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

DAVID LONG, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

CAPITOL COMPLIANCE
MANAGEMENT, LLC, et al.,

Defendants.

Case No.: 34-2021-00301119-CU-OE-GDS

CLASS ACTION

Complaint Filed: May 20, 2021

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

Date: March 24, 2023

Time: 9:00 a.m.

Dept.: 28

Reservation No.: 2704731

RELATED CASE: 34-2021-00302928-CU-OE-GDS

Complaint Filed: June 21, 2021

DAVID LONG, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

CAPITOL COMPLIANCE
MANAGEMENT, LLC, et al.

Defendants.

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on March 24, 2023, at 9:00 a.m., or as soon thereafter as
3 the matter may be heard, before the Honorable Lauri A. Damrell, in Department 28 of the above
4 referenced Court located at 720 9th Street, Sacramento, California 95814, Plaintiff David Long
5 (“Plaintiff”) will seek an Order: (1) approving the Joint Stipulation of Class Action and PAGA
6 Settlement (“Agreement” or “Settlement Agreement”) in this matter; (2) conditionally certifying
7 the following Class for settlement purposes only: “all current and former non-exempt employees
8 of Defendants in the State of California, who worked during the Class Period”; (3) appointing
9 Plaintiff David Long as the Class Representative, and Larry W. Lee and Max W. Gavron of
10 Diversity Law Group, P.C. and Kelsey A. Webber and Shaelyn A. Stewart of Webber Law
11 Group as Class Counsel; (4) preliminarily approving the Agreement and the total Gross
12 Settlement Amount in the amount of Five Hundred Thousand Dollars (\$500,000.00); (5) finding
13 on a preliminary basis that the Agreement appears to be within the range of reasonableness of a
14 settlement, including the amount of the Class Representative incentive payment, attorneys’ fees
15 and costs, settlement administration costs, and the allocation of payments to Class Members, that
16 could ultimately be given final approval by this Court; (6) approving the Notice of Class Action
17 Settlement (“Class Notice”) to be sent to Class Members; (7) appointing Phoenix Settlement
18 Administrators as the Settlement Administrator; and (8) setting the matter for a Final Fairness
19 and Final Approval hearing.

20 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
21 provides for court approval of the settlement of a purported class action and allows the Court to
22 preliminarily certify a class for settlement purposes.

23 The basis for this Motion, filed without any opposition from Defendants Capital
24 Compliance Management, LLC; CC101, Inc.; Alternative Medical Center, Inc.; Sharp Source;
25 Doc’s Inc.; Perchta, Inc.; and C9 Alliance, Inc. (collectively, “Defendants”), is that the proposed
26 settlement is fair, adequate, and reasonable and the procedures proposed by the Parties are
27 adequate to ensure the opportunity of Class Members to participate in, opt-out of, or object to the
28 settlement. This Motion will be based on the attached Memorandum of Points and Authorities,

1 the Settlement Agreement and the proposed Class Notice, and the supporting Declarations of
2 Larry W. Lee, Max W. Gavron, Kelsey A. Webber, and Plaintiff David Long, and upon the oral
3 arguments of counsel (should there be any) and on the complete records and file herein.

4 Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of
5 this matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative
6 rulings for the department may be downloaded off the court's website. If the party does not have
7 online access, they may call the dedicated phone number for the department as referenced in the
8 local telephone directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before
9 the hearing and receive the tentative ruling. If you do not call the court and the opposing party by
10 4:00 p.m. the court day before the hearing, no hearing will be held.

11
12 DATED: March 2, 2023

DIVERSITY LAW GROUP, P.C.
WEBBER LAW GROUP

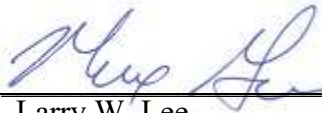
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14 By: 
15 Larry W. Lee
16 Max W. Gavron
17 Kelsey A. Webber
18 Shaelyn A. Stewart
19 Attorneys for Plaintiff David Long
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4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002).... 10, 11

Newberg on Class Actions, *supra*, at § 11.47 12

1 **I. INTRODUCTION**

2 This is a wage and hour class and representative Private Attorneys General Act
3 (“PAGA”) action seeking statutory and civil penalties under the California Labor Code. Plaintiff
4 David Long (“Plaintiff”) alleges that Defendants Capital Compliance Management, LLC;
5 CC101, Inc.; Alternative Medical Center, Inc.; Sharp Source; Doc’s Inc.; Perchta, Inc.; and C9
6 Alliance, Inc. (collectively, “Defendants”) (together with Plaintiff, the “Parties”) failed to pay
7 overtime wages for all hours worked, provide off-duty meal and rest breaks, pay all wages owed
8 upon separation of employment, reimburse business expenses, and provide accurate itemized
9 wage statements. Plaintiff brings class and PAGA claims based on these violations. The Parties
10 have reached a proposed class and PAGA action settlement, the terms of which are reflected in
11 the Parties’ Joint Stipulation of Class Action and PAGA Settlement (“Agreement” or “Settlement
12 Agreement”).

13 Prior to the settlement of this action, the Parties thoroughly investigated the facts relating
14 to the class and PAGA claims alleged in the lawsuit and engaged in a thorough study of legal
15 principles applicable to the claims asserted against Defendants. Through the exchange of formal
16 and informal discovery, Defendants provided necessary data pertaining to the number of putative
17 class members and number of workweeks at issue, a sampling of time and pay records for
18 purposes of performing an analysis of the alleged violations and penalties resulting therefrom, as
19 well as information pertaining to Defendants’ payroll policies and practices. Thereafter, the
20 Parties attended a full day of mediation with neutral Michael J. Loeb, Esq. The mediation did
21 not result in a settlement, but the Parties continued to negotiate and litigate the case. Thereafter,
22 the Parties arrived at the proposed settlement presented to the Court now. The following
23 represent the key terms of the settlement:

- 24 • Gross Settlement Amount of \$500,00.00, which will be paid by Defendants and
25 distributed to the Class on a **non-reversionary** basis (*See* Agreement ¶ 15);
26 • Estimated Class of 1,228 individuals (*Id.* ¶ 3);
27 • Class Members do not need to submit claim forms to participate in the settlement (*Id.* ¶
28 53 (explaining if a class member fails to opt out they will be bound by the settlement);

- Class Representative Incentive Payment of up to \$10,000.00 (*Id.* ¶ 10);
- Class Counsel’s attorneys’ fees of up to \$166,666.67 (one-third of the Gross Settlement Amount) (*Id.* ¶ 5);
- Class Counsel’s litigation costs of up to \$30,000.00 (*Id.* ¶ 5);
- Settlement Administration Costs of up to \$13,500.00 (*Id.* ¶ 35);
- Payment to the LWDA of \$11,250.00, representing 75% of the total PAGA Payment of \$15,000.00 (*Id.* ¶ 21);
- Net Settlement Amount of approximately \$264,833.33 (*Id.* ¶ 44); and
- Raw average of \$215.66 ($\$264,833.33 \div 1,228$ Class Members) to each Participating Class Member.

The Parties believe that the settlement for the consideration and on the terms set forth in the Settlement Agreement is fair, adequate, and reasonable, in light of all known circumstances and the expenses and risks inherent in litigation and respectfully request that the Court grant this Motion for Preliminary Approval of Class Action Settlement.

II. PROCEDURAL HISTORY

On April 26, 2021, Plaintiff submitted written notice to the California Labor and Workforce Development Agency (“LWDA”), alleging violations of Labor Code §§ 201-204, 226(a), 226.7, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, and 2802, pursuant to the Private Attorneys General Act (“PAGA”), Labor Code § 2699 (“PAGA letter”). Declaration of Max W. Gavron (“Gavron Decl.”) ¶ 2. On May 20, 2021, Plaintiff filed a class action complaint in the Superior Court of the State of California for the County of Sacramento on behalf of himself and all similarly situated employees. Gavron Decl. ¶ 3. Plaintiff asserted claims for: (1) violation of Labor Code §§ 510, 558, and 1194; (2) violation of Labor Code § 226.7 and 512; (3) violation of Labor Code § 226.7; (4) violation of Labor Code § 2802; (5) violation of Labor Code § 226; and (6) violation of Business and Professions Code § 17200, *et seq.* On June 21, 2021, Plaintiff filed a related action in the Superior Court of the State of California for the County of Sacramento. *Id.* ¶ 4. The related complaint alleged a single cause of action for violation of the PAGA. *Id.* ¶ 4.

On February 14, 2022, Plaintiff filed a first amended consolidated class and

1 representative action complaint (“First Amended Complaint”), consolidating the claims of the
2 class action and the related action. *Id.* ¶ 5. The First Amended Complaint is the operative
3 complaint. *Id.* ¶ 5.

4 Plaintiff contends that each of the Defendants operated as a single entity despite their
5 purported separate corporate forms. Plaintiff contends that Defendants regularly scheduled their
6 employees to work across multiple marijuana dispensaries during the workday, to avoid paying
7 overtime wages. To wit, Defendants assigned Plaintiff to work at one location for fewer than 8
8 hours, then transferred Plaintiff to work at another location during the same workday for fewer
9 than 8 hours. This scheduling practice also resulted in employees being unable to take off-duty
10 meal and rest breaks. Even though Plaintiff regularly worked enough hours to qualify for both
11 meal and rest breaks on any given workday, because Defendants spread Plaintiff’s working hours
12 across multiple locations and considered each location alone, Defendants did not provide off-
13 duty meal and rest breaks. Moreover, even when Plaintiff worked 3.5 hours or more at a single
14 dispensary, he was unable to take an off duty break due to understaffing. Premium pay for
15 missed meal and rest breaks was not paid to employees. Additionally, employees were not
16 reimbursed for work-related expenses such as mileage incurred from traveling among various
17 dispensary locations and cell phone expenses incurred by clocking in and out of work, making
18 deliveries, and contacting customers. Plaintiff has not received all wages owed to him and is thus
19 owed waiting time penalties. Finally, as a result of the underpayment and/or nonpayment of
20 wages, the wage statements issued to Plaintiff displayed inaccurate rates of pay, regular and
21 overtime hours worked, total hours worked, and net and gross wages earned. Plaintiff seeks
22 damages and penalties under the California Labor Code, the California Business & Professions
23 Code, and the PAGA, as well as attorneys’ fees and costs. *Id.* ¶ 6.

24 The Parties engaged in both formal and informal discovery. *Id.* ¶ 7. Among other relevant
25 topics, the discovery required Defendants to provide documents and information relevant to class
26 certification, including the number of putative class members, payroll records of putative class
27 members, Defendants’ policies and procedures with respect to overtime wages, meal and rest
28 period premiums, and policies governing when and how putative class members were provided

1 meal and rest periods. *Id.*

2 On July 12, 2022, the Parties engaged in a full-day mediation with neutral Michael J.
3 Loeb, Esq. Gavron Decl. ¶ 8. In advance of the mediation, Defendants provided Plaintiff's
4 counsel with informal data and information pertaining to the putative class size and number of
5 pay periods, a sampling of time and pay records, Plaintiff's time records, and Defendants' wage
6 and hour policies and practices. *Id.* ¶ 8. Defendants' production of time records allowed Plaintiff
7 to conduct a damages analysis and extrapolate from the sample. *Id.* However, the mediation did
8 not result in settlement. Thereafter, the Parties returned to litigation and ultimately reengaged in
9 settlement discussions. Gavron Decl. ¶ 8. In resolution of Plaintiff's class and PAGA claims, the
10 Parties entered the Joint Stipulation of Class Action and PAGA Settlement, a true and correct
11 copy of which is attached as **Exhibit A** to the Declaration of Max W. Gavron. *Id.*

12 **III. DISCUSSION**

13 Any settlement of a class action lawsuit must be reviewed and approved by the Court.
14 This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final
15 review after notice has been distributed to the class members for their comment or objections.

16 The preliminary approval by the trial court is simply a conditional finding that the
17 settlement appears to be within the range of acceptable settlements. As Professor Newberg
18 comments, "[t]he strength of the findings made by a judge at a preliminary hearing or conference
19 concerning a tentative settlement proposal may vary. The court may find that the settlement
20 proposal contains some merit, is within the range of reasonableness required for a settlement
21 offer, or is presumptively valid subject only to any objections that may be raised at a final
22 hearing." Alba Conte & Herbert B. Newberg, *4 Newberg on Class Actions* § 11.26 (4th ed.
23 2002).

24 Here, the Parties have reached such an agreement and have submitted to this Court in
25 connection with this Motion a copy of the Agreement fully setting forth the agreement reached
26 among the Parties. The parties also may, at the preliminary approval stage, request that the court
27 provisionally approve certification of the class—conditional upon final approval of the
28 settlement. "[P]re-certification settlements are routinely approved if found to be fair and

reasonable.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001); accord *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1803 (1996) (although the settlement was reached before any “adversary certification,” the court was satisfied that it was “fair, adequate and reasonable”); *In re Baldwin-United Corp.*, 105 F.R.D. 475, 478 (S.D.N.Y. 1984) (“many courts have employed this practice in the name of judicial efficiency in order to facilitate apparently beneficial settlement proposals”). As further explained by Professor Newberg:

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

4 Newberg on Class Actions § 11.26.

The Agreement contains a provision pursuant to which the Parties stipulate to the Court’s provisional certification of the class but do so for the purposes of this settlement only. Defendants have reserved the right to contest class certification in the event that the settlement is not approved and litigation resumes.

A. Proposed Class Definition

The current settlement is being settled on behalf of “all current and former non-exempt employees of Defendants in the State of California who worked during the Class Period.” See Agreement ¶ 3. The Class Period is defined as “the period of May 20, 2017, through June 10, 2022.” *Id.* ¶ 8. There are approximately 1,228 individuals that comprise the Class. *Id.* ¶ 3.

B. Settlement Terms and Evaluation

Courts presume the absence of fraud or collusion in the negotiation of settlement unless evidence to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars Steel Corp. v. Continental Illinois Nat’l Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In re Chicken Antitrust Litig.*, 560 F. Supp. 957, 962 (N.D. Ga. 1980). Courts do not substitute their judgment for that of the proponents, particularly where, as here, settlement has been reached with the participation of experienced counsel familiar with the litigation. *Nat’l Rural Telecomms.*

1 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004); *Hammon v. Barry*, 752 F. Supp.
2 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re Armored Car*
3 *Antitrust Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav.*
4 *& Loan Ass'n*, 79 F.R.D. 571 (E.D. Pa. 1978).

5 While the recommendations of counsel proposing the settlement are not conclusive, the
6 Court can properly take them into account, particularly where, as here, they have been involved
7 in informal discovery and negotiations for some period of time, appear to be competent, have
8 experience with this type of litigation, and have exchanged substantial evidence from the
9 opposing party. *See Newberg on Class Actions, supra* § 11.47; *Nat'l Rural Telecomms. Coop.*,
10 221 F.R.D. at p. 528 (“[s]o long as the integrity of the arm’s length negotiation process is
11 preserved, however, a strong initial presumption of fairness attaches to the proposed
12 settlement...[citations] and ‘great weight’ is accorded to the recommendations of counsel, who
13 are most closely acquainted with the facts of the underlying litigation”). Here, both Plaintiff’s
14 and Defendants’ counsel have a great deal of experience in wage and hour class action litigation.
15 Plaintiff’s counsel has been approved as class counsel in a number of wage and hour class
16 actions and have extensive litigation experience. Gavron Decl. ¶¶ 31-35; Declaration Larry W.
17 Lee (“Lee Decl.”) ¶¶ 6-8; Declaration of Kelsey A. Webber (“Webber Decl.”) ¶¶ 3-8. Each side
18 has apprised the other of their respective factual contentions, legal theories, and defenses,
19 resulting in negotiations taking place between the Parties. Gavron Decl. ¶ 10.

20 Based on the class data provided by Defendants, Plaintiff estimated that Defendants
21 could face potential liability of up to approximately \$5.3 million for Plaintiff’s class claims if
22 Plaintiff succeeded on all claims at trial. Gavron Decl. ¶ 11. Plaintiff was able to estimate the
23 potential class penalties based on class data provided by Defendants, which identified 1,228
24 putative class members, 16,490 pay periods, and approximately 31,000 workweeks, at issue. *Id.*

25 From this, Plaintiff estimated the exposure on the meal and rest period claims was
26 approximately \$572,337.50, respectively. Gavron Decl. ¶ 12. Plaintiff calculated this by
27 multiplying the number of workweeks by 5 days in a workweek and multiplying that value by
28 the average rate of pay, \$14.77. Gavron Decl. ¶ 12. Plaintiff then discounted the maximum

1 exposure by 75% considering the theory of liability and data produced by Defendants indicating
2 that only a small fraction of employees (approximately 15) worked for different enterprises
3 during the same workday. Gavron Decl. ¶ 12. If Defendants were successful in establishing this
4 defense, Plaintiff's claims may not be subject to certification and, even if they were, would only
5 be applicable to a small percentage of Defendants' workforce. Gavron Decl. ¶ 12. Accordingly,
6 given the theory of liability and the data produced by Defendants, the reduction in the potential
7 exposure was warranted.

8 For Plaintiff's overtime claim, Plaintiff estimated approximately a quarter hour of unpaid
9 overtime per pay period as a result of the staffing of individuals across Defendants' various
10 enterprises. Gavron Decl. ¶ 13. This estimate was supported by the data produced by
11 Defendants. Gavron Decl. ¶ 13. This resulted in an estimated exposure on the overtime claim of
12 \$91,354.60 (($\22.16 OT rate x 0.25) x 16,490 pay periods). Gavron Decl. ¶ 13. Plaintiff
13 estimated the value of the reimbursement claim as approximately \$164,900, which was premised
14 on a \$10 reimbursement for cellphone and mileage reimbursement use every pay period. Gavron
15 Decl. ¶ 13.

16 With respect to Plaintiff's claim for waiting time penalties, Plaintiff estimated the
17 potential exposure on this claim was approximately \$2,500,000.00, based on 702 former
18 employees whose average hourly rate of pay was \$14.77 (702 employees x 8 hours x 30 days x
19 \$14.77 per hour). To succeed on this claim, Plaintiff would have to defeat Defendants' argument
20 that its alleged failure to pay any wages was subject to a "good faith" defense. *See Hill v.*
21 *Walmart Inc.*, 32 F.4th 811, 823 (9th Cir. 2022) (holding that defendant presented good faith
22 dispute precluding imposition of Section 203 penalties even where trial court denied employer's
23 motion for summary judgment on same issue). Defendants argued that they did not willfully fail
24 to pay wages upon separation thus precluding penalties. Gavron Decl. ¶ 14.

25 With respect to Plaintiff's claim for violation of Labor Code § 226, Plaintiff estimated the
26 penalties associated with this claim as approximately \$1,587,600.00, which was based on 16,490
27 alleged pay periods (($\$100$ x 16,490) - ($\$50$ x 1,228 class members)). *Id.* ¶ 15; Lab. Code §
28 226(e). Further, Defendants would have argued that the violation was not "knowing and

1 intentional” and thus would not warrant Section 226(e) penalties. *See Harris v. Vector Mktg.*
2 *Corp.*, 656 F. Supp. 2d 1128, 1145-46 (N.D. Cal. 2009) (granting summary judgment in favor of
3 employer and finding its conduct was not “knowing and intentional”). Defendants would have
4 argued that they were entitled to a “good faith” defense on this claim, too. *See, e.g., Apodaca v.*
5 *Costco Wholesale Corp.*, 2014 WL 2533427, at *3 (C.D. Cal. June 5, 2014) (“Where an
6 employer has a good faith belief that it is not in violation of Section 226, any violation is not
7 knowing and intentional.”); *Wright v. Adventures Rolling Cross Country, Inc.*, 2013 WL
8 1758815, at *9 (N.D. Cal. Apr. 24, 2013) (same); *Ricaldai v. U.S. Investigations Servs., LLC*,
9 878 F. Supp. 2d 1038, 1047 (N.D. Cal. 2012) (same); *Dalton v. Lee Publ'ns, Inc.*, 2011 WL
10 1045107, at *5 (S.D. Cal. Mar. 22, 2011) (same).

11 With respect to potential liability of Plaintiff’s PAGA claims, Defendants represented
12 that there were 9,525 total pay periods during the PAGA period. Gavron Decl. ¶ 16. Plaintiff
13 estimated that Defendants could face civil penalties of up to \$952,500, if the Court awarded \$100
14 per pay period. Gavron Decl. ¶ 16. While the PAGA does provide for a heightened “subsequent”
15 penalty, courts are hesitant to award that amount where there has not been a prior violation of the
16 Labor Code. *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (2008); *accord*
17 *Amalgamated Transit Union Local 1309 v. Laidlaw Transit Service, Inc.* 2009 WL 2448430, at
18 *9 (S.D. Cal. Aug. 10, 2009) (“[u]nder California law, courts have held that employers are not
19 subject to heightened penalties for subsequent violations unless and until a court or
20 commissioner notifies the employer that it is in violation of the Labor Code”); *see also Bernstein*
21 *v. Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021) (holding no subsequent penalty unless
22 prior citation or court ruling). Defendants argued no such prior violation occurred here
23 warranting only the initial penalty, if anything at all.

24 Even assuming Plaintiff ultimately prevailed on his PAGA claims, the Court still has
25 discretion to reduce any PAGA penalties. Pursuant to Labor Code § 2699(e)(2), the Court can
26 decline to award PAGA penalties where “if, based on the facts and circumstances of the
27 particular case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive,
28 or confiscatory.” Indeed, as shown in the Court of Appeal’s decision in *Carrington v. Starbucks*

1 *Corp.*, 30 Cal. App. 5th 504 (2018), while the plaintiff prevailed on his PAGA claim upon trial,
2 the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer's good
3 faith attempt at complying with the law. *Id.* at p. 517. Upon review, the Court of Appeal found
4 such reduction to be proper. *Id.* at p. 539.

5 Thus, even if Plaintiff were to successfully prove his claims at trial, there is a possibility
6 that the Court may only award a small percentage of PAGA penalties, as the Court has discretion
7 to do so. If the Court reduced PAGA penalties by the same percentage as approved in
8 *Carrington*, the potential exposure on the PAGA claim would only be \$95,290. Gavron Decl. ¶
9 18.

10 Although Plaintiff believes that the class can be certified, Plaintiff also believes in the
11 fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff
12 involved in not prevailing on one or more of the causes of action or theories alleged in the
13 operative Complaint, the possibility of non-certification, and the potential for appeals. Gavron
14 Decl. ¶ 19. These risks on class certification are compounded by the California Supreme Court's
15 holding in *Duran v. U.S. Bank Nat'l Ass'n*, 59 Cal. 4th 1 (2014). There, the plaintiffs obtained
16 class certification and subsequently prevailed at trial after eight years of litigation, but the
17 judgment and the certification ruling were reversed by the California Supreme Court after an
18 additional five years of litigation. The case was remanded to superior court where class
19 certification was denied and plaintiffs' subsequent appeal also was denied.

20 Numerous courts have held that **gross** settlements approximating between only 8 and
21 25% of the defendant's potential exposure are fair and reasonable. *See Lesevic v. Spectraforce*
22 *Techs., Inc.*, 2021 WL 1599310, at *3 (N.D. Cal. Apr. 23, 2021) (noting wage and hour class
23 fund of \$600,000 that compensated for 7% of maximum potential recovery was reasonable);
24 *Bellinghausen v. Tractor Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at p.*6 (N.D.
25 Cal. Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of
26 the defendant's potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist. Ct.
27 Case No. 8:12-cv-02161 (C.D. Cal. 2014) (granting preliminary approval of wage and hour class
28 settlement which obtained **only 9.1%** of projected damages, given the risks of continued

litigation); *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-00261 SBA EMC, 2012 WL 5878390, at p.*6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement of approximately 15% of the potential recovery was fair and reasonable); *Greko v. Diesel U.S.A., Inc.*, No. 10-cv-02576 NC, 2013 WL 1789602, at *5 (N.D. Cal. Apr. 26, 2013) (24 percent was reasonable).

Here, the total amount of class and PAGA penalties amount to approximately \$6.2 million on the high end, and \$5.5 million if the Court were to reduce PAGA penalties as was done in *Carrington*. Gavron Decl. ¶ 21. The Gross Settlement Amount is \$500,000.00, which is approximately 8-9% of the maximum class and PAGA penalties. *Id.* The reasonableness of the settlement is also supported by Defendants' claims of financial distress, which resulted in the need for a payment plan to fund the settlement. Agreement ¶ 38; Gavron Decl. ¶ 21. As part of settlement negotiations, Plaintiff's counsel reviewed financial information provided by Defendants that substantiated its claims of financial distress and significant tax liabilities. Gavron Decl. ¶ 21. Accordingly, taking into account the risks of litigation, Defendants' ability to pay, and uncertainty of appeals, the settlement is fair and reasonable.

Despite the asserted fairness of the settlement terms, as set forth in the Notice of Class Action Settlement ("Class Notice"), should any Class Member wish to pursue his or her own case for the claims being released herein, each Class Member has the right to submit a Request for Exclusion (*i.e.*, opt-out) from the settlement, with the exception of the PAGA claims. *See* Class Notice, attached as **Exhibit A** to the Settlement Agreement. Moreover, as set forth in the Class Notice, Class Members are advised of their right to object to any of the terms contained in the Settlement Agreement and attend the final approval hearing. *Id.*

1. Amount and Manner of Distribution of the Compensation to be Provided to Class Members Including the Amount, or an Estimate, of What Each Class Member Will Receive

The Settlement Agreement provides for Five Hundred Thousand Dollars (\$500,000.00) as the Gross Settlement Amount. Agreement ¶ 15. The Net Settlement Amount (calculated after

deduction of attorneys' fees (up to \$166,666.67), costs (up to \$30,000.00¹), the Class Representative Incentive Payment (up to \$10,000.00), PAGA Payment (\$15,000.00), and settlement administration costs (up to \$13,500)) is estimated to be approximately \$264,833.33. Agreement ¶¶ 15, 40-44.

Pursuant to the Settlement Agreement, the Net Settlement Amount will be apportioned among the Class Members on a pro rata basis, based on the number of pay periods worked by each respective Class Member during the Class Period, as compared to the total number of pay periods worked by all Class Members during the Class Period. *See* Agreement ¶ 45.a. Based thereon, on a raw average, each Class Member potentially may recover approximately \$215.66 (\$264,833.33 ÷ 1,228 Class Members). Gavron Decl. ¶ 22. The amount actually paid to each Participating Class Member will increase or decrease depending on the number of pay periods he or she worked during the Class Period and the number of putative class members who choose not to participate in the settlement. Twenty-five percent (25%) of the PAGA Payment, or \$3,750.00, shall be paid to PAGA Members who worked during the PAGA Period (the period commencing on April 26, 2020, through June 10, 2022), on a pro rata basis, based on the number of pay periods worked by each PAGA Member during the PAGA Period as compared to the total number of pay periods worked by all PAGA Members during the PAGA Period. Agreement ¶¶ 22, 43, 45.b. Finally, uncashed checks (upon the expiration date) shall be sent to the *cy pres* recipient Legal Aid at Work, in accordance with California Civil Procedure § 384. *See* Agreement ¶ 58; *see* Gavron Decl. ¶ 25. Class Counsel does not have any conflicts of interest with the designated *cy pres* recipient. Gavron Decl. ¶ 25.

2. Settlement Funds Do Not Revert to the Defendant

None of the settlement funds will revert to Defendant. Agreement ¶¶ 15, 36.

3. Scope of the Release of Class Members' Claims

As a condition of participating in this class action settlement, Class Members who do not

¹ Class Counsel anticipates the actual costs incurred will be less than the amount allotted for in the Agreement in which case the balance will revert to the Net Settlement Amount for distribution according to the terms of the agreement. Gavron Decl. ¶ 29; Agreement ¶ 40.

1 opt out of the settlement (“Participating Class Members”) will provide a limited release of the
2 claims that were alleged or could have been alleged in the operative complaint against the
3 Released Parties (“Released Claims”). *See* Agreement ¶¶ 29, 63. In addition, regardless of their
4 decision to participate in the settlement, PAGA Members who worked during the PAGA Period
5 will also provide a limited release of the PAGA claims only (“PAGA Release”). *See* Agreement
6 ¶¶ 23, 63. Given that the releases above are tailored to only claims pled or could arise out of the
7 facts alleged in the operative Complaint and PAGA letter and that accrued during the Class
8 and/or PAGA Period, the releases are appropriately limited.

9 **4. Tax Treatment of Settlement Amounts**

10 The Parties have agreed that the class portion of the Individual Settlement Payment to
11 Participating Class Members shall be allocated as follows: ten percent (10%) wages, for which
12 an IRS Form W-2 will issue; thirty percent (30%) interest, for which an IRS Form 1099 will
13 issue; and sixty percent (60%) penalties, for which an IRS Form 1099 will issue (if applicable) to
14 the Participating Class Members. Agreement ¶ 45.c. The PAGA Payment portion of the
15 Individual Settlement Payments will be allocated as one hundred percent (100%) penalties. *Id.*
16 The employer’s share of payroll taxes will be paid by Defendants from the Gross Settlement
17 Amount. *Id.* ¶¶ 38, 59.

18 **5. No Affirmative Obligations to be Undertaken by Class Members**

19 Class Members will not be required to make a submission to participate in the settlement.
20 Thus, this substantially decreases the amount of burden each Class Member must bear in order to
21 receive their Individual Settlement Payment. If a Class Member does not wish to take part in this
22 settlement and be bound by the release, the Class Member must submit an exclusion request.
23 Agreement ¶¶ 31, 53.

24 **C. Notice to Class Members**

25 Should the Court grant the instant Motion, Defendants will provide the Settlement
26 Administrator with a list containing each Class Member’s full name, last known home address,
27 last known telephone number, Social Security Number, Employee Identification Number, start
28 and end dates of active employment as a non-exempt employee in California, number of pay

1 periods worked during the Class Period (or information sufficient to calculate said number),
2 number of pay periods worked during the PAGA Period (or information sufficient to calculate
3 said number), and any other information needed by the Settlement Administrator to administer
4 the settlement (“Class List”). Agreement ¶ 6. Defendants shall provide this information within
5 fifteen (15) calendar days of preliminary approval of this settlement. *Id.* ¶ 48. Upon receipt of the
6 information and prior to mailing the Class Notice, the Settlement Administrator shall perform a
7 search based on the National Change of Address Database for information to update and correct
8 for any known or identifiable address changes. *Id.* ¶ 50. Within ten (10) calendar days of receipt
9 of the Class List, the Settlement Administrator shall mail the Class Notice to all Class Members.
10 *Id.* ¶ 49. Any Class Notices returned to the Settlement Administrator as non-deliverable on or
11 before the opt-out deadline shall be sent promptly via regular first-class U.S. mail to the
12 forwarding address affixed thereto and the Settlement Administrator shall indicate the date of
13 such re-mailing on the Class Notice. *Id.* ¶ 50. If no forwarding address is provided, the
14 Settlement Administrator shall promptly attempt to determine the correct address using a skip
15 trace or other search and perform a re-mailing. *Id.*

16 The Class Notice will describe the terms of the settlement and advise Class Members of
17 their estimated Individual Settlement Payment and their opportunity to opt out of the Settlement,
18 object to the Settlement, and/or dispute the number of pay periods credited to them. *Id.* ¶ 51.

19 If Class Members need further information about the settlement and/or the lawsuit, Class
20 Counsel’s contact information and the Settlement Administrator’s contact information are
21 provided in the Class Notice. *See* Class Notice.

22 **D. Typicality and Adequacy of Representation**

23 **1. Class Representative’s Claims are Typical of the Class**

24 The commonality requirement is met when there are questions of law and fact common to
25 the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) (“The existence of shared
26 legal issues with divergent legal factual predicates is sufficient, as is a common core of salient
27 facts couple with disparate legal remedies within the class”). Commonality requires only that
28 some common legal or factual questions exist; the plaintiffs need not show that all issues in the

litigation are identical. *See Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473 (1981). Defendant's conduct is central to the commonality inquiry.

Plaintiff alleges that Defendants, as a matter of its corporate policy, practice, or procedure, violated the Labor Code by failing to pay overtime wages for all hours worked, failing to provide off-duty meal and rest breaks, failing to pay all wages owed upon separation of employment, failing to reimburse business expenses, and failing to provide accurate itemized wage statements. Declaration of David Long ("Long Decl.") ¶¶ 2-5. As a result, Plaintiff alleges that he is owed unpaid wages and penalties for the above violations. Long Decl. ¶ 3.

Moreover, Plaintiff does not have any interests adverse to the Class, nor have any such issues been raised or presented. Long Decl. ¶ 6. Plaintiff has taken all necessary steps to represent the interests of the Class, and by providing information and documents to Plaintiff's counsel. *Id.* ¶ 7.

2. Class Counsel Have Adequately Represented the Class

From the inception of the case, Class Counsel have zealously represented the interests of the Class. Class Counsel have engaged in significant meet and confer discussions with opposing counsel to obtain informal data and documents and to discuss the merits of the claims on behalf of the Class. Gavron Decl. ¶ 27. The settlement was obtained for the benefit of the Class, as opposed to the individual Class Representative. Further, Class Counsel have been approved as class counsel on a number of prior cases, have litigated numerous other class action cases, and are competent to represent the Class. Gavron Decl. ¶¶ 31-35; Lee Decl. ¶¶ 6-8; Webber Decl. ¶¶ 3-8.

E. Costs and Fees

1. Attorneys' Fees and Costs

California state and federal courts have recognized that an appropriate method for determining award of attorneys' fees is based on a percentage of the total value of benefits to class members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997).

1 In 2016, the California Supreme Court held that the award of attorneys' fees in common
2 fund wage and hour class action settlements should start with the percentage method. *See Laffitte*
3 *v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the overwhelming majority of federal
4 and state courts in holding that when class action litigation establishes a monetary fund for the
5 benefit of the class members, and the trial court in its equitable powers awards class counsel a
6 fee out of that fund, the court may determine the amount of a reasonable fee by choosing an
7 appropriate percentage of the fund created"). The California Supreme Court in *Laffitte* affirmed
8 a fee award representing 33 1/3 percent of the fund. *Laffitte*, 1 Cal. 5th at p. 506. And this was
9 based on a lodestar amount that required a multiplier of 2.13. *Id.* at p. 487. As the Court held,
10 only when the multiplier is "extraordinarily high or low [should] the trial court [] consider
11 whether the percentage method should be adjusted so as to bring the imputed multiplier within a
12 justifiable range." *Id.* at p. 505.

13 Here, the Parties have agreed to a payment of a maximum one-third of the Gross
14 Settlement Amount (\$166,666.67) for payment to Class Counsel as of attorneys' fees.
15 Agreement ¶ 40. The Parties have agreed to a payment of the foregoing attorneys' fees and,
16 thus, this payment should be presumed to be fair. Further, the Parties have agreed to
17 reimbursement of Class Counsel's litigation costs up to \$30,000.00. *Id.* Class Counsel have, at
18 their own risk, expended costs, for example, to file this instant action and other pleadings in the
19 case, effect service of process, participate in mediation, and pay other litigation-related costs. If
20 Class Counsel's actual costs are less than \$30,000.00, the remainder will go to the Class for
21 distribution. *Id.*

22 2. Proposed Payment to the Class Representative

23 Class Representative David Long requests an enhancement of \$10,000.00. Agreement ¶
24 41. The Class Representative met and conferred with Class Counsel on a number of occasions to
25 discuss the case, provided documents and information to Class Counsel, and reviewed the
26 Settlement Agreement. As part of his duties as the Class Representative, Plaintiff provided
27 invaluable information, evidence, and documents that resulted in this settlement. Long Decl. ¶ 8.
28 In addition to the invaluable services that he provided, Plaintiff also took a significant risk, both

1 professionally and monetarily, in acting as the Class Representative and seeking benefits on
2 behalf of the Class. Because the claims alleged by the Class Representative involved the
3 payment of costs to the prevailing party, Plaintiff could have possibly faced paying the costs of
4 Defendants, had he not prevailed in this action. Plaintiff also agreed to provide a general release
5 of claims and waiver of the protections of Civil Code § 1542, which is something that was not
6 required of the Class Members. Agreement ¶¶ 41, 64.

7 **3. Settlement Administration Fees**

8 The Parties have agreed to an estimated payment of \$13,500.00 to the Settlement
9 Administrator, Phoenix Settlement Administrators, to send notices and to administer this
10 settlement. Stipulation ¶ 34, 42. The Parties believe that the administration fee is reasonable and
11 should be approved. Gavron Decl. ¶ 24.

12 **4. Notice to LWDA**

13 Concurrent with the filing of this Motion, Plaintiff submitted all required documentation
14 to the LWDA. Gavron Decl. ¶ 39; Ex. B.

15 **IV. CONCLUSION**

16 Plaintiff respectfully requests that the Court grant preliminary approval of the proposed
17 settlement, sign the proposed Order, approve and authorize mailing of the proposed Class Notice,
18 and set a date for a final approval hearings.

19
20 DATED: March 2, 2023

DIVERSITY LAW GROUP, P.C.
WEBBER LAW GROUP

21
22 By: 
23 Larry W. Lee
24 Max W. Gavron
25 Kelsey A. Webber
26 Shaelyn A. Stewart
27 Attorneys for Plaintiff David Long
28

1 **cPROOF OF SERVICE**

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

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

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

9 On March 2, 2023, I served the following document(s) described as:

- 10 **1. PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY**
APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
- 11 **2. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S**
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT
- 12 **3. DECLARATION OF MAX W. GAVRON IN SUPPORT OF PLAINTIFF'S**
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT
- 13 **4. DECLARATION OF KELSEY A. WEBBER IN SUPPORT OF PLAINTIFF'S**
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT
- 14 **5. DECLARATION OF DAVID LONG IN SUPPORT OF PLAINTIFF'S**
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT
- 15 **6. [PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR**
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

16 on the interested parties in this action as follows:

17 Larry Kazanjian
18 Palmer Kazanjian Wohl Hodson LLP
19 2277 Fair Oaks Blvd., Suite 455
20 Sacramento, CA 95825
21 lkazanjian@pkwhlaw.com
22 cc: Cynthia Cervantes
23 CCervantes@pkwhlaw.com

*Attorneys for Defendants Capitol Compliance
Management, LLC; CC101, Inc.; Alternative
Medical Center, Inc.; Sharp Source; Doc's,
Inc.; C9 Alliance, Inc.; and Perchta, Inc.*

VIA ELECTRONIC SERVICE

24 Kelsey A. Webber
25 Shaelyn A. Stewart
26 Webber Law Group, P.C.
27 1610 R Street, Suite 300

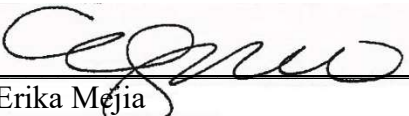
Attorneys for Plaintiff

VIA ELECTRONIC SERVICE

1 Sacramento, California 95811
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4 X BY ELECTRONIC MAIL: by personally sending a true and correct copy of
5 the above-described document(s) to the party(ies) listed above or on the attached mailing list
6 from the e-mail server diversitylaw.com, to the electronic transmission address of the recipient(s)
7 indicated above or on the attached mailing list. I certify that said electronic transmission was
8 completed and that all pages were received by the party(ies) identified herein or on the attached
9 mailing list.

10 I declare under penalty of perjury under the laws of the State of California that the above
11 is true and correct. Executed on March 2, 2023, at Los Angeles, California.

12 
13 _____
14 Erika Mejia
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