actions. (Kuchinsky Decl. ¶¶ 10–12.) Plaintiff’s counsel shares the view that this is a fair and
14 reasonable settlement in light of the uncertainties inherent in class certification and litigation.

15 **F. The Proposed Plan of Allocation is Fair and Reasonable**

16 Plans of allocation are subject to the same standard of review as class action settlements;
17 they must be “fair, adequate and reasonable.” *See Officers for Just.*, 688 F.2d at 624–25, 629–30.
18 Here, the proposed plan of allocation compensates the Settlement Class Members based on the
19 number of jobs performed by each class member. Allocating individual payouts based on the
20 number of pay periods worked by each class member is not appropriate as it disproportionately
21 favors those class members who performed smaller number of jobs per pay period. (Settlement,
22 ¶59). However, the number of jobs performed would most accurately represent the amount of
23 work and time spent by each Class Member. Therefore, class members’ qualified job should be
24 approved as a fair, practical, and most-precise unit for measuring individual shares of the class

25
26 ⁹ The view of the attorneys actively conducting the litigation is entitled to significant weight in deciding
27 whether to approve the settlement. *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980),
28 *aff’d*, 661 F.2d 939 (9th Cir. 1981); *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008)
(stating that the court must take into account “the experience and view of counsel”) (internal quotation
and citation omitted)).

1 settlement.

2 **G. The Proposed Notice Fairly Apprises the Class Members of the Terms of the**
3 **Settlement and the Class Members' Rights Under the Settlement**

4 Plaintiff requests that the Court approve the proposed plan and form of Class Notice. The
5 standard for determining the adequacy of notice is whether the notice has “a reasonable chance
6 of reaching a substantial percentage of the class members.” *Cartt v. Superior Ct.*, 50 Cal. App.
7 3d 960, 974 (1975).

8 Pursuant to the Settlement Agreement, the Notice will be sent to the last-known address,
9 or an updated address if one is located in the National Change of Address Database, of all Class
10 Members. (Settlement, ¶ 70.) If any Notices are returned as undeliverable, the administrator will
11 undertake another reasonable address verification measure to locate a valid mailing address and
12 will promptly send the Class Notice to the new address. *Id.* Therefore, the Notice is likely to
13 reach most, if not all, Class Members.

14 With respect to the contents of the Notice, the “notice given to the class must fairly
15 apprise the class members of the terms of the proposed compromise and of the options open to
16 dissenting class members.” *Trotsky v. LA. Fed. Sav. & Loan Ass’n*, 48 Cal. App. 3d 134, 151–52
17 (1975). The purpose of a class notice is to give Class members sufficient information to decide
18 whether they should accept the benefits offered, opt out and pursue their own remedies, or object
19 to the settlement. *Id.*

20 Here, the Notice clearly explains the terms of the proposed Settlement and the options to
21 opt out of the Settlement or contest it at the final approval hearing. (Settlement, ¶¶ 73-74, Exhibit
22 “A”.) Therefore, the Notice describes the proposed Settlement with enough specificity to allow
23 Class Members to make an informed choice regarding whether to participate in the Settlement.

24 Therefore, the Court should approve the proposed Notice.

25 **H. The Settlement of Penalties Under the Labor Code Private Attorney**
26 **Generals Act of 2004 (PAGA) Is Reasonable**

27 The settlement of a PAGA claim requires court approval under PAGA, which states that
28 the “[t]he superior court shall review and approve any settlement of any civil action filed

1 pursuant to this part.” (See Cal. Lab. Code § 2699(l).) In reviewing a PAGA settlement, the
2 courts must determine whether the proposed settlement is “fair, reasonable, and adequate in
3 relation to “PAGA's purposes to remediate present labor law violations, deter future ones, and to
4 maximize enforcement of state labor laws.” maximize enforcement of state labor laws.
5 *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56, 60 (2021).

6 Here, the proposed settlement achieves PAGA’s goals. Defendant agreed to resolve all
7 class and PAGA claims for \$75,000, of which \$6,000 is allocated to civil penalties under the
8 PAGA and will be distributed between the LWDA (75 percent) and the Settlement Class
9 Members (25 percent) as required under Labor Code section 2699(i). Plaintiff Counsel estimates
10 that the theoretical maximum recovery of civil penalties for all claims is approximately
11 \$156,400. (Kuchinsky Decl. ¶¶62-67) However, a class settlement with a small PAGA allocation
12 may be approved because the monetary recovery secured on the class claims also fulfills the
13 statutory purpose of PAGA. See, e.g., *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869, at *9
14 (N.D. Cal. Oct. 11, 2016). For example, in *O’Connor v. Uber Technologies Inc.*, 201 F. Supp.
15 3d, 1110, one federal court noted that in evaluating the adequacy of a settlement of a PAGA
16 claim, courts may employ a sliding scale, taking into account the value of the settlement as a
17 whole. *O’Connor*, 201 F. Supp. 3d at 1134. Therefore, where a proposed class settlement is
18 reasonable, the statutory purposes of PAGA may be fulfilled even with a relatively small award
19 on the PAGA claim itself because such “a settlement not only vindicates the rights of the class
20 members as employees, but may have a deterrent effect upon the defendant employer and other
21 employers, an objective of PAGA.” *Id.*

22 Notably, the LWDA did not object to or comment on the proposed PAGA Settlement. On
23 October 17, 2022, pursuant to Labor Code section 2699(l)(3), Plaintiff’s Counsel provided the
24 LWDA with a copy of the proposed PAGA Settlement and informed the LWDA about the date
25 and time of the approval hearing. (Kuchinsky Decl. ¶13.) At the time of the filing of this
26 Motion, Plaintiff did not receive any communication from the LWDA. *Id.* The absence of the
27 LWDA’s objections further confirms the reasonableness of the settlement of the PAGA claims.

1 **I. Attorneys’ Fees and Costs are Reasonable, Fair, and Appropriate**

2 The Settlement Agreement allows Plaintiff to seek one third of the total Settlement fund,
3 approximately \$25,000 and reimbursement of reasonable costs incurred, not exceeding \$3,000.
4 Any amount of attorneys’ fees, costs, and incentive award requested by Class Counsel but
5 unapproved by the Court will be allocated to the Net Settlement Amount. (Settlement, ¶65.)
6 Plaintiff’s Counsel will file a noticed motion before the final approval hearing, explaining in
7 detail the reasonableness of a fee award of one third and a lodestar cross-check.

8 **J. The Class Representative Incentive Payment Is Reasonable**

9 At the final approval hearing, Class Counsel will ask the Court to approve an incentive
10 payment of \$7,500 for Plaintiff. The requested incentive payment is intended to recognize her
11 initiative, risks, and efforts on behalf of the Class Members.¹⁰ This incentive payment will be
12 deducted from the Settlement Sum. Based on Plaintiff’s significant time, effort, and risks
13 incurred in bringing this case on behalf of the Class, as well as the substantial benefits the
14 resulting Settlement provides the Class, the requested service awards should ultimately be found
15 to be reasonable.

16 **K. Phoenix Should Be Appointed as the Settlement Administrator**

17 Pursuant to the Settlement, Plaintiff seeks to appoint Phoenix Settlement Administrators
18 (“Phoenix”) as the settlement administrator. The settlement administrator will be responsible for
19 processing class data from Defendant; mailing the Class Notices; for returned Class Notices,
20 using skip-tracing, last-known telephone numbers, and personal emails to obtain current
21 addresses for Class Members; creating and overseeing a qualified settlement fund (QSF);
22 calculating the Class Settlement payments; distributing the Class Settlement payments to Class
23 Members; and tax reporting of Class Settlement payments. As set forth in the Declaration of
24

25 ¹⁰ Courts routinely approve class representative incentive payments to compensate named plaintiffs for
26 the services they provided and the risks they incurred during class action litigation. *See Cellphone Fee*
27 *Termination Cases*, 186 Cal. App. 4th 1380 (2010) (approving incentive payments of \$10,000.00 each);
28 *Ingram v. Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001). *See also Bell v. Farmers Ins. Exch.*, 115
Cal. App. 4th 715, 726 (2004) (upholding “service payments” to named plaintiff for efforts in bringing
the case); *Manual for Complex Litigation* § 21.62 n.971 (noting that such awards “may sometimes be
warranted for time spent meeting with Class Members, monitoring cases, or responding to discovery”).

1 Jodey Lawrence, Phoenix’s President of Business Developments, Phoenix is a competent and
2 experienced settlement administration company.

3 Plaintiff will apply to the Court for payment for Phoenix’s fees and costs, which shall not
4 exceed \$4,000. The estimate is based on the lowest of the quotes received by Plaintiff’s counsel
5 from four claims administrators. Based on Plaintiff’s counsel’s experience and the quotes
6 received, Plaintiff’s counsel is of opinion that \$4,000 is a reasonable expenditure given that the
7 class size is 131. (Kuchinsky Decl. ¶68, Ex. 2).

8 **L. *Cy Pres* Recipient**

9 Under the proposed Settlement, any unclaimed funds will be paid to Centro Legal De La
10 Raza – Workers’ Right Clinic located in Oakland, California. The proposed *cy pres* beneficiary
11 is appropriate under California Code of Civil Procedure section 384(b)¹¹. (Settlement, §62).

12 Here, Centro Legal De La Raza is a non-profit 501(c)(3) legal services organization
13 assisting low-income working families. (Kuchinsky Decl. ¶70). It was established in 1969 and its
14 Workers’ Right Program provides legal help to eligible low-income individuals with wage and
15 hour claims. *Id.* Because the Centro Legal De La Raza’s Workers’ Right Program provides
16 employment law services to indigent individuals, it satisfies section 384 in that it promotes the
17 law consistent with the objectives of this case (enforcement of minimum labor law standards).
18 The proposed use of funds for these purposes is in the public interest and is consistent with
19 essential public and governmental purposes.

20 None of the attorneys, their families, the class representative or their families have any
21 relationship with the *cy pres* recipient. (Kuchinsky Decl. ¶71). The amount of money to be paid
22

23 ¹¹ California Code of Civil Procedure section 384(b) sets forth the criteria for appropriate
24 *cy pres* recipients in the settlement of class action cases. The statute states that the unpaid residue
25 of a class action is appropriately directed “to nonprofit organizations or foundations to support
26 projects that will benefit the class or similarly situated persons, or that promote the law
27 consistent with the objectives and purposes of the underlying cause of action, [or] to child
28 advocacy programs” Cal. Code Civ. Pro. § 384(b). The Court has broad discretion to
determine if a class action settlement is “fair, reasonable and adequate to all concerned.” *Dunk v.*
Ford Motor Co., 48 Cal. App. 4th 1794, 1800–01 (1996).

1 to the *cy pres* recipient is expected to be quite small. Plaintiff's counsel will report to the Court
2 the total amount paid to the Settlement Class Members and Centro Legal De La Raza.

3 **M. A Final Approval Hearing Should Be Scheduled**

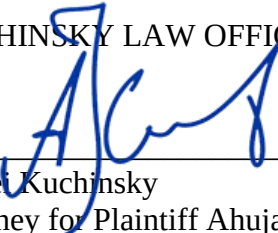
4 Plaintiff respectfully requests that the Court schedule the final approval hearing and set
5 deadlines for the submission of supporting papers. *See* Cal. R. Ct. 3.769(g).

6 **VII. CONCLUSION**

7 For the reasons set forth above and in the accompanying papers, Plaintiff respectfully
8 requests that the Court grant Plaintiff's Motion for Preliminary Approval of the Class Settlement.

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10 DATED: October 17, 2022

KUCHINSKY LAW OFFICE, P.C.

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12 By: 
13 Alexei Kuchinsky
14 Attorney for Plaintiff Ahuja and the Class
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