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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

MARISELA MEZA, individually, and on behalf
of all others similarly situated,

Plaintiff,

v.

ARGUS MANAGEMENT COMPANY, LLC, a
California Limited Liability Company;
PROHEALTH PARTNERS, A MEDICAL
GROUP, INC., a California corporation; ARGUS
MEDICAL MANAGEMENT, LLC, an unknown
entity; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 21STCV31612

CLASS ACTION

[Assigned for all purposes to: Hon. Yvette M.
Palazuelos, Dept. 9]

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

[Filed with the Declaration of Justin F.
Marquez, Declaration of Marisela Meza, and
Proposed Order]

PRELIMINARY APPROVAL HEARING

Date: November 21, 2023

Time: 10:00 a.m.

Dept: 9

Complaint filed: August 26, 2021

Trial date: Not set

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

2 PLEASE TAKE NOTICE that on November 21, 2023 at 10:00 a.m., in Department 9 of
3 the Los Angeles Superior Court, located at 312 N. Spring Street, Los Angeles, CA 90012, pursuant
4 to Code of Civil Procedure § 382 and California Rules of Court 3.769 *et seq.*, Plaintiff Marisela
5 Meza will move the Court for an Order granting preliminary approval of the proposed class action
6 settlement between Plaintiff and Defendants Argus Management Company, LLC and ProHealth
7 Partners, a Medical Group, Inc. (collectively, “Defendant”). Plaintiff further moves the Court for
8 an Order:

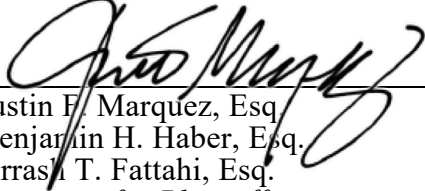
- 9 1. Granting preliminary approval of the Class Action and PAGA Settlement Agreement
10 and Class Notice;
11 2. Certifying a Class for settlement purposes;
12 3. Approving the Notice and the plan for distribution of the Notice;
13 4. Appointing Plaintiff Marisela Meza as Class Representative for settlement purposes;
14 5. Appointing Plaintiff’s Counsel, Justin F. Marquez, Benjamin H. Haber, Arrash T.
15 Fattahi of Wilshire Law Firm, PLC, as Class Counsel for settlement purposes;
16 6. Appointing Apex Class Action as the Settlement Administrator; and
17 7. Scheduling a final approval hearing.

18 The motion will be based upon this notice, the attached memorandum of points and
19 authorities, the Declarations of Justin F. Marquez and Marisela Meza, filed concurrently herewith,
20 the records and files in this action, and any other further evidence or argument that the Court may
21 properly receive at or before the hearing.

22 Respectfully submitted,

23 Dated: September 25, 2023

WILSHIRE LAW FIRM

24 By: 

25 Justin F. Marquez, Esq.
26 Benjamin H. Haber, Esq.
27 Arrash T. Fattahi, Esq.
28 *Attorneys for Plaintiff*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Marisela Meza (“Plaintiff”) seeks preliminary approval of a proposed \$1,750,000
4 non-reversionary, wage and hour class action settlement with Defendants Argus Management
5 Company, LLC and ProHealth Partners, a Medical Group, Inc. (collectively, “Defendant”). The
6 Settlement will provide substantial monetary payments to approximately 1,956 class members. And,
7 as set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval
8 under California law. The Settlement was reached after extensive investigation, discovery, and
9 negotiations. The negotiations were at arms-length and were facilitated by an experienced class
10 action mediator, Lisa Klerman, Esq., over the course of a full day of mediation that was conducted
11 via Zoom. After extensive negotiations and discussions regarding the strengths and weaknesses of
12 Plaintiff’s claims and Defendant’s defenses, the Parties reached a settlement on March 23, 2023.
13 Accordingly, Plaintiff requests that the Court preliminarily approve the proposed Settlement, certify
14 the proposed settlement class, approve the proposed notice, and set a final approval hearing.

15 **II. SUMMARY OF THE LITIGATION AND SETTLEMENT**

16 **A. Plaintiff’s Claims**

17 This is a wage and hour class action and PAGA representative action. Plaintiff and
18 putative class members worked in California as hourly-paid or non-exempt employees for
19 Defendant during the class period. Defendant Argus Management Company LLC is based in
20 Long Beach, California and it provides physician practice management solutions to solo
21 practitioners, groups, and hospitals. Defendant ProHealth Partners, a Medical Group, Inc. is a
22 medical group consisting of physicians practicing in Los Angeles County and Orange County.
23 (Declaration of Justin F. Marquez in Support of Plaintiff’s Motion for Preliminary Approval of
24 Class Action Settlement [“Marquez Decl.”], ¶ 2.)

25 Plaintiff alleges that Defendant’s payroll, timekeeping, and wage and hour practices
26 resulted in Labor Code violations. Plaintiff alleges that Defendant failed to pay for all hours
27 worked. Plaintiff further alleges that Defendant failed to provide employees with legally
28 compliant meal and rest periods, and Defendant failed to reimburse business expenses. Based

1 on these allegations, Plaintiff asserts related claims for failure to provide accurate wage
2 statements, failure to pay all final wages at termination, unfair business practices, and civil
3 penalties under PAGA. (*Id.* at ¶ 3.)

4 On August 26, 2021, Plaintiff filed a putative wage-and-hour class action complaint
5 against Defendant for: (1) failure to pay minimum and straight time wages (Labor Code §§ 204,
6 1194, 1194.2, and 1197); (2) failure to pay overtime wages (Labor Code §§ 1194, and 1198);
7 (3) failure to provide meal periods (Labor Code §§ 226.7 and 512); (4) failure to authorize and
8 permit rest periods (Labor Code §§ 226.7 and 512); (5) failure to provide accurate itemized
9 wage statements (Labor Code § 226); (6) failure to timely pay final wages at termination (Labor
10 Code §§ 201-203); (7) failure to indemnify employees for expenditures (Labor Code § 2802);
11 and (8) unfair business practices (Business and Professions Code 17200 et seq.). On September
12 25, 2023, Plaintiff filed joint stipulation for leave to file a First Amended Complaint against
13 Defendant adding claims for civil penalties under Private Attorneys General Act “PAGA”
14 (Labor Code § 2698 et seq.). Plaintiff sent a notice to Defendant and the California Labor &
15 Workforce Development Agency (“LWDA”) alleging similar wage and hour violations pursuant
16 to the PAGA (Cal. Lab. Code §§ 2699, *et seq.*) on August 26, 2021. (Marquez Decl., ¶ 4.)

17 **B. Discovery and Investigation**

18 Following the filing of the Complaint, the parties exchanged documents and information
19 before mediating this action. Defendant produced a sample of time and pay records for class
20 members. Defendant also provided documents of its wage and hour policies and practices
21 during the class period, and information regarding the total number of current and former
22 employees in its informal discovery responses. (*Id.* at ¶ 5.)

23 After reviewing documents regarding Defendant’s wage and hour policies and practices,
24 analyzing Defendants’ timekeeping and payroll records, and interviewing Class Members, Class
25 Counsel was able to evaluate the probability of class certification, success on the merits, and
26 Defendant’s maximum monetary exposure for all claims. (*Id.* at ¶ 6.) Class Counsel also
27 investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*)
28 Class Counsel reviewed these records and prepared a damage analysis prior to mediation. (*Id.*)

1 The damages model was based on a sample size of 130,802 shifts out of an estimated 902,881
2 total shifts worked by class members, which represents a 0.25% margin of error based on a 95%
3 confidence interval. (*Id.*)

4 **C. Settlement Negotiations**

5 On March 23, 2023, the parties participated in private mediation with experienced class
6 action mediator Lisa Klerman, Esq. (*Id.* at ¶ 7.) The mediation was conducted via Zoom. The
7 settlement negotiations were at arm's length and, although conducted in a professional manner,
8 were adversarial. The parties went into the mediation willing to explore the potential for a
9 settlement of the dispute, but each side was also prepared to litigate their position through trial
10 and appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and
11 discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's
12 defenses, the Parties reached a settlement the material terms of which are encompassed within
13 the Settlement. (*Id.* at ¶ 8, Ex. 1 [Class Action and PAGA Settlement Agreement and Class
14 Notice].)

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

21 Indeed, the \$1,750,000.00 Settlement represents **58% of the realistic maximum**
22 **recovery of \$3,013,334.45.** (*Id.* at ¶ 25.) Although Class Counsel estimated that Defendant's
23 maximum potential liability for all claims was approximately \$25.6 million, when the risk of
24 prevailing at certification and trial are factored into the equation, Class Counsel believes that
25 Defendant's realistic exposure was \$3,013,334.45, meaning the Settlement achieves a
26 significant recovery. (*Id.* at ¶¶ 16-29.) Considering the risk and uncertainty of prevailing at
27 class certification and at trial, this is an excellent result for the Class. (*Id.* at ¶ 25.) Indeed,
28 because of the proposed Settlement, class members will receive timely, guaranteed relief and

will avoid the risk of an unfavorable judgment.

D. Key Terms of the Proposed Settlement

The Parties used the Los Angeles Superior Court’s Form Class Action and PAGA Settlement Agreement and Class Notice. A document showing edits the parties made to the template in redline is attached to the Declaration of Justin F. Marquez as Exhibit 2. The Settlement’s key terms include:

1. Class Definition: For settlement purposes only, the Parties agree to the certification of a class pursuant to California Code of Civil Procedure § 382 defined as: “all persons employed by Defendant in California and classified as a non-exempt or hourly-paid employee who worked for Defendant during the Class Period.” (Settlement, § 1.5.)

2. Class Period: “means the period from August 26, 2017 to March 23, 2023.” (Settlement, § 1.12.)

3. Participating Class Members: “means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.” (Settlement, § 1.35.)

4. Aggrieved Employees: means a person employed by Defendant in California and classified as an hourly-paid or nonexempt employee who worked for Defendant during the PAGA Period from August 26, 2021 to March 23, 2023. (Settlement, §§ 1.4, 1.31.)

5. Gross Settlement Amount: This amount is \$1,750,000.00, for all claims, including wages, interest, the Class Counsel Award, Litigation costs, Settlement Administration Costs, payment to the Labor and Workforce Development Agency (“LWDA”) for the alleged PAGA penalties, all other penalties, and the Class Representative Service Award. (Settlement, § 1.22.)

6. Uncashed Checks: If a settlement check is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace search and, if another address is identified, shall mail the check to the newly identified address. Any settlement checks remaining uncashed after one hundred and eighty (180) days shall be transmitted to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). (Settlement, § 4.4.3.)

1 7. Release: “All Participating Class Members, on behalf of themselves and their
2 respective former and present representatives, agents, attorneys, heirs, administrators, successors,
3 and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have
4 been alleged, based on the Class Period facts stated in the Operative Complaint, including any and
5 all claims involving any recovery of unpaid minimum wages and unpaid overtime (Cal. Lab. Code
6 §§ 204, 1194, 1194.2, 1197, 1198), failure to provide meal and rest periods (Cal. Lab. Code §§
7 226.7, 512), failure to provide accurate wage statements (Cal. Lab. Code § 226), failure to pay all
8 wages due at separation (Cal. Lab. Code §§ 201-203), failure to reimburse business expenses (Cal.
9 Lab. Code § 2802), and violation of Unfair Business Practices (Cal. Bus. & Prof. Code §§ 17200,
10 et seq.).” (Settlement, § 5.2.) This Release will be deemed effective on the date when Defendant
11 fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the
12 Wage Portion of the Individual Class Payments. (Settlement, § 5.)

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

15 9. PAGA Allocation: The settlement includes \$50,000.00 allocated to Plaintiff’s
16 claims under PAGA, with 75% of which (\$37,500.00) being paid to the LWDA and 25%
17 (\$12,500.00) being paid to the Aggrieved Employees. (Settlement, § 1.34.) Class Counsel
18 submitted the proposed settlement to the LWDA before filing this Motion for Preliminary
19 Approval. (Marquez Decl., ¶ 10.)

20 10. Net Settlement Amount: The “Net Settlement Amount” is the amount that remains
21 and that shall be paid to Settlement Class Members after the following amounts are subtracted: (1)
22 attorneys’ fees and Litigation costs, (2) Administrative Costs, (3) enhancement to the Named
23 Plaintiff, and (4) the penalties recoverable pursuant to the PAGA. (Settlement, § 1.28.)

24 11. Distribution Formula: “An Individual Class Payment calculated by (a) dividing the
25 Net Settlement Amount by the total number of Workweeks worked by all Participating Class
26 Members during the Class Period and (b) multiplying the result by each Participating Class
27 Member’s Workweeks.” (Settlement, § 3.2.4.) As to PAGA: “The Administrator will calculate
28 each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees’ 25%

share of PAGA Penalties (\$12,500) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods." (Settlement, § 3.2.5.1.)

12. Tax Allocation: Any settlement money paid to Settlement Class Members will be allocated as 25% wages, 75% to penalties and interest. (Settlement, § 3.2.4.1.)

13. Class Representative Service Award: Subject to Court approval, Plaintiff shall be paid an enhancement award not to exceed \$10,000.00. (Settlement, § 3.2.1.) This amount is for Plaintiff's time and effort in bringing and presenting the action, and in exchange for a general release of all claims, known or unknown, pursuant to Civil Code Section 1542. (Settlement, § 5.1.) If the Court approves a lesser enhancement, then the unapproved portion or portions shall revert into the Net Settlement Amount to be distributed between the participating Settlement Class Members on a pro-rata basis. (Settlement, § 3.2.1.)

14. Attorneys' Fees and Costs: The Settlement provides that Defendant will not oppose a fee application of up to 33 1/3% (\$583,333.33) of the Gross Settlement Amount, plus out-of-pocket costs not to exceed \$25,000.00. (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 award being sought, and an explanation of how the settlement allocations are calculated. (Settlement, Ex. A, Class Notice.) Class Members will be notified by first-class mail of the settlement. (Settlement, § 7.4.) Apex Class Action, 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.*; Marquez Decl., ¶ 11, Ex. 3 [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.*

1 Ct. (1979) 89 Cal.App.3d 434, 438.) Fairness is presumed when: (1) the settlement is reached
2 through arm's-length bargaining; (2) investigation is sufficient to allow counsel and the court to
3 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors
4 is small. (*Dunk*, 48 Cal.App.4th at p. 1800.)

5 In considering whether a settlement is reasonable, the trial court should consider relevant
6 factors, which may include the strength of plaintiff's case, the risk, expense, complexity and likely
7 duration of further litigation, the risk of maintaining class action status through trial, the amount
8 offered in settlement, the extent of discovery completed and the stage of the proceedings, the
9 experience and views of counsel, the presence of a governmental participant, and the reaction of
10 the class members to the proposed settlement. (*Kullar v. Foot Locker Retail, Inc.*, (2008) 168
11 Cal.App.4th 116, 128.) In order to approve a class action settlement, the court must satisfy itself
12 that the class settlement is within the "ballpark" of reasonableness. (*Id.* at p. 133.) The record
13 need not contain an explicit statement of the maximum theoretical recovery. (*Munoz v. BCI Coca-*
14 *Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-9 [holding that *Kullar* does not
15 require "an explicit statement of the maximum amount the plaintiff class could recover if it
16 prevailed on all its claims", but instead, only an "understanding of the amount that is in controversy
17 and the realistic range of outcomes of the litigation."].)

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

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

23 **1. The Settlement Is the Product of Discovery, Investigation, and Informed**
24 **and Non-Collusive Arm's-Length Negotiations**

25 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless
26 evidence to the contrary is offered; thus, there is a presumption here that the negotiations were
27 conducted in good faith. (Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 11.51.)
28 Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh v. Super.*

1 *Ct.* (1976) 62 Cal.App.3d 231, 236; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447 [“The
2 fact that a plaintiff might have received more if the case had been fully litigated is no reason not
3 to approve the settlement.”].)

4 The Settlement was reached following extensive negotiations following one day of
5 mediation with experienced employment mediator, Lisa Klerman, Esq. (Marquez Decl. ¶ 7.) The
6 settlement negotiations were at arm’s length and, although conducted in a professional manner,
7 were adversarial. (*Id.*) The parties went into the mediation willing to explore the potential for a
8 settlement of the dispute, but each side was also prepared to litigate their or its position through
9 trial and appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and
10 discussions regarding the strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses,
11 the Parties reached an agreement. (Marquez Decl. ¶ 8.)

12 Prior to reaching this settlement, Class Counsel conducted informal discovery concerning
13 the claims set forth in the Litigation, such as a sample of class member timekeeping and payroll
14 records, Defendant’s policies and procedures concerning the payment of wages, the provision of
15 meal and rest breaks, issuance of wage statements, and providing all wages at separation, as well
16 as information regarding the number of putative class members and the mix of current versus
17 former employees, the wage rates in effect, and the amount of meal and rest period premium wages
18 paid to class members. (*Id.* at ¶¶ 5-6.) In conjunction with their extensive factual investigation,
19 Class Counsel investigated the applicable law regarding the claims and defenses asserted in the
20 litigation. (*Id.*) Thus, Plaintiff and her counsel were able to act intelligently and effectively in
21 negotiating the proposed Settlement. (*Id.*)

22 Class Counsel also has considerable experience and has demonstrated competence with
23 litigating wage and hour class actions. (*Id.* at ¶¶ 40-50.) Again, this supports the position that the
24 terms of the Settlement are premised on objective evidence that has been considered and weighed
25 in light of the risks, expenses, and time consumption to both sides of continued litigation of this
26 action.

27 ///

28 ///

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

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

10 This settlement avoids the risks and the accompanying expense of further litigation.
11 (Marquez Decl., ¶ 27.) While Plaintiff is confident in the merits of her claims, a legitimate
12 controversy exists as to each cause of action. (*Id.* at ¶ 26.) Plaintiff also recognizes that proving
13 the amount of wages due to each class member would be an expensive, time-consuming, and
14 uncertain proposition. (*Id.*)

15 The proposed settlement of \$1,750,000.00 therefore represents a substantial recovery when
16 compared to Plaintiff’s reasonably forecasted recovery. (*Id.* at ¶¶ 16-29.) Because of the proposed
17 Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an
18 unfavorable judgment. When considering the risks of litigation, the uncertainties involved in
19 achieving class certification, the burdens of proof necessary to establish liability, the probability
20 of appeal of a favorable judgment, it is clear that the settlement amount of \$1,750,000.00 is within
21 the “ballpark” of reasonableness, and preliminary settlement approval is appropriate. (*Id.*) ***Indeed,***
22 ***each Settlement Class Member is eligible to receive an average net benefit of approximately***
23 ***\$542.77.*** (*Id.* at ¶ 28.)

24 **3. Class Counsel Has Extensive Experience in Class Action Litigation**

25 The settlement negotiations were conducted by highly capable and experienced counsel.
26 Class Counsel have a strong record of vigorous and effective advocacy for their clients and are
27 experienced in handling complex wage and hour class action litigation. (Marquez Decl., ¶¶ 40-
28 50.) Although Plaintiff and her counsel were prepared to litigate the claims alleged in the litigation,

they support the proposed Settlement as being in the best interests of the class.

B. The Proposed Class Notice of Settlement Should Be Approved

The proposed Notice, in the form attached to the Settlement Agreement, should be approved for dissemination to the class. The Notice informs the class of the terms of the settlement and of their rights 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. Accordingly, the proposed Notice meets all the requirements of Rule 3.769(f) of the California Rules of Court.

C. The Proposed Attorneys' Fees and Costs Are Reasonable

Under the Settlement, subject to the Court's approval, Defendant agrees to pay Class Counsel reasonable attorneys' fees in amount of \$583,333.33, which is 33 1/3% of the gross Settlement Amount, and up to \$25,000.00 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*

1 *County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized
2 that the common fund doctrine has been applied “consistently in California when an action brought
3 by one party creates a fund in which other persons are entitled to share.” (*Id.* at p. 110.)

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

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

15 According to a leading treatise on class actions, “No general rule can be articulated on what
16 is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a
17 reasonable fee award from a common fund in order to assure that the fees do not consume a
18 disproportionate part of the recovery obtained for the class, although somewhat larger percentages
19 are not unprecedented.” (*See* Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 14.03.)
20 Attorneys’ fees that are fifty percent of the fund are typically considered the upper limit, with thirty
21 to forty percent commonly awarded in cases where the settlement is relatively small. (*Id.*; see also
22 *Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F. Supp. 294 [stating that most
23 cases where 30-50 percent was awarded involved “smaller” settlement funds of under \$10
24 million].)

25 Here, Plaintiff requests attorneys’ fees equal to 33 1/3% of the Settlement Amount, which
26 is in line with the prevailing guidelines established in California case law and academic literature
27 and is consistent with awards in California. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th
28 43, 66, n.11 [“Empirical studies show that, regardless whether the percentage method or the

1 lodestar method is used, fee awards in class actions average around one-third of the recovery.”].)
2 Accordingly, Plaintiff respectfully requests that the Court approve the attorneys’ fees as negotiated
3 by the parties and requested herein.

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

5 Labor Code § 1194 (a) provides for the recovery of “minimum wage or overtime
6 compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Under this
7 section, Plaintiff would be permitted to recover her actual attorneys’ fees, even if those fees were
8 larger than the total class recovery at the conclusion of this case. This settlement is beneficial in
9 that it limits the risk of continued expenses and consumption of time, energy, and resources facing
10 Defendant while at the same time rewarding Class Counsel for their decision to assume risk by
11 taking on this matter. In fact, prosecution of this action involved significant financial risk for Class
12 Counsel. (Marquez Decl., ¶¶ 38-39.) Class Counsel undertook this matter solely on a contingent
13 basis, with no guarantee of recovery. (*Id.*) Once counsel undertook this litigation on behalf of the
14 Class, Class Counsel committed to pursue it to its conclusion, placing its fiduciary duty to the Class
15 ahead of all other concerns.

16 **4. The Experience, Reputation and Ability of Class Counsel Support the** 17 **Requested Fee Award**

18 As demonstrated by their past experience in pursuing class actions on behalf of consumers
19 and employees, Class Counsel possess considerable expertise in litigating class actions. (Marquez
20 Decl., ¶¶ 40-50.) Class Counsel has been involved as lead counsel or co-counsel in several class
21 actions that resulted in millions in recovery. (*Id.*) Because it is reasonable to compensate class
22 counsel commensurate with their skill, reputation and experience, Class Counsel’s requested fee
23 award is supported here.

24 Class Counsel’s experience in wage and hour class actions was integral in evaluating the
25 strengths and weaknesses of the case against Defendant and the reasonableness of the settlement.
26 Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning
27 the rapidly evolving substantive law (state and federal), as well as the procedural law of class
28 action litigation. Based on these and other factors, Class Counsel has frequently received fee

awards of this percentage from the gross recovery for the class. Therefore, the requested fee award is reasonable and fair.

D. The Service Award to Named Plaintiff Is Reasonable

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

Service awards are particularly important to plaintiffs in wage and hour cases because they promote the important public policies underlying the wage and hour laws. This strong policy is codified in California Labor Code section 90.5, which provides, “it is the policy of this state to vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions....”). Nonetheless, the California Supreme Court has noted that “retaliation against employees for asserting statutory rights under the Labor Code is 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 agreement, subject to the Court’s approval, Defendant agreed to pay a Service Award in the amount of \$10,000 to Plaintiff. This amount is also in exchange for Plaintiff’s general release of all claims against Defendant. Class Counsel represent that Plaintiff 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 was frequently in contact with Class Counsel during the mediation. (Marquez Decl., ¶¶ 30-34.) This amount is reasonable particularly in light of the substantial benefits Plaintiff 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., ¶ 34.)

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.” (Theodore Eisenberg & Jeffrey P. Miller, “Incentive Awards to Class Action Plaintiffs: An Empirical Study”, 53 UCLA L. Rev. 1303, 1308 (2006).) 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 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.)

B. Plaintiff Maintains That the Criteria for Class Certification Are Satisfied for Settlement Purposes.

1. The Classes Are Ascertainable and Numerous

The proposed class that Plaintiff seeks to represent is easily ascertainable and includes approximately 1,956 employees of Defendant.

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

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

1 Plaintiff contends that numerosity is plainly satisfied.

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

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

8 Here, the employment practices at issue are: whether Defendant had legally compliant
9 policies and practices to provide employees with meal periods; whether Defendant had legally
10 compliant policies and practices authorizing and permitting its employees to take rest periods;
11 whether Defendant had legally compliant policies and practices for all hours worked, including
12 overtime wages; whether Defendant reimbursed employees for business expenses; whether final
13 payment of wages was untimely and excluded unpaid wages, including meal period premium
14 wages, and rest period premium wages; and whether the wage statements were consequently non-
15 compliant. Plaintiff contends that the factual and legal issues are the same for all of the identified
16 class members, including Plaintiff. Further, all class members suffered from, and seek redress for,
17 the same alleged injuries.

18 **3. Plaintiff's Claims Are Typical of the Claims of the Class**

19 The typicality requirement does not focus on the individual characteristics or circumstances
20 of the representative plaintiff compared to those of the remainder of the class, but rather upon the
21 typicality of the proposed representative's claims as they relate to the defendant's conduct and
22 activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 ["[t]he only requirements are that
23 common questions of law and fact predominate and that the class representative be similarly
24 situated" vis-à-vis the class.].) A representative plaintiff's claims are typical of the class if they
25 arise from the same event, practice or course of conduct, and if the claims rest on the same legal
26 theories. (*Id.*) That is precisely the case here. Plaintiff is a former employee of Defendant; as
27 such, she alleges that she was subject to the same policies and practices as other similarly situated
28 employees.

1 **4. Plaintiff and Her Counsel Meet the Adequacy Requirement**

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

6 All of these requirements are met here for settlement purposes. Plaintiff retained counsel
7 with extensive experience in prosecuting complex class actions, including similar class actions that
8 previously settled. (Marquez Decl., ¶¶ 40-50.) Class Counsel unquestionably is "qualified,
9 experienced and generally able to conduct the proposed litigation." (*Miller v. Woods* (1983) 148
10 Cal.App.3d 862, 875.) In addition, Plaintiff has no conflicts, and Plaintiff has, with counsel,
11 litigated this case and diligently reviewed the settlement terms, showing her dedication. Plaintiff's
12 willingness to serve as a representative demonstrates her serious commitment to bringing about
13 the best results possible for the class. (*McGhee, supra*, 60 Cal.App.3d at p. 451.)

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

15 Finally, in making its class certification decision, the Court must determine that a class
16 action would be superior to alternative means for the fair and efficient adjudication of the litigation.
17 By consolidating many potential individual actions into a single proceeding, this Court's use of the
18 class action device enables it to manage this litigation in a manner that serves the economics of
19 time, effort and expense for the litigants and the judicial system. Absent class treatment, similarly-
20 situated employees with small but nevertheless meritorious claims for damages would, as a
21 practical matter, have no means of redress because of the time, effort and expense required to
22 prosecute individual actions. (*Gentry v. Super. Ct.* (2007) 42 Cal. 4th 443, 457-62; *Leyva v.*
23 *Medline Ind.* (9th Cir. 2013) 716 F.3d 510, 515.) Moreover, in the context of settlement, the
24 superiority concerns are essentially non-existent.

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

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

27 Notice requirements are set forth in the California Rules of Court. Cal. Rules of Court,
28 Rule 3.766 (e) and (f). California law vests the Court with broad discretion in fashioning an

1 appropriate notice program. (*Cartt v. Super Ct.* (1975) 50 Cal.App.3d 960, 973-74.) There is no
2 statutory or due process requirement that all class members receive actual notice, but in this matter,
3 the class members will receive direct mailed notice. As the Court of Appeals has explained, “[t]he
4 notice given should have a reasonable chance of reaching a substantial percentage of the Class
5 Members” (*Id.* at p. 974.) In this case, notice of the proposed settlement will be provided by
6 direct mailing, the best possible form of notice.

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

8 The proposed Notice should be approved. It will be disseminated through direct U.S. first
9 class mail to the last known address for each Class Member. It informs the Class Members of the
10 terms of the settlement and their right to be excluded from the Settlement. And if there are Class
11 Members who wish to object to this proposed class action settlement, they will have the
12 opportunity to file their objections and be heard at the Final Approval Hearing.

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

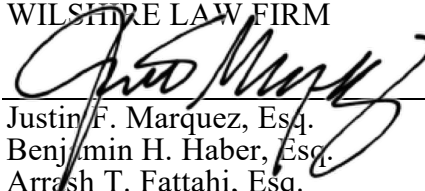
21 **VI. CONCLUSION**

22 For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary
23 approval of the proposed settlement and set a Final Approval Hearing on March 25, 2024.

24 Respectfully submitted,

25 Dated: September 25, 2023

WILSHIRE LAW FIRM

26 By: 

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Meza v. Argus Management Company, LLC, et al.
21STCV31612

I, Min Jee Kim, am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to this action. My business address is 3055 Wilshire Blvd., 12th Fl., Los Angeles, California 90010. My electronic service address is minjee@wilshirelawfirm.com.

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(X) **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above via third-party cloud service **CASEANYWHERE**.

Executed this **September 25, 2023**, at Los Angeles, California.


Min Jee Kim