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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

GUADALUPE GUARISTA, individually, on
behalf of all others similarly situated, and on
behalf of the State of California and other
aggrieved persons; and TENISHA KATHERINE
HOWARD and JENNIFER LOPEZ-
TRIGUEROS, individually, and on behalf of all
others similarly situated,

Plaintiffs,

v.

UROLOGIC INSTITUTE OF THE HIGH
DESERT, INC., a corporation, and DOES 1
through 10, inclusive,

Defendants.

Case No.: CIVSB2125029

[Consolidated with Case No. CIVSB213340]

CLASS & REPRESENTATIVE ACTION

[Assigned to: Hon. Jessica Morgan, Dept. S-26]

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

[Filed concurrently with: Declaration of
Justin F. Marquez; Declaration of Plaintiff
Guadalupe Guarista; Declaration of Plaintiff
Tenisha Katherine Howard; Declaration of
Jennifer Lopez-Trigueros; Declaration of Lisa
Mullins; Declaration of Ahllam H. Berri,
Esq.; Declaration of Dr. Pedram Ilbeigi; and
[Proposed] Order]

PRELIMINARY APPROVAL HEARING

Date: December 19, 2024

Time: 8:30 a.m.

Dept: S-26

Complaint filed: August 27, 2021

Trial date: Not set

1 **TO THE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that on December 19, 2024 at 8:30 a.m., in Department S-26 of
3 the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA
4 92415, pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769, *et seq.*,
5 Plaintiffs Guadalupe Guarista, Tenisha Katherine Howard, and Jennifer Lopez-Trigueros
6 (collectively, “Plaintiffs”) will and do move the Court for an Order granting preliminary approval
7 of the proposed class action settlement between Plaintiffs and Defendant Urologic Institute of the
8 High Desert, Inc. (“Defendant”). Plaintiffs further move the Court for an Order:

- 9 1. Granting preliminary approval of the Class Action and PAGA Settlement Agreement
10 and Class Notice;
- 11 2. Certifying a Class for settlement purposes;
- 12 3. Approving the Notice and the plan for distribution of the Notice;
- 13 4. Appointing Plaintiffs Guadalupe Guarista, Tenisha Katherine Howard, and Jennifer
14 Lopez-Trigueros as Class Representatives for settlement purposes;
- 15 5. Appointing Plaintiffs’ Counsel, Justin F. Marquez and Arrash T. Fattahi of Wilshire
16 Law Firm, PLC, as Class Counsel for settlement purposes;
- 17 6. Appointing ILYM Group, Inc. as the Settlement Administrator; and
- 18 7. Scheduling a final approval hearing.

19 The motion will be based upon this notice, the attached memorandum of points and
20 authorities, the Declarations of Justin F. Marquez, Plaintiff Guadalupe Guarista, Plaintiff Tenisha
21 Katherine Howard, Plaintiff Jennifer Lopez-Trigueros, Lisa Mullins, Ahllam H. Berri, Esq., and
22 Dr. Pedram Ilbeigi, filed concurrently herewith, the records and files in this action, and any other
23 further evidence or argument that the Court may properly receive at or before the hearing.

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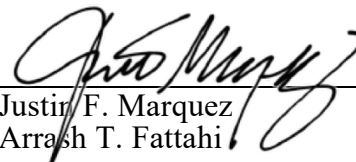
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2 Dated: September 5, 2024
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Respectfully submitted,

WILSHIRE LAW FIRM

4 By:


Justin F. Marquez
Arrash T. Fattahi

Attorneys for Plaintiffs
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Guadalupe Guarista, Tenisha Katherine Howard, and Jennifer Lopez-Trigueros (collectively, “Plaintiffs”) seek preliminary approval of a proposed \$200,000.00 non-reversionary, wage and hour class action settlement with Defendant Urologic Institute of High Desert, Inc. (“Defendant,” and together with Plaintiffs, the “Parties”). The Settlement will provide substantial monetary payments to approximately 153 class members. And, as set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law. The Settlement was reached after extensive investigation, discovery, and negotiations. The negotiations were at arms-length and were facilitated by an experienced employment mediator, Hon. Steve Denton (Ret.), over the course of a full day of mediation. After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiffs’ claims and Defendant’s defenses, the Parties reached a settlement in October 2023. Accordingly, Plaintiffs request that the Court preliminarily approve the proposed Settlement, certify the proposed settlement class, approve the proposed notice, and set a final approval hearing.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiffs’ Claims

This is a wage and hour class and Private Attorneys General Act (“PAGA”) representative action. Plaintiffs and putative class members worked in California as hourly-paid or non-exempt employees for Defendant during the class period. Defendant operated a medical practice group located in Southern California that specialized in urology. (Declaration of Justin F. Marquez in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement [“Marquez Decl.”], ¶ 2.)

Plaintiffs allege that Defendant’s payroll, timekeeping, and wage and hour policies and practices resulted in Labor Code violations. Plaintiffs allege that Defendant failed to pay for all hours worked. Plaintiffs further allege that Defendant failed to provide employees with legally compliant meal and rest periods and Defendant failed to reimburse business expenses. Based on these allegations, Plaintiffs assert related claims for failure to provide accurate wage

1 statements, failure to pay all final wages at termination, unfair business practices, and civil
2 penalties under PAGA. (*Id.* at ¶ 3.)

3 On August 27, 2021, Plaintiff Guarista filed a putative wage and hour class action
4 complaint against Defendant for: (1) failure to pay minimum and straight time wages; (2) failure
5 to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit
6 rest periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate
7 itemized wage statements; and (7) unfair business practices. Prior to the filing of the class
8 action complaint, on August 26, 2021, Plaintiff Guarista sent a notice to Defendant and the
9 California Labor & Workforce Development Agency (“LWDA”) alleging similar wage and hour
10 violations pursuant to the PAGA. On November 30, 2021, Plaintiff Guarista separately filed a
11 PAGA-only action against Defendant in the San Bernardino County Superior Court (Case No.
12 CIVSB2133340). On July 8, 2022, the Class and PAGA actions were consolidated with the
13 Class Action being designated as the lead case. Plaintiff Guarista’s First Amended Consolidated
14 Class & Representative Complaint, which combined the Class and PAGA Actions into one
15 complaint, added Plaintiffs Tenisha Katherine Howard and Jennifer Lopez-Trigueros as class
16 representatives, and added a cause of action for Defendant’s failure to reimburse for necessary
17 business expenditures, was deemed effective on July 24, 2024. (Marquez Decl., ¶ 4.)

18 **B. Discovery and Investigation**

19 The Parties exchanged documents and information before mediating this action in July
20 2022. Defendant produced timekeeping and payroll records for a sample of the class members
21 and demographic data for the class. Defendant also provided documentation regarding its
22 written wage and hour policies throughout the class period. Following the unsuccessful
23 mediation in July 2022, the Parties engaged in formal discovery, including written discovery,
24 Plaintiff Guarista’s deposition, and multiple PMK (“Person(s) Most Knowledge”) depositions.
25 (*Id.* at ¶ 5.)

26 After reviewing documents regarding Defendant’s wage and hour policies and practices,
27 analyzing Defendant’s timekeeping and payroll records, and engaging in formal discovery to
28 uncover additional facts regarding the matter, Class Counsel was able to evaluate the probability

1 of class certification, success on the merits, and Defendant's maximum monetary exposure for
2 all claims. (*Id.* at ¶ 6.) Class Counsel also investigated the applicable law regarding the claims
3 and defenses asserted in the litigation. (*Id.*)

4 **C. Settlement Negotiations**

5 On July 27, 2022, the Parties participated in private mediation with experienced class
6 action mediator, Hon. Steve Denton (Ret.). (*Id.* at ¶ 7.) The settlement negotiations were at
7 arm's length and, although conducted in a professional manner, were adversarial. The Parties
8 went into the mediation willing to explore the potential for a settlement of the dispute, but each
9 side was also prepared to litigate their position through trial and appeal if a settlement had not
10 been reached. (*Id.*) The Parties were unable to resolve the matter at the end of the July 2022
11 mediation and opted to engage in formal discovery. (*Id.*) After engaging in formal discovery
12 and having extensive negotiations and discussions regarding the strengths and weaknesses of
13 Plaintiffs' claims and Defendant's defenses, the Parties ultimately reached a settlement, the
14 material terms of which are encompassed within the Settlement Agreement. (*Id.* at ¶ 8, Ex. 1
15 [Class Action and PAGA Settlement Agreement and Class Notice].)

16 Class Counsel has conducted a thorough investigation into the facts of this case. Based
17 on the foregoing discovery and their own independent investigation and evaluation, The Parties
18 are of the opinion that the Settlement is fair, reasonable, and adequate and is in the best interests
19 of the Settlement Class Members in light of all known facts and circumstances, the risk of
20 significant delay, the defenses that could be asserted by Defendant both to certification and on
21 the merits, trial risk, and appellate risk. (*Id.* at ¶ 15.)

22 Indeed, the \$200,000.00 Settlement represents **56%** of the **realistic maximum recovery**
23 of \$357,237.88 (estimated by Plaintiffs). (*Id.* at ¶ 24.) Although Class Counsel estimated that
24 Defendant's maximum potential liability for all claims was approximately \$1.9 million, when
25 the risk of prevailing at certification and trial are factored into the equation, Class Counsel
26 believes that Defendant's realistic exposure was \$357,237.88, meaning the Settlement achieves
27 a significant recovery. (*Id.* at ¶¶ 15-28.) Considering the risk and uncertainty of prevailing at
28 class certification and at trial, this is an excellent result for the Class. (*Id.* at ¶ 24.) Indeed,

1 because of the proposed Settlement, class members will receive timely, guaranteed relief and
2 will avoid the risk of an unfavorable judgment.

3 **D. Key Terms of the Proposed Settlement**

4 The Settlement's key terms include:

5 1. Class Definition: For settlement purposes only, the Parties agree to the certification
6 of a class pursuant to California Code of Civil Procedure § 382 defined as: "a person employed by
7 Defendant in California and classified as non-exempt who worked for Defendant during the Class
8 Period." (Settlement, § 1.5.)

9 2. Class Period: "means the period from August 27, 2017 to the October 27, 2022, or
10 alternatively, the New Class Period End Date pursuant to Paragraph 9." (Settlement, § 1.11.)

11 3. Participating Class Member: "means a Class Member who does not submit a valid
12 and timely Request for Exclusion from the Settlement." (Settlement, § 1.34.)

13 4. Gross Settlement Amount: "means \$200,000.00 which is the maximum and total
14 amount Defendant agrees to pay under the Settlement except as provided in Paragraph 9 below.
15 The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA
16 Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class
17 Representative Service Payment and the Administrator's Expenses. (Settlement, § 1.21.)

18 5. Uncashed Checks: Any settlement checks remaining uncashed after one hundred
19 and eighty (180) days shall be transmitted to a *cy pres* recipient approved by the Court.
20 (Settlement, § 4.4.3.)

21 6. Release by Participating Class Members: "Plaintiffs and all Participating Class
22 Members release and forever discharge, on behalf of themselves and their respective former and
23 present representatives, agents, attorneys, heirs, administrators, successors, and assigns, Released
24 Parties, to the fullest extent permitted by law, from all claims alleged in any pleading in the Action
25 and the Operative Complaint in the Action and all claims that reasonably could have been alleged
26 based on the facts and/or theories pled in the Operative Complaint including claims for unfair
27 competition predicated on claims for failure to pay minimum and straight time wages, failure to
28 pay overtime wages, failure to provide meal periods, failure to provide rest periods, failure to

1 timely pay final wages at termination, failure to provide accurate wage statements, failure to
2 reimburse business expenses, and regular rate violations with respect to overtime, double time,
3 meal and rest period premiums, and sick pay that accrued during the Class Period; and labor code
4 violations for failure to pay minimum and straight time wages, failure to pay overtime wages,
5 failure to provide meal periods, failure to provide rest periods, failure to timely pay final wages at
6 termination, failure to provide accurate wage statements, and failure to reimburse business
7 expenses, and regular rate violations with respect to overtime, double time, meal and rest period
8 premiums, and sick pay that accrued during the Class Period. The released claims include, but are
9 not limited to, claims for wages, statutory penalties, civil penalties, damages, liquidated damages,
10 or any other relief brought under state or federal law, the California Labor Code, the Fair Labor
11 Standards Act, California Business and Professions Code sections 17200 *et seq.*, and/or any
12 applicable Industrial Welfare Commission Wage Order; attorneys' fees and costs; and interest that
13 accrued during the Class Period. The release expressly excludes claims for any alleged vested
14 benefits, wrongful termination, unemployment insurance, disability benefits, social security, and
15 workers' compensation." (Settlement, § 5.2.)

16 7. Release by Aggrieved Employees: "Plaintiffs, all Class Members who are
17 Aggrieved Employees, and the State of California release and forever discharge, on behalf of
18 themselves and their respective former and present representatives, agents, attorneys, heirs,
19 administrators, successors, and assigns, the Released Parties from any and all claims asserted, or
20 which could have been asserted, in the Action, arising during the PAGA Period for civil penalties
21 under California Labor Code section 2698, *et seq.* as well as any interest, fees, and costs available
22 under PAGA, based on or reasonably arising out of the facts and circumstances contained in any
23 pleading in the Action, the PAGA Notice, and the Operative Complaint, and all claims that could
24 have been alleged based on the factual allegations contained collectively therein, including, but
25 not limited to, claims for failure to pay minimum and straight time wages, failure to pay overtime
26 wages, failure to provide meal periods, failure to provide rest periods, failure to pay all earned
27 wages twice per month, failure to maintain accurate records of hours worked, failure to timely pay
28 final wages at termination, failure to provide accurate wage statements, and failure to reimburse

1 business expenses, and regular rate violations with respect to overtime, double time, meal and rest
2 period premiums, and sick pay that accrued during the and for violations of Labor Code sections
3 201-204, 204.1, 210, 226, 226.3, 226.7, 510, 1173, 1174, 1174(d), 1174.5, 1182, 1182.12, 1185,
4 1194, 1194.2, 1197, 1197.1, 1198, 2802, and the applicable Industrial Welfare Commission Wage
5 Orders in conformity with Labor Code section 2699.3. Nothing in this paragraph shall be construed
6 to be a release of any individual claims against Defendant by any Aggrieved Employees not a party
7 to this Action.” (Settlement, § 5.3)

8 8. No Reversion: None of the Gross Settlement Amount will revert to Defendant.
9 (Settlement, § 3.1.)

10 9. PAGA Allocation: The settlement includes \$10,000.00 allocated to Plaintiffs’
11 claims under PAGA, with 75% of which (\$7,500.00) being paid to the LWDA and 25% (\$2,500.00)
12 being paid to the Individual PAGA Payments. (Settlement, § 3.2.5.) Class Counsel submitted the
13 proposed settlement to the LWDA before filing this Motion for Preliminary Approval. (Marquez
14 Decl., ¶ 9.)

15 10. Net Settlement Amount: “means the Gross Settlement Amount, less the following
16 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
17 Payment, Class Representatives Service Payments, Class Counsel Fees Payment, Class Litigation
18 Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to
19 Participating Class Members as Individual Class Payments.” (Settlement, § 1.27.)

20 11. Individual Class Payment: means “the Participating Class Member’s pro rata share
21 of the Net Settlement Amount calculated according to the number of Workweeks worked during
22 the Class Period.” (Settlement, § 1.22.)

23 12. Tax Allocation: 50% of each Participating Class Member’s Individual Class
24 Payment will be allocated to the settlement of wage claims and 50% will be allocated to settlement
25 of claims for interest and penalties. (Settlement, § 3.2.4.1.)

26 13. Class Representative Service Payments: “Class Representative Service Payments to
27 Plaintiff Guadalupe Guarista in the amount of \$5,000.00, and Class Representative Service Payments
28 to Tenisha Katherine Howard and Jennifer Lopez-Trigueros in the amount of \$1,000.00 (in addition

to any Individual Class Payments and any Individual PAGA Payments the Class Representative are entitled to receive as Participating Class Members).” (Settlement, § 3.2.1.)

14. Class Counsel Fees and Costs: “A Class Counsel Fees Payment of not more than 33.333333%, which is currently estimated to be \$66,666.67 and a Class Counsel Litigation Expenses Payment of not more than \$20,000.00.” (Settlement, § 3.2.2.)

15. Notice of Proposed Class Action Settlement: The Notice sets forth in plain terms, a statement of the case, the terms of the Settlement Agreement, the approximate amount of attorneys’ fees, costs, and service awards being sought, and an explanation of how the settlement allocations are calculated. (Marquez Decl., ¶ 8, Settlement, Ex. A, Class Notice.) Class Members will be notified by first-class mail of the settlement. (Settlement, § 7.) ILYM Group, Inc., the proposed Settlement Administrator, will undertake its best efforts to ensure that the notice is provided to the current addresses of class members, including conducting a national change of address search and re-mailing the notice to updated addresses. (*Id.*; Declaration of Lisa Mullins in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement, ¶¶ 6, 9-10, Ex. C [Settlement Administrator Bid].)

III. DISCUSSION

To prevent fraud, collusion, or unfairness to the class, the settlement of a class action requires court approval. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-01.) This Court has wide discretion to determine whether the proposed settlement is fair. (*Mallick v. Super. Ct.* (1979) 89 Cal.App.3d 434, 438.) Fairness is presumed when: (1) the settlement is reached through arm’s-length bargaining; (2) investigation is sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*Dunk*, 48 Cal.App.4th at p. 1800.)

In considering whether a settlement is reasonable, the trial court should consider relevant factors, which may include the strength of plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of

1 the class members to the proposed settlement. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168
2 Cal.App.4th 116, 128.) In order to approve a class action settlement, the court must satisfy itself
3 that the class settlement is within the “ballpark” of reasonableness. (*Id.* at p. 133.) The record
4 need not contain an explicit statement of the maximum theoretical recovery. (*Munoz v. BCI Coca-*
5 *Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-9 [holding that *Kullar* does not
6 require “an explicit statement of the maximum amount the plaintiff class could recover if it
7 prevailed on all its claims”, but instead, only an “understanding of the amount that is in controversy
8 and the realistic range of outcomes of the litigation.”].)

9 As discussed below, Class Counsel has provided information exceeding the threshold
10 required to provide this Court with materials and information necessary to determine that the
11 proposed settlement is fair, adequate, and reasonable.

12 **A. The Settlement Is Fair, Reasonable, Adequate, and the Product of**
13 **Investigation, Litigation, and Negotiation**

14 **1. The Settlement Is the Product of Discovery, Investigation, and Informed**
15 **and Non-Collusive Arm’s-Length Negotiations**

16 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless
17 evidence to the contrary is offered; thus, there is a presumption here that the negotiations were
18 conducted in good faith. (Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 11.51.)
19 Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh v. Super.*
20 *Ct.* (1976) 62 Cal.App.3d 231, 236; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447 [“The
21 fact that a plaintiff might have received more if the case had been fully litigated is no reason not
22 to approve the settlement.”].)

23 The Settlement was reached following one day of mediation and extensive formal
24 discovery. (Marquez Decl., ¶¶ 7-8.) The settlement negotiations were at arm’s length and,
25 although conducted in a professional manner, were adversarial. (*Id.*) The Parties went into the
26 mediation willing to explore the potential for a settlement of the dispute, but each side was also
27 prepared to litigate their position through trial and appeal if a settlement had not been reached.
28 (*Id.*) After engaging in formal discovery and having extensive negotiations and discussions

1 regarding the strengths and weaknesses of Plaintiffs’ claims and Defendant’s defenses, the Parties
2 ultimately reached an agreement. (*Id.* at ¶ 8.)

3 Prior to reaching this settlement, Class Counsel conducted both informal and formal
4 discovery concerning the claims set forth in the litigation. Defendant produced timekeeping and
5 payroll records for a sample of class members, demographic data for the class, and documentation
6 regarding its written wage and hour policies throughout the class period. Following the
7 unsuccessful mediation in July 2022, the Parties engaged in formal discovery, including written
8 discovery, Plaintiff Guarista’s deposition, and multiple PMK depositions. (*Id.* at ¶¶ 5-6.) In
9 conjunction with their extensive factual investigation, Class Counsel investigated the applicable
10 law regarding the claims and defenses asserted in the litigation. (*Id.*) Thus, Plaintiffs and their
11 counsel were able to act intelligently and effectively in negotiating the proposed Settlement. (*Id.*)

12 Class Counsel also has considerable experience and has demonstrated competence with
13 litigating wage and hour class actions. (*Id.* at ¶¶ 39-52.) Again, this supports the position that the
14 terms of the Settlement are premised on objective evidence that has been considered and weighed
15 in light of the risks, expenses, and time consumption to both sides of continued litigation of this
16 action.

17 **2. The Settlement Is Fair and Reasonable in Light of the Parties’** 18 **Respective Legal Positions**

19 A settlement is not judged against what might plaintiff recover had he or she prevailed at
20 trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable.
21 (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250 [“Compromise is inherent
22 and necessary in the settlement process . . . even if the relief afforded by the proposed settlement
23 is substantially narrower than it would be if the suits were to be successfully litigated, this is no
24 bar to a class settlement because the public interest may indeed be served by a voluntary settlement
25 in which each side gives ground in the interest of avoiding litigation.”].)

26 This settlement avoids the risks and the accompanying expense of further litigation.
27 (Marquez Decl., ¶ 26.) While Plaintiffs are confident in the merits of their claims, a legitimate
28 controversy exists as to each cause of action. (*Id.* at ¶ 25.) Plaintiffs also recognize that proving

1 the amount of wages due to each class member would be an expensive, time-consuming, and
2 uncertain proposition. (*Id.*)

3 The proposed settlement of \$200,000.00 therefore represents a substantial recovery when
4 compared to Plaintiffs' reasonably forecasted recovery. (*Id.* at ¶¶ 15-28.) Because of the proposed
5 Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an
6 unfavorable judgment. When considering the risks of litigation, the uncertainties involved in
7 achieving class certification, the burdens of proof necessary to establish liability, the probability
8 of appeal of a favorable judgment, it is clear that the settlement amount of \$200,000.00 is within
9 the "ballpark" of reasonableness, and preliminary settlement approval is appropriate. (*Id.*) ***Indeed,***
10 ***each Settlement Class Member is eligible to receive an average net benefit of approximately***
11 ***\$586.82.*** (*Id.* at ¶ 27.)

12 3. Class Counsel Has Extensive Experience in Class Action Litigation

13 The settlement negotiations were conducted by highly capable and experienced counsel.
14 Class Counsel have a strong record of vigorous and effective advocacy for their clients and are
15 experienced in handling complex wage and hour class action litigation. (Marquez Decl., ¶¶ 39-
16 52.) Although Plaintiffs and their counsel were prepared to litigate the claims alleged in the
17 litigation, they support the proposed Settlement as being in the best interests of the class.

18 B. The Proposed Class Notice of Settlement Should Be Approved

19 The proposed Notice, in the form attached to the Settlement Agreement, should be approved
20 for dissemination to the class. The Notice informs the class of the terms of the settlement and of
21 their rights to be excluded from the settlement. And if there are class members who wish to object
22 to this proposed class action settlement, they will have the opportunity to file their objections and
23 be heard at the Final Approval Hearing. Accordingly, the proposed Notice meets all the
24 requirements of Rule 3.769(f) of the California Rules of Court.

25 C. The Proposed Attorneys' Fees and Costs Are Reasonable

26 Under the Settlement, subject to the Court's approval, Defendant agrees to pay Class
27 Counsel reasonable attorneys' fees in amount of \$66,666.67, which is 33.333333% of the Gross
28 Settlement Amount, and up to \$20,000.00 in costs. These amounts are disclosed to all class

members in the proposed Notice and are reasonable.

**1. Class Counsel Request an Award of Fees Based on the “Common Fund”
Method**

California courts have long awarded attorneys’ fees as a percentage of the benefit created by counsel in creating a common fund. The California Supreme Court held that “when a number of persons is entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorneys’ fees out of the fund.” (*Serrano v. Priest* (1977) 20 Cal.3d 25, 34, quoting *D’Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1.)

Class Counsel seeks an award of attorneys’ fees on the “percentage of recovery/ common fund” theory. The purpose of this approach is to “spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone.” (*Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of California* (1995) 15 Cal.3d 162, the California Supreme Court stated: “[O]ne who expends attorneys’ fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs.” (*Id.* at p. 167.) Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine has been applied “consistently in California when an action brought by one party creates a fund in which other persons are entitled to share.” (*Id.* at p. 110.)

The California Supreme Court affirmed in *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th 480 that, “when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created.” (*Id.* at p. 503.) The court explained: “The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—convince us the percentage method is a valuable tool that should not be denied our trial courts.”

(*Id.* [internal citations omitted].)

2. The Requested Fee Award Is in Line with Typical Cases

According to a leading treatise on class actions, “[n]o general rule can be articulated on what is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented.” (*See Conte & Newberg, Newberg on Class Actions* (3rd Ed.) § 14.03.) Attorneys’ fees that are fifty percent of the fund are typically considered the upper limit, with thirty to forty percent commonly awarded in cases where the settlement is relatively small. (*Id.*; *see also Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F. Supp. 294 [stating that most cases where 30-50 percent was awarded involved “smaller” settlement funds of under \$10 million].)

Here, Plaintiffs request attorneys’ fees equal to 33.333333% of the Gross Settlement Amount, which is in line with the prevailing guidelines established in California case law and academic literature and is consistent with awards in California. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 [“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”].) Accordingly, Plaintiffs respectfully request that the Court approve the attorneys’ fees as negotiated by the Parties and requested herein.

3. This Matter Involves A “Fee-Shifting” Provision of the Labor Code

Labor Code § 1194 (a) provides for the recovery of “minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Under this section, Plaintiffs would be permitted to recover their actual attorneys’ fees, even if those fees were larger than the total class recovery at the conclusion of this case. This settlement is beneficial in that it limits the risk of continued expenses and consumption of time, energy, and resources facing Defendant while at the same time rewarding Class Counsel for their decision to assume risk by taking on this matter. In fact, prosecution of this action involved significant financial risk for Class Counsel. (Marquez Decl., ¶¶ 37-38.) Class Counsel undertook this matter solely on a contingent

1 basis, with no guarantee of recovery. (*Id.*) Once counsel undertook this litigation on behalf of the
2 Class, Class Counsel committed to pursue it to its conclusion, placing its fiduciary duty to the Class
3 ahead of all other concerns.

4 **4. The Experience, Reputation and Ability of Class Counsel Support the** 5 **Requested Fee Award**

6 As demonstrated by their past experience in pursuing class actions on behalf of consumers
7 and employees, Class Counsel possesses considerable expertise in litigating class actions.
8 (Marquez Decl., ¶¶ 39-52.) Class Counsel has been involved as lead counsel or co-counsel in
9 several class actions that resulted in millions in recovery. (*Id.*) Because it is reasonable to
10 compensate class counsel commensurate with their skill, reputation and experience, Class
11 Counsel’s requested fee award is supported here.

12 Class Counsel’s experience in wage and hour class actions was integral in evaluating the
13 strengths and weaknesses of the case against Defendant and the reasonableness of the settlement.
14 Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning
15 the rapidly evolving substantive law (state and federal), as well as the procedural law of class
16 action litigation. Based on these and other factors, Class Counsel has frequently received fee
17 awards of this percentage from the gross recovery for the class. Therefore, the requested fee award
18 is reasonable and fair.

19 **D. The PAGA Allocation is Reasonable**

20 Where settlements negotiate a good faith amount for PAGA penalties and “there is no
21 indication that this amount was the result of self-interest at the expense of other” class members,
22 such amounts are generally considered reasonable. (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr.
23 3, 2009) No. CV-08-0844 EDL, 2009 WL 928133 at *1, 9.) Courts have approved amounts for
24 PAGA penalties in the range of zero to two percent of the total maximum amount of the Settlement.
25 (*Id.* [approving a PAGA payment of 0.3%, or \$1,500]; *see also Jack v. Hartford Fire Ins. Co.* (S.D.
26 Cal. Oct. 13, 2011) 2011 WL 4899942 at *6 [approving a PAGA payment of 0.25%]; *McKenzie v.*
27 *Fed. Express Corp.* (C.D. Cal. Jan. 23, 2012) 2012 WL 12882124 at *5 [acknowledging that courts
28 approve PAGA claim settlements in the range of zero to two percent of the total settlement].) Here,

1 the amount to be paid to the LWDA is larger than many other PAGA settlement amounts approved
2 by the courts where seemingly nominal amounts were allocated for such claims. (*See, e.g., Zubia*
3 *v. Shamrock Foods Co.* (C.D. Cal. Dec. 21, 2017) No. CV1603128ABAGRX, 2017 WL 10541431,
4 at *14 [approving a PAGA settlement of 0.1%]; *Hopson*, 2008 WL 3385452, at *1 [approving a
5 PAGA settlement of 0.3% or \$1,500]; *Garcia v. Gordon Trucking, Inc.* (E.D. Cal. Oct. 31, 2012)
6 No. 1:10-CV-0324 AWI SKO, 2012 WL 5364575, at *3 [approving a PAGA settlement of
7 0.27%].) Here, the Parties negotiated a good faith amount of \$10,000.00, 75% percent of which
8 (\$7,500.00) will be paid to the LWDA and 25% (\$2,500.00) to be distributed to the Aggrieved
9 Employees. (Settlement at § 3.2.5.) The \$10,000.00 settlement amount equates to 5% of the Gross
10 Settlement Amount, which far exceeds amounts that are routinely approved. The Parties negotiated
11 to allocate 5% of the Settlement to PAGA penalties in good faith and this amount is reasonable
12 considering that the maximum PAGA penalties were estimated at \$197,400.00 (which assumed
13 \$100 per pay period). (Marquez Decl., ¶ 23.)

14 **E. The Service Awards to Named Plaintiffs Are Reasonable**

15 Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to
16 compensate them for the expense or risk they have incurred in conferring a benefit on other
17 members of the class.” (*Munoz, supra*, 86 Cal.App.4th at p. 412.) Courts routinely grant approval
18 of class action settlement agreements containing enhancements for the class representatives, which
19 are necessary to provide incentive to represent the class, and are appropriate given the benefit the
20 class representatives help to bring about for the class. (*See Rodriguez v. W. Publ'g Corp.* (9th Cir.
21 2009) 563 F.3d 948, 958-59.)

22 Service awards are particularly important to plaintiffs in wage and hour cases because they
23 promote the important public policies underlying the wage and hour laws. This strong policy is
24 codified in California Labor Code § 90.5, which provides, “it is the policy of this state to vigorously
25 enforce minimum labor standards in order to ensure employees are not required or permitted to
26 work under substandard unlawful conditions” Nonetheless, the California Supreme Court has
27 noted that “retaliation against employees for asserting statutory rights under the Labor Code is
28 widespread,” despite anti-retaliation statutes designed to protect employees. (*Gentry v. Super. Ct.*

(2007) 42 Cal.4th 443, 460-61.) In this context, class representatives should be rewarded for assuming the risk of retaliation for the sake of class members. (*See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

Under the Settlement, subject to the Court’s approval, Defendant agreed to pay Service Awards in the amount of \$5,000.00 to Plaintiff Guarista and \$1,000.00 each to Plaintiffs Howard and Lopez-Trigueros (\$7,000.00 total). These amounts are also in exchange for Plaintiffs’ general release of all claims against Defendant. Courts routinely approve up to a \$10,000 enhancement award for plaintiffs represented by Class Counsel. (*See, e.g., Moreno v. Pretium Packaging, L.L.C.* (C.D. Cal. Aug. 6, 2021) 2021 WL 3673845, *3 [“The Court concludes a \$10,000 incentive award is appropriate.”]; *Suarez v. Bank of America, National Association* (N.D. Cal., Jan. 11, 2024, No. 18-CV-01202-LB) 2024 WL 150721, at *4 [“The court approves awards of \$10,000 for each class representative.”].) Class Counsel represent that Plaintiffs devoted a great deal of time and work assisting counsel in the case, communicated with counsel very frequently for litigation and to prepare for mediation, and were frequently in contact with Class Counsel during the mediation. (Marquez Decl., ¶¶ 29-33; *see generally* Plaintiffs’ Declarations.) This amount is reasonable particularly in light of the substantial benefits Plaintiffs generated for all class members. (*Id.*) Indeed, in *Karl Adams, III, et al. v. MarketStar Corporation, et al.*, No. 2:14-cv-02509-TLN-DB, Class Counsel Justin F. Marquez helped negotiate a \$2.5 million class action settlement for 339 class members, and the court approved a \$25,000 class representative incentive award for each named plaintiff. (Marquez Decl., ¶ 33.)

When compared with the amounts awarded in typical class action cases, the amount requested here is particularly reasonable. Indeed, a **2006** study examining the average incentive award given to class action plaintiffs from **1993 to 2002** found that the “average award per class representative was \$15,992 and the median award per class representative was \$4,357.” (Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study* (2006) 53 UCLA L.Rev. 1303, 1308.) That same study found that named plaintiffs in employment discrimination class actions received an average award of \$69,850 and a median award of \$31,081, while named plaintiffs in other employment class actions received an average award of \$12,121 and a median

award of \$13,059. (*Id.* at p. 1334.) The authors of the study found that higher awards in employment cases reflected the “courts’ wish to make representative plaintiffs whole by compensating them for the high costs of their service to the class, including risks of stigmatization or retaliation on the job.” (*Id.* at p. 1308.)

IV. **CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED**

A. **Legal Standard**

The proposed Settlement Class is well suited for class certification. All of the claims derive from a core set of alleged violations of California’s wage and hour laws and regulations. For the reasons set forth more fully below, for purposes of settlement only, the Class satisfies the prerequisites for certification under California Code of Civil Procedure § 382. Section 382 provides: “when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.” (Code Civ. Proc., § 382.) There are two requirements to section 382: “(1) There must be an ascertainable class; and (2) there must be a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented.” (*Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 704 [citations omitted].) To clarify these requirements, the California Supreme Court has looked to Federal Rule of Civil Procedure 23 to explain that the community-of-interest requirement itself embodies three factors: “(1) predominant questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.” (*Richmond v. Dart Indus., Inc.* (1981) 29 Cal.3d 462, 470.)

California law and policy favor the fullest and most flexible use of the class action device. (*Id.* at pp. 469-73.) Indeed, “Courts long have acknowledged the importance of class actions as a means to prevent a failure of justice in our judicial system” particularly where the rights of consumers are at issue. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 434.) Any doubt as to the appropriateness of class treatment should be resolved in favor of certification. (*Richmond, supra*, 29 Cal.3d at pp. 473-75.)

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1 **B. Plaintiffs Maintain That the Criteria for Class Certification Are Satisfied for**
2 **Settlement Purposes.**

3 **1. The Classes Are Ascertainable and Numerous**

4 The proposed class that Plaintiffs seek to represent is easily ascertainable and includes
5 approximately 153 employees of Defendant.

6 Plaintiffs maintain that there is an easily ascertainable class, defined by objective and
7 precise criteria. Because class members are identified using specific criteria in the regular business
8 records of Defendant, i.e., job position, the class is ascertainable. (*Wilner v. Sunset Life Ins. Co.*
9 (2000) 78 Cal.App.4th 952, 959-60 [class membership defined by ownership of product that is the
10 subject of the lawsuit is sufficient to make the class ascertainable].)

11 “The requirement of Code of Civil Procedure section 382 that there be ‘many’ parties to a
12 class action suit is indefinite and has been construed liberally.” (*Rose v. City of Hayward* (1981)
13 126 Cal.App.3d 926, 934.) “Where a question is of common interest to ‘many’ persons, an action
14 may be maintained as a class action even where the parties are numerous and it is in fact practicable
15 to join them all.” (*Id.*) “No set number is required as a matter of law for the maintenance of a
16 class action.” (*Id.*) “Thus, our Supreme Court has upheld a class representing the 10 beneficiaries
17 of a trust in an action for removal of the trustees.” (*Id.*, citing *Bowles v. Super. Ct.* (1955) 44
18 Cal.2d 574; *see also Collins v. Rocha* (1972) 7 Cal.3d 232 [upholding a 35 member class.])
19 Therefore, Plaintiffs contend that numerosity is plainly satisfied.

20 **2. There are Many Common Issues of Law and Fact Which Predominate**

21 The Court should grant conditional class certification for settlement purposes here on the
22 grounds that questions of law and fact common to all class and subclass predominate over any
23 individual questions. This inquiry tests whether proposed classes are sufficiently cohesive to
24 warrant adjudication by representation. (*See, e.g., Clothesrigger, Inc. v. GTE Corp.* (1987) 191
25 Cal.App.3d 605.)

26 Here, the employment practices at issue are: whether Defendant had legally compliant
27 policies and practices for paying employees for all hours worked, including overtime wages;
28 whether Defendant had legally compliant policies and practices to provide employees with meal

1 periods; whether Defendant had legally compliant policies and practices authorizing and permitting
2 its employees to take rest periods; whether Defendant reimbursed employees for business
3 expenses; whether final payment of wages was untimely and excluded unpaid wages, including
4 meal and rest period premium wages; and whether the wage statements were consequently non-
5 compliant. Plaintiffs contend that the factual and legal issues are the same for all of the identified
6 class members, including Plaintiffs. Further, all class members suffered from, and seek redress
7 for, the same alleged injuries.

8 **3. Plaintiffs' Claims Are Typical of the Claims of the Class**

9 The typicality requirement does not focus on the individual characteristics or circumstances
10 of the representative plaintiff compared to those of the remainder of the class, but rather upon the
11 typicality of the proposed representative's claims as they relate to the defendant's conduct and
12 activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 ["[t]he only requirements are that
13 common questions of law and fact predominate and that the class representative be similarly
14 situated" vis-à-vis the class.]) A representative plaintiff's claims are typical of the class if they
15 arise from the same event, practice or course of conduct, and if the claims rest on the same legal
16 theories. (*Id.*) That is precisely the case here. Plaintiffs are former employees of Defendant; as
17 such, they allege that they were subject to the same policies and practices as other similarly situated
18 employees.

19 **4. Plaintiffs and Their Counsel Meet the Adequacy Requirement**

20 The adequacy of representation requirements is met by fulfilling two conditions: first, a
21 named plaintiff must be represented by counsel qualified to conduct the pending litigation; second,
22 a named plaintiff's interests cannot be antagonistic to those of the class. (*McGhee v. Bank of*
23 *America* (1976) 60 Cal.App.3d 442, 451.)

24 All of these requirements are met here for settlement purposes. Plaintiffs retained counsel
25 with extensive experience in prosecuting complex class actions, including similar class actions that
26 previously settled. (Marquez Decl., ¶¶ 39-52.) Class Counsel unquestionably is "qualified,
27 experienced and generally able to conduct the proposed litigation." (*Miller v. Woods* (1983) 148
28 Cal.App.3d 862, 875.) In addition, Plaintiffs have no conflicts, and Plaintiffs have, with counsel,

1 litigated this case and diligently reviewed the settlement terms, showing their dedication.
2 Plaintiffs' willingness to serve as a representative demonstrates their serious commitment to
3 bringing about the best results possible for the class. (*McGhee, supra*, 60 Cal.App.3d at p. 451.)

4 **5. A Class Action is Superior to a Multiplicity of Litigation**

5 Finally, in making its class certification decision, the Court must determine that a class
6 action would be superior to alternative means for the fair and efficient adjudication of the litigation.
7 By consolidating many potential individual actions into a single proceeding, this Court's use of the
8 class action device enables it to manage this litigation in a manner that serves the economics of
9 time, effort and expense for the litigants and the judicial system. Absent class treatment, similarly-
10 situated employees with small but nevertheless meritorious claims for damages would, as a
11 practical matter, have no means of redress because of the time, effort and expense required to
12 prosecute individual actions. (*Gentry, supra*, 42 Cal.4th at pp. 57-62; *Leyva v. Medline Ind.* (9th
13 Cir. 2013) 716 F.3d 510, 515.) Moreover, in the context of settlement, the superiority concerns
14 are essentially non-existent.

15 **V. THE PROPOSED NOTICE IS CONSTITUTIONALLY SOUND**

16 **A. The Proposed Notice Plan Satisfies Due Process**

17 Notice requirements are set forth in the California Rules of Court. (Cal. Rules of Court,
18 Rule 3.766 (e), (f).) California law vests the Court with broad discretion in fashioning an
19 appropriate notice program. (*Cartt v. Super. Ct.* (1975) 50 Cal.App.3d 960, 973-74.) There is no
20 statutory or due process requirement that all class members receive actual notice, but in this matter,
21 the class members will receive direct mailed notice. As the Court of Appeals has explained, "[t]he
22 notice given should have a reasonable chance of reaching a substantial percentage of the Class
23 Members" (*Id.* at p. 974.) In this case, notice of the proposed settlement will be provided
24 by direct mailing, the best possible form of notice.

25 **B. The Notice is Accurate and Informative**

26 The proposed Notice should be approved. It will be disseminated through direct U.S. first
27 class mail to the last known address for each Class Member. It informs the Class Members of the
28 terms of the settlement and their right to be excluded from the Settlement. And if there are Class

Members who wish to object to this proposed class action settlement, they will have the opportunity to file their objections and be heard at the Final Approval Hearing.

The Notice also fulfills the requirement of neutrality in class notices. (Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 8.39.) It summarizes the proceedings to date and the terms and conditions of the settlement agreement, in an informative and coherent manner. It makes clear that the settlement agreement does not constitute an admission of liability by the Defendant, who denies all liability, and it recognizes that this Court has not ruled on the merits of the action. It also states that the final settlement approval decision has yet to be made. The Notice thus complies with the standards of fairness, completeness, and neutrality required of a combined settlement-certification class notice.

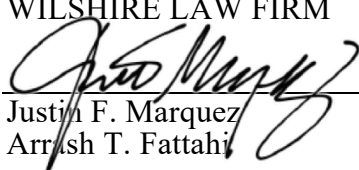
VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully requests that the Court grant preliminary approval of the proposed settlement and set a Final Approval Hearing in May 2025.

Respectfully submitted,

Dated: September 5, 2024

WILSHIRE LAW FIRM

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Attorneys for Plaintiffs

Guarista v. Urologic Institute of The High Desert, Inc., et al.
CIVSB2125029

PROOF OF SERVICE