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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA**

KHAYO SISHI, SANDEEP PUREWAL,
VANESSA BARBER, and CHERRA REDD on
behalf of the Putative Class, the State of
California and Aggrieved Employees;

Plaintiffs,

v.

ESKATON PROPERTIES INCORPORATED,
CALIFORNIA HEALTHCARE
CONSULTANTS, INC., and DOES 1-100,
inclusive;

Defendants.

Case No.: RG21100764

Hon. Eumi Lee
Dept. 512

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: July 28, 2023

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1 **I. INTRODUCTION**

2 Plaintiffs Khayo Sishi, Sandeep Purewal, Vanessa Barber, and Cherra Redd, on behalf of
3 themselves and all others similarly situated (“Plaintiffs”), seek final approval of the settlement of this
4 wage and hour class and representative action against Defendants Eskaton Properties Incorporated and
5 California Healthcare Consultants, Inc. (“Defendants”). The Parties’ Settlement¹ resolves numerous
6 claims that provide substantial benefit to the members of the Class.

7 The basic terms of the Settlement are as follows: (1) the non-reversionary Gross Settlement
8 Amount is \$5,500,000.00; (2) the Net Settlement Amount of approximately \$3,509,510.72² will be
9 available for distribution to Settlement Class Members (i.e., those 5,983 Class Members who do not
10 timely opt out of the Settlement) proportionally based on the number of workweeks that they worked
11 for Defendants as a percentage of the total workweeks worked by all Settlement Class Members; (3)
12 individual service awards to Plaintiffs Khayo Sishi, in the amount of \$10,000, and to Sandeep Purewal,
13 Cherra Redd, and Zenaya White in the amount of \$5,000.00 each for their efforts on behalf of the Class;
14 (4) a sum of \$55,000.00 for penalties under the California Private Attorneys General Act (“PAGA”),
15 California Labor Code § 2699; (5) the costs and expenses of the Settlement Administrator, Settlement
16 Services, Inc. (“SSI”), \$60,000; (6) one-third of the Gross Settlement Amount (\$1,833,333.33) for
17 attorneys’ fees; and (7) reimbursement of actual costs to Class Counsel, which amount to \$30,905.95.
18 The average award for each of the 5,983 Settlement Class Members is approximately \$587.78.³

19 The Court granted preliminary approval of this Settlement on January 20, 2023, and the
20 response of the Settlement Class has been overwhelmingly positive. There have been zero objections,
21 five opt-outs, and zero disputes regarding workweeks.

22 The Settlement satisfies all the criteria for final settlement approval and falls well within the
23 range of reasonableness. Accordingly, Plaintiffs request that the Court: (1) finally approve the
24 Settlement, (2) certify the Settlement Class⁴; (3) finally approve Plaintiffs Khayo Sishi, Sandeep
25 Purewal, Cherra Redd, and Zenaya White (“Class Representatives”) as Class Representatives, (4)
26 finally approve Schneider Wallace Cottrell Konecky LLP (“Schneider Wallace”), Lawyers for Justice,
27 PC, (“Lawyers for Justice”), and Capstone Law APC (“Capstone”) as Class Counsel, (5) finally
28

29 ¹ The Class Action Settlement Agreement and Release and Addenda A and B thereto (collectively the “Settlement”).

30 ² The estimated Net Settlement Amount available to Class Members totals \$3,495,760.72 and Net PAGA Amount of
\$13,750.00 (for a total of \$ 3,509,510.72).

31 ³ This amount is based on SSI’s calculations assuming Class Counsel’s actual costs were those indicated during preliminary
approval, \$29,242.97.

32 ⁴ The Class Members are defined as all current and former hourly, non-exempt workers employed by Defendants
throughout California any time between June 2, 2017 and June 11, 2022.

1 approve service awards in the amount of \$10,000.00 to Plaintiff Sishi, and \$5,000 each to Plaintiffs
2 Purewal, Redd, and White; (6) finally approve an award of attorneys' fees to Class Counsel in the
3 amount of one-third of the Gross Settlement Amount (\$1,833,333.33), plus reimbursement of Class
4 Counsel's out-of-pocket expenses (\$30,905.95); (7) finally approve an award of \$55,000 for penalties
5 under California Private Attorneys General Act of 2004 ("PAGA"); (8) finally approve SSI as
6 Settlement Administrator and approve the estimated costs of settlement administration (\$60,000); and
7 (9) approve the proposed implementation schedule, set forth in the Notice of Motion, for relevant dates
8 and deadlines regarding the administration of the Settlement.

9 **II. FACTUAL AND PROCEDURAL BACKGROUND**

10 **A. The Pleadings.**

11 On March 15, 2021, Plaintiff Khayo Sishi submitted a letter to the Labor & Workforce
12 Development Agency ("LWDA"), notifying the agency of his intent to file a lawsuit for penalties under
13 the PAGA. Declaration of Carolyn H. Cottrell ("Cottrell Decl.") at ¶ 8. He later submitted an amended
14 letter on May 18, 2021, and all named Plaintiffs further supplemented their letters to the LWDA on
15 August 12, 2022. *Id.* The LWDA did not issue any response. *Id.*

16 On June 2, 2021, Plaintiff Sishi filed his Complaint for Penalties Pursuant to Sections 2699(a)
17 and (f) of the California Private Attorneys General Act against Defendant Eskaton Properties
18 Incorporated, and then filed a First Amended Complaint to add Defendant California Healthcare
19 Consultants, Inc. as an additional Defendant on July 28, 2021. *Id.* at ¶ 9. Defendants filed their Answers
20 on August 6, 2021, and September 15, 2021. *Id.* at ¶ 10. Plaintiffs filed a Second Amended Complaint
21 ("SAC") on September 13, 2022, consolidating all Plaintiffs' claims. *Id.* at ¶¶ 11-14.

22 Defendants are part of the nursing homes and long-term care facilities industry and provide
23 memory care, assisted living, and skill nursing services. SAC ¶ 28. Plaintiffs and putative Class
24 Members are current and former hourly, non-exempt employees of Defendants throughout California.
25 *Id.* at ¶¶ 13-15, 29, 57. Plaintiffs allege that they were scheduled to work at least eight hours per shift,
26 approximately five shifts per week, for approximately 40 hours or more per week. *Id.* at ¶ 30. Plaintiffs
27 allege that Class Members are routinely denied payment for all hours worked, including at the required
28 minimum wage and overtime rates, are routinely denied compliant meal and rest periods, are not
29 properly reimbursed for necessary business expenditures, are not paid for costs of medical
30 examinations, do not have their sick time properly calculated, and are not provided written notice of
31 materials terms of their employment. *See, generally*, SAC. Plaintiffs also allege derivative violations
32

1 for failure to provide accurate, itemized wage statements, waiting time penalties, and violations of Cal.
2 Bus. & Prof. Code § 17200. *Id.* Defendants deny these allegations. Settlement, at ¶ 45.

3 **B. Pre-Mediation Efforts and Settlement.**

4 Following the filing of this action, the Parties agreed to participate in early mediation efforts.
5 Cottrell Decl. at ¶ 15. The Parties engaged in extensive informal discovery leading up to mediation,
6 wherein Defendants produced documents and information on an informal basis to facilitate mediation.
7 *Id.* at ¶ 16. Defendants produced hundreds of pages of documents including, but not limited to,
8 applicable written policies, Plaintiff Sishi's personnel file and time and pay records, an approximately
9 10% sampling of employee payroll data, and payroll calendars for the PAGA period. *Id.* Class Counsel
10 completed an exhaustive review of such documents, and used the information and data from
11 Defendants to prepare for mediation, including in the preparation of a detailed damages analysis. *Id.*

12 On February 15, 2022, the Parties conducted a full day mediation session, which was remotely
13 held before well-respected and highly-skilled employment law mediator Jeffrey Krivis. *Id.* at ¶ 18.
14 The case did not settle, but the Parties agreed to continue negotiations and scheduled a second
15 mediation for March 4, 2022. *Id.* In the interim, Defendants produced additional documents, including
16 but not limited to meeting agendas and sign in sheets, timestamp question and answer detail reports,
17 additional policies and training materials, and other pertinent documents. *Id.* at ¶ 19. Class Counsel
18 exhaustively reviewed these documents, and used the information and data from Defendants to update
19 its detailed damages analysis. *Id.* On March 4, 2022, after the second mediation session, the mediator
20 issued a mediator's proposal. *Id.* at ¶ 20. The Parties accepted the mediator's proposal on March 30,
21 2022, and executed a term sheet on April 8, 2022. *Id.*

22 The Parties then extensively met and conferred over the detailed terms of the settlement through
23 intensive, arm's-length negotiations, and executed the finalized long-form settlement agreement on
24 November 22, 2022. *Id.* at ¶ 21; see Settlement. The Parties later agreed to an Addendum A to the
25 Settlement to exclude Plaintiff Barber as a class representative, which was fully executed on December
26 12, 2022. Cottrell Decl. at ¶ 22; see Addendum A. Thereafter, the Parties agreed to Addendum B,
27 which adds Zenaya White as a class representative and Lawyers for Justice and Capstone as additional
28 Class Counsel. Cottrell Decl. at ¶ 23; see Addendum B. The Court granted preliminary approval of
29 the Settlement on January 20, 2023. Cottrell Decl. at ¶ 25.

1 **III. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT**

2 A class action may not be dismissed, compromised, or settled without the approval of the court.⁵
3 Here, the Court has already granted preliminary approval, notice has been mailed to the Class Members,
4 and the Settlement Class has responded favorably. With this Motion, Plaintiffs request that the Court
5 take the final step in the settlement approval process by granting final approval of the Settlement, the
6 Service Award, and Class Counsel's fees and costs.

7 **A. The Best Practicable Notice Was Provided to The Class.**

8 Notice of a class action settlement should be the best "practicable under the circumstances
9 including individual notice to all members who can be identified through reasonable effort." *Torrissi v.*
10 *Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370, 1374; *Wershba v. Apple Computer, Inc.* (2001)
11 91 Cal.App.4th 224, 251 (the standard is whether the notice has a reasonable chance of reaching a
12 substantial percentage of the class members). The notice is adequate where the notice is given in a
13 "form and manner that does not systematically leave an identifiable group without notice." *Mandujano*
14 *v. Basic Vegetable Prod., Inc.* (9th Cir. 1976) 541 F.2d 832, 835. Sending individual notices to
15 settlement class members' last-known addresses meets this standard and is an adequate means of
16 providing notice. *Grunin v. International House of Pancakes* (8th Cir. 1975) 513 F.2d 114, 121
17 (referring to *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 174-77).

18 Here, pursuant to the Court's January 20, 2023 order granting preliminary approval, the
19 Settlement Notice was mailed (and emailed where provided) to the 5,988 Class Members according to
20 the terms of the Settlement. See Lange Decl. at ¶ 10; Cottrell Decl. at ¶ 57. The Notice provided a
21 description of the case and the proposed Settlement, informed Class Members of their individual
22 workweeks and estimated individual settlement payment, explained how Settlement Class Members
23 could receive payment under the Settlement, exercise their right to opt-out, object, or dispute their
24 workweeks, and identified Class Counsel and the anticipated attorneys' fees and costs. See Lange Decl.
25 Exhibit A; Cottrell Decl. at ¶ 58.) SSI also set up a toll-free number and website for Class Member
26 inquiries. Lange Decl. at ¶ 16.

27 Following the initial mailing to all potential Class Members, 558 notices were returned as
28 undeliverable. Lange Decl. at ¶ 11. After performing computerized skip trace procedures, addresses
29 were found for 497 of those and remailed them, 53 of which were returned as undeliverable. *Id.* SSI
30 was unable to find a new address for 31 of those and they remained undeliverable. *Id.* SSI followed all

31 _____
32 ⁵ See California Civil Code § 1781(f); California Rule of Court 3.769; see also Federal Rule of Civil Procedure 23(e). The California Supreme Court has authorized and urged California's trial courts to use Federal Rule of Civil Procedure Rule 23 and federal case law for guidance in considering class action issues. See *Green v. Obledo* (1981) 29 Cal.3d 126, 145-46.

1 of the procedures set forth in the Court-approved notice plan. Reasonable steps have been taken to
2 ensure that all Class Members receive the notice packets. Accordingly, the notice process satisfies the
3 “best practicable notice” standard.

4 **B. Final Approval Is Appropriate Because the Settlement Is Fair, Reasonable, And**
5 **Adequate.**

6 For final approval, a Court must ensure that “the agreement is not the product of fraud or
7 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole,
8 is fair, reasonable and adequate to all concerned.” *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d
9 1011, 1027. The decision to approve or reject a proposed settlement is committed to a court’s broad
10 discretion. *Wershba*, 91 Cal.App.4th at 234-35. As long as the Court has sufficient information about
11 the nature and magnitude of the claims being settled, as well as impediments to recovery, the Court
12 should be able to make an independent assessment of the reasonableness of the terms agreed upon.
13 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. Plaintiffs provide the necessary
14 information regarding the claims being settled and recognizes and appreciates the risks of continued
15 litigation.

16 **1. The terms of the Settlement are fair, and the result for the members of**
17 **the Settlement Class are substantial.**

18 A presumption of fairness exists where: (1) the settlement is reached through arm’s-length
19 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
20 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.
21 *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1802. All conditions are satisfied here.

22 **a. The Settlement was reached through arms-length bargaining after**
23 **extensive investigation, discovery, and analysis of the Class claims.**

24 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is
25 reached through arm’s-length bargaining.” *Wershba*, 91 Cal.App.4th at 245. In addition, fairness exists
26 where the investigation and discovery conducted is sufficient to allow counsel, as well as the Court, to
27 act intelligently. *Dunk*, 48 Cal. App. 4th at 1802.

28 Here, sufficient investigation and discovery occurred to allow Plaintiffs, Class Counsel, and the
29 Court to act intelligently. Defendants produced hundreds of pages of documents prior to mediation, as
30 described in section II.B. above. *Id.* at ¶¶ 16, 19. Class Counsel investigated the applicable law and
31 facts in this case and extensively analyzed the potential damages that might be recovered following the
32 exchange of documents and information with Defendants. *Id.* at ¶ 60. Plaintiffs’ liability and damages

1 evaluation was premised on a careful and extensive analysis of the effects of Defendants’ compensation
2 policies and practices on Class members’ pay. *Id.* at ¶ 61.

3 The settlement negotiations were at all time arm’s-length discussions. The Parties attended two
4 mediations with a well-respected mediator and a settlement was reached after numerous arm’s-length
5 settlement discussions between Class Counsel, Defendants’ counsel, and the mediator. *Id.* at ¶ 62.
6 Accordingly, the Settlement was agreed upon through arm’s-length bargaining following an extensive
7 review of the facts, law, documents, and data. *Id.*

8 **b. Class Counsel are experienced class action litigators.**

9 In reaching the proposed Settlement, Class Counsel also relied on their substantial litigation
10 experience and experience in similar wage-and-hour class actions. *Id.* at ¶¶ 4-7, 63; Declaration of
11 Edwin Aiwazian (“Aiwazian Decl.”) at ¶¶ 15-17; Declaration of Raul Perez (“Perez Decl.”) at ¶ 2-10.
12 Based on Class Counsel’s knowledge and expertise in this area of law, Class Counsel believes this
13 Settlement will provide a substantial benefit to the Class Members. Cottrell Decl. at ¶ 63.

14 **c. The Class approves of the Settlement.**

15 Class Members approve of the Settlement, and there have been no objections to the Settlement.
16 Only 5 out of 5,988 class members requested exclusion from the Settlement, and there have been no
17 workweek disputes. Lange Decl. at ¶¶ 18-22. The lack of objections and small number of opt-outs show
18 widespread support for the Settlement among the Class Members and gives rise to a presumption of
19 fairness. *See Dunk*, 48 Cal.App.4th at 1802.

20 **2. Litigation of this action not only would delay recovery, but would be**
21 **expensive, time-consuming, and would involve substantial risk.**

22 The Settlement yields a prompt, certain, and substantial recovery for Settlement Class
23 Members. Cottrell Decl. at ¶ 64. Absent this Settlement, Class Members would be forced to wait years
24 for the case to make its way through litigation (including discovery, class certification, dispositive
25 motions, trial, and appeal). Cottrell Decl. at ¶ 65. It is estimated that Class Counsel’s fees and costs
26 would far exceed \$2,000,000.00 to pursue these claims through final resolution. *Id.* Litigating the class
27 claims in this action would require substantial additional discovery including written discovery, the
28 depositions of current and former employees and experts, as well a deposition of Defendants’ person
29 most qualified on several topics. *Id.* It would also require consideration, preparation, and presentation
30 of voluminous documentary evidence and the preparation and analysis of expert reports. *Id.* Defendants
31 likely have resources they could use to litigate the case for years to come, including through multiple
32 levels of appeals. *Id.* Resolution of these claims now through the Settlement will benefit the parties and
the court system. *Id.* at ¶ 66.

1 The reasonableness of the Settlement is further underscored by the fact that Defendants have
2 legal and factual grounds available to defend this action and that further litigation poses the risk of no
3 recovery. *Id.* at ¶ 67. Defendants posit that this case is not suitable for class treatment, that they fully
4 complied with their obligations under the Labor Code, and that Plaintiffs and Class Members are not
5 entitled to damages, penalties, or other relief sought. *Id.* These defenses must be accounted for in
6 considering the reasonableness of the Settlement.

7 Plaintiffs would also face other significant risks if the litigation were to proceed to trial. *Id.* at ¶
8 68. Plaintiffs would need to establish class-wide liability and prove up various issues regarding
9 damages and penalties. *Id.* Such efforts would likely take many more months, if not years, and would
10 necessitate expert witness testimony and significant additional litigation. *Id.* Even if Plaintiffs
11 successfully overcame these procedural obstacles, full recovery of Plaintiffs' claims would also require
12 complete success and certification of all of Plaintiffs' claims, a questionable feat in light of
13 developments in wage and hour and class action law as well as the legal and factual grounds that
14 Defendants have asserted to defend this action. *Id.* at ¶ 69.

15 Off-the-clock claims are difficult to certify for class treatment, given that the nature, cause, and
16 amount of the off-the-clock work may vary based on the individualized circumstances of the worker.⁶
17 While Plaintiffs are confident that they would establish that common policies and practices give rise to
18 the off-the-clock work for Class Members, Plaintiffs acknowledged that the off-the-clock work was
19 performed by hourly employees holding various job titles at dozens of different locations around
20 California, and whether all such work was under the control of Defendants would be heavily contested.
21 *Id.* at ¶ 70. With differing facilities' physical layouts, supervisors, and the nature of the work varying
22 by location, Plaintiffs recognized that obtaining class certification would present a significant obstacle,
23 with the risk that the Class Members could only pursue individual actions in the event that certification
24 was denied. *Id.* Certification of off-the-clock work claims is further complicated by the lack of
25 documentary evidence and reliance on employee testimony, and Plaintiffs would likely face motions
26 for decertification as the case progressed. *Id.*

27 Plaintiffs' claims regarding business expense reimbursements and for unpaid medical or
28 physical examinations would be equally difficult to certify for class treatment, given that the nature and
29 amounts of such expenses may vary based on the individualized circumstances of each worker, and
30

31 ⁶ See, e.g., *In re AutoZone, Inc., Wage & Hour Emp't Practices Litig.* (N.D. Cal. 2012) 289 F.R.D. 526, 539, *aff'd*, (9th
32 Cir. Oct. 4, 2019) No. 17-17533, 2019 WL 4898684 ; *Kilbourne v. Coca-Cola Co.* (S.D. Cal. July 29, 2015) No. 14CV984-
MMA BGS, 2015 WL 5117080, at *14; *York v. Starbucks Corp.*
(C.D. Cal. Nov. 23, 2011) No. CV 08-07919 GAF PJWX, 2011 WL 8199987, at *30.

1 given that evidence of such expenses would be complicated by the lack of documentary evidence and
2 reliance on employee testimony. *Id.* at ¶ 71.

3 Additionally, Plaintiffs’ derivative claims rise and fall with Plaintiffs’ other claims. *Id.* at ¶ 72.
4 While Plaintiffs believe they would prevail on these issues, they recognize the risk that a fact finder
5 may find for Defendants on one or more issues and may find damages to be significantly less than what
6 Plaintiffs claim. *Id.* For example, Defendants would likely argue that no penalties for waiting-time
7 violations can be awarded unless the failure to pay wages is “willful,” an element that Plaintiffs
8 acknowledge would have been difficult to prove given Defendants’ policies and enforcement.⁷

9 There is also the risk that even before Plaintiffs successfully prevailed in proving liability as to
10 all of their claims, the Court could strike Plaintiffs’ PAGA claims for lack of manageability, a
11 requirement now affirmed by one California appellate court ruling in *Wesson v. Staples the Off.*
12 *Superstore, LLC* (2021) 68 Cal.App.5th 746, *reh’g denied* (Sept. 27, 2021), *rev’w denied* (Dec. 22,
13 2021) (“courts have inherent authority to ensure that PAGA claims can be fairly and efficiently tried
14 and, if necessary, may strike a claim that cannot be rendered manageable”).⁸

15 Plaintiffs would also likely need to move for and defend against motions for summary judgment
16 or adjudication, and would have been further required to take their claims to trial. Cottrell Decl., ¶ 73.
17 Trials are inherently risky for all parties. Although Plaintiffs believe they could have been successful
18 in proving these claims, and that Defendants’ evidence would not have been as persuasive, a trial on
19 off-the-clock claims and meal and rest periods would have carried a high degree of risk. After all,
20 Defendants, represented by experienced employment lawyers, raised many of the above arguments,
21 and more, in mediation and would have done so in continued litigation. *Id.* at ¶ 75. Despite Plaintiffs’
22 confidence in their ability to prove their claims on a Class-wide basis, any of the defenses, if decided
23 in Defendants’ favor, could have reduced or even eliminated any potential damages award. *Id.* Given
24 all these risks, Class Counsel believes that this settlement is reasonable, and indeed excellent, based on
25 the strength of the claims, the size of the group of Class Members, and the risks of going to trial.

26
27 ⁷ See Cal. Lab. Code § 203; 8 C.C.R. 13520 (“[a] willful failure to pay wages within the meaning of Labor Code section
28 203 occurs when an employer intentionally fails to pay wages to an employee when those wages were due.”); *Smith v. Rae*
29 *Venter Law Group* (2002) 29 Cal.4th 345, 354 n.2 (holding that a good faith dispute that any wages are due will preclude
an award of waiting time penalties). Defendants would also have argued that an employer’s failure to pay wages is not
willful unless it reached the standard of “gross negligence or recklessness.” See *Amaral v. Cintas* (2008) 163 Cal.App.4th
1157, 1201.

30 ⁸ Assuming Plaintiffs would defeat a motion to strike Plaintiffs’ PAGA claims for lack of manageability, further risks
31 would complicate Plaintiffs’ claims. For example, the majority of courts have found there is no private right of action
32 under the PAGA - if at all - for violations of Labor Code Sections 246 and 248.5 for violations of California sick pay laws.
See, e.g., *Rudolph v. Herc Rentals* (C.D. Cal. Aug. 27, 2021) No. 2:20-cv-05412-ODW (Ex), 2021 U.S. Dist. LEXIS
244970, at *14 (joining *Stearne v. Heartland Payment Sys. LLC* (E.D. Cal. Feb. 6, 2018) No. 2:17-cv-01181-MCE-CKD,
2018 U.S. Dist. LEXIS 20679, 2018 WL 746492, at *2 (dismissing PAGA claims based on sick leave violations)).

1 **3. The proposed Settlement is within the range of reasonableness.**

2 The Net Settlement Amount of \$3,509,510.72 results in fair and just relief to Class Members.
3 *Id.* at ¶ 59. This amount will be available to the 5,983 Settlement Class Members, exclusive of
4 attorneys’ fees and costs, settlement administration costs, payment to the LWDA, and the service
5 award. Cottrell Decl. ¶ 76. Individual settlement payments are allocated based on the number of
6 workweeks for each Settlement Class Member in proportion to the total workweeks for all Settlement
7 Class Members. *Id.* ¶ 77. The average payment to Settlement Class Members is approximately \$587.78
8 per individual.⁹ See Lange Decl. ¶ 24; Cottrell Decl. ¶ 78. The result is not only within the reasonable
9 standard, but is quite reasonable when considering the difficulty and risks presented by continuing this
10 litigation. See Cottrell Decl. ¶¶ 79-87.

11 This is a recovery that easily falls within the range of reasonableness. See, e.g., *Dunleavy v.*
12 *Nadler (In re Mego Fin. Corp. Sec. Litig.* (9th Cir. 2000) 213 F.3d 454, 459 (“It is well-settled law
13 that a cash settlement amounting to only a fraction of the potential recovery does not per se render the
14 settlement inadequate or unfair.”)(citation omitted). It is well-settled that a proposed settlement is not
15 to be measured against a hypothetical ideal result that might have been achieved. See, e.g., *7-Eleven*
16 *Owners for Fair Franchising v. Southland Corp.*, (2000) 85 Cal.App.4th 1135, 1150 (quoting *Linney*
17 *v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 with approval: “This court has
18 aptly held that ‘it is the very uncertainty of outcome in litigation and avoidance of wasteful and
19 expensive litigation that induce consensual settlements. The proposed settlement is not to be judged
20 against a hypothetical or speculative measure of what might have been achieved by the negotiators.”).

21 The Settlement represents 43% of the Defendants’ total substantive potential exposure
22 estimated at \$12.6 million, which represents Defendants’ exposure for claims for unpaid wages, meal
23 and rest breaks, and expense reimbursements that would have been owed to the Class Members. Cottrell
24 Decl. at ¶ 85. The Gross Settlement Amount further represents approximately 13% of Defendant’s
25 estimated total potential exposure of \$43.3 million, including derivative and PAGA claims. *Id.* at ¶ 86.
26 To obtain such amounts, Plaintiffs and the putative Class would have been required to fully prevail on
27 all causes of action and prove that Plaintiffs and the Class indeed were subject to the assumed violation
28 rates. *Id.* at ¶ 87.

29 A recovery of approximately 13% of the total estimated exposure falls easily within the range
30 of reasonableness. *In Re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 459 (“It is well-settled law that a
31

32 ⁹ This amount is based on SSI’s calculations assuming Class Counsel’s actual costs were those indicated during preliminary approval, \$29,242.97.

1 cash settlement amounting to only a fraction of the potential recovery does not per se render the
2 settlement inadequate or unfair.”) (citation omitted).¹⁰

3 **C. The Requested Service Award Is Reasonable and Should Be Approved.**

4 It is well-established that representative plaintiffs are eligible for reasonable incentive payments
5 to compensate them for the expense or risk they have incurred in conferring a benefit on other members
6 of the class. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412.
7 Courts award service payments to advance public policy by encouraging individuals to come forward
8 and perform their civic duty in protecting the rights of the class, as well as to compensate class
9 representatives for their time, effort, inconvenience, and for any expense or risk incurred. *In Re*
10 *California Indirect Purchases* (1998) 1998 WL 1031494, at *11; *Munoz*, 186 Cal.App.4th at 412.

11 Throughout the litigation, Plaintiff Sishi estimates he spent at least six to eight hours working
12 with Class Counsel and assisting in the development of the case. Declaration of Khayo Sishi (“Sishi
13 Decl.”) at ¶¶ 6-15. He provided extensive information and documents including but not limited to wage
14 statements, correspondences to and from Defendants, and policy documents, in anticipation of
15 discovery and in preparation for mediation. Cottrell Decl. at ¶ 90; Sishi Decl. at ¶ 11. He also assisted
16 Class Counsel in their preparation for mediation and answered Class Counsel’s questions in developing
17 Plaintiffs’ position for mediation. Cottrell Decl. at ¶ 90; Sishi Decl. at ¶ 12. Plaintiffs Plaintiff Purewal,
18 Redd and White also worked with their counsel in the litigation of their cases. See Declaration of
19 Sandeep Purewal (“Purewal Decl.”) at ¶¶ 5-12; Declaration of Cherra Redd (“Redd Decl.”) at ¶ 5-13;
20 Declaration of Zenaya White (“White Decl.”) at ¶ 4-14. Class Representatives have also taken part in
21 the Settlement decision, agreed to a broader release, and remained apprised of the case at all times
22 during litigation. Cottrell Decl. at ¶ 91; Sishi Decl. at ¶¶ 13, 17; Purewal Decl. at ¶¶ 10, 14; Redd Decl.
23 at ¶¶ 11, 15; White Decl. Decl. at ¶ 11.

24 Class Representatives also took the significant risk of coming forward to represent the interests
25 of their fellow employees by filing and prosecuting their actions. Cottrell Decl. at ¶¶ 92-93; Sishi Decl.
26 at ¶ 16; Purewal Decl. at ¶ 13; Redd Decl. at ¶ 14. They have subjected themselves to risk with regards
27 to future employment opportunities and their reputation in the community by participating in this
28 action. See *id.*

29
30 ¹⁰ See also, *Viceral v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016) Case No. 15-cv-2198-EMC, 2016 WL 5907869, at *7
31 (approving wage and hour settlement representing 8.1% of the total verdict value); *Stovall-Gusman v. W.W. Granger, Inc.*
32 (N.D. Cal. June 17, 2015) 2015 WL 3776765, at *4 (“10% gross and 7.3% net figures are ‘within the range of
reasonableness”); *Balderas v. Massage Envy Franchising, LLP* (N.D. Cal. July 21, 2014) 2014 WL 3610945, at *5 (gross
settlement amount of 8% of maximum recovery and net settlement amount of 5%); *Ma v. Covidien Holding, Inc.* (C.D.
Cal. Jan. 31, 2014) 2014 WL 360196, at *4-5 (9.1% of “the total value of the action” is within the range of reasonableness).

1 In light of the efforts Class Representatives made and the risks they took in filing and
2 prosecuting this action to obtain this \$5,500,000 Settlement, Plaintiffs requests a Service Awards of
3 \$10,000 for Plaintiff Sishi, and \$5,000 each to Plaintiffs Purewal, Redd, and White. These figures are
4 well within the range of service awards approved in comparable cases. *See, e.g., Sano v. Southland*
5 *Management Group, Inc.* (Cal. Super. Dec. 02, 2013) No. BC489112, 2013 WL 7231686, at *3
6 (approving two \$15,000 service awards in context of class action settlement); *Benedict v. Reachlocal,*
7 *Inc.* (Cal. Super. Dec. 09, 2011) No. BC 432721, 2011 WL 9155053 (approving \$12,500 and \$10,000
8 service awards); *Wilson v. Rock-Tenn Co.* (Cal. Super. Dec. 12, 2017) No. BC488456, 2017 WL
9 9342358, at *2 (approving five \$10,000 service awards); *Chavez v. Teledirect Communs. Inc.* (Cal.
10 Super. June 11, 2021) No. 34-2018-00233487-CU-OE-GDS, 2021 Cal. Super. LEXIS 10020, *9
11 (approving service award of \$7,500 to each of the plaintiffs). Defendants do not oppose this request,
12 and neither does the Class. Cottrell Decl. at ¶ 94.

13 As a result of Plaintiffs' efforts and willingness to step forward, the Settlement Class Members
14 will receive significant recoveries if the Settlement is approved. Cottrell Decl. at ¶ 92. If they did not
15 serve as Plaintiffs and Class Representative or assist in the prosecution of their cases, Class Members
16 may not be getting any recovery, and Defendants' alleged conduct may have gone unchecked. *Id.* The
17 requested Service Awards are reasonable and should be finally approved.

18 **D. The Requested Attorneys' Fees and Costs Are Reasonable and Should Be**
19 **Approved.**

20 The excellent result did not come without extensive effort, skill, and substantial risk of Class
21 Counsel. Defendants raised myriad procedural and substantive defenses, as described above. Absent
22 the Settlement, Plaintiffs would face considerable risk in preparing for class certification and proving
23 their claims on their merits.

24 For their efforts and the substantial risk they undertook in obtaining this Settlement and the
25 considerable monetary compensation to the Class Members, Class Counsel seeks an award of one-third
26 of the Gross Settlement Amount, or \$1,833,333.33 as well as reasonable litigation expenses of
27 \$30,905.95. *Id.* at ¶ 95. These fees and costs are warranted under the law and within the range
28 commonly awarded in similar cases.

29 **1. The requested fee award is fair and reasonable in light of the excellent**
30 **result achieved and the risks inherent in this action.**

31 Among the factors considered in determining whether the requested fee percentage is
32 reasonable are: (1) the results achieved; (2) the risk of further litigation; (3) the skill required of

1 plaintiff's counsel and the quality of work performed by plaintiff's counsel; (4) the contingent nature
2 of the fee and the financial burden carried by the plaintiff; and (5) awards made in similar cases.
3 *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048-50. All these factors support an award
4 here of one-third of the common fund. *See Cottrell Decl.* at ¶¶ 96-100.

5 First, as discussed above, Class Counsel's efforts resulted in a substantial settlement by any
6 standard, and an especially good result in light of the challenges Plaintiffs would face in litigating the
7 claims on a representative basis. *Id.* at ¶¶ 64, 67-75. The average payout per class member is
8 approximately \$587.78. *Lange Decl.* at ¶ 24. This result was achieved by the work and success of Class
9 Counsel, who negotiated the Settlement after extensive preparation, investigation, review of documents
10 produced by Defendants, and two mediation sessions. *Cottrell Decl.* at ¶¶ 16-21.

11 Second, Plaintiffs faced significant risks going forward with the litigation. *Id.* at ¶¶ 67-75.
12 Defendants raised numerous defenses throughout this litigation, any one of which, if successful, could
13 have decimated the case. *Id.* Accordingly, Plaintiffs faced serious risks going forward, and it would
14 have likely taken several more years to realize any recovery. *Id.*

15 Third, Class Counsel are experienced class action litigators. *Id.* at ¶¶ 4-7, 63; *Aiwazian Decl.* at
16 ¶¶ 15-17; *Perez Decl.* at ¶ 2-10. This experience and expertise, combined with the high quality of work
17 performed in this case by Class Counsel, resulted in the Settlement achieved. *Id.*

18 Fourth, Class Counsel have been representing Plaintiffs (and the State of California) in this
19 matter on a strictly contingency basis, and had to forego opportunities to litigate other cases, incurred
20 the risk of non-recovery after a substantial investment of time, money, and resources, and have done
21 so since the inception of the cases without any payment or compensation. *Cottrell Decl.* at ¶¶ 96. This
22 is no easy burden for any firm. If, despite these hardships and risks, Class Counsel are paid only basic
23 hourly rates multiplied by the number of hours worked on the case, they would not be fairly
24 compensated for the hardships and serious risks they incurred. *See Posner, Economic Analysis of the*
25 *Law*, 534, 567 (4th ed. 1992) ("A contingent fee must be higher than a fee for the same legal services
26 paid as they are performed ... because the risk of default (the loss of the case, which cancels the debt
27 of the client to the lawyer) is much higher than that of conventional loans").

28 Fifth, as discussed below, the request for attorney's fees in the amount of one third of the
29 common fund falls well within the range accepted by state and federal courts in California in
30 comparable wage-and-hour actions. *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 503.

31 For all of these reasons, a common-fund fee award in the amount of one-third of the \$5,500,000
32 common fund created by Plaintiffs and their attorneys is fair and reasonable.

1 **2. California courts routinely approve attorneys’ fees awards of one-third of**
2 **the common fund.**

3 The California Supreme Court has “join[ed] the overwhelming majority of federal and state
4 courts in holding that when class action litigation establishes a monetary fund for the benefit of the
5 class members, . . . the court may determine the amount of a reasonable fee by choosing an appropriate
6 percentage of the fund created. *Laffitte, supra*, 1 Cal. 5th at 503 (approving award of attorney’s fees in
7 the amount of one third of the gross \$19 million settlement under the common-fund theory). By
8 awarding counsel a percentage of the total recovery, rather than fees based on hours worked, the
9 common-fund method encourages attorneys to efficiently litigate to achieve the best results possible
10 for the class. *See id.* at 492-494.

11 California courts routinely uphold attorney’s fees of one-third of the common fund.¹¹ Moreover,
12 federal courts and secondary sources confirm that attorneys’ fees in this range are reasonable.¹² These
13 authorities establish that Class Counsel’s request for one-third of the Gross Settlement Amount is well
14 within the range customarily approved by courts in California.

15 **3. A lodestar cross-check confirms the reasonableness of the fee award.**

16 The trial court may use an abbreviated lodestar “cross-check” for common-fund awards if the
17 court considers it useful. *Id.* at 504-05. The Supreme Court expressly instructed that “the lodestar
18 calculation, when used in this manner, does not override the trial court’s primary determination of the
19 fee as a percentage of the common fund and thus does not impose an absolute maximum or minimum
20 on the fee award.” *Id.* at 505. In conducting a lodestar cross-check, the court is not “required to closely
21 scrutinize each claimed attorney-hour.” *Id.* An evaluation may be done by reviewing “counsel
22 declarations summarizing overall time spent.” *Id.*

23
24 ¹¹ *See, e.g., Guillen v. Framing by Superior* (Riverside Super. Nov. 4, 2021) No.: RIC 1804201, 2021 Cal. Super. LEXIS
25 89153, *9 (finally approving of class counsel’s “request for an award for up to 33.3% of the Gross Settlement Amount”
26 (Hon. Sunshine Sykes); *Perez v. Contera Constr. Corp.* (Riverside Super. Nov. 24, 2021) No.: RIC2002575, 2021 Cal.
27 Super. LEXIS 89085, *6-7 (finding that the gross settlement fund is a true common fund as there is no claims process and
28 money from the settlement would not revert to defendant; also finding that the one-third common fund is fair, reasonable
29 and appropriate and that the requested attorneys’ fees of are also reasonable under the lodestar method given a negative
30 multiplier of 1.406”) (Hon. Sunshine Sykes); *Asalati v. Intel Corp.* (Santa Clara Super. Ct., Oct. 29, 2018) No. 16cv302615
31 (approving 33.3% fee award, at a multiplier of 3.98 over lodestar); *Ochoa v. Haralambos Beverage Co.* (Los Angeles
32 Super. Ct., Feb. 1, 2007) No. BC319588 (approving 33.3% fee award with no mention of lodestar crosscheck); *Big Lots
Overtime Cases* (San Bernardino Super. Ct., JCC Proceeding No. 4283, Feb. 4, 2004) (approving award of attorney’s fees
of 33% of the recovery); *Davis v. The Money Store, Inc.* (Sacramento Super. Ct., No. 99AS01716, Dec. 26, 2000) (same);
Miskell v. Auto. Club of Southern Cal. (Orange County Super. Ct., No. 01CC09035, May 27, 2003) (same).

¹² *See Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 297-98 (“Class Counsel have also cited 73
district court opinions in which fees in the range of 30-50 percent of the common fund were awarded.”); *In Re Pacific
Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 379 (33% fee award); *Williams v. MGM-Pathe Communications Co.*
(9th Cir. 1997) 129 F.3d 1026, 1027 (33% of total fund awarded); Newberg on Class Actions, §11:24 (4th Ed. 2002);
Manual for Complex Litigation, §14:6.

1 In conducting a lodestar cross-check, the Court first determines a lodestar value for the fees by
2 multiplying the time reasonably spent by plaintiffs' counsel on the case by a reasonable hourly rate. *In*
3 *re Consumer Privacy Cases* (2009) 175 Cal. App. 4th 545, 556-57. To determine whether the requested
4 rate is reasonable, courts look to the prevailing rate for similar work in the pertinent geographic region.
5 *PLCM Group v. Drexler* (2000) 22 Cal. 4th 1084, 1096-97 (using prevailing hourly rate in community
6 for comparable legal services even though party used in-house counsel). Here, Class Counsel's hourly
7 rates are comparable to those charged by other class action plaintiffs' counsel and the firms defending
8 class actions, and similar rates have been approved by numerous federal and state courts.¹³

9 Class Counsel's aggregate lodestar is currently estimated at approximately \$874,490.00 based
10 on approximately 1,295.4 hours of attorney and staff time. *See Cottrell Decl.* at ¶ 102; *Aiwazian Decl.*
11 *at* ¶ 12; *Perez Decl.* at ¶ 11. Class Counsel's aggregate lodestar will increase as a result of preparation
12 for and attendance at the Final Approval Hearing and the settlement administration process. *Cottrell*
13 *Decl.* at ¶ 103.

14 A cross-check of Class Counsel's lodestar, which results in the application of a positive
15 multiplier, confirms that a fee award of one third of the \$5,500,000 Gross Settlement Amount is a
16 reasonable and fair payment. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 255
17 (noting that multipliers can range from 2 to 4 or higher); *Van Vranken v. Atlantic Richfield Co.* (N.D.
18 Cal. 1995) 901 F.Supp.294, 298 ("Multipliers in the 3-4 range are common in lodestar awards for
19 lengthy and complex class action litigation"); *see also Vizcaino*, 290 F.3d at 1051 & n.6 (multipliers
20 "ranging from one to four are frequently awarded in common fund cases when the lodestar method is
21 applied"; affirming fees where the cross-check multiplier is 3.65).

22 Moreover, a court "must apply a risk multiplier to the lodestar 'when (1) attorneys take a case
23 with the expectation they will receive a risk enhancement if they prevail, (2) their hourly rate does not
24 reflect that risk, and (3) there is evidence that the case was risky. Failure to apply a risk multiplier in
25 cases that meet these criteria is an abuse of discretion.'" *Stetson v. Grissom* (9th Cir. 2016) 821 F.3d

26
27 ¹³ In particular, in a recent order, Judge John A. Mendez of the of the Eastern District of California found that Schneider
28 Wallace's "hourly rates are within the prevailing range of hourly rates charged by attorneys providing similar services in
29 class action, wage-and-hour cases in California." *Wright et al. v. Frontier Management LLC et al.*, Case 2:19-cv-01767-
30 JAM-CKD (E.D. Cal. March 13, 2023). Moreover, the hourly rates for Schneider Wallace were found to be reasonable for
31 purposes of a lodestar crosscheck by Judge William Q. Hayes of the Southern District of California in *Amaraut v.*
32 *Sprint/United Mgmt. Co.* (S.D. Cal. Aug. 5, 2021) No. 19-cv-411-WQH-AHG, 2021 WL 3419232, 2021 U.S. Dist. LEXIS
147176, at *18 [approving a one third fee award, and in August 2021, finding that "the fee award is further supported by
a lodestar crosscheck, whereby it finds that the hourly rates of Schneider Wallace Cottrell Konecky LLP ... are reasonable,
and that the estimated hours expended are reasonable."]. Judge Hayes found that Class Counsel "has significant experience
in class action and wage and hour litigation and has demonstrated significant skill during this contentious litigation." Judge
Laurel Beeler also found Schneider Wallace's rates reasonable in *Villafan v. Broadpectrum Downstream Services, Inc.*,
et al. (N.D. Cal. Apr. 8, 2021) Case No. 3:18-cv-06741-LB, ECF 150.

1 1157, 1166 (quoting *Stanger v. China Elec. Motor, Inc.* (9th Cir. 2016) 812 F.3d 734, 741 (emphasis
2 in original, internal quotation marks omitted)). In this matter, Class Counsel took on this class action
3 with an expectation that at least a modest risk enhancement would be applied to any fee request, the
4 hourly rates cited are not adjusted for risk and, as set forth above, this case involved substantial risk.
5 Accordingly, a multiplier would be appropriate.

6 **E. The Litigation Costs are Fair and Reasonable.**

7 Class Counsel requests reimbursement of their actual out-of-pocket expenses incurred to
8 prosecute this action, in the amount of \$30,905.95. *See* Cottrell Decl. at ¶ 116; Aiwazian Decl. at ¶ 18;
9 Perez Decl. at ¶ 15. Attorneys are permitted to recover their litigation costs and expenses under the
10 California Labor Code and the common-fund doctrine. Cal. Lab. Code §§ 218.5, 226, 1194, 2699;
11 *Serrano v. Priest* (1977) 20 Cal.3d 25, 35. Class Counsel incurred costs including, for example, costs
12 for filing and service, mediation costs, document retrieval and printing costs, mailing costs, jury fees,
13 and costs for submission of the PAGA letter to the LWDA. Cottrell Decl. at ¶ 117. These expenses
14 were incidental and necessary to the effective representation of the Class Members. *Id.*

15 **F. The Requested Settlement Administration Costs Are Fair and Reasonable.**

16 Class Counsel also request that the Court approve payment of \$60,000.00 for costs necessary
17 to administer the Settlement. SSI's costs currently total \$25,000.00; an additional \$35,000.00 will be
18 incurred for the check distribution and tax work to be performed prior to the Final Approval Hearing,
19 for an estimated total of \$60,000.00. Lange Decl. at ¶ 25. Pursuant to the Settlement, the Settlement
20 Administrator's costs were estimated at \$60,000.00. *See* Settlement at ¶ 2(z). These costs are reasonable
21 and uncontested by Defendants and the Class, and should be approved.

22 **IV. THE PROPOSED IMPLEMENTATION SCHEDULE**

23 Plaintiffs respectfully requests that the Court approve the proposed implementation schedule
24 for approval of the Settlement as set forth in the Notice of Motion and proposed order.

25 **V. CONCLUSION**

26 For the foregoing reasons, Plaintiffs respectfully requests that the Court grant this Motion for
27 Final Approval and enter an Order consistent with the Proposed Order submitted herewith.

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Respectfully Submitted,

Dated: June 30, 2023

**SCHNEIDER WALLACE
COTTRELL KONECKY LLP**

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