

Justin F. Marquez, Esq. (SBN 262417)

justin@wilshirelawfirm.com

Christina M. Le, Esq. (SBN 237697)

cle@wilshirelawfirm.com

Arsiné Grigoryan, Esq. (SBN 319517)

agrigoryan@wilshirelawfirm.com

WILSHIRE LAW FIRM

3055 Wilshire Blvd., 12th Floor

Los Angeles, California 90010

Telephone: (213) 381-9988

Facsimile: (213) 381-9989

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

VANESSA MURILLO, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

SAN BERNARDINO MEDICAL
ORTHOPAEDIC GROUP, INC. DBA
ARROWHEAD ORTHOPAEDICS, a California
corporation, and DOES 1 through 10, inclusive,

Defendants.

Case No. CIVSB2128071

CLASS ACTION

*[Assigned for all purposes to Judge David
Cohn, Dept. S-26]*

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

*[Filed with Memorandum of Points and
Authorities, the Declarations of Vanessa
Murillo, Justin F. Marquez, and Stephen
Gomez and Proposed Order]*

FINAL APPROVAL HEARING

Date: November 18, 2022

Time: 10:00 a.m.

Dept: S-26

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

2 **PLEASE TAKE NOTICE** that on November 18, 2022, at 10:00 a.m., in Department S-
3 26 of the San Bernardino County Superior Court, 247 West 3rd Street, San Bernardino, California
4 92415, pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769 *et seq.*,
5 Plaintiff Vanessa Murillo will move the Court for an Order granting final approval of the
6 proposed class action settlement between Plaintiff and Defendant San Bernardino Medical
7 Orthopaedic Group, Inc. dba Arrowhead Orthopaedics. Plaintiff further moves the Court for an
8 Order:

- 9 1. Certifying a Class for settlement purposes;
- 10 2. Approving the settlement as fair and reasonable and finding that class members were
11 given notice of the settlement, and advised of their right to participate in the
12 settlement, object to the settlement, or exclude themselves from the settlement, in a
13 reasonable manner;
- 14 3. Appointing Plaintiff Vanessa Murillo as Class Representative for settlement purposes;
- 15 4. Appointing Plaintiff's Counsel, Wilshire Law Firm, PLC, as Class Counsel for
16 settlement purposes;
- 17 5. Approving payment of administrative expenses to Simpluris as the Settlement
18 Administrator in the amount of \$9,995.00;
- 19 6. Approving payment of \$500,000.00 in attorney's fees, which is 33 1/3% of the
20 Maximum Settlement Amount, and costs of up to \$25,000.00 for litigating this action
21 to Class Counsel;
- 22 7. Approving the payment to the California Labor Workforce Development Agency in
23 the amount of \$22,500.00;
- 24 8. Directing that the clerk of the Court enter the Court's order as a final judgment; and,
- 25 9. Without affecting the finality of the final judgment, reserving continuing jurisdiction
26 over the parties for the purposes of implementing, enforcing and/or administering the
27 Settlement or enforcing the terms of the judgment.

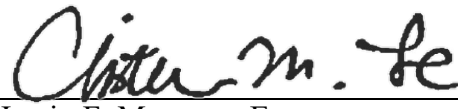
28 The motion will be based upon this notice, the attached memorandum of points and

1 authorities, the Declarations of Vanessa Murillo, Justin F. Marquez, and Stephen Gomez filed
2 concurrently herewith, the records and files in this action, and any other further evidence or
3 argument that the Court may properly receive at or before the hearing.

4 Respectfully submitted,

5 Dated: October 25, 2022

WILSHIRE LAW FIRM

6
7 By: 
Justin F. Marquez, Esq.
Christina M. Le
Arsiné Grigoryan, Esq.

9 *Attorneys for Plaintiff*

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	SUMMARY OF THE LITIGATION AND SETTLEMENT.....	2
A.	Plaintiff’s Claims	2
B.	Discovery and Investigation.....	3
C.	Settlement Negotiations, Preliminary Approval, and Class Size.....	3
D.	Key Terms of the Proposed Settlement.....	4
E.	Class Notice and Settlement Administration.	8
III.	THE SETTLEMENT MERITS FINAL APPROVAL	8
A.	The Settlement Reflects a Reasonable Compromise.	9
B.	The Settlement was Reached After Arms-Length Negotiations Following Informal Discovery.	10
C.	Plaintiff’s Counsel Has Substantial Class Action Experience.	11
D.	There Are No Objections to the Settlement.	11
IV.	THE COURT SHOULD AWARD PLAINTIFF THE REQUESTED AMOUNTS OF FEES, COSTS AND AN ENHANCEMENT PAYMENT.	12
A.	Counsel Requests an Award of Fees Based on the “Common Fund” Method.	12
1.	The Standard Fee Award in Class Actions Has Resolved Itself As One-Third Of The Recovery In Common Fund Cases.	14
2.	This Matter Involves A “Fee-Shifting” Provision of the Labor Code.	15
3.	The Experience, Reputation and Ability of Class Counsel Support the Fee Award.....	16
B.	While the Lodestar Method is Not Necessary in Common Fund Cases, Courts May Perform a Cross-Check to Award Fees.....	16
1.	Class Counsel’s Rates Have Been Approved by Several Courts.....	17
2.	The Lawsuit Provided a Public Benefit.	18
3.	Applying a Positive Multiplier Is Appropriate.....	18
C.	Costs Are Reasonable.	20

1	D. The Enhancement Payment to the Plaintiff Is Reasonable.	20
2	E. Administration Expenses Should be Approved.	21
3	V. CONCLUSION	21

TABLE OF AUTHORITIES

CASES

<i>Been v. O.K. Industries, Inc.</i> (E.D. Okla. 2011) 2011 WL 4478766	19
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	14
<i>City and County of San Francisco v. Sweet</i> (1995) 12 Cal.4th 105	13
<i>D’Amico v. Board of Medical Examiners</i> (1974) 11 Cal.3d 1	13
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	9
<i>Frank v. Eastman Kodak Co.</i> (W.D.N.Y. 2005) 228 F.R.D. 174	21
<i>Gentry v. Super. Ct.</i> (2007) 42 Cal.4th 443	20
<i>Graham v. DaimlerChrysler Corp.</i> (2004) 34 Cal.4th 553	15
<i>Hanlon v. Chrysler Corp.</i> (9th Cir.1998) 150 F.3d 1011	12
<i>Hughes v. Microsoft Corp.</i> (W.D.Wash. 2001) 2001 U.S. Dist. LEXIS 5976, 2001 WL 34089697	11
<i>In re Activision Securities Litigation</i> (N.D. Cal 1989) 723 F. Supp. 1373	13, 14
<i>In re Consumer Privacy Cases</i> (2009) 175 Cal.App.4th 545	17
<i>In re Lifelock, Inc. Marketing and Sales Practices Litigation</i> (D. Ariz. 2010) 2010 WL 3715138	11
<i>In re Pacific Enterprises Securities City and County of San Francisco Litigation</i> (9th Cir. 1994) 47 F.3d 373	14
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116	9, 11
<i>Laffitte v. Robert Half Int’l</i> (2014) 231 Cal. App. 4th 860	19
<i>Laffitte v. Robert Half Int’l Inc.</i> (2016) 1 Cal.5th 480	13
<i>Lealao v. Beneficial California, Inc.</i> (2000) 82 Cal.App.4th 19	17
<i>Murphy v. Kenneth Cole Productions, Inc.</i> (2007) 40 Cal.4th 1094	15
<i>Neary v. Regents of Univ. of California</i> (1992) 3 Cal.4th 272	8
<i>Press v. Lucky Stores</i> (1983) 34 Cal.3d 311	15
<i>Quinn v. State of California</i> (1995) 15 Cal. 3d 162	13
<i>Rodriguez v. W. Publ'g Corp.</i> (9th Cir. 2009) 563 F.3d 948	20

1	<i>Ryan v. California Interscholastic Federation</i> (2001) 94 Cal.App.4th 1033.....	16
2	<i>Sav-on Drug Stores, Inc. v. Super. Ct.</i> (2004) 34 Cal.4th 319.....	18
3	<i>Serrano v. Priest</i> (1977) 20 Cal.3d 25.....	13
4	<i>Sutter Health Uninsured Pricing Cases</i> (2009) 171 Cal. App. 4th 495.....	18
5	<i>United Steelworkers of America v. Phelps Dodge Corp.</i> (1990) 896 F.2d 403.....	17
6	<i>Van Vranken v. Atlantic Richfield Company</i> (N.D. Cal. 1995) 901 F. Supp. 294.....	14, 17
7	<i>Vincent v. Hughes Air West, Inc.</i> (9th Cir. 1977) 557 F.2d 759	12, 13
8	<i>Vizcaino v. Microsoft Corp.</i> (9th Cir. 2002) 290 F.3d 1043	19
9	<i>Wershba v. Apple Computers, Inc.</i> (2001) 91 Cal.App.4th 224.....	9, 12, 17, 18
10	STATUTES	
11	Cal. Code of Civ. Proc. § 1021.5	15
12	Cal. Lab. Code § 1194	15
13	OTHER AUTHORITIES	
14	Theodore Eisenberg & Jeffrey P. Miller, “Incentive Awards to Class Action Plaintiffs: An	
15	Empirical Study”, 53 UCLA L. Rev. 1303 (2006)	21
16	TREATISES	
17	Conte & Newberg, <i>Newberg on Class Actions</i> (3rd Ed.) § 14.03	14

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Vanessa Murillo (“Plaintiff”) seeks preliminary approval of a proposed \$1,500,000.00 non-reversionary, wage and hour class action settlement with Defendant San Bernardino Medical Orthopaedic Group, Inc. dba Arrowhead Orthopaedics (“Defendant”). The Settlement will provide substantial monetary payments to approximately 905¹ class members. And, as set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law.

The proposed settlement satisfies all the criteria for settlement approval under California law. A presumption of fairness exists as the Settlement was reached through extensive, mediated arm’s-length negotiations, sufficient investigation and discovery allowed Class Counsel to act intelligently, and Class Counsel is experienced in similar wage-and-hour litigation. Upon the Court’s approval of the settlement, participating class members will receive an average individual settlement payment of approximately \$1,024.37, with the highest individual settlement payment to be paid of approximately \$3,111.57, and the lowest individual settlement payment to be paid of approximately \$19.72. (Declaration of Stephen Gomez Regarding Notice Administration [“Salinas Decl.”], ¶ 11.) ***The deadline to opt-out or object to the settlement was October 18, 2022; as of October 20, 2022, there were two requests for exclusion and no objections to the settlement.*** (*Id.* at ¶¶ 13, 15.) Thus, the proposed Settlement is fair, reasonable, and adequate and is in the best interests of the Settlement Class Members.

Plaintiff’s request for attorneys’ fees in the amount of \$500,000.00, reimbursement of attorney costs and expenses in the amount of up to \$25,000.00, an incentive award in the amount of \$10,000.00, Settlement Administration Costs of \$9,995.00; and payment to the California Labor Workforce Development Agency “LWDA”) in the amount of \$22,500.00 are also

¹ In Plaintiff’s Motion for Preliminary Approval of the Settlement, Plaintiff indicated that there were approximately 867 class members at that time based on the information provided by Defendant for the class period. In the final class mailing list provided to the Settlement Administrator by Defendant, the list states that there are 905 class members in the class period. (Gomez Decl., ¶ 6.)

1 reasonable and thus should be approved by the Court.

2 Accordingly, Plaintiff respectfully requests that the Court grant final approval of the
3 Settlement.

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

5 **A. Plaintiff's Claims**

6 This is a wage and hour class and Private Attorneys General Act ("PAGA") (Cal. Lab.
7 Code §§ 2699, et seq.) representative action. Plaintiff and putative class members worked in
8 California as hourly-paid, non-exempt employees for Defendant during the class period.
9 Defendant specializes in full service orthopaedic sub-specialty care in the Inland Empire area
10 of California. (Declaration of Justin F. Marquez in Support of Plaintiff's Motion for Final
11 Approval of Class Action Settlement ["Marquez Decl."], ¶ 2.)

12 Plaintiff alleges that Defendant's payroll, timekeeping, and wage and hour practices
13 resulted in Labor Code violations. Plaintiff alleges that Defendant failed to pay for all hours
14 worked off the clock by the putative class member. In addition, Plaintiff alleges that Defendant
15 failed to include all remuneration in the employees' overtime rate and meal period premiums.
16 Plaintiff further alleges that Defendant failed to provide employees with legally compliant meal
17 and rest periods. Based on these allegations, Plaintiff asserts claims against Defendant for
18 failure to pay minimum and straight time wages, failure to pay overtime wages, failure to
19 provide meal periods, failure to authorize and permit rest periods, failure to timely pay all final
20 wages at termination, failure to provide accurate itemized wage statements, and unfair business
21 practices, and civil penalties under PAGA. (*Id.* at ¶ 3.)

22 On September 30, 2021, Plaintiff filed a putative wage-and-hour class action complaint
23 against Defendant for: (1) failure to pay minimum and straight time wages; (2) failure to pay
24 overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest
25 periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate
26 itemized wage statements; and (7) violation of California's Unfair Competition Law, California
27 Business and Professions Code §§ 17200, et seq. In addition, the Parties stipulate that Plaintiff
28 be afforded leave to file a First Amended Class and Representative Action Complaint, which

1 will add a cause of action for civil penalties under PAGA. On October 24, 2022, Plaintiff filed
2 her First Amended Complaint to add her PAGA claim pursuant to the Court’s July 20, 2022
3 Order granting Plaintiff’s motion for preliminary approval of the class action settlement.
4 (Marquez Decl., ¶ 4.)

5 **B. Discovery and Investigation**

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

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

17 **C. Settlement Negotiations, Preliminary Approval, and Class Size.**

18 On April 19, 2022, the Parties participated in private mediation with experienced class
19 action mediator, Hon. Carl J. West (Ret.). (*Id.* at ¶ 7.) The mediation was conducted via Zoom.
20 The settlement negotiations were at arm’s length and, although conducted in a professional
21 manner, were adversarial. The Parties went into the mediation willing to explore the potential
22 for a settlement of the dispute, but each side was also prepared to litigate their position through
23 trial and appeal if a settlement had not been reached. (*Id.*)

24 After extensive negotiations and discussions regarding the strengths and weaknesses of
25 Plaintiff’s claims and Defendant’s defenses, the Parties were able to reach a resolution, the
26 material terms of which are encompassed within the Settlement Agreement. (*Id.* at ¶ 7; Ex. 1
27 [Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement” or
28 “Settlement Agreement”)].)

1 Thereafter, Plaintiff filed the motion for preliminary approval of the settlement. The
2 class size at the time the motion for preliminary approval was filed was believed to be around
3 867 for the class period for the settlement based on information received from Defendant. The
4 Court granted preliminary approval on July 20, 2022. The Court requested changes to the Class
5 Notice, which the Parties amended accordingly. (*Id.* 11, Ex. 3 [Amended Class Notice].)

6 Class Counsel has conducted a thorough investigation into the facts of this case. Based
7 on the foregoing discovery and their own independent investigation and evaluation, Class
8 Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best
9 interests of the Settlement Class Members in light of all known facts and circumstances, the risk
10 of significant delay, the defenses that could be asserted by Defendant both to certification and
11 on the merits, trial risk, and appellate risk. (Marquez Decl., ¶ 15.)

12 Indeed, the \$1,500,000.00 Settlement represents **62% of the realistic maximum**
13 **recovery of \$2,436,530.00.** (*Id.* at ¶ 23.) Although Class Counsel estimated that Defendant’s
14 maximum potential liability for all claims was approximately \$14.2 million, when the risk of
15 prevailing at certification and trial are factored into the equation, Class Counsel believes that
16 Defendant’s realistic exposure was \$2,436,530.00, meaning the Settlement achieves a
17 significant recovery. (*Id.* at ¶¶ 15- 27.) Considering the risk and uncertainty of prevailing at
18 class certification and at trial, this is an excellent result for the Class. Indeed, because of the
19 proposed Settlement, class members will receive timely, guaranteed relief and will avoid the
20 risk of an unfavorable judgment.

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

22 Under the Settlement, Defendant will pay \$1,500,000.00 to resolve this Litigation. This
23 amount is all-inclusive. The Settlement’s key terms include:

24 1. Settlement Class: For settlement purposes only, the Parties agree to the
25 certification of a class pursuant to California Code of Civil Procedure § 382 defined as: “All
26 persons who worked for Defendant in California as an hourly-paid or non-exempt employee
27 during the Settlement Period (together, collectively referred to as the “Class Members”).”
28 (Settlement, § I (R).)

2. Settlement Period: The Settlement Period means the period from April 5, 2017 through June 18, 2022. (Settlement, § I (S).)

3. Participating Class Members: Participating Class Members means all Class Members who do not submit a valid and timely request to exclude themselves from the Settlement. (Settlement, § I (L).)

4. Participating PAGA Members: Participating PAGA Members means all Class Members, as that term is defined in Section I.R of the Settlement Agreement, who worked for Defendant from April 5, 2020 through June 18, 2022. (Settlement, § I (M).)

5. Gross Settlement Amount: This amount is \$1,500,000.00, 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, § I (Q).)

6. Uncashed Checks & Cy Pres: 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 deemed unpaid residue pursuant Code of Civil Procedure Section 384(a). Unpaid residue (uncashed or returned checks) will be paid to Legal Aid at Work. (Settlement, § 2.8.)

7. Release as to All Settlement Class Members: The class release is limited to “any and claims that were alleged in the Litigation or which could have been alleged in the Litigation based on the facts asserted in the Litigation arising during the Settlement Period against Defendant, and its divisions, affiliates, predecessors, successors, shareholders, members, managers, officers, directors, employees, agents, trustees, representatives, administrators, fiduciaries, assigns, subrogees, executors, partners, parents, subsidiaries, joint employers, insurers, and related corporations, including but not limited to the following claims: (1) all claims alleged in the operative complaint, under any legal theory of liability, for the failure to pay all wages of any kind, including any minimum or straight time wages, owed pursuant to California

1 Labor Code §§ 204, 510, 1194, 1194.2, and 1197, the California Industrial Welfare Commission
2 (“IWC”) Wage Orders, or any comparable federal statute under any theory of liability; (2) all
3 claims alleged in the operative complaint, under any legal theory of liability, for the failure to
4 pay overtime or double time wages owed pursuant to California Labor Code §§ 204, 510, 1194,
5 and 1198, the IWC Wage Orders, or any comparable federal statute under any theory of liability;
6 (3) all claims alleged in the operative complaint, under any legal theory of liability, for the
7 failure to provide meal periods pursuant to California Labor Code §§ 226.7 and 512, and the
8 IWC Wage Orders; (4) all claims alleged in the operative complaint, under any legal theory of
9 liability, for the failure to provide rest periods pursuant to California Labor Code § 226.7, and the
10 IWC Wage Orders; (5) all claims alleged in the operative complaint, under any legal theory of
11 liability, for the failure to properly calculate any premiums owed and/or paid pursuant to
12 California Labor Code § 226.7(b); (6) all claims alleged in the operative complaint, under any
13 legal theory of liability, for any penalties of any kind arising from an alleged failure to pay final
14 wages or other amounts allegedly owed to Class Members pursuant to California Labor Code §§
15 201-203; (7) all claims alleged in the operative complaint, under any legal theory of liability, for
16 any penalties of any kind arising from an alleged wage statement violation pursuant to California
17 Labor Code §§ 226 and 1174.5; (8) all claims alleged in the operative complaint, under any legal
18 theory of liability, for failure to indemnify employees for expenditures pursuant to California
19 Labor Code § 2802; (9) all claims alleged in the operative complaint, under any legal theory of
20 liability, for violation of Business & Professions Code §§ 17200, *et seq.*; (10) all claims alleged
21 in the operative complaint and Plaintiff’s PAGA letter, under any legal theory of liability, for
22 penalties pursuant to the PAGA (Labor Code §§ 2698, *et seq.*); and (11) all claims alleged in the
23 operative complaint, under any legal theory of liability, for any penalties or any another amounts
24 that could be potentially owed to Class Members during the Settlement Period, including penalties
25 owed pursuant to California Labor Code §§ 210, 226.3, 558, and 1197.1.” (Settlement, § VIII
26 (A).) This Release will be deemed effective upon the date the Court’s Final Approval Order
27 becomes “Final” (as that term is defined in the Settlement Agreement, § I (E)). (Settlement,
28 § VIII (A).)

8. PAGA Allocation: The settlement includes \$30,000.00 allocated to Plaintiff's claims under PAGA, with 75% of which (\$22,500.00) being paid to the LWDA and 25% (\$7,500.00) being paid to the Participating PAGA Members. (Settlement, § XVII.) Class Counsel submitted the proposed settlement to the LWDA before filing this Motion for Preliminary Approval and will be submitting this Motion for Final Approval to the LWDA before the hearing. (Marquez Decl., ¶ 8.)

9. Net Settlement Fund: The "Net Settlement Fund" or "Net Settlement Amount" is the amount that remains and that shall be paid to Settlement Class Members after the following amounts are subtracted: (1) attorneys' fees and Litigation costs, (2) Administrative Costs, (3) enhancement to the Named Plaintiff, and (4) the penalties recoverable pursuant to the PAGA. (Settlement, § I (K).)

10. Distribution Formula: Members of the Settlement Class not opting out will receive a lump sum payment as good and valuable consideration for the waiver and release of claims as set forth in Section D (7), above, in an amount determined by the Settlement Administrator in accordance with the provisions as outlined in Section XII of the Settlement Agreement.

11. Tax Allocation: Any settlement money paid to Settlement Class Members will be allocated as 20% wages, 40% penalties, and 40% interest. (Settlement, § XVI.) The tax allocation breakdown comports with Plaintiff's *Kullar* analysis, as detailed in Justin F. Marquez's Declaration. (Marquez Decl., ¶¶ 15 - 27; *Kullar v. Foot Locker Retail, Inc.*, (2008) 168 Cal.App.4th 116, 128.)

12. Class Representative Service Award: Subject to Court approval, Plaintiff shall be paid an enhancement award not to exceed \$10,000.00. (Settlement, § XV.) 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, § VIII (B).) 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, § XV.)

13. Attorneys' Fees and Costs: The Settlement provides that Defendant will not

1 oppose a fee application of up to 33 1/3% (\$500,000.00) of the Gross Settlement Amount, plus
2 out-of-pocket costs not to exceed \$25,000.00. (Settlement, § XIV.) At this time, Class
3 Counsel's costs are approximately \$13,419.69. (Marquez Decl., ¶ 42.)

4 14. Notice of Proposed Class Action Settlement: The Notice sets forth in plain terms,
5 a statement of the case, the terms of the Settlement Agreement, the approximate amount of
6 attorneys' fees, costs, and service award being sought, and an explanation of how the settlement
7 allocations are calculated. (Marquez Decl., ¶ 11; Ex. 3 [Amended Class Notice].) The Notice
8 also includes an opt-out form that class members can complete in the event they decide to not
9 participate in the settlement. (*Id.*) Class Members will be notified by first-class mail of the
10 settlement. (Settlement, § X (C).) Simpluris, the proposed Settlement Administrator, will
11 undertake its best efforts to ensure that the notice is provided to the current addresses of class
12 members, including conducting a national change of address search and re-mailing the notice to
13 updated addresses. (*Id.*) (Marquez Decl., ¶ 10; Ex. 2 [Settlement Administrator Bid].) Dispute
14 Procedure: Class Notice will include a procedure by which a Class Member may dispute the
15 number of workweeks or opt-out of the settlement. (Marquez Decl., ¶ 11; Ex. 3 [Amended Class
16 Notice].)

17 **E. Class Notice and Settlement Administration.**

18 This Court granted preliminary approval on July 20, 2022. (Marquez Decl., ¶ 11.)
19 Notices explaining class member rights were mailed out to all 905 class members in the mailing
20 list provided by Defendant. (Gomez Decl., ¶ 8.) To date, 7 notice packets remain undeliverable
21 after re-mailing attempts were made. (*Id.* at ¶ 9.) *There were two requests for exclusion and*
22 *no objections to the settlement.* (*Id.* at ¶¶ 13, 15.)

23 **III. THE SETTLEMENT MERITS FINAL APPROVAL**

24 The law favors the settlement of lawsuits, particularly in class actions and other complex
25 cases. (*See e.g., Neary v. Regents of Univ. of California* (1992) 3 Cal.4th 272, 277-81.) Factors
26 to be considered in evaluating a class action settlement include "the strength of plaintiffs' case, the
27 risk, expense, complexity and likely duration of further litigation, the risk of maintaining class
28 action status through proceedings, the experience and views of counsel, the presence of a

1 government participant, and the reaction of the class members to the proposed settlement.” (*Kullar*
2 *v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.) A presumption that a settlement is
3 fair and reasonable exists where, as here, the following four factors are present: “(1) the settlement
4 is reached through arm’s length bargaining; (2) investigation and discovery are sufficient to allow
5 counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4)
6 the percentage of objectors is small.” (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th
7 224, 245.)

8 Whether a class action settlement should be approved is a question committed to the trial
9 court’s broad discretion. (*Id.* at pp. 234-35.) In exercising its discretion, the Court should give
10 “[d]ue regard ...to what is otherwise a private consensual agreement between the parties.” (*Dunk*
11 *v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) “The inquiry ‘must be limited to the extent
12 necessary to reach a reasoned judgment that the agreement is not the product of fraud or
13 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
14 whole, is fair, reasonable and adequate to all concerned.” (*Id.* [internal citations omitted].)

15 **A. The Settlement Reflects a Reasonable Compromise.**

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

23 The settlement obviates the significant risk that this Court may deny certification of all or
24 some of Plaintiff’s claims. (Marquez Decl., ¶ 25.) While Plaintiff is confident in the merits of
25 their claims, a legitimate controversy exists as to each cause of action. (*Id.* at ¶ 24.) Plaintiff also
26 recognizes that proving the amount of wages due to each class member would be an expensive,
27 time-consuming, and uncertain proposition. (*Id.*) Furthermore, even if Plaintiff obtained
28 certification of all or some of the claims, continued litigation would be expensive, involving a trial

1 and possible appeals, and would substantially delay and reduce any recovery by the class. (*Id.* at
2 ¶¶ 24 - 25.)

3 The proposed settlement of \$1,500,000.00 therefore represents a substantial recovery when
4 compared to Plaintiff's reasonably forecasted recovery. (*Id.* at ¶¶ 15-27.) 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 \$1,500,000.00 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 ***\$1,066.90.*** (*Id.* at ¶ 26.)

12 **B. The Settlement was Reached After Arms-Length Negotiations Following**
13 **Informal Discovery.**

14 The Settlement was reached following extensive negotiations following two half days of
15 mediation with experienced employment mediator, Hon. Carl J. West (Ret.). (Marquez Decl. ¶
16 7.) The settlement negotiations were at arm's length and, although conducted in a professional
17 manner, were adversarial. (*Id.*) The parties went into the mediation willing to explore the potential
18 for a settlement of the dispute, but each side was also prepared to litigate their or its position
19 through trial and appeal if a settlement had not been reached. (*Id.*)

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

1 negotiating the proposed Settlement. (*Id.*)

2 **C. Plaintiff's Counsel Has Substantial Class Action Experience.**

3 Class Counsel also has considerable experience and has demonstrated competence with
4 litigating wage and hour class actions. (*Id.* at ¶¶ 43-54.) Class Counsel has substantial experience
5 in all facets of litigation in state and federal court, including discovery, law and motion, trial,
6 appeals, arbitration and mediation. Class Counsel has litigated numerous class actions on behalf
7 of plaintiffs and have been lead counsel or otherwise exercised significant case handling
8 responsibilities in numerous cases resulting in millions of dollars in class action settlements. (*Id.*)

9 Based on Class Counsel's experience as employment and class action attorneys, Class
10 Counsel is eminently qualified to evaluate the strength of Plaintiff's claims, the strength of
11 Defendant's defenses against certification, the strength of Defendant's defenses on the merits, and
12 the fairness of the Settlement. Their opinion that final approval of the Settlement would be in the
13 best interests of class members in light of the significant risks of litigation is entitled to great
14 weight. (*See Kullar, supra*, 168 Cal.App.4th at 129 ["The court undoubtedly should give
15 considerable weight to the competency and integrity of counsel and the involvement of a neutral
16 mediator in assuring itself that a settlement agreement represents an arms' length transaction
17 entered without self-dealing or other potential misconduct"].)

18 **D. There Are No Objections to the Settlement.**

19 No class member has objected to the Settlement, and only two class member have requested
20 exclusion from the Settlement. (Gomez Decl., ¶¶ 13, 15.) The overwhelmingly positive response
21 of the class strongly supports final approval of the Settlement. (*See, e.g., In re Lifelock, Inc.*
22 *Marketing and Sales Practices Litigation* (D. Ariz. 2010) 2010 WL 3715138, *6 [relatively few
23 objections and requests for exclusion support approval].)

24 Factors to be considered in evaluating a class action settlement include "the reaction of the
25 class members to the proposed settlement." (*Kullar, supra*, 168 Cal.App.4th at p. 128.) The
26 reaction here has been overwhelmingly positive. Courts have approved class action settlements in
27 lesser circumstances. (*See, e.g., Hughes v. Microsoft Corp.* (W.D.Wash. 2001) 2001 U.S. Dist.
28 LEXIS 5976, 2001 WL 34089697, *8 [court found that the "class members overwhelmingly

support[ed] the settlement” where there were over 37,000 notices sent out, 2,745 class members participated in the settlement, “only nine objections were submitted”, and there were 86 timely opt-outs and over 20 additional defective or untimely opt-outs, “these indicia of the approval of the class of the terms of the settlement support a finding of fairness under Rule 23”], *citing Hanlon v. Chrysler Corp.* (9th Cir.1998) 150 F.3d 1011, 1027 [despite vigorous objections and appeal by objectors, “fact that the overwhelming majority of the class willingly approved the offer and stayed in the class presents at least some objective positive commentary as to its fairness”, court did not abuse its discretion in approving settlement].)

IV. THE COURT SHOULD AWARD PLAINTIFF THE REQUESTED AMOUNTS OF FEES, COSTS AND AN ENHANCEMENT PAYMENT.

Under the Settlement, subject to the Court’s approval, Defendant has agreed to pay Class Counsel reasonable attorneys’ fees in the amount of \$500,000.00, which is 33 1/3% of the Maximum Settlement Amount, and costs up to \$25,000.00 for litigating this Action. In addition, Defendants will not oppose an application for the payment of Settlement Administration Costs and a Class Representative Enhancement Award. Settlement Administration Costs are \$15,000.00, and Plaintiff will apply for an Enhancement Award in the amount of \$10,000.00. The proposed attorneys’ fees and expenses were disclosed to the Class Members in the proposed Notice of Proposed Class Action Settlement.

“In general, questions whether a settlement was fair and reasonable, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court’s broad discretion.” (*Wershba, supra*, 91 Cal.App.4th at pp. 234-235.) “Courts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method.” (*Id.* at p. 254; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.)

A. Counsel Requests 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 pursuing claims on behalf of a class. 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

1 or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff
2 or plaintiffs may be awarded attorneys’ fees out of the fund.” (*Serrano v. Priest* (1977) 20 Cal.3d
3 25, 34 [*quoting D’Amico v. Board of Medical Examiners* (1974) 11 Cal. 3d 1.]

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

15 The California Supreme Court affirmed in *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th
16 480 that, “when class action litigation establishes a monetary fund for the benefit of the class
17 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the
18 court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
19 fund created.” (*Id.* at p. 503.) The court explained: “The recognized advantages of the percentage
20 method—including relative ease of calculation, alignment of incentives between counsel and the
21 class, a better approximation of market conditions in a contingency case, and the encouragement
22 it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—
23 convince us the percentage method is a valuable tool that should not be denied our trial courts.”
24 (*Id.* [internal citations omitted].)

25 Several courts have expressed frustration with the alternative “lodestar” approach for
26 deciding fee awards, which usually involves wading through voluminous and often indecipherable
27 time records. Commenting on the lodestar approach, Chief Judge Marilyn Hall Patel wrote: “This
28 court is compelled to ask, ‘Is this process necessary?’ Under a cost-benefit analysis, the answer

would be a resounding, ‘No!’” (*In re Activision Securities Litigation* (N.D. Cal 1989) 723 F. Supp. 1373, 1375.) The percentage approach is preferable to the lodestar because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources. (*Id.* at pp. 1378-79.) The Ninth Circuit now routinely uses the percentage of the common fund approach to determine the award of attorney’s fees. (*See, e.g. In re Pacific Enterprises Securities City and County of San Francisco Litigation* (9th Cir. 1994) 47 F.3d 373, 378-79 [approving attorney’s fee of 33 1/3%].)

1. The Standard Fee Award in Class Actions Has Resolved Itself As One-Third Of The Recovery In Common Fund Cases.

According to a leading treatise on class actions, “No 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*. (*See 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].)

The settled-for 33 1/3% fee award is consistent with the average fee award in class actions. Indeed, the custom and practice in class actions is to award approximately one-third of a fund as a fee award. (*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.”].) Thus, Plaintiff’s fee request is in line with the prevailing guidelines established in California case law and academic literature and is consistent with awards in California. Accordingly, Plaintiff requests that the Court approve the attorneys’ fees requested herein.

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

2 Class Counsel is entitled to recover fees under Labor Code § 1194, which provides, in part:
3 [A]ny employee receiving less than the legal minimum wage or the legal overtime
4 compensation applicable to the employee is entitled to recover in a civil action the
 unpaid balance of the full amount of this minimum wage or overtime compensation,
 including interest thereon, reasonable attorney’s fees, and costs of suit.

5 (Cal. Lab. Code § 1194.)

6 As this litigation culminated in a settlement that provided for a recovery of unpaid wages,
7 including unpaid minimum wages and overtime compensation, Plaintiff is entitled to recover
8 reasonable attorneys’ fees and costs under the California Labor Code.

9 Class Counsel is also entitled to a fee award under California’s private attorney general
10 statute, Code of Civil Procedure § 1021.5. “The award of attorneys’ fees is proper under Section
11 1021.5 if ‘(1) plaintiffs’ action ‘has resulted in the enforcement of an important right affecting the
12 public interest,’ (2) ‘a significant benefit, whether pecuniary or nonpecuniary, has been conferred
13 on the general public or a large class of persons’ and (3) ‘the necessity and financial burden of
14 private enforcement are such as to make the award appropriate.’” (*Press v. Lucky Stores* (1983)
15 34 Cal.3d 311, 317-318.) The fundamental objective of the statute is “to encourage suits enforcing
16 public policies by providing substantial attorneys’ fees to successful litigants in such cases.”
17 (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 565.)

18 This action resulted in the enforcement of an important right affecting the public interest,
19 as Plaintiff sought to enforce Settlement Class Members’ rights to recover statutory wages arising
20 from Defendants’ failure to pay all wages and failure to provide meal and rest breaks. (*See Murphy*
21 *v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1113 [noting that “health and safety
22 concerns” are what motivated the Industrial Wage Commission to adopt mandatory meal and rest
23 periods].)

24 This action also conferred a significant benefit on a large class of persons. Notice was sent
25 to 905 Settlement Class Members, and only one Settlement Class Members requested exclusion.
26 The Settlement provides a significant monetary benefit, in that it permits all persons who worked
27 for Defendants during the applicable class period to obtain compensation for unpaid wages and
28 missed meal and rest periods.

1 Finally, the necessity and financial burden of private enforcement render an award
2 appropriate. Without the incentive of an attorneys' fee award, Plaintiff could not have afforded to
3 hire counsel to pursue this case, as the cost of litigating this matter far outweighed Plaintiff's
4 potential recovery. (*See Ryan v. California Interscholastic Federation* (2001) 94 Cal.App.4th
5 1033, 1044 ["As to the necessity and financial burden of private enforcement, an award is
6 appropriate where the cost of the legal victory transcends the claimants' personal interest; in other
7 words, where the burden of pursuing the litigation is out of proportion to the plaintiff's individual
8 stake in the matter."].)

9 **3. The Experience, Reputation and Ability of Class Counsel Support the**
10 **Fee Award.**

11 As demonstrated by their past experience in pursuing class actions on behalf of consumers
12 and employees, Class Counsel possesses considerable expertise in litigating class action matters.
13 Class Counsel has been involved as lead counsel or co-counsel in dozens of class actions resulting
14 in a multitude of beneficial results to class members in California. Because it is reasonable to
15 compensate class counsel commensurate with their skill, reputation and experience, a fee award of
16 33 1/3% of the Maximum Settlement Amount, a percentage considered within the norm in class
17 action practice, is certainly justified here.

18 Class Counsel's experience in wage and hour class actions was integral in evaluating the
19 strengths and weaknesses of the case against Defendants and the reasonableness of the settlement.
20 Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning
21 the rapidly evolving substantive law (state and federal), as well as the procedural law of class
22 action litigation. Based on these and other factors, Class Counsel has frequently received fee
23 awards amounting to 33 1/3% of the recovery for the class. Therefore, the requested fee award is
24 reasonable and fair.

25 **B. While the Lodestar Method is Not Necessary in Common Fund Cases, Courts**
26 **May Perform a Cross-Check to Award Fees.**

27 Although California supports the common fund doctrine, the lodestar method can be used
28 to cross-check fee awards. "It may be appropriate in some cases, assuming the class benefit can

1 be monetized with a reasonable degree of certainty, to “cross-check” or adjust the lodestar in
2 comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and
3 within the range of fees freely negotiated in the legal marketplace in comparable litigation.” (*In re*
4 *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557.)

5 Applying the lodestar method requires a two-step process. The first step is to multiply the
6 number of hours reasonably expended by a reasonable hourly rate. The second step is to apply a
7 multiplier to the lodestar to take into account various factors. “The purpose of such adjustment is
8 to fix a fee at the fair market value for the particular action. In effect, the court determines,
9 retrospectively, whether the litigation involved a contingent risk or required extraordinary legal
10 skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate
11 for such services.” (*Id.* at pp. 556-57.) “Under certain circumstances, a lodestar calculation may
12 be enhanced on the basis of a percentage-of-the-benefit analysis.” (*Id.* at p. 557.)

13 Wilshire Law Firm’s current lodestar is \$239,155 based on approximately 345.1 hours of
14 work performed by Class Counsel thus far. (Marquez Decl., ¶¶ 34, 35.) Accordingly, the requested
15 fee of \$500,000.00 is reasonable and fair as it is based on a multiplier of 2.0. To be sure, trial
16 courts have substantial discretion in adjusting the lodestar to account for various factors. (*See*
17 *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26, 39-45; *see also Serrano, supra*,
18 20 Cal.3d at p. 49.) In addition, it has been held that “[m]ultipliers can range from 2 to 4 or even
19 higher.” (*See Wershba*, 91 Cal.App.4th at p. 255; *see also Van Vranken, supra*, 901 F. Supp. At
20 p. 298 “[m]ultipliers in the 3-4 range are common in lodestar awards for lengthy and complex
21 class action litigation”].)

22 **1. Class Counsel’s Rates Have Been Approved by Several Courts.**

23 Class Counsel provides a declaration to support their lodestar hourly rates. “Affidavits of
24 the plaintiffs’ attorney and other attorneys regarding prevailing fees in the community, and rate
25 determinations in other cases, particularly those setting a rate for the plaintiffs’ attorney, are
26 satisfactory evidence of the prevailing market rate.” (*United Steelworkers of America v. Phelps*
27 *Dodge Corp.* (9th Cir. 1990) 896 F.2d 403, 407.) Class Counsel has received final approval of
28 their hourly rates in other wage and hour class action settlements. These rates are not opposed or

1 challenged.

2 **2. The Lawsuit Provided a Public Benefit.**

3 Class Counsel’s choice to litigate this matter provided a public benefit to 905 California
4 employees. Moreover, the California Supreme Court stated that “Labor Code section 1194 confirms
5 “a clear public policy ... that is specifically directed at the enforcement of California’s minimum wage
6 and overtime laws for the benefit of workers.” [citation omitted].” (*Sav-on Drug Stores, Inc. v.*
7 *Super. Ct.* (2004) 34 Cal.4th 319, 340.) Given the financial risks and numerous attorney hours
8 attendant to the litigation of Plaintiff’s claims, this factor supports Class Counsel’s fee request and
9 encourages the private enforcement of legal rights for the general good.

10 **3. Applying a Positive Multiplier Is Appropriate.**

11 Once this lodestar figure has been determined, the Court may take into account other
12 “enhancement” factors to adjust the lodestar award. While Plaintiff seeks only a modest
13 multiplier of 2.0 here, the overall reasonableness of Plaintiff’s request is underscored by the
14 fact that a significantly higher multiplier would be justified under applicable law.

15 Contingency fees should be higher than fees for the same legal services paid concurrently
16 with the provision of the services. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-33.) “A
17 lawyer who both bears the risk of not being paid and provides legal services is not receiving the
18 fair market value of his work if he is paid only for the second of these functions. If he is paid
19 no more, competent counsel will be reluctant to accept fee award cases.” (*Id.* at p. 1133.)
20 Application of that rule is particularly appropriate where the case is brought to redress important
21 rights of vulnerable persons. (*Id.*) A risk enhancement is “earned compensation; unlike a
22 windfall, it is neither unexpected nor fortuitous. Rather it is intended to approximate market-
23 level compensation for such services which typically pay a premium for the risk of nonpayment
24 or delay in payment of attorney’s fees.” (*Id.* at p. 1138.)

25 “Multipliers can range from 2 to 4 or even higher.” (*Wershba, supra*, 91 Cal.App.4th at
26 p. 255; *see also Sutter Health Uninsured Pricing Cases* (2009) 171 Cal. App. 4th 495, 512
27 [applying a 2.52 multiplier on a cross-check in an antitrust class action]; *Chavez, supra*, 162
28 Cal. App. 4th at p. 60 [applying a 2.5 multiplier on a lodestar cross-check]; *Vizcaino v. Microsoft*

1 *Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 n.6 [“most” common fund cases apply a multiplier
2 of 1.0-4.0]; *Been v. O.K. Industries Inc.* (E.D. Okla. 2011) 2011 WL 4478766, *11 [citing a
3 study “reporting [an] average multiplier of 3.89 in survey of 1,120 class action cases” and
4 finding that a multiplier of 2.43 would be “per se reasonable”].) The intermediate court in
5 *Laffitte*, after finding that “2 to 4” is a reasonable range for multipliers on a cross-check,
6 affirmed a 2.13 multiplier. (*Laffitte v. Robert Half Int’l* (2014) 231 Cal. App. 4th 860, 881-82.)
7 The intermediate court opinion was affirmed in full by the California Supreme Court in its new
8 decision guiding lower courts on assessing fees.

9 Factors considered in determining whether a lodestar multiplier is appropriate generally
10 include: (1) the risks presented by the contingent nature of the case; (2) the novelty and difficulty
11 of the questions involved and the skill requisite to perform the legal service properly; (3) the
12 nature of the opposition; (4) the preclusion of other employment by the attorney due to
13 acceptance of the case; and (5) the result obtained and the importance of the lawsuit to the
14 public. (*Serrano, supra*, 20 Cal. 3d at pp. 48-49.) All of these factors favor approval of a
15 multiplier along the lines of those approved in the cases above.

16 The major consideration in determining the necessity of a multiplier is the contingent nature
17 of the award. (*Ketchum, supra*, 24 Cal.4th at pp. 1132-33.) Further, the possibility of no recovery
18 is only one of the uncertainties involved in taking on such a case. Other uncertainties are the
19 amount that will be recovered, uncertainty as to the cost, both in effort and expenses, and
20 uncertainty about how much time will pass before the recovery is obtained. (*Id.* at pp. 1132-1133,
21 1138.) Here, Class Counsel have been the only counsel to represent Class Members in this matter
22 and have borne the entire risk and costs of litigation purely on a contingency basis. Class Counsel’s
23 outlay of time and money in this case has been significant.

24 The other factors are also present here. Class Counsel are skilled attorneys who have
25 had success in wage-and-hour class actions. This case required experienced and competent
26 lawyers and expertise in the issues presented herein. Defendant’s contentions underscore the
27 risk of prevailing at class certification and trial, and any of these obstacles could have prevented
28 recovery completely. Further, proceeding to trial would have added years to the resolution of

1 this case because of the difficult legal and factual issues raised and the likelihood of appeals.
2 Despite these risks, Class Counsel took this case on a contingency basis. Yet, there are only so
3 many cases that Class Counsel can take at any one time. Consequently, there were other
4 meritorious cases presented to Class Counsel that would have generated substantial fees, but
5 were declined, during the pendency of this action in order to devote the attention necessary to
6 achieve favorable results. (Marquez Decl., ¶ 41.) Considered against the risks of continued
7 litigation, and the importance of the employment rights and a speedy recovery, the relief
8 provided under the Settlement represents a very strong result for the Class.

9 **C. Costs Are Reasonable.**

10 Class Counsel requests reimbursement of up to \$25,000.00 in expenses. (Marquez Decl.,
11 ¶ 43.) As of the date of filing this Motion, Class Counsel has incurred around \$13,419.69 in
12 costs, and they anticipate incurring at least \$500.00 in additional costs up to the time the Court
13 enters a judgment in this action and schedules a hearing on distribution. (*Id.* at ¶¶ 9, 42.)
14 Accordingly, Class Counsel respectfully requests reimbursement of up to \$25,000.00 in costs.
15 (*Id.*) Notably, Defendant has agreed that it will not oppose any cost award request up to
16 \$25,000.00. The categories of costs are set forth in the accompanying Declaration of Justin
17 Marquez, and these costs are easily seen to be both reasonable and necessary.

18 **D. The Enhancement Payment to the Plaintiff Is Reasonable.**

19 Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to
20 compensate them for the expense or risk they have incurred in conferring a benefit on other
21 members of the class.” (*Munoz, supra*, 86 Cal.App.4th at p. 412.) Courts routinely grant approval
22 of class action settlement agreements containing enhancements for the class representatives, which
23 are necessary to provide incentive to represent the class, and are appropriate given the benefit the
24 class representatives help to bring about for the class. (*See Rodriguez v. W. Publ'g Corp.* (9th Cir.
25 2009) 563 F.3d 948, 958-59.) The California Supreme Court has also noted that “retaliation against
26 employees for asserting statutory rights under the Labor Code is widespread,” despite anti-
27 retaliation statutes designed to protect employees. (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443,
28 460-61.) Plaintiffs should therefore be rewarded for assuming the risk of retaliation for the sake

1 of class members. (*See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

2 Under the settlement agreement, subject to the Court’s approval, Defendant agreed to pay
3 a Service Award in the amount of \$10,000.00 to Plaintiff. (Settlement, § XV.) This amount is
4 also in exchange for Plaintiff’s general release of all claims against Defendant. Plaintiff has
5 submitted a declaration demonstrating that she devoted approximately 40 hours of time and work
6 assisting counsel in the case, communicated with counsel very frequently for litigation and to
7 prepare for mediation. (*See Declaration of Plaintiff Vanessa Murillo*, ¶¶ 3-10.)

8 When compared with the amounts awarded in typical class action cases, the amount
9 requested here is particularly reasonable. Indeed, a **2006** study examining the average incentive
10 award given to class action plaintiffs from **1993 to 2002** found that the “average award per class
11 representative was \$15,992 and the median award per class representative was \$4,357.” (Theodore
12 Eisenberg & Jeffrey P. Miller, “Incentive Awards to Class Action Plaintiffs: An Empirical Study”,
13 53 UCLA L. Rev. 1303, 1308 (2006).)

14 **E. Administration Expenses Should be Approved.**

15 Simpluris, the Settlement Administrator, estimates that it will incur a total of \$9,995.00 in
16 costs associated with the administration of this Settlement. (Gomez Decl., ¶ 16.) These expenses
17 are reasonable, based upon the size of the class, claim and exclusion tracking, and Class Member
18 payment processing.

19 **V. CONCLUSION**

20 For the foregoing reasons, Plaintiff respectfully requests that the Court grant final
21 approval of the proposed settlement.

22 Respectfully submitted,

23 Dated: October 25, 2022

WILSHIRE LAW FIRM

24 By: 

25 Justin F. Marquez, Esq.
26 Christina M. Le, Esq.
27 Nicol E. Hajjar, Esq.
28 Arsiné Grigoryan, Esq.

Attorneys for Plaintiff

PROOF OF SERVICE

Murillo v. San Bernardino Medical Orthopedic Group, Inc., et al.
CIVSB2128071

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

I, Sandy S. Sespene, state that I am employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 3055 Wilshire Blvd., 12th Floor, Los Angeles, California 90010. My electronic service address is sspene@wilshirelawfirm.com.

On **October 26, 2022**, I served the foregoing **PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES**, on the interested parties by placing a true copy thereof, enclosed in a sealed envelope by following one of the methods of service as follows:

Joshua Carlon (SBN 263838)
joshua.carlon@lewisbrisbois.com
Robert Walker (SBN 254337)
Robert.Walker@lewisbrisbois.com

LEWIS BRISBOIS
633 W. 5th Street, Suite 4000
Los Angeles, CA 90071
Telephone: (213) 281-5235
Fax: (213) 250-7900

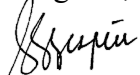
*Attorneys for Defendant,
San Bernardino Medical Orthopedic Group, Inc.*

(X) **BY UPLOAD:** I hereby certify that the documents were uploaded by my office to the State of California Labor and Workforce Development Agency Online Filing Site

(X) **BY MAIL:** I enclosed the above documents in a sealed envelope with postage thereon fully prepaid and placed for collection and mailing on the above date in accordance with ordinary business practices. I am readily familiar with this firm's practice of collection and processing of correspondence for mailing with the United States Postal Service, and that the correspondence shall be deposited with the United States Postal Service the same day in the ordinary course of business pursuant to Cal. Code Civ. Proc. § 1013(a).

I declare under the penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on **October 26, 2022**, at Los Angeles, California.



Sandy S. Sespene