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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

TITIKSHA PAREKH, an individual; and
PATRICIA MARTINEZ, an individual; each
on their own behalf and in their representative
capacity, on behalf of all others similarly
situated,

Plaintiffs,

v.

COLLECTION SITES, LLC, a Nevada
limited liability corporation; and DOES 1
through 50 inclusive,

Defendant.

TITIKSHA PAREKH, FATIMA GALVAN,
and ROSARIO ZAVALA MARTINEZ, each
individually, and on behalf of all others
similarly situated,

Plaintiffs,

v.

COLLECTION SITES, LLC, a Nevada
limited liability company; MEDIVOLVE,
INC., a Canadian corporation and DOES 1
through 25 inclusive,

Defendants.

Case No. 37-2021-00045276-CU-OE-CTL

(Consolidated with Case Nos. 37-2021-
00046881-CU-OE-CTL and 21STCV22681)

Assigned for all purposes to:
Hon. Carolyn Caietti
Dept. C-70

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT**

Date: November 9, 2023

Time: 10:30 a.m.

Dept.: C-70

Action Filed: October 22, 2021

1 MARIA LOZANO, an individual,

2 Plaintiff,

3 v.

4
5 COLLECTION SITES, LLC, a Nevada
6 limited liability corporation; and DOES 1
7 through 50 inclusive,

8 Defendant.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Maria Lozano, Titiksha Parekh, Fatima Galvan, Patricia Martinez Orozco, and
4 Rosario Zavala Lopez (collectively “Plaintiffs”), on behalf of the putative Class, the State of
5 California, and the Aggrieved Employees, seek preliminary approval of the settlement of this wage
6 and hour Class and Private Attorneys’ General Act (“PAGA”) action against Defendants Collection
7 Sites, LLC and Medivolve, Inc. (collectively “Defendants”).¹ Plaintiffs and Class Counsel have
8 achieved a fair and reasonable result for the members of the Class and the Aggrieved Employees who
9 are current and former non-exempt employees of Defendants throughout the State of California. The
10 Settlement resolves approximately 706 putative Class Members’ claims that almost certainly never
11 would have been prosecuted as individual actions, and in so doing provides an excellent benefit to the
12 members of the Class and the Aggrieved Employees.

13 The basic terms of the Settlement are as follows: (1) the Gross Settlement Amount is
14 \$1,200,000.00; (2) no portion of the Gross Settlement Amount will revert to Defendants; (3) a Net
15 Settlement Amount of approximately \$572,250.00 will be available for distribution to Participating
16 Individuals; (4) Plaintiffs request, and Defendants do not oppose, an individual service award of a
17 maximum of \$12,000 for each named Plaintiffs’ efforts on behalf of the Class; (5) a sum of \$75,000.00
18 for PAGA penalties; (6) the actual costs and expenses of the Settlement Administrator, currently
19 estimated to be \$22,750.00; (7) 35% of the Gross Settlement Amount, or \$420,000.00, for attorneys’
20 fees; and (8) reimbursement of actual costs to Class Counsel currently estimated at approximately
21 \$29,423.31.

22 The average award for each of the around 706 proposed Class Members is approximately
23 \$810.55. This is a strong recovery for a wage and hour class action, particularly considering the risks
24 and factual circumstances described herein. The Settlement satisfies the criteria for preliminary
25 settlement approval under California law and falls well within the range of reasonableness.

26 Plaintiffs request that the Court: (1) grant preliminary approval of the Settlement; (2) appoint
27

28 ¹ A true and correct copy of the Joint Stipulation of Class and PAGA Settlement (“Settlement”) is attached as Exhibit 1 to the Declaration of Attorney Carolyn Hunt Cottrell in Support of the Motion for Preliminary Approval of the Settlement (“Cottrell Decl.”).

1 ILYM Group, Inc. (“ILYM”) as Settlement Administrator for the Settlement and approve as
2 reasonable the estimated costs of settlement administration of \$22,750.00; (3) appoint Schneider
3 Wallace Cottrell Konecky LLP (“SWCK”), W Employment Law, APC, Law Office of Scott Ernest
4 Wheeler, and Employment Rights Law Group, APC as Class Counsel for the Settlement Class; (4)
5 appoint Plaintiffs Maria Lozano, Titiksha Parekh, Fatima Galvan, Patricia Martinez Orozco, and
6 Rosario Zavala Lopez as Representatives of the Settlement Class; (5) provisionally certify the Class
7 for settlement purposes only; (6) preliminarily approve a service award of \$12,000.00 to each Plaintiff
8 for their efforts on behalf of the Class; (7) preliminarily approve an allocation of \$75,000.00 for PAGA
9 penalties; (8) preliminarily approve an award of attorneys’ fees to Class Counsel in the amount of 35%
10 of the Gross Settlement Amount, or \$420,000.00, plus reimbursement of Class Counsel’s out-of-
11 pocket expenses currently estimated at approximately \$29,423.31; (10) approve the Notice of Class
12 Action Settlement and Final Approval Hearing (“Class Notice”) attached as Exhibit A to the
13 Settlement Agreement; and (11) approve the proposed notice administration schedule, set forth in the
14 Settlement Agreement.

15 **II. SUMMARY OF THE LITIGATION**

16 **A. Factual Background**

17 Defendant Collection Sites, LLC is a Nevada limited liability company doing business in
18 California. (Cottrell Decl., ¶ 8). Defendant Medivolve, Inc. is a Canadian corporation doing business
19 in California, and the parent company of Collection Sites, LLC. (Cottrell Decl., ¶ 8; Parekh Class
20 Complaint, ¶ 7). Defendants provide healthcare technology and services, notably COVID-19 testing.
21 (Cottrell Decl., ¶¶ 8-9).

22 Plaintiffs and approximately 706 Class Members are Defendants’ current and former non-
23 exempt hourly employees in California (*Id.*, ¶ 10). Plaintiffs were assigned to work at Defendants’
24 COVID-19 testing sites throughout California where they performed and administered COVID-19
25 tests. (*Id.*, ¶ 9).

26 Plaintiffs allege that they and the Class Members regularly worked over eight hours per day,
27 five days per week. (Consolidated Complaint, ¶ 42). Plaintiffs allege that Defendants failed to
28 compensate them and the Class Members at their overtime and double time rates for each day they

1 worked more than eight hours and/or for each week they worked more than forty hours. Plaintiffs also
2 allege that Defendants failed to pay them and the Class Members all wages owed including minimum
3 wages and regular wages for all time worked, including for time spent working while off-the-clock.
4 (*Id.*) Plaintiffs further allege that Defendants often failed to provide them and the Class Members with
5 code compliant meal and rest periods. (*Id.*, ¶ 34). Even when Defendants did provide meal or rest
6 breaks, Plaintiff and Class Members were required to remain on-duty and return to work when needed
7 before the end of their breaks. (*Id.*, ¶ 36). Plaintiffs further allege that Defendant required them and
8 the Class Members to pay out of pocket for necessary business expenses such as personal cell phone
9 usage and mileage but failed to reimburse them. (*Id.*, ¶¶ 48-52). Plaintiffs allege that Defendants’
10 conduct is widespread, repeated, and consistent throughout its operations in California. (*Id.*, ¶ 56).

11 As a result of these violations, Plaintiffs assert Labor Code claims for (1) failure to pay for all
12 hours worked; (2) failure to pay overtime wages; (3) failure to pay minimum wages; (4) failure to
13 authorize and permit and/or make available meal and rest periods; (5) failure to reimburse business
14 expenses; (6) failure to pay wages when due; (7) failure to maintain accurate records of hours worked
15 and wages paid (8) failure to provide accurate itemized wage statements; (9) waiting time penalties;
16 (10) unlawful business practices; and (11) penalties pursuant to PAGA. (Cottrell Decl., ¶ 12).

17 **B. Procedural History**

18 On June 17, 2021, Plaintiff Lozano filed the initial complaint in Los Angeles Superior Court,
19 Case No. 21STCV22681 (“*Lozano*”). (Cottrell Decl. ¶ 15). Plaintiff Lozano’s complaint is a PAGA
20 representative action against Defendant Collection Sites, LLC. (*Id.*) On July 19, 2021, Plaintiff Lozano
21 filed a first amended complaint. (Cottrell Decl., ¶ 16).

22 On October 22, 2021, Plaintiffs Parekh and Martinez Orozco filed a PAGA representative
23 action in San Diego Superior Court, Case No. 37-2021-00045276-CU-OE-CTL (“*Parekh PAGA*”). s
24 (Cottrell Decl., ¶ 17; Declaration of Jacob N. Whitehead in Support of Motion for Preliminary
25 Approval of Class Action Settlement (“*Whitehead Decl.*”), ¶ 7).

26 On November 3, 2021, Plaintiffs Parekh, Galvan, and Zavala Lopez filed a class action
27 complaint in San Diego Superior Court, Case No. 37-2021-00046881-CU-OE-CTL (“*Parekh Class*”).
28 (Cottrell Decl., ¶ 18; Whitehead Decl., ¶ 8). On January 20, 2022, Plaintiffs Parekh, Galvan, and

1 Zavala Lopez filed a first amended complaint. (Cottrell Decl., ¶ 18).

2 The Parties also agreed to the filing of a consolidated complaint in the *Parekh* Actions for
3 settlement purposes concurrently with this Motion. (Cottrell Decl., ¶ 19; Settlement, ¶ 48).

4 On June 30, 2022, the parties participated in a private mediation before Lisa Klerman, but were
5 unable to reach a settlement. (Cottrell Decl., ¶ 22; Settlement ¶ 51). On September 19, 2022, the parties
6 participated in a second private mediation before Tripper Ortman which led to an agreement to settle
7 these actions. (Cottrell Decl., ¶ 23; Settlement ¶ 52). In the lead-up to the mediation that resulted in
8 the instant Settlement, Defendants produced significant documents and information. (*Id.*, ¶¶ 20, 26).
9 The production included hundreds of pages of documents relating to its policies, practices, and
10 procedures regarding its wage and hour practices, including timekeeping and compensation policies,
11 meal and rest periods policies, meal premiums paid, and payroll and operational policies. (*Id.*). It also
12 included time-punch (clock-in and clock-out times) and payroll information, employee handbooks,
13 policies applicable to hourly non-exempt employees, and job descriptions. (*Id.*). Class Counsel used
14 this information to perform a detailed investigation of Defendants' timekeeping and payroll policies
15 and practices, including an expert damages analysis based on a sample of data. (Cottrell Decl., ¶ 21).

16 Class Counsel also investigated Defendants' financial health and identified certain risks
17 associated with Defendants' potential insolvency and/or limited ability to pay. (Cottrell Decl., ¶ 39).
18 Class Counsel consulted an accounting expert, to analyze Defendants' inability to pay a class-wide
19 settlement. (*Id.*) The expert determined that, from an operating standpoint, Defendants were losing
20 approximately \$1.5 million per month with only approximately \$5 million in available cash. (*Id.*) The
21 expert's analysis of Defendants' finances and shows a pattern of limited solvency combined with
22 nonexistent profit margins. (*Id.*)

23 Considering the circumstances, including Defendants' financial health, the parties ultimately
24 agreed to a Settlement of \$1,200,000.00 to resolve all the claims alleged in the Action. (*Id.*) On
25 September 22, 2022, the parties memorialized the basic terms of their agreement in a memorandum of
26 understanding. (*Id.*, ¶ 24). The parties then negotiated the full terms of the Settlement, and executed
27 the long-form Class Action and PAGA Settlement Agreement on June 8, 2023. (*Id.*, ¶¶ 24-25).

III. SUMMARY OF THE SETTLEMENT

A. Terms of the Settlement

The Settlement provides that Defendants will pay a non-reversionary Maximum Settlement Amount of \$1,200,000.00 plus all employer payroll taxes owed on the wage portions of the Individual Class Payments to settle all aspects of the case. (Cottrell Decl., ¶ 39; Settlement, ¶ 22). The Settlement covers approximately 706 Class Members who collectively worked a total of 14,510 workweeks during the Class Period. (Cottrell Decl., ¶¶ 28, 51).

The Net Settlement Amount of \$572,250.00 available to the Class Members is the Maximum Settlement Amount, less deductions for: Plaintiffs' Enhancement Awards (\$12,000.00 each for the five Named Plaintiffs), attorneys' fees to Class Counsel (not to exceed 35%, or \$420,000.00), Class Counsel reasonable costs, administrative expenses to the Settlement Administrator currently estimated to be and not to exceed \$22,750.00, the Labor & Workforce Development Agency ("LWDA") Payment (\$56,250.00), and the Individual PAGA Awards (\$18,750). (Cottrell Decl., ¶ 51; Settlement, ¶ 23).

1. Proposed Class Definition

The Settlement Class to be certified for settlement purposes only includes all persons employed by Collection Sites, LLC and/or Medivolve, Inc. in an hourly, non-exempt position in California from June 17, 2017, through November 18, 2022. (Cottrell Decl., ¶ 58; Settlement, ¶¶ 10, 11).

The PAGA Members are all persons employed by Collection Sites, LLC and/or Medivolve, Inc. in an hourly, non-exempt position in California from June 17, 2020, through November 18, 2022. (Cottrell Decl., ¶ 59; Settlement, ¶¶ 27, 28)

2. Proposed Class Notice

The Parties have jointly selected ILYM Group, Inc. ("ILYM") as the Settlement Administrator. (Cottrell Decl., ¶ 71). During the Class Notice process, the Settlement Administrator will send out the proposed Class Notice, which informs Class Members of: (1) the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and (2) the number of Workweeks and/or PAGA Pay Periods used to calculate these amounts. (Settlement Agreement, Ex. A). Each Class Member and Aggrieved Employee shall have the opportunity to challenge the number of Workweeks allocated to the Class Member in the Class Notice, and/or the number of PAGA Pay

1 Periods allocated to the Aggrieved Employee in the Class Notice. (Cottrell Decl., ¶¶ 87-89). Class
2 Members who wish to exclude themselves from the Settlement must submit a written request for
3 exclusion from the Settlement by the Response deadline. (*Id.*).

4 **3. Proposed Release**

5 As of the date Defendants fund the entire Maximum Settlement Amount, Plaintiffs and
6 Participating Class Members will be deemed to have fully released Defendants for all related claims
7 that occurred during the Class period as to Defendants and the other Released Parties. (Cottrell Decl.,
8 ¶¶ 68-70). The released claims are the claims arising from or related to all facts, transactions, and
9 occurrences which occurred during the Class period, including, without limitation (a) all claims that
10 were, or reasonably could have been, alleged based on the facts alleged in the Consolidated Complaint
11 and facts alleged in Plaintiffs' PAGA Notices; and (b) all claims that were, or reasonably could have
12 been, ascertained during the Action. (*Id.*) Plaintiffs, Aggrieved Employees and the State of California,
13 shall also release all claims pursuant to PAGA that were alleged in the Action, for the PAGA Period.
14 (*Id.*)

15 **4. Proposed Service Award**

16 The Agreement provides for payments to Plaintiffs in the amount of up to \$12,000.00 each
17 based on the efforts they made and the risks they took in filing and prosecuting this action and obtain
18 this \$1,200,000.00 settlement. Plaintiffs took the significant risk of coming forward to represent the
19 interests of their fellow employees. (Cottrell Decl., ¶¶ 52-57). They have subjected themselves to risk
20 with regards to future employment opportunities and their reputation in the community by their
21 participation in this action. (*Id.*) Their service as the named Plaintiffs in a wage and hour class action
22 lawsuit may be discerned by potential employers and members of the community, creating a very real
23 risk of future repercussions, particularly with respect to future job opportunities. (*Id.*) In addition,
24 Plaintiffs, unlike the Class Members, also agree to a general release of claims. (*Id.*)

25 **5. Proposed Attorneys' Fees and Costs**

26 Plaintiffs seek reasonable attorneys' fees and costs from the \$1,200,000.00 Maximum
27 Settlement Amount. (Settlement, ¶¶ 7-8, 57b). Under the terms of the Settlement, Class Counsel may
28 seek a fee award of up to 35% of the Total Settlement Amount, or \$420,000.00 which will compensate

1 Class Counsel for all work performed and to be performed in the Action. The requested attorneys' fees
2 are to be divided between Class Counsel as follows: 28% to Law Offices of Scott Ernest Wheeler,
3 22% to Employment Rights Law Group APC, 25% to Schneider Wallace Cottrell Konecky, LLP, and
4 25% W Employment Law APC. (Cottrell Decl., ¶ 76; Settlement, ¶ 57b). In addition, Class Counsel
5 shall, subject to Court approval, receive reimbursement of Class Counsel Litigation Expense Payments
6 currently estimated at approximately \$29,423.31. (*Id.*, ¶ 79).

7 **IV. PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE**

8 A class action may not be dismissed, compromised, or settled without the approval of the
9 court.² Cal. Rules of Court, Rule 3.769 describes three distinct steps for approval of class action
10 settlements by California courts: (1) preliminary approval of the proposed settlement after submission
11 of a written motion for preliminary approval, the proposed class action settlement, and the proposed
12 Class Notice; (2) mailing of notice of the settlement to all affected Members of the Settlement Class;
13 and (3) a final settlement approval hearing at which Members of the Settlement Class may be heard
14 regarding the settlement, and at which evidence and argument concerning the fairness, adequacy, and
15 reasonableness of the settlement is presented.³

16 With this Motion, the Parties request that the Court take the first step and grant preliminary
17 approval. The Settlement proposed herein is based on arm's length negotiations that were guided by
18 Class Counsel's investigation and the evaluation of informal discovery. (Cottrell Decl., ¶¶ 40-41). The
19 negotiations included extensive communications between Class Counsel and counsel for Defendants
20 and two mediation conferences supervised by experienced and respected mediators. (*Id.*) The proposed
21 Settlement provides substantial monetary recovery for the Settlement Class, and it satisfies all of the
22 required due process protections. (*Id.*, ¶¶ 50-51). Thus, the proposed Settlement is fair, reasonable,
23 and adequate, and Plaintiffs therefore request that this Court grant preliminary approval.

24 **A. The Settlement Warrants Preliminary Approval**

25 The decision to approve or reject a proposed settlement is within a court's discretion. *Wershba*

26
27 ² See Cal. Code Civ. Proc. § 1781(f); Cal. Rules of Court, Rule 3.769; see also Fed. R. Civ. P. 23(e). The California
Supreme Court has authorized and urged California's trial courts to use Fed. R. Civ. P. 23 and federal case law for guidance
in considering class action issues. See *Green v. Obledo* (1981) 29 Cal.3d 126, 145-46.

28 ³ This procedure is similar to the procedure and criteria for approval of class actions under federal law and is also endorsed
by the nation's leading class action commentator, Professor Herbert Newberg. See *Newberg on Class Actions*, § 11:24 (4th
Ed. 2002); *Manual for Complex Litigation*, § 21:63 (4th Ed. 2006).

1 *v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35. To grant preliminary approval of a class
2 action settlement, courts need only find that the settlement falls within the range of possible final
3 approval, also described as “the range of reasonableness.” *See, e.g., North County Contractor’s Assn.,*
4 *Inc. v. Touchstone Ins. Servs.* (1994) 27 Cal.App.4th 1085, 1090; *see also Newberg on Class Actions*
5 *at §11:25.*

6 To make this determination, courts must consider several relevant factors, including “the
7 strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the
8 risk of maintaining class action status through trial, the amount offered in settlement, the extent of
9 discovery completed and the stage of the proceedings, [and] the experience and views of counsel.”
10 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. “The list of factors is not exclusive, and
11 the court is free to engage in a balancing and weighing of the factors depending on the circumstances
12 of each case.” *Wershba, supra*, at 245.

13 **1. The Terms of the Settlement Are Fair, Reasonable, and Adequate.**

14 A proposed settlement is not to be measured against a hypothetical ideal result that might have
15 been achieved. *See, e.g., 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85
16 Cal.App.4th 1135, 1150 (quoting *Linney v. Cellular Alaska P’ship* (9th Cir. 1998) 151 F.3d 1234,
17 1242) (“This court has aptly held that it is the very uncertainty of outcome in litigation and avoidance
18 of wasteful and expensive litigation that induce consensual settlements.”). Instead, courts make an
19 initial evaluation of the fairness, reasonableness, and adequacy of the proposed settlement based on
20 information already known, supplemented as necessary by briefs, motions, or information presented
21 by the settling parties. *See Manual for Complex Litigation at § 21:632.* Courts must ensure that “the
22 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties,
23 and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Hanlon v.*
24 *Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027. A presumption of fairness exists where: (1) the
25 settlement is reached through arm’s length bargaining; (2) investigation and discovery are sufficient
26 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and
27 (4) the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at 1802. The first three of these
28 conditions are satisfied here, and Plaintiffs expect that the fourth condition will also be satisfied.

1 A preliminary review of the Settlement reveals the fairness of its terms. The estimated Net
2 Settlement Amount of \$572,250.00 derived from the Maximum Settlement Amount of \$1,200,000.00
3 will result in fair and just relief to the Class Members and Aggrieved Employees. (Cottrell Decl., ¶
4 51). This amount provides an estimated average recovery of \$810.55 per Class Member, assuming
5 100% participation in the Settlement. (*Id.*) The result is within the reasonable standard, particularly
6 when considering the nature of Plaintiffs' claims and the difficulty and risks presented by continuing
7 this litigation. (*Id.*, ¶ 40). The \$1,200,000.00 settlement represents approximately 18.5% of the total
8 potential exposure of \$6,495,877.28 for core claims for unpaid wages, meal and rest breaks, expense
9 reimbursements, derivative claims, and potential PAGA penalties. (*Id.*, ¶ 39). The Net PAGA Amount
10 of \$75,000.00 represents 6.25% of the Maximum Settlement Amount, well within the settlements
11 previously approved in this and other California courts.⁴ (*Id.*)

12 **a) The Settlement is the result of arm's length negotiations.**

13 California courts recognize that "a presumption of fairness exists where . . . [a] settlement is
14 reached through arm's length bargaining." *Wershba*, 91 Cal.App.4th at 224, 245. The Settlement was
15 reached after numerous arm's length settlement discussions between Class Counsel and Defendants'
16 counsel, and at two **mediations** with respected mediators. (Cottrell Decl., ¶ 41). Class Counsel's
17 investigation included the review and analysis of documents and information provided by Defendants
18 for purpose of mediation, including Defendants' handbook, a 65.5% sample of Class Members' time
19 and pay data, the estimated number of class workweeks and PAGA pay periods, current and former
20 Class Members and Aggrieved Employees, average hourly rate of pay for all Class Members. (*Id.*)
21 Accordingly, the settlement was agreed upon following extensive arm's length negotiations. (*Id.*)

22 **b) The parties reached the Settlement after extensive investigation,**
23 **discovery, and analysis of the class claims.**

24 Preliminary approval is warranted where the Court is provided sufficient information regarding

25 ⁴ See *Ramirez v. Benito Valley Farms, LLC* (N.D. Cal. Aug. 27, 2017) 2017 U.S. Dist. LEXIS 137272 at * 14 (approving
26 a PAGA settlement that represented only 4.5% of the total estimated possible penalties under PAGA due to early stage of
litigation, Defendant's weak financial condition, and stipulated injunctive relief); *Hartley v. On My Own, Inc.* (E.D. Cal.
27 Aug. 25, 2020) 2020 WL 5017608 at *4 (approving settlement at 3.47% of verdict value of PAGA penalty, resulting in
average payment per employee of \$61); *Haralson v U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383 F.Supp.3d 959 at
28 972-74 (citing cases reflecting approval of settlements at 0.2% to 1.1% of verdict value of PAGA penalty); *Gilmore v. McMillan-Hendryx Inc.* (E.D. Cal. Jan. 20, 2022) 2022 U.S. Dist. LEXIS 11032 at * 9 (recognizing the inherent risks and costs in any litigation matter, and approving a PAGA settlement that amounted to approximately 4.2% of the total exposure calculated by plaintiff).

1 the discovery process and the facts developed, so that the Court may form “an understanding of the
2 amount that is in controversy and the realistic range of outcomes of the litigation.” *Kullar v. Foot*
3 *Locker Retail Inc.* (2008) 168 Cal.App.4th 116, 129-31; *Clark v. Am. Residential Servs. LLC* (2009)
4 175 Cal.App.4th 785, 801.

5 In the lead up to mediation, Class Counsel investigated the applicable law and the facts and
6 extensively analyzed the potential damages that might be recovered for the employees. (Cottrell Decl.,
7 ¶¶ 26-39). Defendants produced hundreds of pages of documents relating to its policies, practices, and
8 procedures regarding its wage and hour practices, paying non-exempt employees for all hours worked,
9 meal and rest period policies, meal premiums paid, and payroll and operational policies. (*Id.*, ¶¶ 20-
10 21). Class Counsel also reviewed time records, pay records, and information relating to the size and
11 scope of the Class, and data permitting Class Counsel to estimate the number of workweeks and pay
12 periods in the Class Period and PAGA Period. (*Id.*) Plaintiffs’ Counsel also provided this information
13 to their retained expert, Aaron Woolfson, to perform a damages analysis and estimate Defendants’
14 potential exposure. (*Id.*)

15 In light of the challenges that Plaintiffs would likely face in protracted litigation on both
16 liability and damages, and the risks associated with Defendants’ potential insolvency and/or limited
17 ability to pay, the \$1,200,000.00 settlement is reasonable and fair. *See, e.g., In re Mego Fin. Corp.*
18 *Sec. Litig.* (9th Cir. 2000) 213 F.3d 454, 459 (“It is well-settled law that a cash settlement amounting
19 to only a fraction of the potential recovery does not *per se* render the settlement inadequate or unfair.”);
20 *Bellinghausen v. Tractor Supply Co.* (N.D. Cal. 2015) 306 F.R.D. 245, 256 (approving settlement that
21 provided 9% recovery based on estimated liability exposure because “[s]ettlement avoids the
22 complexity, delay, risk and expense of continuing with the litigation and will produce a prompt,
23 certain, and substantial recovery for the Plaintiff class”).

24 **c) Class Counsel are experienced class action litigators.**

25 Class Counsel are experienced and respected class action litigators. (Cottrell Decl., ¶¶ 5-7;
26 Wheeler Decl., ¶¶ 7-14; Whitehead Decl., ¶ 5; Seyedfarshi Decl., ¶¶ 14-21). Based on Class Counsel’s
27 knowledge and expertise in this area of law and in light of Defendants’ financial difficulties and limited
28 ability to pay a class-wide settlement, Class Counsel believe this Settlement will provide an excellent

benefit to the Class Members and Aggrieved Employees. (Cottrell Decl., ¶ 39; Wheeler Decl., ¶ 3; Whitehead Decl., ¶ 5; Seyedfarshi Decl., ¶¶ 20-21). The Settlement is well within the range of reasonableness. (*Id.*) As analyzed in the Declaration of Carolyn H. Cottrell, the Net Settlement is an excellent result which recovers approximately 18.5% of substantive and derivative damages owed to the Class and satisfies these standards. (Cottrell Decl., ¶ 39).

2. Plaintiffs Face Substantial Risk of Continued Litigation

In contrast to the risk and uncertainty of continued litigation, the Settlement will yield a prompt, certain, and substantial recovery for the employees. Such a result will benefit the parties and the court system.

The fairness of the Settlement is further underscored by the risk that Defendants may not be able to pay a class-wide settlement in the near future as a result of their limited solvency and inability to make substantial profits. The Court may consider Defendant's financial resources and ability to pay a larger settlement when deciding whether to approve a class settlement. *See, e.g., Dunk*, 48 Cal.App.4th at 1801 (noting a court must include the risk of insolvency and inability to pay a larger settlement in its assessment of the reasonableness of a class action settlement).

Here, Plaintiff consulted Kenneth L. Creal, CPA, to investigate Defendants' ability to pay a settlement in September 2022. (Cottrell Decl., ¶ 39). Mr. Creal determined that although Defendants' annual revenues were approximately \$50 million, Defendants spent approximately \$70 million per year, losing close to \$20 million a year. (*Id.*) From an operating standpoint, Defendants were losing approximately \$1.5 million per month and as of September 2022 had only \$5 million available in cash. (*Id.*)

Moreover, Defendants provide COVID-19 testing to the public and their solvency, along with other COVID-19 testing providers, depends on the course of the COVID-19 pandemic. It is anticipated that Defendants revenues will drop as the impact of the COVID-19 pandemic continues to diminish.

Further, if this case were to go to trial as a class action, it would require substantial additional preparation and discovery and ultimately would involve the depositions of managerial employees and experts, the presentation of witnesses at trial, as well as the consideration, preparation, and presentation of voluminous documentary evidence and the preparation and analysis of expert reports.

1 (*Id.*, ¶ 42). In contrast to the risk and uncertainty of continued litigation, the Settlement will yield a
2 prompt, certain, and substantial recovery for the employees. (*Id.*, ¶¶ 43-44). Such a result will benefit
3 the parties and the court system. (*Id.*)

4 The Plaintiffs would face other significant risks if the litigation were to proceed to trial. (*Id.*, ¶
5 45). For example, in the experience of Class Counsel, putative class actions for off-the-clock claims
6 have traditionally been difficult to certify. (*Id.*) Even assuming that the Motion for Certification is
7 granted, the Plaintiffs would then have to establish Class-wide liability and prove up various issues
8 regarding damages and penalties. (*Id.*, ¶ 46). Liability and damages issues would also be vigorously
9 disputed by Defendant. (*Id.*) Obtaining class certification, establishing liability, and proving damages
10 would likely take years, and would necessitate expert witness testimony and significant additional
11 litigation. (*Id.*)

12 Additionally, the Plaintiffs’ derivative claims regarding waiting time penalties and wage
13 statements rise and fall with Plaintiffs’ other wage payment claims. (*Id.*, ¶ 47). For example, the
14 Plaintiffs would recover nothing under § 203 if they were unable to prove the underlying claims or
15 defeat a “good faith” dispute defense. (*Id.*); *see* Cal. Code Regs. Tit. 8, § 13520 [good faith dispute,
16 based in law or fact, precludes award of waiting time penalties].

17 While the Plaintiffs believe that they would have prevailed on these issues and others, they
18 recognize the risk that a factfinder may have found for Defendants on one or more of these issues and
19 or found damages to be significantly less than what the Plaintiffs claim. (*Id.*, ¶ 48). Defendant,
20 represented by experienced employment lawyers, raised the above arguments, and more, in mediation
21 and would have done so in continued litigation. (*Id.*, ¶ 49). Despite the Plaintiffs’ confidence in their
22 ability to prove their claims on a Class-wide basis, any one of the above defenses, if decided in favor
23 of Defendant, could have reduced or even eliminated any potential damages award. (*Id.*)

24 **B. Provisional Class Certification is Appropriate**

25 This Court should certify the proposed Class pursuant to Cal. Code Civ. Proc. § 382, which
26 provides: “[W]hen the question is one of a common or general interest, of many persons, or when the
27 parties are numerous, and it is impracticable to bring them all before the court, one or more may sue
28 or defend for the benefit of all.” California has a strong public policy in favor of broad enforcement

1 of wage and hour laws for the benefit of workers and in favor of using the class action device. *Sav-on*
2 *Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 340. A party seeking class certification has
3 the burden to establish the existence of both an ascertainable class and a well-defined community of
4 interest among class members. The community of interest requirement embodies three factors: (1)
5 predominant common questions of law or fact; (2) class representatives with claims or defenses typical
6 of the class; and (3) class representatives who can adequately represent the class. *Id.* at 326.

7 The benefits and efficiencies of this proposed Settlement, when compared to continued
8 litigation of this case on either a class basis or through multiple individual suits, justifies certification
9 of the proposed Class. (Cottrell Decl., ¶ 80). The Settlement specifically defines the Class for
10 Settlement purposes as: all persons employed by Collection Sites, LLC and/or Medivolve, Inc. in an
11 hourly, non-exempt position in California from June 17, 2017, through November 18, 2022. (*Id.*, ¶ 81;
12 Settlement, ¶¶ 10, 11). The parties stipulate that the requisites for class certification with respect to the
13 Class Members are met. (Cottrell Decl., ¶ 81; Settlement ¶ 55). Applying the standards outlined herein,
14 the Court should certify the proposed Class as defined herein.

15 **1. Plaintiffs Satisfy the Ascertainability and Numerosity Requirements**

16 To be certified, a class must be numerous in size such that it is impracticable to bring them all
17 before the court. Cal. Code Civ. Proc. § 382. The requirement of § 382 that there be many parties to a
18 class action suit is indefinite and has been construed liberally. No set number is required as a matter
19 of law for the maintenance of a class action. The ultimate issue in evaluating this factor is whether the
20 class is too large to make joinder practicable. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926,
21 934; *Collins v. Rocha* (1972) 7 Cal.3d 232, 238. Plaintiffs satisfy the numerosity element as there are
22 706 Class Members who would likely not have pursued their individual rights absent a class
23 mechanism, making joinder impracticable. (Cottrell Decl., ¶ 82; Settlement, ¶ 55); *Rose, supra*, at 934;
24 *Collins, supra*, at 238.

25 In determining whether a class is “ascertainable,” courts “examine the class definition, the size
26 of the class, and the means of identifying the class members.” *Reyes v. Bd. of Supervisors* (1987) 196
27 Cal.App.3d 1263, 1274-75. Plaintiffs defined the Class according to objective criteria. The Class
28 Members are easily identifiable, and Defendants will provide a Class list identifying each Class

1 Member. (Cottrell Decl., ¶ 82).

2 **2. Common Questions of Law and Fact Predominate in This Action**

3 “[T]he focus in a certification dispute is on what type of questions – common or individual –
4 are likely to arise in the action[.]” *Sav-on*, 34 Cal.4th at 427. The California Supreme Court has
5 expressly held that predominance does not require that all questions of law and fact be uniform for all
6 members of the class. *Id.* at 338.

7 Here, Plaintiffs contend that Defendant’s company-wide policies and procedures raise
8 common issues of law and fact that are applicable to the claims of Plaintiffs and Class Members.
9 (Settlement ¶ 55; Cottrell Decl., ¶ 83). Where, as in this case, uniform policies and procedures apply
10 on a class-wide basis, “the legal question to be resolved is not an individual one. To the contrary, the
11 common legal question remains the overall impact of [Defendants’] policies on its [employees].”
12 *Jaimez v. Daiohs USA, Inc.* (2010) 181 Cal.App.4th 1286, 1299. Plaintiffs allege that Defendants have
13 uniform policies applicable to all employees. (Cottrell Decl., ¶ 83). Specifically, they are subject to
14 the same meal and rest period policies and practices; the same timekeeping, payroll, compensation,
15 and overtime policies; the same expense reimbursement policies, and the same hiring and training
16 processes. (*Id.*) Plaintiffs also contend that common factual issues apply to the Class Members, such
17 as whether Defendant’s labor model and operational standards force the employees to miss meal and
18 rest breaks, and whether breaks are missed and interrupted. (*Id.*) Plaintiffs allege that these
19 standardized policies and procedures are dictated by Defendants and apply to all Class Members. (*Id.*)

20 **3. The Typicality Requirement Is Satisfied**

21 Plaintiffs also must establish that their claims are typical to those of the putative Class they
22 seek to represent. *Chern v. Bank of America* (1976) 15 Cal.3d 866, 874. A representative plaintiff’s
23 claims are “typical” if they arise from the same event, practice, or course of conduct that gives rise to
24 the claims of the other class members and if their claims are based on the same legal theory. *Classen*
25 *v. Weller* (1983) 145 Cal.App.3d 27, 46-47. The typicality requirement is not onerous and does not
26 require the claims to be identical. *Id.*

27 Here, Plaintiffs contend that they, like other Class Members, were subject to the policies and
28 practices that form the basis of the claims asserted in this case. (Cottrell Decl., ¶ 84). Plaintiffs claim

1 they were denied meal and rest breaks, overtime and double time, minimum wage compensation, and
2 reimbursement for work-related expenses. (*Id.*) Plaintiffs also claim that the Class Members were
3 subjected to the same illegal policies and practices to which Plaintiffs were subjected and the Class
4 claims are based on the same legal theory as Plaintiffs’ individual claims. (*Id.*) Accordingly, Plaintiffs
5 are members of the Class they seek to represent, and their claims are “typical” of those asserted by
6 other Class Members. (*Id.*); see *Classen*, 145 Cal.App.3d at 46-7.

7 **4. The Adequacy Requirement Is Satisfied**

8 A plaintiff is an adequate class representative if his or her claims are not inconsistent with or
9 antagonistic to the claims of the class members. See *Johnson v. GlaxoSmithKline, Inc.* (2008) 166
10 Cal.App.4th 1497, 1509. In the instant case, there is no conflict between Plaintiffs and the proposed
11 Class. (Cottrell Decl., ¶ 85; Wheeler Decl., ¶ 4). Plaintiffs’ claims are in line with those of the Class
12 and Plaintiffs have prosecuted this case with the interests of the Class in mind. (Cottrell Decl., ¶ 85).
13 Plaintiffs have met with Counsel, conducted interviews regarding their work experiences, and
14 participated in class-wide settlement decisions. (*Id.*) Furthermore, Plaintiffs have selected counsel with
15 extensive experience in class action and employment litigation, including wage and hour class actions,
16 and who do not have any conflict with the Class. (*Id.*) For the foregoing reasons, Plaintiffs are adequate
17 class representatives, and Counsel are appropriate Class Counsel. (*Id.*).

18 **C. The Proposed Service Award Is Reasonable**

19 Named plaintiffs in class action litigation are eligible for reasonable service awards. See *Staton*
20 *v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 977. Courts award service payments to advance public
21 policy by encouraging individuals to come forward and perform their civic duty in protecting the rights
22 of the class, as well as to compensate class representatives for their time, effort, and inconvenience. *In*
23 *re California Indirect Purchases* (1998) 1998 WL 1031494 at *11. It is well-established that
24 representative plaintiffs are eligible for reasonable incentive payments to compensate them for the
25 expense or risk they have incurred in conferring a benefit on other members of the class. *Munoz v.*
26 *BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412.

27 Payments to Plaintiffs in the amount of \$12,000.00 each is reasonable in light of the efforts
28 they made and risks they took in filing and prosecuting this action and obtain this \$1,200,000.00

1 settlement. (Cottrell Decl., ¶ 57). Incentive awards “are intended to compensate class representatives
2 for work done on behalf of the class, to make up for financial or reputational risk undertaken in
3 bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.”
4 *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393–94. Throughout this litigation,
5 Plaintiffs worked with Class Counsel and assisted in the development of the case. (Cottrell Decl., ¶¶
6 52-57; Seyedfarshi Decl. ¶ 22). They provided extensive information and documents during Class
7 Counsel’s initial investigation and the preparation of the complaints. (*Id.*) They also provided
8 responses to Class Counsel’s questions as the case progressed and provided valuable insight into
9 Defendant’s operations. (*Id.*) Plaintiffs have taken part in the Settlement decision and remained
10 apprised of the case during approximately two years of litigation. (*Id.*) In addition, Plaintiffs, unlike
11 the Class Members, also agree to a general release of claims. (*Id.*)

12 As a result of the Plaintiffs’ efforts and willingness to step forward, the employees will receive
13 significant recoveries if the Settlement is approved. (*Id.*) On the other hand, if the Plaintiffs did not
14 serve as Class Representatives or assist in the prosecution of this case, the claims of the employees
15 would never have been asserted. (*Id.*) Defendants’ alleged conduct would have gone unchecked. (*Id.*)
16 The Plaintiffs have committed their time to this case and assumed significant risk to obtain the
17 favorable result. (*Id.*)

18 Moreover, the enhancement payments are fair when compared to the payments approved in
19 similar cases. (*Id.*); *see, e.g., Soto v. O.C. Commc’ns, Inc.* (N.D. Cal. Oct. 23, 2019) Case No. 3:17-
20 cv-00251-VC, ECF 304 (approving \$15,000.00 and \$10,000.00 service awards in recent hybrid
21 FLSA/Rule 23 settlement); *Van Liew v. North Star Emergency Servs., Inc.* (Alameda Super. Ct., Dec.
22 11, 2018) No. RG17876878, (approving \$15,000.00 and \$10,000.00 service awards, respectively, to
23 class representatives in California Labor Code wage and hour class action).

24 **D. The Proposed Notice of Settlement Provides Adequate Notice to the Class**

25 “Adequate notice is critical to court approval of a class settlement under Rule 23(e).” *Hanlon*,
26 150 F.3d at 1025. A class action settlement notice “is satisfactory if it ‘generally describes the terms
27 of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come
28 forward and be heard.’” *Churchill Village LLC v. General Elec.* (9th Cir. 2004) 361 F.3d 566, 575.

1 Here, all Class Members will be identified, and the Class Notice Packet will be mailed directly
2 to each Class Member at their last known addresses provided by Defendants. (Settlement, ¶¶ 68-70,
3 Ex. A). If the Notice is returned as undeliverable, the Settlement Administrator will perform a skip
4 trace and resend the Notice. (*Id.*, ¶ 71, Ex. A). Thus, reasonable steps will be taken to ensure that all
5 Class Members receive the Notice. (Cottrell Decl., ¶ 86).

6 The proposed Class Notice is clear and straightforward, and provides information on the case,
7 the Settlement, the rights of the Class Members to participate, opt out, and object, the monetary awards
8 that the Settlement will provide to Participating Individuals, and the identity and contact information
9 for Class Counsel. (*Id.*, ¶ 87).

10 The Class Notice summarizes the proceedings necessary to provide context for the Settlement
11 and summarizes the terms and conditions of the Settlement, including an explanation of how the
12 Settlement amount will be allocated between the Plaintiffs, Class Counsel, the Settlement
13 Administrator, and Participating Individuals. (*Id.*, ¶ 88). It further explains the Class definitions. (*Id.*)
14 The Class Notice also describes the release of claims to which Class Members will be subject if they
15 participate in the Settlement. (*Id.*). Moreover, this summary is presented in a coherent, and easy-to-
16 understand manner, all in compliance with the Manual for Complex Litigation’s recommendation that
17 “the notice contain a clear, accurate description of the terms of the settlement.”

18 The Class Notice clearly explains the procedures and deadlines for opting out of the Settlement
19 and submitting objections and disputes, the consequences of taking or foregoing the various options
20 available to Class Members, and the date, time, and place of the Final Approval Hearing. (*Id.*, ¶ 89).
21 The Class Notice also sets forth the amount of attorneys’ fees and costs sought by Class Counsel and
22 explains that Class Members have the opportunity to object to Class Counsel’s requests for fees and
23 costs. (*Id.*). In addition, the Class Notice clearly states that the Settlement does not constitute an
24 admission of liability by Defendants. (*Id.*). Finally, it makes clear that the final settlement approval
25 decision has yet to be made. (*Id.*). The Class Notice also fulfills the requirement of neutrality in class
26 notices. (*Id.*). See *Newberg on Class Actions* at §§ 8:21 and 8:39; *Manual for Complex Litig.* at §§
27 21:311 and 21:312. Based on the foregoing, the Class Notice complies with the standards of fairness,
28 completeness, and neutrality required of a settlement class notice disseminated under authority of the

1 Court.

2 **E. The Proposed Attorneys' Fees and Costs are Appropriate and Should be**
3 **Preliminary Approved**

4 Plaintiffs seek reasonable attorneys' fees and expenses as a percentage of the \$1,200,000.00
5 Maximum Settlement Amount. (Settlement, ¶ 23). Under the terms of the Settlement, Class Counsel
6 may seek an award of up to 35% of the Maximum Settlement Amount, or \$420,000.00, plus
7 reimbursement of reasonable costs. (*Id.*).

8 The California Supreme Court upheld the use of the common fund theory of recovery for
9 attorneys' fees in *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 506. In *Laffitte*, the Court
10 approved attorneys' fees in the amount of one third of the gross settlement (*e.g.*, an award of \$6.33
11 million) under the common fund theory. *Id.* By awarding counsel a percentage of the total recovery,
12 rather than fees based on hours worked, the common fund method encourages attorneys to efficiently
13 litigate to achieve the best results possible for the class. *Id.* at 492-94. Indeed, the "percentage-of-
14 recovery method is generally favored in common fund cases because it allows courts to award fees
15 from the fund 'in a manner that rewards counsel for success and penalizes it for failure.'" *Id.* at 493
16 (quoting *In re Rite Aid Corp. Sec. Litig.* (3d Cir. 2005) 396 F.3d 294, 300).

17 In this case, given the excellent results achieved and the effort expended litigating the Actions,
18 35% is warranted. (Cottrell Decl., ¶¶ 75-79). There was no guarantee of compensation or
19 reimbursement. (*Id.*) Rather, counsel have undertaken all the risks of this litigation on a completely
20 contingent fee basis. (*Id.*) The inherent risk of proving liability and damages on a Class-wide basis
21 and Defendants' representation by skillful counsel confront Class Counsel with the prospect of
22 recovering nothing or close to nothing for their commitment to and investment in the case. (*Id.*)
23 Nevertheless, Plaintiffs and Class Counsel have committed themselves to developing and pressing
24 Plaintiffs' legal claims to enforce the employees' rights and maximize the Class recovery. (*Id.*)

25 Class Counsel's fee request of 35% of the settlement fund is well within the range customarily
26 approved by California and federal courts in comparable class actions.⁵ California Superior Courts

27 _____
28 ⁵ See, *e.g.*, *Newberg on Class Actions* at §11:24; *Manual for Complex Litigation* at §14:6; *Van Vranken v. Atlantic Richfield*
Co. (N.D. Cal. 1995) 901 F.Supp. 294, 297-98 ("Class Counsel have also cited 73 district court opinions in which fees in

frequently grant common fund awards of at least 33%.⁶

The requested attorneys' fees are reasonable when compared to Class Counsel's lodestar amount, currently estimated to be at least \$441,188.05 for all Class Counsel. (Cottrell Decl., ¶ 75; Wheeler Decl. ¶ 15; Seyedfarshi Decl. ¶ 13; Whitehead Decl., ¶ 15). This amount will only increase with preparation and attendance at the preliminary and final approval hearings, further correspondence with Class Members, and Settlement administration and oversight. At final approval, Class Counsel will provide detailed lodestar information to show the requested fee is reasonable under both the percentage method and a lodestar "cross-check." (*Id.*)

Furthermore, reasonable litigation expenses are ordinarily included in an award of attorneys' fees pursuant to California wage and hour law. *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1424. Class Counsel's litigation costs are currently estimated at approximately \$29,423.31. (Cottrell Decl. ¶ 79; Wheeler Decl., ¶ 16; Whitehead Decl., ¶ 16; Seyedfarshi Decl., ¶ 13). Plaintiffs' counsel incurred costs including, inter alia, filing and service fees, costs for remote appearances, document retrieval, and mediation fees. These expenses were incidental and necessary to the effective representation of the Class and Aggrieved Employees. (*Id.*) They are reasonable and uncontested and should be approved.

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant preliminary

the range of 30-50% of the common fund were awarded."); *In Re Pacific Enter. Sec. Litig.* (9th Cir 1995) 47 F.3d 373, 379 (33% fee award); *Williams v. MGM-Pathe Commc'ns Co.* (9th Cir. 1997) 129 F.3d 1026, 1027 (33% of total fund awarded); *In re Activision Sec. Litig.* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375 (noting that fee awards in common fund cases "almost always hover[] around 30% of the fund created by the settlement") (cited with approval in *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19 at 49); *In re Vitamins Antitrust Litig.* (D.D.C. 2001) 2001 WL 34312839 (34.6% of \$365 million recovery); *Laffitte v. Robert Half Int'l Inc.* (2014) 180 Cal.Rptr.3d 136, 149 ("...the trial court's use of a percentage of 33 1/3% of the common fund is consistent with, and in the range of, awards in other class action lawsuits.").

⁶ See, e.g., *Asalati v. Intel Corp.* (Santa Clara Super. Ct., Oct. 29, 2018) No. 16cv302615 (approving 33.3% fee award, at a multiplier of 3.98 over lodestar); *Ochoa v. Haralambos Beverage Co.* (Los Angeles Super. Ct., Feb. 1, 2007) No. BC319588 (approving 33.3% fee award with no mention of lodestar crosscheck); *Big Lots Overtime Cases* (San Bernardino Super. Ct., Feb. 4, 2004) JCC Proceeding No. 4283 (approving award of attorneys' fees of 33% of the recovery); *Barela v. Ralph's Grocery Company* (Los Angeles Super. Ct., June 5, 1998) No. BC070061 (same); *Davis v. The Money Store, Inc.* (Sacramento Super. Ct., Dec. 26, 2000) No. 99AS01716 (same); *Miskell v. Auto. Club of Southern Cal.* (Orange Super. Ct., May 27, 2003) No. 01CC09035 (same); *Sconce/Lamb Cremation Cases* (Los Angeles Super. Ct., March 24, 1992) JCC Proceeding No. 2085 (same); *Ojito v. Robertson's Ready Mix Concrete, Inc.* (Riverside Super. Ct., Jan. 16, 2007) No. RIC420994 (approving 30% fee award with no mention of lodestar crosscheck); *Jones v. Alliance Imaging, Inc.* (Alameda Super. Ct., Nov. 27, 2006) No. RG05210418 (approving 33% fee award with no mention of lodestar crosscheck); *Wisniewski v. Pacific Maritime Assoc.* (Los Angeles Super. Ct., Nov. 20, 2006) No. BC293134 (approving 30.7% fee award from \$12.9 million dollar settlement with no mention of lodestar crosscheck); *Garcia v. Save Mart Supermarket* (Stanislaus Super. Ct., Aug. 3, 2004), No. 312026 (approving 33% fee award with no mention of lodestar crosscheck); *Terrell v. Ocean's 11 Casino, Inc.* (San Diego Super. Ct., Feb. 10, 2004) No. GIC795732 (approving 33% fee award with no mention of lodestar crosscheck).

1 approval of the Settlement Agreement, in accordance with the schedule set forth herein.

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4 Dated: October 16, 2023

Respectfully Submitted,

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