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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

TONYA HALFHILL, individually and on
behalf of other individuals similarly situated,

Plaintiff,

v.

KAISER FOUNDATION HOSPITALS., a
California Nonprofit Corporation; a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO. RG21096610

*[Assigned for all purposes to the
Hon. Noël Wise, Dept. 21]*

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

*[Filed concurrently with Declaration of Shaun
Setareh, Kevin Stoops, William Restis and Kiley
Grombacher in support thereof]*

Date: February 2, 2024

Time: 9:00 a.m.

Place: Department 21

Reservation No.: 470892162236

Complaint Filed: April 20, 2021

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20 MARIO MORENO and SUSIE DRENNAN

1 TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on February 2, 2024 at 9:00 a.m., or as soon thereafter as the matter
3 may be heard in Department 21 of the above-entitled Court located at 1225 Fallon Street
4 Oakland, CA 94612, Plaintiffs TONYA HALFHILL, DANYELL SANDERS, MARIO MORENO and
5 SUSIE DRENNAN ("Plaintiffs") will and do hereby move this Court for an Order:

- 6 • Preliminarily approving the proposed Stipulation and Settlement of Class, Collective, and
7 Representative Action;
- 8 • Certifying the Settlement Class;
- 9 • Appointing Plaintiffs as the Class Representatives;
- 10 • Appointing Setareh Law Group, Bradley/Grombacher, LLP, Sommers Schwartz, P.C.,
11 and The Restis Law Firm, P.C. as Class Counsel;
- 12 • Approving the Stipulation and Settlement of Class, Collective, and Representative Action;
- 13 • Appointing ILYM as the Settlement Administrator;
- 14 • Directing that notice be mailed to the Settlement Class; and
- 15 • Scheduling a hearing date for the Motion for Final Approval of Class Action Settlement.

16 This motion is made pursuant to California Rules of Court 3.769. This motion will be based upon
17 this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the
18 Declaration of Shaun Setareh, Kevin Stoops, William Restis and Kiley Grombacher as well as exhibits
19 attached thereto, the arguments of counsel, the documents filed in this action and any other matters as may
20 be properly presented on or before the hearing on this motion.

21
22 Dated: January 10, 2024

BRADLEY/GROMBACHER, LLP

23 

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28 Attorneys for Plaintiffs Ro
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs TONYA HALFHILL, DANYELL SANDERS, MARIO MORENO and
4 SUSIE DRENNAN (collectively, “Plaintiffs”) seek preliminary approval of a non-reversionary class,
5 collective and representative action settlement of wage and hour claims, FLSA claims and claims for civil
6 penalties under the Private Attorneys General Act of 2004 (“PAGA”) against Defendant KAISER
7 FOUNDATION HOSPITALS (“Defendant”)¹ for a Gross Fund Value (“GFV”) of **\$10,000,000**. The
8 Settlement Class consists of approximately 101,517 Class Members. This settlement resolves three cases
9 now combined into this action.

10 The Net Settlement Amount (“NSA”) expected to be paid to Class Members – after payment of
11 Class Counsel fees of one-third of the GFV (\$3,333,333) and costs of up to \$150,000, settlement
12 administration estimated to be \$170,000, Plaintiffs’ enhancement awards of \$7,500 each (\$30,000 total),
13 and a payments to the California Labor & Workforce Development Agency (“LWDA”) pursuant to the
14 PAGA of \$225,000 (75% of the total PAGA Payment of \$300,000) is \$6,091,667². Including the 25%
15 portion of the PAGA Payment, or \$75,000, that will be paid to PAGA Members, the Net Settlement
16 Amount (“NSA”) being paid to Class Members is \$6,166,667. Plaintiffs have obtained a significant
17 monetary recovery for Class Members.

18 The Settlement occurred as a result of extensive, arm’s-length negotiations by experienced counsel
19 after sufficient formal and informal written discovery and investigation into the facts with the guidance of
20 David Rotman, an experienced and well-respected class action mediator. The Settlement seeks to fully
21 and finally settle and resolve all claims Plaintiffs pled or could have pled based on the allegations in the
22 Third Amended Complaint (“TAC”)³, individually and on behalf of all persons who worked for Defendant
23 from April 20, 2017 through December 31, 2023.

24 _____
25 ¹ The Parties executed a Stipulation and Settlement of Class, Collective and Representative Action
26 (“Settlement”), attached as Exhibit 1 to the Declaration of Shaun Setareh (“Setareh Decl.”) filed
27 concurrently herewith.

28 ² This includes the \$200,000 allocated to the FLSA Subclass.

³ A stipulation to file a TAC will be submitted in advance of the February 2, 2024 hearing date.
(Setareh Decl. ¶ 8.)

1 The Settlement will result in financial benefit to the class members on terms that are fair,
2 reasonable, and adequate. Based upon their evaluation, Plaintiffs and their counsel have determined that
3 the Settlement is fair, reasonable, adequate and in the best interest of the Class, and they request that this
4 Court grant preliminary approval of the Settlement.

5 **II. THE MAJOR TERMS OF SETTLEMENT**

6 Key provisions of the proposed settlement include the following:

- 7 • Defendant will pay a maximum of **\$10,000,000**, referred to as the GFV.
- 8 • Defendant will not oppose Class Counsel’s application for fees of 1/3 of the GFV (**\$3,333,333**) and
9 costs not to exceed **\$150,000**, to be paid out of the GFV.
- 10 • The Settlement will be administered by ILYM, whose costs are estimated to be **\$170,000**.
- 11 • Out of the GFV, **\$300,000** is allocated to resolve the PAGA claims, with 75%, i.e., **\$225,000**, to
12 be paid by the Settlement Administrator to the LWDA, and 25%, i.e., **\$75,000**, to be paid to PAGA
13 Members – i.e., Class Members employed with Defendant in California at any time during the
14 PAGA Period i.e. between June 7, 2020 through December 31, 2023.
- 15 • Defendant will not oppose the application for Class Representative Service Awards in the amount
16 of **\$7,500** to each of the Plaintiffs (or **\$30,000** total), to be paid out of the GFV.
- 17 • After deducting Class Counsel’s attorneys’ fees and costs, enhancement payment to Plaintiffs,
18 settlement administration costs, the payment to the LWDA, the remainder – i.e., the NSA – is
19 calculated to be at least \$6,091,667. Including the 25% portion of the PAGA Payment, or \$75,000,
20 that will be paid to PAGA Members, the Net Settlement Amount (“NSA”) being paid to Class
21 Members is **\$6,166,667**. Each Participating Class Member, FLSA Subclass Member and each
22 PAGA Member will receive a *pro rata* share based upon the number of weeks worked.
- 23 • Settlement Class Members will be mailed a check so long as they do not opt out. PAGA Members
24 will be mailed a check regardless of whether they opt out of the Settlement.
- 25 • The Settlement will release specified wage-and-hour claims for those Settlement Class Members
26 who do not opt out of the Settlement. FLSA Subclass Members who timely cash or otherwise
27 negotiate their Settlement Payment Check will be deemed to have opted into the Action for purposes
28 of the FLSA and, as to those Class Members, the Released Claims include any and all claims the Class

Members may have under the FLSA arising under or related to the alleged claims during the FLSA Subclass Period.

- Any checks issued by ILYM remaining uncashed for more than 180 days after issuance will sent to the cy pres California Rural Legal Assistance.

(Declaration of Shaun Setareh (“Setareh Decl.”), ¶ 31, Exh. 1 (the “Settlement”).)

III. STATEMENT OF FACTS

A. THE LAWSUITS AND ALLEGATIONS

This settlement is the culmination of three wage and hour lawsuits brought against Kaiser. *Halfhill v. Kaiser Foundation Hospitals* (Alameda Co. Sup. Ct. Case No. RG21096610, filed April 20, 2021), *Sanders v. Kaiser Foundation Hospitals* (San Francisco Co. Sup. Ct. Case No. CGC-21-595263, filed September 16, 2021), and *Moreno and Drennan v. Kaiser Foundation Hospitals* (San Diego Sup. Ct. Case No. 37-2021-00042468, filed October 5, 2021). Before February 2, 2024, the parties will submit a stipulation to file a TAC so that all of the allegations are included in one complaint. (Setareh Decl. ¶ 8.) Plaintiffs allege causes of action for: 1) Failure to Pay All Wages; 2) Failure to Pay Overtime Compensation; 3) Missed Meal Breaks; 4) Missed Rest Breaks; 5) Failure to Indemnify; 6) Failure to Furnish an Accurate, Itemized Wage Statement upon Payment of Wages in Violation of California Labor Code § 226; 7) Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203); 8) Violations of California Business & Professions Code §§ 17200, et seq.; and 9) PAGA. (*Id.*)

1. Plaintiff Halfhill

Halfhill v. Kaiser Foundation Hospitals, Alameda County Superior Court Case No. RG21096610 was brought on behalf of all current or former nurses beginning from April 20, 2017. Halfhill was employed as a nurse at a Kaiser hospital in Riverside County, California. (*Id.* ¶¶ 9-10.)

Halfhill alleged that she was required to work off-the-clock during meetings and “handoffs” at the end of her shift where she would communicate with the nurse taking over from her about the patients and their needs. (*Id.* ¶ 11.)

1 Halfhill alleged Kaiser also had a policy of not allowing nurses to work overtime unless their
2 need to do was certified by the lead nurse. The result of this is that nurses are not paid for work in
3 excess of eight hours in a day. (*Id.* ¶ 12.)

4 Halfhill alleged Kaiser also does not provide for a relief nurse to step in when a nurse must
5 assist a patient during a meal or rest break. As a result, Halfhill sometimes did not receive her meal
6 and rest breaks. (*Id.* ¶ 13.)

7 **2. Plaintiff Sanders**

8 *Sanders v. Kaiser Foundation Hospitals et al* San Francisco Superior Court Case No. CGC
9 21-595263 was brought on a class of all Kaiser non-exempt employees in California beginning from
10 September 16, 2017. Plaintiff Sanders worked as a clerk at the Kaiser medical center in Woodland
11 Hills California from approximately August 3, 2020, through October 29, 2020. (*Id.* ¶ 14.)

12 Plaintiff Sanders alleged that she sometimes worked off-the-clock due to Covid 19 checks at
13 the start of shifts and donning and doffing protective equipment. (*Id.* ¶ 15.)

14 Plaintiff Sanders alleged she sometimes did not receive timely uninterrupted meal and rest
15 breaks and because of the Covid 19 screening was unable to leave the hospital during her breaks. (*Id.*
16 ¶ 16.)

17 Plaintiff Sanders alleged that when Kaiser would pay overtime pay as well as meal and rest
18 period premiums, it underpaid by not factoring in bonuses and non-discretionary compensation into
19 the regular rate of pay. (*Id.* ¶ 17.)

20 Plaintiff Sanders further alleged that Kaiser did not reimburse for cell phone usage, drug tests,
21 personal protective equipment and maintaining her own uniform of cleaning scrubs. (*Id.* ¶ 18.)

22 **3. Plaintiffs Moreno and Drennan**

23 *Moreno and Drennan v. Kaiser Foundation Hospitals*, San Diego Superior Court Case No.
24 37-2021-00042486, was brought on behalf of a class of current and former hourly registered nurses
25 beginning from October 5, 2017. (*Id.* ¶ 19.)

26 Plaintiffs Mario Moreno and Susie Drennan worked as nurses at Kaiser's Zion Medical Center
27 in San Diego, California. They alleged Kaiser pressured them to work off-the-clock without
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1 compensation, during meal and rest breaks and at the end of shifts. For example, medical charting and
2 other paperwork was sometimes done off-the-clock without compensation. (*Id.* ¶ 20.)

3 Plaintiffs Moreno and Drennan also alleged Kaiser also failed to pay them overtime and meal
4 and rest period premiums at the regular rate of pay. They allege Kaiser paid shift differentials and
5 bonus pay but did not factor this into the rate used to pay overtime and meal and rest premiums. (*Id.*
6 ¶ 21.)

7 Plaintiffs Moreno and Drennan also alleged Kaiser required them to use their personal
8 cellphones for business purposes without reimbursement. (*Id.* ¶ 22.)

9 Kaiser also allegedly improperly deducted alleged overpayments from Moreno and Drennan's
10 paychecks. (*Id.* ¶ 23.)

11 **4. Defendant's Defenses**

12 Defendant Kaiser states a number of arguments against class certification for purposes other
13 than settlement and states that Plaintiffs' allegations have no merit. A summary of some of
14 Defendant's defenses are below. (*Id.* ¶ 24.)

15 Defendant alleges that Plaintiffs were union represented and covered by collective bargaining
16 agreements ("CBAs") that are very employee-protective and exceed the requirements of California
17 law in many respects. (*Id.*)

18 Defendant alleges that it complies with the law regarding meal and rest breaks, that their
19 written policies are compliant, and that meal and rest break premiums were paid as needed. Kaiser
20 allows 15 minute paid rest breaks rather than 10 minute rest breaks. Kaiser has many different
21 departments where managers take a variety of approaches to provide breaks. Additionally, many
22 Kaiser employees have meal period waivers. Defendant represents that individualized inquiries would
23 predominate any common questions, in part due to a large variety of job locations and positions. While
24 *Donohue v. AMN Services, LLC*, 11 Cal.5th 58 (2021) holds that the employer has a burden to show
25 that a compliant meal period was provided when the records do not reflect a compliant meal period,
26 employees must be permitted to present facts to rebut that presumption. Kaiser alleges that here, such
27 rebuttal necessarily would require Kaiser to present individualized testimony and other evidence from
28 tens of thousands of class members regarding whether each facially non-compliant meal period

1 actually was not complaint (or whether the meal period was taken later, was shortened, or was skipped
2 entirely due to the employee’s own voluntary choice). (*Id.*)

3 Defendant denies that Plaintiffs’ regular rate claims have merit, arguing that Plaintiffs are
4 covered by a CBA that meets the requirements of Labor Code Section 514 overtime exemption.
5 Defendant further alleges that it pays meal and rest period premiums at the regular rate of pay,
6 including differentials and other forms of non-discretionary compensation. (*Id.*)

7 Defendant contends that all huddles, patient hand-offs and donning/doffing occurred while
8 employees were clocked in. (*Id.*)

9 Defendant states that the time spent on Covid 19 screenings is negligible, as screenings often
10 only required employees to walk through a thermal scanner without having to stop for a manual
11 temperature scan, while at other locations a temperature was manually taken, which only took a few
12 seconds. Defendant further argued that in the healthcare context, the FLSA standard of “hours
13 worked” applies. Kaiser employees are covered by Wage Order 5-2001, which contains a special
14 definition of “hours worked” for employees in the healthcare industry. Defendant also states that any
15 off-the-clock claims for Covid 19 screenings are barred by the Public Readiness and Emergency
16 Preparedness Act (“PREP Act”). (*Id.*)

17 Defendant states that Plaintiffs were not required to use personal phones for work and that
18 Kaiser provides a phone or cell phone reimbursement when employees need to use phones for work.
19 Kaiser states that it pays for drug testing and personal protective equipment. (*Id.*)

20 **B. INVESTIGATION AND DISCOVERY**

21 Plaintiffs and Defendant engaged extensively in formal and informal discovery prior to resolving
22 the Action. (Setareh Decl., ¶¶ 25-27). Both sides propounded written discovery. Plaintiffs Moreno and
23 Drennan engaged in extensive discovery with Kaiser, including exchanging multiple sets of interrogatories and
24 requests for production of documents. (Declaration of Kevin Stoops (“Stoops Decl.”, ¶ 16). Plaintiff Sanders
25 propounded Requests for Production of Documents and both Special and Form Interrogatories upon
26 Defendant as to its policies, procedures, and practices with respect to the alleged wage and hour claims
27 during the Class Period, as to the identification of and time and payroll records for the putative class
28 members, and as to Plaintiff Sanders, to which Defendant responded. (Setareh Decl., ¶ 25.) On May

1 13,2022, Plaintiff Sanders filed motions to compel regarding Defendant’s Special Interrogatory and Request
2 for Production of Document discovery responses. These motions were fully briefed and denied without
3 prejudice on July 25, 2022, with the Court instructing the parties to confer on a Belaire-West procedure.
4 (Setareh Decl., ¶ 25.)

5 In addition to this exchange of formal discovery, the Parties agreed to attend mediation to attempt
6 to resolve the action entirely and further agreed to engage in informal discovery in advance and in
7 preparation thereof. (*Id.* ¶ 26.) This included, but was not limited to, the informal exchange of a sample
8 of time and pay records and review of the same; the exchange of written policies and agreements governing
9 the Class throughout the Class Period; and other documents relevant to the litigation. (*Id.*)

10 Defendant produced a sampling of payroll and timekeeping records and relevant company written
11 policies. (*Id.* ¶ 27.) Plaintiffs hired an expert to hire analyze the produced data with respect to potential
12 damages and penalties in preparation for mediation. From the data and other documents obtained from
13 Defendant pertaining to the Class and Defendant’s policies, Plaintiffs’ expert was able to analyze the data
14 sampling, and Plaintiffs were then able to thoroughly assess the merits of each claim. (*Id.*) The parties
15 engaged in substantial investigation and discovery which enabled them to enter into this settlement.

16 **C. SETTLEMENT NEGOTIATIONS AND SETTLEMENT**

17 The Parties agreed to mediate Plaintiffs’ alleged wage and hour and PAGA claims and selected
18 David Rotman to serve as mediator. (Setareh Decl., ¶ 29.) With the aid of Mr. Rotman, the parties
19 reached an agreement to settle all claims on a class-wide basis. (*Id.*) Each of the Parties, represented by
20 its respective counsel, recognized the risk of an adverse result in the Action. (*Id.*) The parties agreed to
21 settle the Action and resolve all claims alleged against Defendant. (*Id.*) As part of the Settlement, the
22 Parties stipulated to filing a TAC to add all named Plaintiffs and ensure all claims are included.
23 (Settlement, ¶I B; Setareh Decl., ¶ 8.)

24 **D. REASONABLENESS OF THE SETTLEMENT**

25 Plaintiffs’ Counsel believe that the Settlement is in the best interest of the class members based on
26 their investigation and discovery, their detailed understanding of the issues raised, and the outcome of
27 extensive settlement negotiations. (Setareh Decl., ¶ 30; Stoops ¶ 35.) Plaintiffs’ counsel balanced the
28

1 Settlement against the probable outcome of class certification, liability, the range of recovery at trial, the
2 risks of losing class certification, losing at trial, or not recovering as much as provided by the proposed
3 Settlement, as well as the difficulties and complexity of the litigation, the lengthy process of litigating to
4 judgment, and the various possible delays and appeals. (Setareh Decl., ¶¶ 30, 60.) Although Defendant
5 contends they have no liability in this case, Plaintiffs' Counsel believe that the Settlement represents a fair,
6 reasonable, and adequate settlement given the respective risks associated with the Action. (Setareh Decl.,
7 ¶¶ 30, 58-62; Stoops ¶ 35.)

8 **IV. DESCRIPTION OF THE SETTLEMENT**

9 **A. APPOINTMENT OF SETTLEMENT CLASS COUNSEL**

10 Bradley/Grombacher, LLP, Sommers Schwartz, P.C., The Restis Law Firm, P.C., and Setareh
11 Law Group shall be appointed Class Counsel upon approval by the Court. (*Id.*, ¶ I D.)

12 **B. APPOINTMENT OF SETTLEMENT ADMINISTRATOR**

13 The Parties have stipulated to the appointment of ILYM to administer the Settlement and to
14 provide notice to the Class Members. The Settlement Administrator's estimated fee of \$170,000 is
15 reasonable for a settlement with a class of this size. (Setareh Decl., ¶ 67.)

16 **C. DESCRIPTION OF THE SETTLEMENT CLASS**

17 For settlement purposes only, the Parties agree to the certification of a class pursuant to
18 California *Code of Civil Procedure* § 382 defined as: All non-exempt persons who were employed by
19 Defendant in the State of California at any time during the Class Period, i.e. April 20, 2017 through
20 December 31, 2023. (Settlement, ¶ I F-G.)

21 The FLSA Subclass is composed of all Settlement Class Members who were employed by
22 Defendant in the State of California between April 20, 2018 through December 31, 2023. (*Id.*, ¶ I L.)

23 PAGA Members are defined as Class Members employed with Defendant in California at any
24 time during the PAGA Period i.e. between June 7, 2020 through December 31, 2023. (*Id.*, ¶ I W.)

25 Defendant estimates that there are 101,517 class members. (Setareh Decl. ¶ 70.) Defendant
26 estimates that as of April 5, 2023, there are 14,425,260 workweeks from the beginning of the
27 Settlement Period. If the workweeks as of April 5, 2023 are more than 10% greater than 14,425,260,
28 Defendant will pay an increased pro rata amount for each 1% over 10%, so that if the additional

workweeks are 11% Defendant will pay an additional 1%, if the additional workweeks are 12% Defendant will pay an additional 2%. (Settlement, ¶ I I.)

D. SCOPE OF THE RELEASE

1. Release by Participating Class Members and PAGA Members

As of the date of the Order Granting Final Approval, Class Members who do not opt out shall release Defendant and its present and former affiliates and all of their officers, directors, employees, agents, servants, registered representatives, attorneys, insurers, successors and assigns, and any other persons acting by, through, under or in concert with any of them (“Releasees”), from any and all claims, debts, liabilities, demands, obligations, penalties, premium pay, guarantees, costs, expenses, attorney’s fees, damages, actions or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, under any legal theory under federal and state law for any alleged failure to pay all wages due (including minimum wage and overtime wages), claims regarding rounding, grace periods, shift tolerance, failure to pay for all hours worked (including off-the clock work), failure to provide meal and rest periods, short/late meal and rest periods, failure to relieve of all duties during meal and rest periods, combining of meal and rest periods, that Defendant’s exemption permit from the DLSE is not valid or does not apply to Class Members, failure to timely pay wages and final wages, failure to properly calculate the regular rate of pay, failure to pay or properly calculate meal period premiums, donning and doffing, pre or post-shift testing or inspections, COVID-19 related activities including testing, reporting, and queuing for testing, reporting time pay, failure to furnish accurate wage statements including claims derivative and/or related to these claims, liquidated damages, conversion of wages, that the Labor Code Section 514 exemption does not apply to Defendant’s employees, pre and post-shift work and record-keeping violations, up to and including the date of preliminary approval by the Court. This Release shall include all claims and theories arising under the California Labor Code, wage orders, and applicable regulations, including Labor Code Sections 201, 202, 203, 204, 206, 218, 218.5, 226, 226.3, 226.7, 227, 510, 511, 512, 515, 517, 551, 552, 558, 1174, 1175, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, and 1199, all claims and theories arising under Labor Code Section 2802 (except that the release shall not include claims related solely to working from home under Labor Code Section 2802), as well as claims under Business and Professions Code section 17200 *et seq.* and/or Labor Code Section 2698 *et seq.* based on alleged violations of the above Labor Code provisions, as alleged in the lawsuits. The release shall run through December 31, 2023. (Settlement ¶ I. DD.)

2. Release by FLSA Subclass Members

FLSA Subclass Members who timely cash or otherwise negotiate their Settlement Payment Check will be deemed to have opted into the Action for purposes of the FLSA and, as to those Class Members, the Released Claims include any and all claims the Class Members may have under the FLSA arising under or related to the alleged claims during the FLSA Subclass Period. Only those FLSA Subclass Members who timely cash or otherwise negotiate their Settlement Payment Check will be deemed to have opted into the Action for purposes of the FLSA and thereby release and waive any of their claims under the FLSA arising under or relating to the alleged claims. This release excludes the release of claims not permitted by law. The following language will be printed on the reverse of each Settlement Payment Check, or words to this effect: “By endorsing or otherwise negotiating this check, I acknowledge that I read, understood, and agree to the terms

1 set forth in the Notice of Class Action Settlement and I consent to join in the Fair
2 Labor Standards Act (“FLSA”) portion of the [Action], elect to participate in the
3 settlement of the FLSA claims, and agree to release all of my FLSA claims that are
covered by the Settlement.” (Settlement ¶ I. DD.)

3. Release by Plaintiffs

4 Upon the Effective Date, and as a condition of receiving any portion of their
5 Class Representative Enhancement Payments, Class Representatives Tonya
6 Halfhill, Danyell Sanders, Mario Moreno, and Susie Drennan shall fully and finally
7 release the Released Parties from any and all claims, known and unknown, under
federal, state and/or local law, statute, ordinance, regulation, common law, or other
source of law, including but not limited to claims arising from or related to their
employment with Defendant and their compensation while an employee of
Defendant which occurred before or during the Class Period.

8 The Class Representatives’ released claims include all claims against the
9 Released Parties, whether known or unknown. Thus, Class Representatives Tonya
Halfhill, Danyell Sanders, Mario Moreno, and Susie Drennan waive all rights
provided by California Civil Code section 1542, which states:

10 A general release does not extend to claims that the creditor or releasing party
11 does not know or suspect to exist in his or her favor at the time of executing the
release and that, if known by him or her, would have materially affected his or her
settlement with the debtor or released party.

12 Notwithstanding this release, Plaintiff Danyell Sanders is not releasing the
13 claims asserted in *Sanders v. Kaiser Foundation Hospitals et al.*, Los Angeles
Superior Court Case No. 21STCV40840,
(Settlement ¶ I. EE.)

14 E. SETTLEMENT AMOUNT AND ALLOCATION OF SETTLEMENT MONIES

15 The Settlement provides for a GFV of **\$10,000,000**, which represents the amount payable in this
16 Settlement by Defendant, and which includes but is not limited to, all settlement payments to the Class
17 Members, all attorneys’ fees, all litigation costs, all settlement administration expenses, all payments to
18 the LWDA, the FLSA Subclass Payment and the enhancement awards to Plaintiffs. Defendant will be
19 responsible for any employer payroll taxes in addition to the Class Settlement Amount. (*Id.*, ¶ I I.) This is a
20 non-reversionary settlement, and none of the GFV shall revert to Defendant, with the funds of checks
21 uncashed more than 180 days after issue being directed to the cy pres California Rural Legal Assistance.
22 (*Id.*, ¶ I I; ¶ IX 2.)

23 F. INDIVIDUAL SETTLEMENT PAYMENT FORMULA

24 The Parties have agreed to a settlement formula which allocates settlement amounts to Class
25 Members, Collective Members and PAGA Members on a *pro rata* basis, based on their number of
26 workweeks. (Settlement, ¶ IV).

27 1. Individual FLSA Subclass Settlement Payment

Defendant will calculate the Qualified FLSA Work Weeks of each Class Member during the FLSA Subclass Period, and provide these calculations to Settlement Administrator. FLSA Subclass Members will receive a pro-rated share of the FLSA Subclass Payment, less applicable withholdings, based on their work weeks as a non-exempt hourly paid employee of Defendant during the FLSA Subclass Period (“Qualified FLSA Work Weeks”). Each FLSA Subclass Member is entitled to receive an amount that is determined by multiplying the FLSA Subclass Payment by a ratio that is determined by dividing a FLSA Subclass Member’s Qualified FLSA Work Weeks during the FLSA Subclass Period in California by the Qualified FLSA Work Weeks of all FLSA Subclass Members employed by Defendant during the FLSA Subclass Period (“Total Qualified FLSA Work Weeks”) as expressed in the following formula: FLSA Subclass Member Payment = (FLSA Subclass Member’s Qualified FLSA Work Weeks divided by Total Qualified FLSA Work Weeks) x FLSA Subclass Payment. (Settlement, ¶ VI A).

2. Individual PAGA Settlement Payment

Defendant will calculate the Qualified PAGA Pay Periods of each PAGA Group Member during the PAGA Period, and provide these calculations to Settlement Administrator. PAGA Group Members will receive a pro-rated share of the PAGA Settlement Payment, based on their Pay Periods as a non-exempt hourly paid employee of Defendant during the PAGA Period (“Qualified PAGA Pay Periods”). Each PAGA Group Member is entitled to receive an amount that is determined by multiplying the PAGA Settlement Payment by a ratio that is determined by dividing a PAGA Group Member’s Qualified PAGA Pay Periods during the PAGA Period in California by the Qualified PAGA Pay Periods of all PAGA Group Members employed by Defendant during the PAGA Period (“Total Qualified PAGA Pay Periods”) as expressed in the following formula: PAGA Group Member Payment = (PAGA Group Member’s Qualified PAGA Pay Periods divided by Total Qualified PAGA Pay Periods) x PAGA Settlement Payment. (*Id.* B).

3. Individual Class Settlement Payment

Defendant will calculate the Qualified Class Work Weeks of each Class Member during the Class Period, and provide these calculations to Settlement Administrator. Class Members will receive a pro-rated share of the Net Settlement Amount (“NSA”) minus the FLSA Subclass Payment of \$200,000 and the PAGA Settlement Payment of \$75,000 (the “Remaining NSA”), less applicable withholdings, based on their Work Weeks as a non-exempt hourly paid employee of Defendant during the Class Period (“Qualified Class Work Weeks”). Each Class Member is entitled to receive an amount that is determined by multiplying the Remaining NSA by a ratio that is determined by dividing a Class Member’s Qualified Class Work Weeks during the Class Period in California by the Qualified Class Work Weeks of all Class Members employed by Defendant during the Class Period (“Total Qualified Work Weeks”) as expressed in the following formula: Class Member Payment = (Class Member’s Qualified Class Work Weeks divided by Total Qualified Class Work Weeks) x Remaining NSA. (*Id.* C).

Each Class Member’s Individual Settlement Payment will be the sum of the Class Member’s

Individual FLSA Subclass Settlement Payment, Individual PAGA Settlement Payment, and Individual Class Settlement Payment.

1 All Individual Settlement Payments will be allocated as follows: one-third (1/3) wages, one-
2 third (1/3) interest and one-third (1/3) penalties. (*Id.*, ¶ X.)

3 Within fourteen (14) calendar days after the Effective Date of the Settlement, Defendant will
4 make a one-time deposit of all approved and claimed amounts from the Class Settlement Amount into
5 a Qualified Settlement Account to be established by the Settlement Administrator. Within fourteen
6 (14) calendar days of the funding of the Settlement, the Settlement Administrator will issue payments
7 to: (a) Class Members; (b) the Labor and Workforce Development Agency (LWDA); (c) Plaintiffs;
8 and (d) Class Counsel. The Settlement Administrator will also issue a payment to itself for Court-
9 approved services performed in connection with the Settlement. (*Id.*, ¶ II.)

10 **G. NOTICE TO CLASS MEMBERS OF SETTLEMENT**

11 The proposed Notice of Class Action Settlement (“Notice”) (attached as Exhibit 1 to the
12 Settlement) provides Class Members with all required information so that each member may make an
13 informed decision regarding his or her participation in the Settlement. (*Id.*, ¶ I T.) All Class Members,
14 FLSA subclass members and PAGA Members will receive a Notice. Each Notice will list: (1) information
15 regarding the nature of the Action, (2) a summary of the substance of the Settlement, (3) the Class and
16 FLSA Subclass definitions, (4) the PAGA definition, (5) that Individual Settlement Payments are based
17 on the number of workweeks worked, (6) the deadlines by which the Class Member must postmark a
18 Request for Exclusion, postmark an objection to the Settlement with the Claims Administrator or submit
19 disputes regarding the amount of workweeks, (7) a description of the claims to be released, (8) the number
20 of workweeks, and (9) estimated individual payment. (*Id.*)

21 Defendant will provide the Claims Administrator a confidential spreadsheet with, for each Class
22 Member, the full name; mailing address; Social Security number; dates of employment; qualified Class,
23 FLSA, and PAGA Work Weeks/ Pay Periods, and any other relevant information needed to calculate
24 settlement payments within 21 days of the Court granting preliminary approval of the Settlement. (*Id.*, ¶
25 I E.) Upon receipt of the names and addresses, the Administrator will run the same through the NCOA
26 database to obtain current address information. (*Id.*, ¶ I E.) The Claims Administrator will prepare for each
27 Class Member to be sent by first-class mail a Notice. (*Id.*, ¶ VII 4.) Within 30 days after receiving the
28 Class List from Defendant as provided herein, the Claims Administrator shall send a Notice to all Class

1 Members and PAGA Members via regular First-Class U.S. Mail. (*Id.* ¶ VII 3.)

2 Any Notice Packets returned to the Settlement Administrator as non-deliverable on or before the
3 Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed
4 thereto and the Settlement Administrator will indicate the date of such re-mailing on the Notice Packet. If no
5 forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct
6 address using a skip-trace, or other search using the name, address and/or Social Security number of the Class
7 Member involved, and will then perform a single re-mailing. Those Class Members who receive a re-mailed
8 Notice Packet, whether by skip-trace or by request, will have between the later of (a) an additional fifteen (15)
9 calendar days or (b) the Response Deadline to postmark or fax a Request for Exclusion or Notice of Objection
10 to the Settlement. (*Id.* ¶ VII 4.)

11 The deadline by which Class Members must mail or fax to the Settlement Administrator valid Requests
12 for Exclusion, Notices of Objection to the Settlement, or Qualified Class, FLSA, or PAGA Work Weeks/ Pay
13 Periods disputes is 45 days from the initial mailing of the Notice Packet by the Settlement Administrator. The
14 Response Deadline will be extended 15 days for any Class Member who is re-mailed a Notice Packet by the
15 Settlement Administrator. (*Id.* I HH).

16 Any Request to be Excluded must include the class member's full name, signature, address, telephone
17 number and a written statement requesting to be excluded from this Settlement (*Id.* I GG.) A Class Member
18 who does not submit a timely and valid Request for Exclusion from the Settlement will be deemed a Class
19 Member and will be bound by all terms of the Settlement if the Settlement is approved. (*Id.*)

20 Any Class Member who opts out of the Settlement may not submit an Objection and shall not
21 receive any Individual FLSA or Class Settlement Payment, and shall not be bound by the Class or
22 FLSA releases. However, a PAGA Group Member who submits a Request for Exclusion will still
23 remain a member of the PAGA Group, will receive a PAGA Settlement Payment, and will release the
24 PAGA claims. If a Class Member submits both a Request for Exclusion and an Objection, then the
25 Request for Exclusion will be valid and will invalidate the Objection.

26 To object to the Settlement Agreement, a Class Member must timely mail or fax to the Settlement
27 Administrator a written statement of the grounds of objection, and include the objector's full name, signature,
28 address, and telephone number. (*Id.*)

1 Class Members will have an opportunity to dispute the information provided in their Notice Packets.
2 (*Id.* VII 6.)

3 **H. NOTICE AND PAGA PAYMENT TO THE LWDA**

4 The Parties agree to allocate **\$300,000** of the GFV for settlement of claims for civil penalties under
5 PAGA, Labor Code § 2699, *et seq.* (*Id.*, ¶ I R.) Pursuant to Labor Code section 2699(i), 75% of that
6 amount (**\$225,000**) will be paid to the LWDA. (*Id.*) The remaining 25% (**\$75,000**), will be distributed to
7 PAGA Members on a *pro rata* basis according to the number of workweeks during the PAGA Period.
8 (*Id.*) Class Counsel has provided a copy of the Settlement and this Motion for Preliminary Approval to the
9 LWDA. (Setareh Decl., ¶ 68.)

10 **V. ARGUMENT**

11 **A. THE COURT SHOULD CONDITIONALLY CERTIFY THE SETTLEMENT**
12 **CLASS BECAUSE IT MEETS ALL THE REQUIREMENTS FOR CLASS**
13 **CERTIFICATION FOR SETTLEMENT PURPOSES ONLY UNDER CODE OF**
14 **CIVIL PROCEDURE SECTION 382**

15 Under Code of Civil Procedure § 382, class certification is warranted so long as there is “a
16 numerous and ascertainable class with a well-defined community of interest among its members” and a
17 “class action proceeding is superior to other means for a fair and efficient adjudication of the litigation.”
18 *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326, 332. “The certification question
19 is ‘essentially a procedural one that does not ask whether an action is legally or factually meritorious.’” *Id.*
20 at 326 (quoting *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 439-440). Indeed, the certification
21 question simply asks whether the theory of recovery advanced by the plaintiff is likely to prove amenable
22 to class treatment. *E.g., Jaimez v. Daiohs USA, Inc.* (2010) 181 Cal.App.4th 1286, 1298. In ruling on a
23 certification motion, a trial court’s task is to determine “whether...the issues which may be jointly tried,
24 when compared with those requiring separate adjudication, are so numerous or substantial that the
25 maintenance of a class action would be advantageous to the judicial process and to the litigants.” *Id.*

26 “[I]t is also well established that trial courts should use different standards to determine the
27 propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard
28 of scrutiny is used for settlement cases.” *Global Minerals & Metals Corp. v. Superior Court* (2003) 113
Cal.App.4th 836, 859 (citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 n.19 (“*Dunk*”)).

1 As the court noted in *Dunk*, although certification requirements are intended “to protect the interests of the
2 non-representative class members,” that concern is “protected by the trial court’s fairness review of the
3 settlement.” *Id.*

4 Indeed, numerous courts have certified settlement classes. For example, *In re Drexel Burnham*
5 *Lambert Group, Inc.* (2d Cir. 1992) 960 F.2d 285, *cert. dismissed* (1993) 506 U.S. 1088, 122 L. Ed. 497,
6 113 S. Ct 1070, the parties entered into a tentative settlement before a class was certified. After a hearing,
7 the "district court issued an order certifying the class and approving the settlement agreement." *Id.* at 289;
8 *see also, Alaniz v. California Processors, Inc.* (N.D. Cal. 1976) 73 F.R.D. 269, 278 ("the use of the
9 tentative settlement class procedure was appropriate in this case"), *aff’d*, 572 F.2d 657 (9th Cir.), *cert.*
10 *denied*, 439 U.S. 837 (1978). Certification of a settlement class is a regular feature of class action litigation
11 and an approved procedure which ought to be followed in this case. *See Newberg on Class Actions* (3d ed.
12 1991) § 11.27, pp. 11-40 to 11-56; and *Manual for Complex Litigation*, 2d (1993) § 30.45.

13 As shown below, this Settlement and the Settlement Class easily meet all of the requirements for
14 certification for settlement purposes.

15 **1. Objectively Ascertainable and Sufficiently Numerous Class**

16 A class is ascertainable when it may be readily identified via an objectively stated definition
17 without unreasonable expense or time by reference to official records. *Rose v. City of Hayward* (1981) 126
18 Cal.App.3d 926, 932. No set number of class members is required to maintain a class action. *Hebbard v.*
19 *Colgrove* (1972) 28 Cal.App.3d 1017, 1030. The California Supreme Court has upheld a class of as few
20 as ten members. *Bowles v. Super. Ct. (Nickel, Jr.)* (1955) 44 Cal.2d 574, 577-81. Here, the Settlement
21 Class is made up of approximately 101,517 individuals, all of whom may be readily ascertained by
22 reference to Defendant’s personnel records. (Setareh Decl. ¶ 70). Accordingly, the Settlement Class is not
23 only ascertainable but also sufficiently numerous.

24 **2. Predominance of Common Questions**

25 A question of law or fact is common to the members of a class if it may be resolved through
26 common proof. *See Jaimez, supra*, 181 Cal.App.4th at 1305. As for predominance, it “is a comparative
27 concept, and ‘the necessity for class members to individually establish eligibility and damages does not
28 mean individual fact questions predominate.’” *Sav-on, supra*, 34 Cal.4th at 334 (quoting *Reyes v. San*

1 *Diego Cty. Bd. of Supervisors* (1979) 196 Cal.App.3d 1263, 1278). Thus, “[i]ndividual issues do not render
2 class certification inappropriate so long as such issues may effectively be managed.” *Id.* This is especially
3 so where the key difference between class members solely concerns their respective amounts of damages.
4 *See id.* As a general rule, if a defendant’s liability can be determined by facts common to all members, a
5 class will be certified even if the members must individually prove their damages. *See Hicks v. Kaufman*
6 *& Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916.

7 In this case, the Settlement Class meets these requirements. Plaintiffs submit that Defendant’s
8 liability arises from the same set of facts and legal questions that apply to and are answered equally as to
9 all Class Members. Plaintiffs allege Class Members were subjected to a common practice in that
10 Defendant: failed to pay them, *inter alia*, for off-the-clock work, failed to provide meal periods and rest
11 periods, including premiums, failed to reimburse for business expenses, failed to properly calculate the
12 regular rate of pay, failed to provide compliant wage statements, and failed to pay all wages due upon
13 separation of employment.

14 The Court accordingly should certify the Settlement Class for purposes of settlement under Code
15 of Civil Procedure section 382 and Rule of Court 3.769(c).

16 3. Typicality of Plaintiffs’ Claims

17 Typicality “requires a showing that the class representative has claims or defenses typical of the
18 class.” *See, e.g., Fireside Bank v. Super. Ct. (Gonzalez)* (2007) 40 Cal.4th 1069, 1090. This focuses on
19 “the nature of the claim or defense of the class representative, and not to the specific facts from which it
20 arose or the relief sought.” *Hanon v. Dataproducts Corp.* (9th Cir. 1992) 976 F.2d 497, 508 (internal
21 citations omitted). “The test of typicality ‘is whether other members have the same or similar injury,
22 whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class
23 members have been injured by the same course of conduct.’” *Id.* (quoting *Schwartz v. Harp* (C.D. Cal.
24 1985) 108 F.R.D. 279, 282; accord *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46 (“it has never been
25 the law in California that the class representative must have *identical* interest with the class members”).

26 Under these standards, Plaintiffs’ claims are typical of those of the class members. Like Class
27 Members, Plaintiffs were hourly non-exempt employees of Defendant in California. (Setareh Decl., ¶¶ 10,
28 14, 20.) Plaintiffs allege they were not paid for all hours worked, were not provided with compliant meal

1 periods and rest breaks, were not reimbursed for business expenses, and did not receive accurate wage
2 statements. (*Id.*) See *Classen, supra*, 145 Cal. App. 3d at 46 (representative plaintiffs need not have all
3 claims or identical interests with class members; they need only have claims that are “typical of the class”);
4 see also *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal. App. 3d 1341, 1347 (representative
5 plaintiffs need not suffer all of the exact same damages as every class member). Accordingly, Plaintiffs
6 pursue claims typical of the class they seek to represent.

7 **4. Adequacy of Plaintiffs and Class Counsel to Represent the Class**

8 The adequacy requirement is met where the named plaintiffs are represented by counsel qualified
9 to conduct the litigation and the plaintiffs’ interest in the litigation is not antagonistic to the classes interests.
10 *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51. In other words, where the named
11 plaintiffs have adequate counsel, they may represent the entire class absent any disabling conflicts of
12 interest that might hinder the named plaintiffs’ ability to represent the class. *Id.*

13 In this case, Plaintiffs have no conflict of interest with absent Settlement Class Members and have
14 agreed to place the classes interests above their own. (Setareh Decl., ¶ 64.) See *Global Minerals, supra*,
15 113 Cal.App.4th at 851 (the inquiry into the adequacy of a class representative is intended to uncover any
16 conflicts between the plaintiff and the class he or she seeks to represent). Setareh Law Group,
17 Bradley/Grombacher, LLP, Sommers Schwartz, P.C., and The Restis Law Firm, P.C., are experienced
18 in wage and hour class action litigation and have no conflicts of interest with absent Class Members.
19 (Setareh Decl., ¶¶ 3-6, 64; Stoops Decl. ¶¶ 2-7; Declaration of Willaim Restis (“Restis Decl.” ¶¶ 1-2);
20 Declaration of Kiley Grombacher “Grombacher Decl.” ¶¶ 5-12.) Thus, this Court should appoint Plaintiffs
21 as Class Representatives for the Settlement Class and appoint their counsel as Class Counsel.

22 **B. STANDARD FOR GRANTING PRELIMINARY SETTLEMENT APPROVAL**

23 Cases brought as class actions may only be settled upon court approval and then only after a
24 determination that the settlement is fair, adequate, and reasonable is made. *In re Microsoft I-V Cases*
25 (2006) 135 Cal.App.4th 706, 723. Courts have broad discretion to make this determination and consider
26 factors, such as the strength of plaintiff’s case, the risk, expense, complexity and likely duration of further
27 litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the
28 extent of discovery completed and the stage of the proceedings, the experience and views of counsel, and

1 the reaction of the class members to the proposed settlement. *Id.*; *Dunk*, 48 Cal.App.4th at 1800-01; *Reed*
2 *v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 336. “[A] presumption of fairness exists
3 where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are
4 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation;
5 and (4) the percentage of objectors is small.” *Dunk, supra*, at 1802; *see also Chaves v. Netflix, Inc.* (2008)
6 162 Cal.App.4th 43, 52.

7 California Rule of Court 3.769(c)-(f) sets forth the procedures for settlement of class actions in
8 California. A two-step process is required. First, the court preliminarily approves the settlement and the
9 class members are notified as directed by the court. “The notice must contain an explanation of the
10 proposed settlement and the procedures for class members to follow in filing written objections to it and
11 in arranging to appear at the settlement hearing and state any objections to the proposed settlement.” Cal.
12 Rule of Court 3.769(f). Second, the court conducts a final approval hearing to inquire into the fairness of
13 the proposed settlement. Cal. Rule of Court 3.769(g). If the court approves the settlement, a judgment is
14 entered with provision for continued jurisdiction for the enforcement of the judgment. (*Id.* h).

15 In deciding whether to grant preliminary approval, courts are to give “due regard” to “what is
16 otherwise a private consensual agreement between the parties.” *Sutter Health Uninsured Pricing Cases*
17 (2009) 171 Cal.App.4th 495, 505. When approving a settlement, “the court need not ‘reach any ultimate
18 conclusions on the contested issues of fact and law which underlie the merits of the dispute, for it is the
19 very uncertainty of the outcome in litigation and avoidance of wasteful and expensive litigation that induce
20 consensual settlements.’” *Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1291 (quoting
21 *Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625).⁴ The court’s inquiry must
22 be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of
23 fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
24 whole, is fair, reasonable and adequate to all concerned. *Id.*

25 _____
26 ⁴ The California Supreme Court has suggested that trial courts, in the absence of controlling California
27 authority, utilize class action procedures of the Federal Rules of Civil Procedure. *See LaSala v.*
28 *American Sav. & Loan Ass’n* (1971) 5 Cal.3d 864, 872. Thus, the Court may look to federal authorities
in ruling on this motion.

1 **C. THIS COURT SHOULD GRANT THIS MOTION AND ISSUE AN ORDER**
2 **PRELIMINARILY APPROVING THE SETTLEMENT BECAUSE IT IS**
3 **FAIR, ADEQUATE, AND REASONABLE**

4 **1. Settlement Resulted From Serious, Informed, Non-Collusive**
5 **Negotiations**

6 The Parties reached this settlement only after they conducted extensive and protracted arm's-length
7 negotiations through an experienced and knowledgeable mediator, David Rotman (Setareh Decl., ¶ 29.)
8 The Parties have not engaged in any collusion or improper negotiations. Plaintiffs and Defendant do not
9 have any agreements regarding the proposed Settlement that are not reflected in the Settlement. (*Id.*, ¶ 30.)

10 **2. Sufficient Fact Investigation and Discovery Has Occurred to Assess the**
11 **Fairness of the Settlement**

12 As discussed above, Plaintiffs' counsel engaged in extensive investigation and informal written
13 discovery that has allowed them to evaluate the merits of the Class Members' claims and Defendant's
14 defenses as well as the range of possible recoverable damages. (*Id.*, ¶¶ 25-27.) Based on Plaintiffs'
15 counsel's investigation and discovery, Plaintiffs and their counsel are of the opinion that this settlement is
16 fair, reasonable, adequate, and in the Class Members' best interest. (*Id.* ¶ 30.) Plaintiffs' counsel's
17 investigation and discovery are more than sufficient to warrant their and Plaintiffs' decision to enter into
18 the Settlement.

19 Plaintiffs and Defendant engaged extensively in formal and informal discovery prior to resolving
20 the Action, including multiple written discovery requests and motions to compel regarding Defendant's
21 discovery responses. (Setareh Decl., ¶¶ 25-27.)

22 In addition to this exchange of formal discovery, the Parties agreed to attend mediation to attempt
23 to resolve the action entirely and further agreed to engage in informal discovery in advance and in
24 preparation thereof. (*Id.*) This included, but was not limited to, the informal exchange of time and pay
25 records for a sample of employees and review of the same; the exchange of written policies and agreements
26 governing the Class throughout the Class Period; and other documents relevant to the litigation. (*Id.*)

27 Plaintiffs hired an expert to hire analyze the produced data with respect to potential damages and
28 penalties in preparation for mediation. (*Id.* ¶ 27.) From the data and other documents obtained from
29 Defendant pertaining to the Class and Defendant's policies, Plaintiffs' expert was able to analyze the data
30 sampling, and Plaintiffs were then able to thoroughly assess the merits of each claim. (*Id.*)

1 **3. Plaintiffs’ Counsel Are Experienced Class Action and Employment**
2 **Attorneys and the Amount of Attorneys’ Fees Sought Are Appropriate**

3 Plaintiffs’ counsel are particularly experienced in employment law and wage and hour class
4 actions. (Setareh Decl., ¶¶ 3-6, 64; Stoops Decl. ¶¶ 2-7; Restis Decl. ¶¶ 1-2); Grombacher Decl. ¶¶ 5-12.)

5 Plaintiffs’ counsel believe that the one-third of the GFV that they will seek in attorneys’ fees are
6 appropriate in this matter. (Setareh Decl., ¶ 66.) The Court of Appeal has recognized that one factor
7 supporting a lodestar multiplier is comparison to the fees typically earned in contingency fee litigation
8 where the plaintiff’s attorney is awarded fees based on a percentage of the award recovered for the client:
9 “to ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in
10 comparable litigation.” *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 50. As the Court
11 knows, contingency fees typically range from one-third to forty percent. Indeed, Setareh Law Group has
12 been awarded one-third common-fund attorneys’ fees in numerous class actions. (*Id.*)

13 Factors that courts consider in determining the multiplier include: “The quality of the
14 representation, the novelty and complexity of the issues, the results obtained, and the contingent risk
15 presented.” *Lafitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 489. “There is no hard and fast
16 rule limiting [these]...numerous factors, and their evaluation is entrusted to a trial court’s sound
17 discretion.” *Center for Biological Diversity v. Cty. of San Bernardino* (2010) 185 Cal.App.4th 866, 901.

18 Counsel believe the proposed settlement is fair, reasonable, and adequate in light of the
19 complexities of the case, the uncertainties of further litigation, and that it represents a fair and reasonable
20 recovery for the Settlement Class. (Setareh Decl., ¶ 30.)

21 **4. The Settlement Is Fair and Reasonable Based on the Strength of**
22 **Plaintiffs’ Case and the Risks and Costs of Further Litigation**

23 California courts recognize that “‘the merits of the underlying class claims are not a basis for
24 upsetting the settlement of a class action.’” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
25 246 (quoting *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135,
26 1150). The settlement need not provide one-hundred percent of the damages sought in order to be judged
27 reasonable. *Wershba*, 91 Cal.App.4th at 250. “Thus, even if ‘the relief afforded by the proposed settlement
28 is substantially narrower than it would be if the suits were to be successfully litigated,’ this is not a bar to
a class settlement because ‘the public interest may indeed be served by a voluntary settlement in which

each side gives ground in the interest of avoiding litigation.’” *Id.* (quoting *Air Lines Stewards v. American Airlines, Inc.* (7th Cir. 1972) 455 F.2d 101, 109).

a. Off-the-Clock Work Claims

Plaintiffs’ claims for failure to pay all wages and overtime wages arise from Plaintiffs’ claims that employees were not compensated for time spent working off-the-clock, including the time they sometimes spent off-the-clock doing charting, huddles and patient hand-offs, donning/doffing equipment, and going through Covid 19 screenings. (Setareh Decl., ¶ 33.)

Defendant contends that all charting, huddles, patient hand-offs and donning/doffing occurred while employees were clocked in. Defendant states that the time spent on Covid 19 screenings is negligible, as screenings often only required employees to walk through a thermal scanner without having to stop for a manual temperature scan, while at other locations a temperature was manually taken, which only took a few seconds. Defendant argued that in the healthcare context, the FLSA standard of “hours worked” applies. Kaiser employees are covered by Wage Order 5-2001, which contains a special definition of “hours worked” for employees in the healthcare industry. Defendant also states that any off-the-clock Covid 19 screening claim is barred by PREP Act. (*Id.* ¶ 34.)

For purpose of mediation, Plaintiffs estimated 5,428,432 shifts were subject to unpaid off-the-clock work of 2 minutes per shift at an average hourly rate of \$61.13, resulting in an outside liability of \$10,965,432.64.⁵ Due to Defendant’s arguments above and its statement that its screening policies were protected by federal law preempting any claim, Plaintiffs valued the off-the-clock claim at \$2,741,358. (*Id.* ¶ 35.)

b. Meal and Rest Period Claims

Plaintiffs alleged that they sometimes were not provided with compliant meal and rest breaks due to Kaiser pressuring them to work during breaks. Records showing missed, late, or short meal

⁵ Due to a prior settlement with Kaiser, Plaintiffs’ off-the-clock, meal, rest, regular rate, 203 and 226 claims are limited to the period of January 1, 2022 through the end of the release period, December 31, 2023. (Setareh Decl. ¶ 28.)

1 periods presumptively establish liability. *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.
2 (Setareh Decl., ¶ 36.)

3 To assess the recorded meal break presumptive violations, Plaintiffs requested and Kaiser
4 produced time and pay data for a sample of 1,000 randomly selected employees. The records showed
5 a 61.6% meal break violation rate. Kaiser explained that these percentages determined by Plaintiffs'
6 expert were subject to significant reduction due to many employees combining meal and rest periods
7 (such that meal periods showing as short or late were vastly overstated) pursuant to a waiver from the
8 Division of Labor Standards Enforcement jointly obtained by Kaiser and its unions allowing
9 employees to combine meal and rest periods. (*Id.* ¶ 37.)

10 To rebut the presumption of liability, Kaiser presented policies that demonstrated that it has
11 maintained an electronic system by which (1) employees report a missed meal period and/or rest
12 period, and (2) Defendant regularly pays the premium for a meal or rest period violation reported
13 by an employee, often automatically without verification. The reasons for alleged missed meal and
14 rest periods by Defendant's employees varied among medical centers and departments within
15 medical centers, based on the agreements and practices agreed to between Kaiser and its various
16 unions, and even based on managerial staff responsible for scheduling and managing break
17 schedules. There are an estimated 101,517 Class Members who worked in thousands of departments
18 at Defendant's numerous facilities in California under many different union contracts. Ascertaining
19 the reasons for meal and rest break violations that may have occurred, that were not reported by
20 class members or grieved by the unions, and were captured by Defendant's electronic system and
21 paid out to Class members would require a department-by-department, union-by-union, employee-
22 by-employee, shift by- shift inquiry. Further, each employee would have to establish the reasons
23 why missed breaks were not claimed per policy. Kaiser also provided information showing that it
24 paid Class members over 109,333 meal period and 185,537 rest period (total 294,870) premiums.
25 (*Id.* ¶ 38.)

26 These facts demonstrate that, at best, Plaintiffs' meal and rest break claims would be very
27 difficult to certify as a class and prove on a class basis and, at worst, that Class Members would not
28 be able to prove their individual claims given Defendant's electronic system to notify Defendant of

missed meal and rest breaks and the prolific payment of break premiums during the relevant period. (Setareh Decl. ¶ 39).

Based on the sampled analysis, margin of error reduction, and information supporting non-liability from Kaiser, Plaintiffs estimated 1,337,565.64 shifts being eligible for premium payments (6.16% of all shifts), less the 109,333 paid by Kaiser, for a total of 1,228,232.64 shifts that presented potential meal break violations at an average hourly rate of \$61.60. Notwithstanding all of the factors discussed above that presented obstacles for certifying a meal break class and prevailing on the merits of the claim, the potential total exposure for meal break premiums was: (1,228,232.64 potential violations) x \$61.60 = \$75,081,861.57 for meal break violations *only if Defendant, not employee choice, caused the employees to forgo a timely break*, and they are able to explain away their failure to report the violation. Defendant had a viable argument that with a system in place to report violations, and a failure of employees to report the violations, that as to each shift when a potential violation occurred, the burden of proof is on the employee to establish the unavailability of a timely break. For settlement purposes, Plaintiffs' counsel placed a significantly reduced value on the meal break claim because those potential violations that were not paid out as meal break violations through Defendant's timekeeping system were either (1) subject to dispute by Defendant and the merits of those claims would have to be determined on a case-by-case basis, or (2) already investigated by Defendant through its procedures and determined not to have been an actual violation and therefore no premium was owed. Given these considerations and the fact that Class Members who sincerely believe they are owed premiums for a substantial number of meal break violations can opt out of the settlement and pursue those claims individually, Plaintiffs only valued the meal break violations at **\$18,770,465 in meal break premiums**, or 25% of what the parties agree is an overstated total. (Setareh Decl. ¶ 40.)

Because Class Members do not clock out for rest breaks, records do not exist for evaluating Plaintiffs' rest break claim. Based on Plaintiffs' experience, Defendant's policies and the union's presence, Plaintiffs' counsel conservatively estimated that Class Members as a group experienced a rest break violation on 5% of their shifts. There are 1,085,686 shifts, less the 185,537 paid by Kaiser, for a total of 900,149.40 shifts. Accordingly, there were approximately 900,149.40

1 shifts with potential rest break violations. Class Members' average hourly rate during the relevant
2 period was \$61.13. Accordingly, notwithstanding all of the factors discussed above that presented
3 obstacles for certifying a rest break class and prevailing on the merits of the claim, the potential total
4 exposure for rest break premiums was: \$55,026,132.82 (or 900,149.40 violations x \$61.13=
5 \$55,026,132.82) for rest break violations that are, for the vast majority of claimed violations,
6 inherently difficult to prove and likely un-certifiable. Plaintiffs had to take into consideration the
7 length of the class period, the probability that class members could not remember which if any shifts
8 they may have missed a rest break for which they did not make a claim during the class period, and
9 the lack of records of missed rest breaks. Finally, the impact on a trier-of-fact of the availability of
10 an opportunity to claim a premium that was not claimed weighed significantly in Plaintiff's risk
11 assessment. (Setareh Decl. ¶ 41.)

12 For settlement purposes Plaintiffs' counsel placed little value on the rest break claim because
13 those potential violations that were not paid out as rest break violations through Defendant's
14 timekeeping system were either (1) subject to dispute by Defendant and the merits of those claims
15 would have to be determined on a case-by-case basis with individual employees probably having to
16 carry the burden of proof, or (2) already investigated by Defendant through its procedures and
17 determined not to have been an actual violation and therefore no premium was owed. Given these
18 considerations and the fact that Class Members who sincerely believe they are owed premiums for a
19 substantial number of rest break violations can opt out of the settlement and pursue those claims
20 individually, Plaintiff valued the rest break violations at **\$13,756,533 in rest break premiums**, or
21 25% of the rest period violations. (Setareh Decl. ¶ 42.)

22 c. Reimbursement Claims

23 Plaintiffs alleged that Kaiser did not reimburse for cell phone usage, drug tests, personal
24 protective equipment and maintaining their scrubs. There are a total of 78,214,445.65 shifts in the
25 reimbursement period. For purposes of mediation, Plaintiffs estimated that reimbursement for
26 business expenses were required for 10% of shifts, or 7,821,444.56 shifts. At a rate of \$5 per month,
27 the reimbursement damages estimate is \$1,955,361.14. Plaintiffs use a downward adjustment due to
28 risks inherent in the claim, and the fact that Defendant states that Plaintiffs were not required to use

1 personal phones for work and that Kaiser provides a phone or cell phone reimbursement when
2 employees need to use phones for work. Furthermore, Kaiser states that it pays for drug testing and
3 personal protective equipment. Due to the reimbursement claim being sporadic in nature rather than
4 systematic, it would be difficult to certify on a class action basis. Thus, Plaintiff valued the
5 **reimbursement claims at \$977,680.** (Setareh Decl. ¶ 43.)

6 **d. Regular Rate Claims**

7 Plaintiffs alleged that when Kaiser would pay overtime pay as well as meal and rest period
8 premiums, it underpaid by not factoring in bonuses and non-discretionary compensation into the
9 regular rate of pay. Plaintiffs expert reviewed the data provided for mediation and calculated the
10 damages for the Regular Rate claim at \$5,172,050.40, based on the sample data Defendant provided.
11 Plaintiffs applied a significant downward adjustment due to Defendant's strong defenses on this claim.
12 Defendant denies that Plaintiffs' regular rate claims have merit, arguing that Plaintiffs are covered by
13 a CBA that meets the requirements of Labor Code Section 514 overtime exemption. Defendant further
14 alleges that it pays meal and rest period premiums at the regular rate of pay, including differentials
15 and other forms of non-discretionary compensation. Thus, Plaintiff valued the **regular rate claims at**
16 **\$517,205.** (Setareh Decl. ¶ 44.)

17 **e. Wage Statement Penalties**

18 Labor Code § 226 provides: "An employee suffering injury as a result of a knowing and
19 intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of
20 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
21 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an
22 aggregate penalty of four thousand dollars (\$4,000)." Lab. Code § 226. (Setareh Decl. ¶ 45.)

23 At mediation, according to Defendant's records, there were approximately 61,758 employees
24 and 1,062,233 pay periods during the statutory liability period for which a wage statement would
25 have been issued. It was not determined how many individuals would have been limited to the
26 maximum of \$4,000, but potential penalties could amount to \$103,135,400. $[(61,758 \text{ employees} \times$
27 $\$50 = \$3,087,900) + (100 \times 1,062,233 \text{ pay periods in 1 year period} - 61,758 \text{ employees} = 1,000,475)$
28 $= \$103,135,400.]$ (Setareh Decl. ¶ 46.)

1 This total is overstated because it does not consider the \$4,000 maximum penalty per
2 employee that could be assessed. Moreover, both wage statement and waiting time penalty claims
3 are subject to a good-faith defense. See, e.g., *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017)
4 (“A good faith dispute that any wages are due will preclude imposition of waiting time penalties
5 under Labor Code Section 203.” (citation and alterations omitted)). Kaiser had a significant
6 likelihood of prevailing on its claim that if any wages were owed, it had a good faith belief that it
7 complied with the law. In light of these factors, Plaintiffs’ counsel valued the wage statement claim
8 at **\$25,783,850 in wage statement penalties.** (Setareh Decl. ¶ 47.)

9 **f. Waiting Time Penalties**

10 Labor Code section 203 provides for waiting time penalties to separated employees who were
11 not timely paid all wages upon separation for each day the employer fails to pay the wages up to a
12 total of 30 days per person. Lab. Code § 203. At the time of mediation, based on Defendant’s records,
13 there were 3,940 former employee Class Members with an hourly rate of \$61.13/hr. However, Kaiser
14 also alleged that by providing rest periods of 15 minutes (rather than the legally required 10 minutes)
15 they would be entitled to a substantial offset for any alleged unpaid time. The outside liability of
16 waiting time penalties is \$57,804,528. (3,940 terminated employees x 240 hours x \$61.13 Avg. Reg.
17 Rate). (Setareh Decl. ¶ 48.)

18 Plaintiff and the former employee Class Members would not be entitled to these waiting
19 time penalties unless they can show that Defendant “*willfully* fail[ed] to pay ... any wages of an
20 employee who is discharged or who quits”. See Cal. Lab. Code §203(a) (emphasis added). A
21 “willful” failure to pay wages occurs only when “an employer intentionally fails to pay wages to an
22 employee when those wages are due.” 8 Cal. Code Regs. § 13520; *accord Davis v. Morris* (1940)
23 37 Cal. App. 2d 269, 274. Notably, when there is a “good faith dispute” as to whether an employee
24 is entitled to additional wages, no waiting time penalties can be awarded. 8 Cal. Code Regs. §
25 13520; *see also Barnhill v. Robert Saunders & Co.* (1981) 125 Cal.App.3d 1, 7 (“A ‘good faith
26 dispute’ that any wages are due occurs when an employer presents a defense, based in law or fact,
27 which, if successful, would preclude any recovery on the part of the employee”). It is irrelevant
28 whether the defense is ultimately successful. 8 Cal. Code Regs. § 13520(a); *see e.g. Barnhill*, 125

1 Cal. App. 3d at 8-9; *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1201 (2008) (the “fact
2 that a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did
3 exist”). Defendant could reasonably argue that the violations were not willful. Accordingly, at most,
4 Plaintiffs attributed **\$14,451,132 to waiting time penalties**. (Setareh Decl. ¶ 49.)

5 **g. PAGA Penalties**

6 “PAGA penalties are paid 75% to the California Labor and Workforce Development Agency
7 and 25% to aggrieved employees. Thus, in wage and hour class action cases that settle, [] very little
8 of the total settlement is paid to PAGA penalties to maximize payments to class members.” *Magadia*
9 *v. Wal-Mart Assocs.* (N.D. Cal. May 31, 2019) 384 F.Supp.3d 1058, 1101. (Setareh Decl. ¶ 50.)

10 “[T]he amount of the common settlement fund reserved for PAGA penalties [is adequate], as
11 courts frequently approve settlements in wage and hour class action and PAGA actions that minimize
12 the total amount of the settlement that is paid to PAGA penalties to maximize payments to class
13 members.” (citations omitted) *Mejia v. Walgreen Co.* (E.D. Cal. Mar. 24, 2021) 2020 U.S. Dist.
14 LEXIS 220685, *26. (Setareh Decl. ¶ 51.)

15 PAGA establishes a \$100 civil penalty for each aggrieved employee per pay period for the
16 initial violation and \$200 for each employee per pay period for each subsequent violation. Lab. Code
17 § 2699(f). A derivative PAGA penalty may be imposed on Defendant for each type of violation
18 (failure to pay wages, rest break and/or meal break) per pay period. PAGA has a one-year statute of
19 limitations. (Setareh Decl. ¶ 52.)

20 The number of PAGA pay periods totals 1,062,233. For purposes of mediation, based on the
21 data provided Plaintiffs calculated PAGA damages at \$26,555,825 for off-the-clock claims,
22 \$6,542,355 for meal break claims, \$5,311,165 for rest break claims, \$56,471,410 for failure to
23 reimburse claims and \$4,350,075 for regular rate of pay claims. But, as discussed above, there are
24 serious obstacles to both class certification and proving liability, and substantial risk remained that
25 the court would not entertain a PAGA trial due to manageability concerns. Accordingly, even if
26 Plaintiffs could prove their unpaid wages claim, the number of class members with viable claims
27 would significantly reduce the PAGA penalties. (Setareh Decl. ¶ 53.)

Furthermore, the Court has discretion to reduce the amount of penalties awarded under PAGA, especially in circumstances where employees are awarded companion Labor Code damages. The Court has discretion pursuant to the California Labor Code, to reduce a PAGA penalty if, “based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code § 2699(e)(2); See, e.g., *Carrington v Starbucks Corp.* (2018) 30 Cal.App.5th 504 is one of the few examples of an appellate opinion discussing a trial court PAGA award (awarding \$5 per violation). Defendant would argue that a significant reduction is warranted here. (Setareh Decl. ¶ 54.)

Similarly, the meal and rest period claims were subject to significant risk and reduction in exposure. Kaiser’s payment of hundreds of thousands of break premiums demonstrated that it attempted to comply with the law in good faith and that imposing a PAGA penalty on top of the premium it already paid would constitute a duplicative penalty. (Setareh Decl. ¶ 55.)

In sum, Plaintiffs significantly reduced the value of the PAGA claims in light of the factors discussed above and the significant amount to be paid as wages to class members in settlement. Discounting the PAGA claims by 90%, Plaintiff valued the PAGA claims at **\$9,923,183 in PAGA penalties**. The Parties allocated \$300,000 of the Gross Settlement Amount towards PAGA penalties as a reflection of the Parties collective opinion that the Court was unlikely to issue a large PAGA award in this case. (Setareh Decl. ¶ 56.)

h. Estimated Total Exposure

\$2,741,358 in off-the-clock claims
\$18,770,465 in meal break premiums
\$13,756,533 in rest period premiums
\$977,680 in reimbursement damages
\$517,205 in regular rate damages
Sub-total potential excluding penalties for 203, 226 and PAGA: \$36,763,241
\$25,783,850 in wage statement penalties
\$14,451,132 in waiting time penalties
Sub-total potential excluding PAGA: 76,998,223
\$9,923,183.10 in PAGA penalties
TOTAL \$86,921,406 (Setareh Decl. ¶ 57.)

Based on the obstacles that would necessarily be encountered in connection with a

1 contested certification motion, and with manageability in the PAGA and class context, the
2 \$10,000,000 Gross Fund Value is warranted as it constitutes more than 36% of Plaintiff's assessment
3 of the actual value of the claims, excluding penalties for wage statements, waiting time and PAGA.

4 Despite a total potential recovery of \$36,763,241 on their class claims excluding penalties for
5 wage statements, waiting time and PAGA, Plaintiffs recognize the challenges they face in certifying a
6 class action and establishing liability on the underlying wage and hour claims. (Setareh Decl. ¶ 61.)
7 Plaintiffs estimate that their likelihood of prevailing on all their causes of action (on the derivative Labor
8 Code section 203 and 226 claims, in particular) are extremely low and thus their likelihood of recovering
9 36 million or anything close to that amount on behalf of a class is very unlikely. (*Id.*)

10 For those claims, if any, that are certified for class treatment, Plaintiffs must prevail at a trial on
11 the merits. (Setareh Decl. ¶ 58.) In addition to having to prove that Plaintiffs and other workers were not
12 paid for all hours worked, Plaintiffs must establish willfulness with respect to their waiting time penalties
13 claim under Labor Code Section 203 as well as a knowing and intentional violation under Labor Code
14 Section 226 for wage statement penalties. (*Id.*)

15 Defendant believes an award against it is unlikely because Plaintiffs and settlement class: (1) have
16 been paid for all time worked; (2) received adequate meal periods; (3) received adequate rest periods;
17 (4) were reimbursed for any business expenses; (5) received accurate itemized wage statements; and
18 (6) timely received all wages owed upon termination. Defendant also denies owing Plaintiff and/or
19 the Settlement Class any additional wages, damages, penalties or any other remedies. Additionally,
20 Defendant further contends it is highly unlikely that a class would be certified by the Court given the
21 number of individual issues. (Setareh Decl. ¶ 59.)

22 With respect to the claims asserted on behalf of the Settlement Class in this case, there are
23 significant risks that support the reduced compromise amount. (Setareh Decl. ¶ 60.) In light of the
24 uncertainties of protracted litigation, the Settlement amount reflects a fair and reasonable recovery for the
25 Class Members. (*Id.*) The Settlement amount is, of course, a compromise figure. (*Id.*) By necessity, it took
26 into account risks related to liability, damages, class action certification, and all the defenses asserted by
27 Defendant as to all such matters. (*Id.*) Moreover, each settlement Class Member will be given the
28 opportunity to opt out of the Settlement, allowing those who feel they have claims that are greater than the

benefits they can receive under this Settlement to pursue their own claims.

D. THE COURT SHOULD GRANT THIS MOTION AND ISSUE AN ORDER DIRECTING THAT NOTICE BE SENT

“The notice given to the class must fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members.” *Trotsky v. L.A. Fed. Sav. & Loan Ass’n* (1975) 48 Cal.App.3d 134, 151-52. “The notice must be structured to enable class members to decide whether to intervene or object, ‘opt out,’ or accept the settlement.” *Id.* at 152. Class notice must strike a balance between thoroughness and the need to avoid unduly complicating the content of the notice and confusing class members. *Wershba*, 91 Cal.App.4th at 252. Furthermore, an appropriate notice is one which has a reasonable chance of reaching the class members. *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974.

The Class Notice explains in plain and easily understood language what the case is about; the class definition and claims; the settlement amount and approximate individual amount each Class Member and/or PAGA Member will receive; the requested amounts to be paid to class counsel and as an enhancement award to the class representative; the rights of class members to opt out or object to the Settlement’s terms and the process by which they can do so; the binding effect of the Settlement on those who do not request exclusion, including a description of the claims being released; and the particulars of the final fairness hearing. (Settlement, ¶ I T, Ex. 1.)

The Parties’ proposed plan for directing notice to the Class is also the best notice that is practicable under the circumstances. Using last-known addresses provided by Defendant or found through a NCOA database search, the Settlement Administrator will send the Notice by First Class U.S. Mail to all Class Members. (*Id.* ¶ VII 3.) Further, the Settlement Administrator will perform skip traces to obtain the correct address of any Class Members for whom the Notice is returned as undeliverable and will attempt re-mailings. (*Id.* ¶ VII 4.)

E. THE COURT SHOULD SET A HEARING FOR FINAL APPROVAL

Finally, the Court should set a formal hearing to conduct an inquiry into the fairness of the proposed settlement. Cal. Rule Ct. 3.769(e), (g). At the hearing, proponents of the Settlement may explain and describe the terms and conditions and offer argument of settlement approval. Members of the Settlement

1 Class, or their counsel, may also appear and offer evidence and testimony in opposition to the Stipulation
2 of Settlement. The Parties request that the hearing on final approval of the settlement be set as soon as
3 may be convenient for the Court.

4 **VI. CONCLUSION**

5 For the foregoing reasons, the Parties respectfully submit that the Settlement's terms are fair,
6 adequate, and reasonable and that it is in the best interest of the Class Members. Under the applicable
7 class action criteria and guidelines, this Class should be conditionally certified, the Settlement should be
8 preliminarily approved, the Class should be notified regarding the Settlement, and the Court should
9 schedule a final approval hearing.

10
11 Dated: January 10, 2024

BRADLEY/GROMBACHER, LLP

12 

13 _____
14 Marcus Bradley
15 Kiley L. Grombacher
16 Lirit A. King
17 Attorneys for Plaintiffs Rob
18 TONYA HALFHILL
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Superior Court of Alameda County Public Portal

Court Reservation Receipt

Reservation			
Reservation ID: 470892162236	Status: RESERVED		
Reservation Type: Motion re: (Motion for Preliminary Approval)	Number of Motions: 1		
Case Number: RG21096610	Case Title: Halfhill VS Kaiser Permanente Insurance Company		
Filing Party: Tonya Halfhill (Plaintiff)	Location: Rene C. Davidson Courthouse - Department 21		
Date/Time: February 2nd 2024, 9:00AM	Confirmation Code: CR-VMARGLCCB7VRCHCED		
Fees			
Description	Fee	Qty	Amount
Reschedule Fee	1.00	1	1.00
TOTAL			\$1.00
Payment			
Amount: \$1.00	Type: Visa		
Account Number: XXXXX1305	Authorization: 008451		
Payment Date: 2023-11-08			