

THE MARKHAM LAW FIRM

David R. Markham (SBN 71814)

dmarkham@markham-law.com

Lisa R. Brevard (SBN 323391)

lbrevard@markham-law.com

888 Prospect Street, Suite 200

La Jolla, CA 92037

Telephone: (619) 399-3995/Facsimile: (619) 323-1684

COHELAN KHOURY & SINGER

Isam C. Khoury (SBN 58759)

ikhoury@ckslaw.com

Michael D. Singer (SBN 115301)

msinger@ckslaw.com

Maggie K. Realin (SBN 263639)

mrealin@ckslaw.com

605 C Street, Suite 200

San Diego, CA 92101

Telephone: (619) 595-3001/ Facsimile: (619) 595-3000

Attorneys for Plaintiff on behalf of herself

and all others similarly situated

[Additional Counsel on Following Page]

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA**

MICHELLE TOWNSEND, an Individual, on
behalf of herself and all others similarly situated,

Plaintiff,

vs.

MAXIM HEALTHCARE SERVICES,
INC., a Maryland Corporation,

Defendant.

Case No.: 22-CV-005450

ASSIGNED FOR ALL PURPOSES TO:
The Honorable Peter Borkon
Department 15

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

Reservation #022201370779

Date: May 8, 2025

Time: 2:30 p.m.

1 **UNITED EMPLOYEES LAW GROUP**

2 Walter L. Haines (SBN 71075)

3 walter@uelglaw.com

4 8605 Santa Monica Blvd., #63354

5 North Hollywood, CA 90069

6 Telephone: (562) 256-1047/Facsimile: (562) 256-1006

7
8 Attorneys for Plaintiff on behalf of herself
9 and all others similarly situated
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I. INTRODUCTION

Plaintiff Michelle Townsend (“Plaintiff”) seeks preliminary approval,¹ under Rule 3.769(c) of the California Rules of Court, of a \$1,200,000 non-reversionary Settlement on behalf of approximately 729 current and former Recruiters who worked for Defendant Maxim Healthcare Staffing Services, Inc. (“Maxim” or “Defendant”)² in California between November 3, 2020 and February 14, 2025 (the “Class Period”).

This is a cash settlement and all Class Members who do not opt out will receive a payment, without a requirement to submit a claim form. The Maximum Settlement Amount is \$1,200,000. Plaintiff alleges that she and other Recruiters were misclassified as exempt employees and thus worked uncompensated overtime, including for time spent on-call, not provided timely meal and rest breaks, nor paid premiums for non-complying breaks, were not reimbursed necessarily incurred business expenses, and derivative claims. Plaintiff also alleges a cause of action for violations of the Private Attorneys General Act (“PAGA”) and Business and Professions Code section 17200, *et seq.* (“UCL”).

This case resolved following mediation before experienced wage and hour neutral, Kevin T. Barnes, Esq. Plaintiff argues that Defendant’s maximum potential liability for all of her claims, excluding PAGA penalties,³ is **\$12,051,817.36**. Defendant uses arbitration agreements with class action waivers which would bar a class recovery through litigation. Thus, this settlement provides for compensation to class members which would not have been possible otherwise. Despite the arbitration agreements, Plaintiff valued class claims in a maximum exposure analysis assuming that she could potentially collect meal and rest break premiums on 25% of shifts, that class members would be compensated for 2 hours of unpaid overtime a week, and \$40/month for use of their personal cell phones for work purposes during the COVID-19 pandemic. The \$1,200,000 Maximum Settlement Amount represents **43%** of Defendant’s discounted potential liability for all of Plaintiff’s non-PAGA claims, and **over 50%** of Plaintiff’s direct unpaid overtime, meal and rest break, and unreimbursed business expenses claims. This is an excellent result – particularly in light of the procedural posture of the case at the time of settlement

¹ This memorandum exceeds the 15-page limit set forth in CRC 3.1113, but Plaintiff has stipulated to an extension of the page limit to allow Plaintiff to sufficiently present this Settlement including class certification factors for the Court’s approval.

² Previously incorrectly identified as *Maxim Healthcare Services, Inc.* and now known as *Amergis Healthcare Staffing, Inc.*

³ The settlement of Plaintiff’s PAGA penalties is discussed in section IV(A)(3), below.

1 – with Plaintiff's individual PAGA claim pending arbitration.

2 II. FACTUAL AND PROCEDURAL BACKGROUND

3 Plaintiff Michelle Townsend was employed as an exempt, salaried Recruiter employee with Maxim
4 in California from August 2018 to March 2021. Declaration of Michelle Townsend ("Townsend Decl."),
5 ¶3. Plaintiff's duties included assisting in the placement process for nurses and other care providers for
6 public schools by sourcing potential candidates, scheduling their training, collecting documents from new
7 hires, communicating with teachers, advisors, and other staff about each case within their district, and
8 "on-call coordination," which required answering phone calls, text messages and emails outside of
9 business hours to facilitate last-minute scheduling changes, among other duties. *Id.*

10 Plaintiff filed a class action complaint on January 10, 2022, in the Northern District of California,
11 alleging claims for unpaid wages, including overtime under the California Labor Code and FLSA, based
12 on Defendant's alleged misclassification of her and other Recruiter employees as salaried exempt, failure
13 to reimburse for business expenses, derivative wage statement and waiting time penalty claims, and
14 violations of the UCL and PAGA. Plaintiff sent a PAGA letter on November 3, 2021, and the relevant
15 time period for PAGA penalties started on November 3, 2020. Declaration of David R. Markham
16 ("Markham Decl."), ¶3.

17 Upon discovery of an arbitration agreement, on January 14, 2022, Plaintiff voluntarily dismissed
18 her class action complaint, and filed a PAGA-only action on the same day in the Alameda Superior Court,
19 alleging the same underlying claims. Following the California Supreme Court's decision in *Adolph v. Uber*
20 *Technologies, Inc.* 14 Cal.5th 1104 (2023), on August 12, 2023, Plaintiff agreed to submit her individual
21 PAGA claims to individual arbitration, and filed a petition for arbitration on August 31, 2023. The parties
22 were in the process of selecting an arbitrator when they agreed to mediation. *Id.*, ¶4.

23 The parties attended a mediation with experienced class action mediator Kevin T. Barnes on
24 October 23, 2024. The case eventually settled. For purposes of settlement, the parties stipulated to filing
25 a First Amended Complaint (FAC) re-alleging class claims, and adding meal and break claims; all claims
26 released in the settlement are alleged in the FAC. Markham Decl., ¶5.

27 //

III. VIGOROUS PROSECUTION OF THIS ACTION

A. Summary of Investigation and Discovery Conducted

The parties carefully investigated the claims and facts alleged in this action, and Plaintiff has made a thorough study of the legal principles applicable to the claims asserted against Defendant. Plaintiff received data points, and hundreds of pages of documents containing operative policies and job descriptions to evaluate Plaintiff's misclassification claim. As a result of careful investigation of the claims in this action, the parties had a clear understanding of their respective claims and defenses. *Id.*, ¶6.

B. Settlement Reached after Arms-Length Negotiations with Assistance of Experienced Mediator

Plaintiff retained counsel with extensive experience in prosecuting wage and hour class and representative actions. Markham Decl., ¶¶26-33; Singer Decl., ¶¶3-14; Haines Decl., ¶3. Defendant was represented by seasoned attorneys at Epstein Becker Green. On October 23, 2024, the parties mediated this case before Kevin T. Barnes, a mediator with vast experience in wage and hour class actions. After additional weeks of arms'-length negotiations, the parties reached a settlement in principle with assistance of the mediator, and subsequently finalized the terms of the settlement agreement. Markham Decl., ¶7. The executed version of the Settlement Agreement is attached as **Exhibit 1** to Markham Declaration.⁴

C. Summary of the Risks to Further Litigation

Although Plaintiff was confident in her position, she recognized several risks to succeeding on the merits. Markham Decl., ¶14. First, Plaintiff's individual claim was set to be arbitrated, staying the PAGA representative claims pending individual arbitration. If Plaintiff had not prevailed on any aspect of her claims in arbitration, she could have lost standing to pursue that claim in court on a representative basis under the issue preclusion doctrine. *Rocha v. U-Haul Co. of California* (2023) 88 Cal.App.5th 65, 79.

Additionally, any recovery for Plaintiff's claims for unpaid wages including unpaid overtime wages, and premiums for non-compliant meal and rest periods, hinged on Plaintiff's claim that she and other Recruiters were misclassified. Plaintiff would argue that the recruiting activities relate to the production of the company, are not administrative in nature but sales-related, non-exempt functions, and

⁴ The Settlement Agreement was submitted to the LWDA concurrent to the filing of this motion, and proof of submission is attached as **Exhibit 2** to Markham Declaration.

1 that the remainder of the duties related to day-to-day operations (service calls, checking emails, etc.).
2 Plaintiff would also argue that the job description supports Plaintiff's claim that Plaintiff did not exercise
3 discretion and independent judgment in performing her job duties, because she had to follow the
4 "required hiring standards for Maxim and applicable contracts" and Maxim guidelines that controlled and
5 pre-planned recruiters' daily activities. Additionally, Plaintiff had no authority to hire or fire the company's
6 employees. Markham Decl., ¶15, Ex. 3 [AMERGIC-TOWNSEND 00000383, 429-30].

7 However, Maxim maintained – and certain policy documents including aspects of the Recruiter
8 job description could have supported – that Recruiters had discretion and exercised independent
9 judgment in their job duties. *Id.*, ¶16 [AMERGIC-TOWNSEND 00000383] (i.e. Recruiters conduct
10 interviews and hire candidates, negotiate salaries, and place and schedule candidates into qualified
11 positions). Had Plaintiff lost on this legal determination, the majority of her claims (absent her expense
12 reimbursement claim) would have failed as well, as recovery hinged entirely in showing that Recruiters
13 were misclassified.

14 Even had Plaintiff prevailed on the misclassification issue, proving her unpaid wage claim would
15 have been difficult. Because employees were salaried, employee time was not recorded. Further, the
16 primary basis for her unpaid wage claim was "on call" time. California law makes recovery of on call time
17 contingent on several factors, some of which would have been difficult to establish, as Recruiters could
18 still engage in personal activities while they were on call. *See Gomez v. Lincare, Inc.*, 173 Cal.App.4th 508,
19 523-25 (2009).

20 Additionally, while Maxim did not record meal periods since Recruiters were classified as exempt,
21 Maxim typically provided one hour, rather than 30 minutes, for meal periods. It would have been difficult
22 to prove based on employee testimony alone that meal periods were not provided or shortened (less than
23 the 30 minutes) on a specific day.

24 Wage statement and untimely wage claims are further derivative of Plaintiff's unpaid time, meal
25 and rest break claims, so if Plaintiff did not prevail on the underlying claims, her derivative claims would
26 also fail. *See Lincare, Inc.*, 173 Cal.App.4th at 524-25. Also, Defendant would likely assert that wages that
27 were not paid cannot form the basis of these derivative claims based on *Maldonado v. Epsilon Plastics, Inc.*,
28

22 Cal.App.5th 1308, 1336-37 (2018). Markham Decl., ¶19.

Regarding Plaintiff's unreimbursed business expenses claim for personal cell phone expenses during the pandemic time, it is very limited in duration due to Plaintiff's statute of limitations beginning six months after the COVID-19 pandemic began. Further, to the extent Plaintiff and other class members did not seek reimbursement of these expenses, this claim would be susceptible to summary judgment. *Hammit v. Lumber Liquidators*, 19 F. Supp. 3d 989, 1001 (S.D. Cal. 2014) (granting summary judgment when employee failed to request reimbursement).

IV. SUMMARY OF SETTLEMENT TERMS

A. Settlement Relief

Maximum Settlement Amount:	\$1,200,000. Settlement Agreement, ¶2(X).
Deductions from the Maximum Settlement Amount:	- Attorneys' fees not to exceed 33.33% of the Maximum Settlement Amount (\$400,000.00). <i>Id.</i>, ¶12; - Out-of-pocket litigation costs not to exceed \$25,000. <i>Id.</i>; - Service Award to Plaintiff not to exceed \$12,000. <i>Id.</i>, ¶13; - PAGA penalties of \$60,000 (of which 75% or \$45,000 will be paid to the LWDA and 25% or \$15,000 to Aggrieved Employees, who are Settlement Class Members employed at any time through February 14, 2025. <i>Id.</i>, ¶15. - Administration costs of approximately \$8,150. <i>Id.</i>, ¶2(NN).
Net Settlement Amount:	Approximately \$694,850. <i>See id.</i> , ¶¶2(X)-(Y)
Definition of the Settlement Class:	All Recruiters who are employed by, or formerly were employed by, Defendant in California between November 3, 2020 and February 14, 2025. <i>Id.</i> , ¶2(B).
Class Period:	From November 3, 2020 and February 14, 2025. <i>Id.</i> , ¶2(I).
The number of Class Members and workweeks worked during the Class Period	729 Settlement Class Members; 66,876 workweeks Markham Decl., ¶¶10, 27.
The number of PAGA Employees and pay periods during the PAGA Period	729 PAGA Employees; 66,876 pay periods. <i>Id.</i> , ¶10.
The average individual settlement payment	\$10.39 per workweek; or approximately \$953.15 per class member (without accounting for the number of workweeks worked). <i>Id.</i>

1. Settlement Formula and Distribution

Class Members who do not opt out of the Settlement will receive their respective Settlement Payments from the Net Settlement Amount based on the number of workweeks they worked during the Class Period, without the need to submit a claim form. Settlement Agreement, ¶16. Distribution amounts will be calculated and allocated as follows:

$$\frac{\text{Workweeks Worked by Class Member}}{\text{Total Workweeks Worked by all Class Members}} \times \text{Net Settlement Amount} = \text{Class Member's Payment}$$

*Id.*⁵

Class Members who do not opt out of the Settlement will release Defendant from all claims that relate to the causes of action asserted in this action – or those that could have been asserted in this action based on the facts alleged in Plaintiff's complaints and PAGA letters. *See id.*, ¶¶20-21.

Settlement checks will be valid and negotiable for 180 days. *Id.*, ¶48. After the expiration of the 180-day period, the Settlement Administrator will void any uncashed checks, and, subject to the Court's approval, the total amount of any uncashed settlement checks will be paid transmitted to the State Controller's Unclaimed Property Fund to permit the affected class members to claim the funds in the future, pursuant to California Code of Civil Procedure section 384(b). *Id.*

All Settlement Payments are subject to taxation and will be reported to the IRS and state tax authorities. Twenty percent (20%) of each Class Member's Settlement Payment will be allocated as wages, and eighty percent (80%) will be allocated as penalties and interest, with withholding to apply only to the portion allocated to wages. *Id.*, ¶18. Class Members shall seek their own tax advice regarding this Agreement. *Id.*, ¶57.

2. Attorneys' Fees and Costs

The parties agreed that, subject to approval by the Court, up to \$400,000 (33.33%) of the Maximum Settlement Amount, may be allocated to attorneys' fees, and up to \$25,000 may be allocated to reimburse Class Counsel for litigation costs and expenses. Settlement Agreement, ¶12. Courts in California wage and hour cases, where the common fund is under \$10 million, tend to award attorneys' fees in the 30% - 40% range. *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491-92 (E.D. Cal. 2010)

⁵ The PAGA Penalty Payment allocated to Aggrieved Employees will be calculated similarly on a pro rata basis, based on the total amount of pay periods PAGA Employees worked during the PAGA Period. *Id.*, ¶17.

(citing to five wage and hour class actions where courts approved fee awards ranging from 30 to 33%). The trial court has discretion to award attorneys' fees based on either the lodestar/multiplier calculation or the percentage-of-recovery method. *Laffitte v. Robert Half International Inc.*, 1 Cal.5th 480, 503 (2016). Class Counsel intends to brief the fee application using both methodologies, as cross checks.⁶ Any portion of the requested attorneys' fees and costs that are not awarded to Class Counsel shall be part of the Net Settlement Amount distributed to Class Members as provided in the Settlement Agreement. *Id.*, ¶12.

3. *PAGA Payment to Labor Workforce Development Agency*

The Parties agreed \$60,000 of the Maximum Settlement Amount will be allocated for payment under PAGA. Of this amount, 75% (\$45,000) will be paid to the LWDA, and 25% (\$15,000) to Aggrieved Employees, who are those Class Members who worked for Defendant from November 3, 2020 through February 14, 2025. *Id.*, ¶I(O). The PAGA penalties to be paid under this Settlement represent approximately .3% of the total potential maximum PAGA penalties for Plaintiff's direct claims, assuming class members could prove misclassification and that they suffered three types of violations in every single pay period (66,876 pay periods times \$100, multiplied by 3 penalties for unpaid time, meal breaks and rest breaks per pay period = \$20,062,800+ an additional violation for unreimbursed business expenses in about 10% of pay periods representing pay periods during the COVID-19 time frame, divided by 4 as a once monthly violation (6,687/4 = 1,672 * \$100 = \$167,200, for a total of \$20,230,000)). Markham Decl., ¶10. The subsequent penalties should be calculated at \$100, not \$200 per pay period because under *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157 (2008), for a plaintiff to recover \$200 per subsequent violation an employer must have been cited first, which has not occurred in this action. *Id.* at 1207-09; *Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334, 356 (2021) ("the increased \$200 civil penalty for 'subsequent violation[s]' does not apply unless [Plaintiff] presents evidence that the Labor Commission or a court notified [Defendant] that it was in violation of the Labor Code."); *see also Hernandez v. Best Buy Stores, LP*, 2017 WL 2445438, 2 (S.D. Cal. June 6, 2017) (holding, based on *Amaral*, that \$100 penalty per pay period is warranted because "no court, commissioner, or any other authority had held [that] Best Buy misclassified" the general managers."); *Trang v. Turbine Engine Components Technologies Corp.*, 2012 WL

⁶ 33.33% of attorneys' fees will be allocated to UELG and 66.67% of attorneys' fees to MLF (with 25% of MLF's share to be allocated to CKS). The client has consented to this fee split agreement in writing. Markham Decl., ¶34.

6618854, *5 (C.D. Cal. Dec. 19, 2012) (“courts have held that employers are not subject to heightened penalties for subsequent violations unless and until a court or commissioner notifies the employer that it is in violation of the Labor Code”); *Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Services, Inc.*, 2009 WL 2448430 at *9 (S.D. Cal. Aug. 10, 2009) (finding that California law imposes the “subsequent violation penalty” only after an employer has been notified by “the court or commissioner” that its conduct violates the Labor Code).

This allocation of the PAGA penalties falls within the range of other approved PAGA settlements, as courts frequently approve PAGA awards between 0.2% to 2.2% of the total potential penalties. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018) (awarding PAGA penalties of 0.2% of the maximum, or \$5 per pay period); *Ruch v. AM Retail Grp., Inc.*, 2016 WL 5462451, at *2, 7 (N.D. Cal. Sept. 28, 2016) (settlement allocating \$10,000 to PAGA penalties where potential value was over \$5.2 million, resulting in 0.2 percent PAGA recovery approved); *Van Kempen v. Matheson Tri-Gas, Inc.*, 2017 WL 3670787, at *10 (N.D. Cal. Aug. 25, 2017) (granting final approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent); *Slavkov v. Fast Water Heater Partners I, LP*, 2017 WL 3834873, at *2 (N.D. Cal. July 25, 2017) (finding that “\$7,500 PAGA payment is reasonable when measured against the total overall settlement [of \$345,000] and the possible weaknesses in Plaintiffs' case.”); *see also Bravo v. Gale Triangle, Inc.*, 2017 WL 708766, at *19 (C.D. Cal. Feb. 16, 2017) (\$10,000 as PAGA penalties found reasonable).

4. Settlement Administration Costs

The parties selected Simpluris, Inc. as the Settlement Administrator in this action. Settlement Agreement, ¶26. The parties obtained bids from three settlement administrators, and Simpluris was the most competitive bid. Markham Decl., ¶13. The costs of the Administrator, estimated at \$8,150, will be deducted from the Maximum Settlement Amount. *Id.*, ¶2(MM-NN); Declaration of Denise Islas of Simpluris, Inc., ¶15.

5. Class Representative’s Service Award

Defendant agreed, subject to Court approval, to pay up to \$12,000 from the Maximum Settlement Amount as a service award to Plaintiff Townsend for her service as class representative. Settlement

1 Agreement ¶13. Any portion of the requested Class Representative's Service Award not awarded to the
2 Class Representative shall be part of the Net Settlement Amount, and shall be distributed to Settlement
3 Class Members as provided in this Agreement. *Id.*

4 **B. Settlement Administration**

5 Within 14 calendar days after the preliminary approval, Defendant will provide Simpluris with a
6 class list containing Class Members' contact information and sufficient information to determine the total
7 number of workweeks worked within the relevant time periods. Settlement Agreement, ¶28. Within 14
8 calendar days thereafter, Simpluris will mail a Class Notice to each Class Member as provided in this
9 Settlement. *Id.*, ¶29. Simpluris will determine the eligibility for, and the amounts of, any Settlement
10 Payments under the terms of this Agreement, process and distribute Class Members' payments, and
11 process and mail tax payments to the appropriate state and federal taxing authorities. *Id.*, ¶31. Further,
12 Class Members will also be able to contact the Settlement Administrator by telephone or e-mail, or access
13 the settlement website,⁷ if they have any Settlement questions or need assistance. *See* Class Notice, **Ex. 1**
14 to the Settlement Agreement. Also, any objections to or opt-outs from the Settlement must be delivered
15 to the Settlement Administrator. Settlement Agreement, ¶¶33-34.

16 **V. THE SETTLEMENT SATISFIES THE PRELIMINARY APPROVAL CRITERIA**

17 There is a strong judicial preference for pre-trial settlement of complex class actions. *Officers for*
18 *Justice v. Civil Serv. Comm'n of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982). The trial judge exercises
19 discretion in deciding whether to grant preliminary approval of a class action settlement and "great weight
20 is accorded to [the] judge's views." *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th
21 1135, 1145 (2000).

22 Preliminary approval is the first of three steps of the settlement approval process. Second is the
23 dissemination of a settlement notice to all class members. Third is a final approval hearing, where the
24 evidence concerning the fairness, adequacy, and reasonableness of the settlement may be presented, and
25 class members may be heard regarding the Settlement. *See* Manual for Complex Litigation, Second, ¶30A4
26 (1993). The court does not need to perform a final analysis of the settlement's fairness to preliminarily

27
28 ⁷ The website will contain settlement-related documents, including notice of final judgment. C.R.C., Rule 3.771(b).

1 approve a proposed settlement. Rather, a more detailed assessment is reserved for the final approval
2 hearing, after class notice has been sent and class members have had the opportunity to object to or opt-
3 out of the settlement. *See* Moore's Federal Practice, 23.165[3] (3d ed. 2005). Generally, there is an initial
4 presumption of fairness when a proposed settlement, which was negotiated at arms'-length by Class
5 counsel, is presented for court approval. 4 Newberg on Class Actions (4th ed. 2002), ¶11.41, p. 90. In
6 approving a settlement where the class has not yet been certified, the court must first determine that a
7 class exists. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613, 619-20 (1997) (commonality must be shown
8 at a preliminary approval stage, although not necessarily manageability). Then, the Court should examine
9 the settlement as a whole to determine if it is fair, adequate and reasonable. *Id.*

10 **A. Settlement Amount Calculations – *Kullar* analysis**

11 The settlement amount of \$1,200,000 derives primarily from Plaintiff's claim that she was
12 misclassified as a salaried exempt employee, and thus not paid overtime wages for time spent on call, as
13 well as meal and rest break premiums when a break was provided non-compliant. Markham Decl., ¶10.
14 Defendant's records indicate there are approximately 66,876 pay periods/workweeks worked by all class
15 members as of November 3, 2020. *Id.* Class members were salaried exempt; Plaintiff earned an annual
16 salary of approximately \$51,000. When converted to an hourly rate based on a 40-hour workweek, this is
17 approximately a \$24.52 hourly rate for purposes of the calculations below. Defendant's maximum
18 exposure and discounted potential exposure is as follows:

19 On-Call / Unpaid Wages Claim: \$4,919,398.56. This is based on Plaintiff's assumption that while
20 class members could be on call for 10 to 15 hours per week (without being called to work), they were
21 called back and worked approximately 2 hours of on-call work each week responding to phone calls and
22 messages after hours and on weekends. *Id.* Thus, the total number of unpaid hours is (66,876 workweeks
23 x 2 hours per week). Plaintiff multiplied the number of unpaid hours (133,752) by an average overtime
24 rate of \$36.78, because class members' average shift length was 8 hours, so any additional work would be
25 at an overtime rate, resulting in maximum unpaid overtime of **\$4,919,398.56.**

26 Plaintiff would apply at least a 75% discount to each claim to account for the risks addressed in
27 Section III(c), including that individual arbitration was pending at the time of settlement. Settlements are
28

1 routinely approved as fair and reasonable when the maximum valuation is discounted by similar amounts
2 to account for class certification and merits risks. *See e.g., Galvan v. Superior Tank Co Inc.*, 2016 WL
3 11502115 *7 (C.D. Cal. July 19, 2016) (approving settlement as fair and reasonable where maximum
4 valuation was discounted for the risk of non-certification, i.e. the rest period claim was discounted by
5 85% for a risk of non-certification and by 65% on the merits); *see also Milburn v. PetSmart, Inc.*, 2019 WL
6 5566313 *4 (E.D. Cal. Oct. 29, 2019) (approving settlement as fair and reasonable where Plaintiff applied
7 forty to fifty percent discount each for class certification and risks on the merits); *Thomas v. Cognizant*
8 *Technology Solutions U.S. Corp.*, 2013 WL 12371622 *6 (C.D. Cal. June 24, 2013) (concluding that settlement
9 between 4 and 5.5% of maximum liability was fair and reasonable, which included a forty percent discount
10 applied to account for risks to class certification); *In re MyFord Touch Consumer Litigation*, 2019 WL 1411510
11 *10 (N.D. Cal. Mar. 28, 2019).

12 Here, applying a 75% discount the discounted potential valuation for the unpaid wages claim is
13 **\$1,229,849.64.**

14 Meal Break Claim: \$2,049,749.40. This is based on a 25% assumed rate of non-premium payment,
15 although salaried-exempt Recruiters were typically provided one hour for lunch, so the true violation rate
16 is likely lower. Because Recruiters were exempt, meal periods were not recorded. Defendant's maximum
17 exposure for this claim is $66,876 * \$24.52 * 1.25$ (25% of 5 shifts/week) = **\$2,049,749.40.**

18 Here, applying a 75% discount the discounted potential valuation for this claim is **\$512,437.35.**

19 Rest Break Claim: \$2,049,749.40. This is also based on the 25% assumed rate of non-premium
20 payments, understanding that Recruiters were typically able to take rest periods but they were not
21 recorded, and premium payments were not made since they were classified as exempt. Defendant's
22 maximum exposure for this claim is $66,876 * \$24.52 * 1.25$ (25% of 5 shifts/week) = **\$2,049,749.40.**

23 In applying the 75% discount the discounted potential valuation for this claim is **\$512,437.35.**

24 Wage statement penalties: \$1,681,000, based on the \$50 per pay period for the initial violation
25 (182 pay periods (approximately 25% of 729 Recruiters for the 1-year period) x \$50 = \$9,100) and \$100
26 for the subsequent violations (\$100 x 16,719 pay periods = \$1,671,900). Thus, the total penalties amount
27 to \$1,681,000 (\$9,100 + \$1,671,900). However, this would exceed the \$4,000 cap per class member
28

1 (\$9,236), thus the total maximum penalties are \$728,000 (approximately 182 class members in the 1-year
2 period * \$4,000) *Id.*, ¶10.

3 Plaintiff also discounts this claim by at least 75% to account for substantial risks as this is purely
4 a derivative claim. Thus, Plaintiff calculates the discounted exposure at **\$182,000**.

5 Waiting time penalties: Plaintiff calculated daily wages for approximately 200 former employees
6 at \$196.16 (8 hours at \$24.52), times 30 days, to amount to **\$1,176,960**. Markham Decl., ¶10.

7 Applying the same 75% discount, Plaintiff calculates the discounted potential exposure at
8 **\$294,240**.

9 Unreimbursed Business Expenses: Plaintiff calculates estimated unreimbursed expenses for
10 personal cell phone use during the pandemic months (approximately 6 months after the start of the class
11 period, or November 2020 to May 2021), at \$40/month for 729 Recruiters = **\$174,960**.

12 Applying the 75% discount as discussed above the discounted valuation is **\$43,740**.

13 Thus, Defendant's potential maximum liability for Plaintiff's direct claims is **\$9,193,857.36**, and
14 an additional \$2,857,960 for Plaintiff's wage statement and waiting time penalties claims, possible only if
15 Plaintiff prevailed on her underlying claims, for a total of **\$12,051,817.36**. Thus, the Maximum Settlement
16 Amount of \$1,200,000 represents 13% Defendant's maximum potential liability for Plaintiff's direct
17 claims, and nearly 10% of Defendant's maximum liability for all of Plaintiff's claims. *Id.* Applying the
18 discounted valuations as stated above, and in light of the risks stated in section III(c), the discounted
19 potential exposure for Plaintiff's direct claims is **\$2,298,464.34**, and an additional \$476,240 for Plaintiff's
20 derivative claims, for a total of **\$2,774,704.34**. Thus, the Maximum Settlement Amount represents **over**
21 **50%** of the discounted potential valuation for Plaintiff's direct claims, and **43%** of the discounted
22 potential liability for all of Plaintiff's claims. *Id.* This is an excellent result and well within the range of –
23 and exceeding - settlements commonly approved by California state and district courts. *Id.* See also section
24 IV(B)(2) below for a detailed explanation.

25 **B. The Proposed Settlement is Fair, Adequate, and Reasonable**

26 The court must determine whether the settlement is fair, adequate, and reasonable. See *Dunk v.*
27 *Ford Motor Co.*, 48 Cal.App.4th at 1801, citing *Officers for Justice, supra*, 688 F.2d. at 625. The “fair, reasonable
28

1 and adequate” test stems from Rule 23 of the Federal Rules of Civil Procedure. *Consumer Advocacy Group,*
2 *Inc. v. Kintetsu Enters. of Am.*, 141 Cal.App.4th 46, 61 (2006). In the absence of California law, the court
3 might follow the federal authority. However, California courts have never adopted Rule 23 as “a
4 procedural strait jacket;” to the contrary, trial courts have been urged to be flexible in dealing with class
5 actions. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 240 (2001), *citing Cartt v. Super. Ct.*, 50
6 Cal.App.3d 960, 970, n.16 (1975). Generally, the opinions of counsel should be given considerable weight
7 because of counsel’s familiarity with the litigation, and previous experience with cases such as this one.
8 *Officers for Justice, supra*, 688 F.2d at 625. “We note that... settlement [is] the preferred means of dispute
9 resolution...especially in complex class action litigation.” *7-Eleven Owners, supra*, 85 Cal.App.4th at 1151.

10 At the preliminary approval stage, the Court considers if:

11 (1) the proposed settlement appears to be the product of serious, informed, noncollusive
12 negotiations, (2) has no obvious deficiencies, (3) does not improperly grant preferential
treatment to class representatives or segments of the class, and (4) falls with the range of
possible approval.

13 *In re Tableware Antitrust Litig.*, 484 F.Supp.2d 1078, 1079 (N.D. Cal. 2007) (citing Manual for Complex
14 Litigation, ¶ 30.44 (2d ed.1985)). This Settlement meets all of these criteria.

15 1. The Settlement is the Product of Serious, Informed and Noncollusive Negotiations

16 This Settlement is the result of extensive and hard-fought negotiations. Markham Decl., ¶7.
17 Plaintiff’s counsels’ law firms specialize in wage and hour class action litigation, and Defendant was
18 represented by seasoned attorneys at Epstein Becker Green. *Id.*, ¶6.

19 Class Counsel analyzed hundreds of pages of pre-mediation document production and diligently
20 investigated Class Members’ claims. Markham Decl., ¶¶4-6 section III(A), *supra*. Defendant produced policies,
21 job descriptions and data points for the class and PAGA employee group. *Id.* At the time the parties agreed to
22 attend mediation, they were gearing up to individually arbitrate Plaintiff’s claims on the merits. *Id.*

23 The vigorous litigation of this case gave both parties a clear view of the strengths and weaknesses
24 of their respective positions. *See Adams v. Inter-Con Sec. Sys., Inc.*, 2007 WL 3225466, at *3 (N.D. Cal. Oct.
25 30, 2007) (preliminarily approving the settlement agreement after finding it was reached through extensive
26 negotiations and plaintiff’s counsel’s thorough investigation of the claims); *Kullar v. Footlocker*, 168
27 Cal.App.4th 116, 129-130 (2008) (trial court should have sufficient information about the potential value
28

1 of the case and litigation issues to independently review the reasonableness of the settlement.)

2 Based on their knowledge of this action, Plaintiff determined that the Settlement would constitute
3 the best outcome for the Class Members. Markham Decl., ¶¶8-9. Likewise, Defendant concluded that
4 this action should be settled in the manner and upon the terms and conditions set forth in the Settlement
5 Agreement in order to avoid the expense, inconvenience, and burden of further legal proceedings, and
6 the uncertainties of trial and appeals. *Id.*

7 Before this action settled, the parties participated in mediation before an experienced neutral.
8 Markham Decl., ¶7; section III(B), *supra*. That indicates the settlement was free of collusion. “The
9 assistance of a well-respected mediator with substantial experience in employment litigation...supports
10 approval of the settlement.” *Murillo v. Pac. Gas & Elec. Co.*, 266 F.R.D. 468, 479 (E.D. Cal. 2010); *Dunk*,
11 *supra*, 48 Cal.App.4th at 1802-03.

12 The parties have been cooperative, yet aggressive, and displayed capable and experienced
13 advocacy on both sides. Accordingly, “[t]here is ... every reason to conclude that settlement negotiations
14 were vigorously conducted at arms’ length and without any suggestion of undue influence.” *In re Wash.*
15 *Public Power Supply Sys. Sec. Litig.*, 720 F.Supp. 1379, 1392 (D. Ariz. 1989).

16 2. The Settlement has no “Obvious Deficiencies” and Falls within the Approval Range

17 “[T]he very essence of a settlement is compromise, ‘a yielding of absolutes and an abandoning of
18 highest hopes.’” *Officers for Justice*, 688 F.2d at 624 (quoting *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir.
19 1977)). Thus, when evaluating the amount offered in settlement, the Court should consider “the complete
20 package taken as a whole,” and the amount should “not be judged against a hypothetical or speculative
21 measure of what might have been achieved by the negotiators.” *Id.* at 625-28.

22 (i) *The Class Recovery Compares Favorably with Similar Wage and Hour Class Action Settlements*

23 Courts routinely approve class action settlements where the settlement amount is a lower
24 percentage of the claimed amount of damages. *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 WL 3776765, at
25 *4 (N.D. Cal. June 17, 2015) (approving settlement representing 10% of potential value); *see also Thomas*,
26 2013 WL 12371622, at *6 (granting final approval in wage and hour action for settlement between 4.4%
27 and 5% of maximum liability); *Villegas v. J.P Morgan Chase & Co.*, 2012 WL 5878390, at *6 (N.D. Cal.

1 Nov. 21, 2012); *In re MyFord Touch Consumer Litig.*, 2019 WL 1411510, at *10 (6% of valuation); *Bellinghausen*
2 *v. Tractor Supply Co.*, 303 F.R.D. 611, 623-24 (N.D. Cal. 2014) (settlement between 9% and 27% of total
3 potential liability fair, adequate and reasonable given the uncertainty of continued litigation); *In re Mego*
4 *Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (16.67% of potential recovery adequate in light of
5 plaintiff's risks). Simply put, "the fact that a proposed settlement may only amount to a fraction of the
6 potential recovery does not mean that [it] should be disapproved." *7-Eleven Owners, supra*, 85 Cal.App.4th
7 at 1150, citing *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998).

8 Here, the Settlement represents **over 50%** of Defendant's discounted potential liability for
9 Plaintiff's direct unpaid overtime wages, meal and rest break and unreimbursed business expense claims,
10 and 43% of Defendant's discounted potential liability for all Plaintiff's claims, without any risks, costs,
11 and uncertainty of prolonged litigation. Markham Decl., ¶10. Without accounting for the length of each
12 class member's employment with Defendant, a class member will recover on average **over \$950** as a result
13 of this settlement, or \$10.39 per workweek. *Id.*, ¶11. Based on the average hourly rate of \$24.52, this is
14 equivalent to **nearly 40 hours of additional wages (a full workweek)** based on Plaintiff's strongest
15 claim of unpaid wages due to misclassification as salaried exempt. *Id.* This is an excellent result when
16 considering that Plaintiff was set to individually arbitrate her claims, Defendant used arbitration
17 agreements with class action waivers, and that even if Plaintiff prevailed at arbitration, she was likely to
18 face difficulties to establish liability and prevail at trial, and is well within (and exceeds) the range of
19 approved settlement payments. *See e.g., Villegas v. J.P Morgan Chase & Co.*, 2012 WL 5878390, at *2, 6
20 (N.D. Cal. Nov. 21, 2012) (approving settlement with approximately \$255 settlement payment per class
21 member). This settlement provides cash benefits to class members without them having to arbitrate each
22 of their claims individually, which would not have been economically feasible and would also add
23 substantial risk of inconsistent adjudications.

24 (ii) *The Formula of Allocation based on Workweeks is Fair and should be Approved*

25 Class Members will receive a portion of the Maximum Settlement Amount based on the number
26 of workweeks they worked for Defendant during the class period. This formula is realistic because Class
27 Members' individual recovery is proportionate to the amount of time the Class Members were employed
28

1 with Defendant. Markham Decl., ¶12. As discussed in section III(C), *supra*, when considering the
2 substantial risks in further litigation and that a \$1,200,000 class award would not otherwise have been
3 attainable in light of the arbitration agreements, the substantial recovery for class members is reasonable.
4 *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 458; *Sandoval*, 2010 WL 2486346, at *7.

5 3. The Settlement does not Improperly Grant Preferential Treatment to the Class
6 Representative or Segments of the Class

7 Class Representative Michelle Townsend will receive \$12,000 each for her time and efforts in
8 representing the Class. Settlement Agreement, ¶13. “Incentive awards [for class representatives] are fairly
9 typical in class actions.” *Cellphone Termination Fee Cases*, 186 Cal.App.4th 1380, 1393 (2010), citing *Rodriguez*
10 *v. West Publ’g*, 563 F.3d 948, 958 (9th Cir. 2009). California courts agree that class representatives are
11 entitled to such an award. *Cellphone Termination*, *supra*, 186 Cal.App.4th at 1394. “Since without a named
12 plaintiff there can be no class action, such compensation as may be necessary to induce him to participate
13 in the suit could be thought the equivalent of the lawyers' nonlegal but essential case-specific expenses,
14 such as long-distance phone calls, which are reimbursable.” *Clark v. Am. Residential Serns.*, 175 Cal.App.4th
15 785, 804 (2009), citing *Matter of Cont’l Ill. Sec. Litig.*, 962 F.2d 566, 571 (7th Cir. 1992).

16 Here, the service award to Plaintiff is based on the extent of Plaintiff’s participation in this action and
17 not conditioned upon Plaintiff’s support of the settlement. *Cf. Radcliffe v. Experian Info. Solutions, Inc.*, 715 F.3d
18 1157, 1165 (2013). Throughout this action, Plaintiff assisted in investigation, participated in multiple call
19 conferences with counsel, provided and reviewed documents and pleadings, and was on standby during
20 mediation. *See* Townsend Decl., ¶¶7-9.

21 Courts award incentive awards in this range. *Ross v. U.S. Bank Nat’l Ass’n*, 2010 WL 3833922, at
22 *3 (N.D. Cal. Sept. 29, 2010) (approving an award of \$20,000 to each of four named plaintiffs based on
23 their contributions to litigation and the risk that being a class representative would harm their reputation);
24 *see also Ridgeway v. Wal-Mart Stores Inc.*, 2017 WL 4071293, at *19 (N.D. Cal., Sept. 14, 2017) (\$15,000
25 incentive awards for each of the named plaintiffs awarded); *Low v. Trump University, LLC*, 246 F.Supp.3d
26 1295, 1316 (S.D. Cal. 2017) (\$15,000 incentive award approved where plaintiffs “devoted significant
27 amounts of time and energy” to the action); *Glass v. UBS Fin. Serns.*, 2007 WL 221862 at *17 (\$25,000 for
28 each class representative in wage and hour action). Thus, the proposed service award is reasonable.

1
2 4. The Stage of the Proceedings is Sufficiently Advanced to Permit Preliminary Approval of
3 the Settlement

4 “A court is more likely to approve a settlement if most of the discovery is completed because it
5 suggests that the parties arrived at a compromise based on a full understanding of the legal and factual
6 issues surrounding the case.” *Nat’l Rural Telecomms. Corp.*, *supra*, 221 F.R.D. at 527. However, the
7 settlement can be approved even in the absence of any discovery, if other factors are satisfied. *In re TD*
8 *Ameritrade Account Holder Litig.*, 2011 WL 4079226, at *6 (N.D. Cal. Sept. 13, 2011). The bottom line is
9 that “the parties have sufficient information to make an informed decision about the settlement.” *Durham*
10 *v. Cont’l Cent. Credit, Inc.*, 2011 WL 90253, at *3 (S.D. Cal. Jan. 10, 2011), citing *Linney v. Cellular Alaska*
11 *P’ship*, 151 F.3d at 1239.

12 Here, before settling this action, the parties had a thorough understanding of their respective
13 claims and defenses, and the parties had engaged in a pre-mediation exchange of data discovery, including
14 Plaintiff reviewing several hundred pages of policies, handbooks and job descriptions relevant to her
15 misclassification claim. *See* section III(A), *supra*; Markham Decl., ¶6. Before mediation, Class Counsel had
16 investigated class members’ claims, examined documents and data, and prepared a damage model. *Id.* At
17 the time the parties engaged in mediation, they knew and understood their respective positions. *Id.*, ¶9.
18 As a result of the work performed in this case, the real value of the class claims was well known, and
19 Class Counsel determined that the Settlement with Defendant is fair, reasonable, adequate, and in the
20 best interest of the Class. *Young v. Polo Retail, LLC*, 2007 WL 951821, at *4 (N.D. Cal. Mar. 28, 2007).

21 **C. The Proposed Class Meets the Qualifications for Certification for Settlement**
22 **Purposes.⁸**

23 To prevail on a motion for class certification, plaintiffs need to show that “the question is one of
24 a common or general interest, of many persons, or...the parties are numerous, and it is impracticable to
25 bring them all before the court.” Cal. Code of Civ. Proc. § 382. The party seeking certification needs to
26 prove that the class is both ascertainable and that there is a well-defined community of interest among
27 class members. *See Sav-On Drug Stores, Inc. v. Super. Ct.*, 34 Cal.4th 319, 326 (2004). In *Sav-On Drug Store*,

28 ⁸ Defendant agrees to certify a class for settlement purposes only, and their agreement to do so shall not be construed as an
admission of the propriety of class certification outside of the settlement context. Settlement Agreement, at ¶9.

1 the court adopted a test for “community of interest,” which consists of the following prongs: (1) there
2 are predominant common questions of law or fact; (2) class representatives have claims typical to those
3 of the class; and (3) class representatives can adequately represent the interests of the class. *Id.*

4 1. An Ascertainable and Numerous Class Exists that can be Determined from Payroll
Records

5 A class is generally considered ascertainable when: (i) under the class definition the members are
6 clearly identifiable, and (ii) the members can be located and notified through a reasonable expenditure of
7 time and money. *See Reyes v. San Diego County Board of Supervisors*, 196 Cal.App.3d 1263, 1274-75 (1987);
8 *Sevidal v. Target Corp.*, 189 Cal.App.4th 905, 919-20 (2010). Typically, class members are ascertainable when
9 they can be easily identified by reference to official or business records. *Archer v. United Rentals, Inc.*, 195
10 Cal.App.4th 807, 828 (2011); *Sevidal*, 189 Cal.App.4th at 919.

11 Here, the Class is composed of approximately 729 current and former Recruiter employees of
12 Defendant in California, who can be identified and located from Defendant’s personnel and payroll
13 records. In California, as few as ten (10) or twenty-eight (28) members satisfied numerosity. *Bowles v. Super.*
14 *Ct.*, 44 Cal.2d 574 (1955); *Hebbard v. Colgrove*, 28 Cal.App.3d 1017, 1030 (1972). Defendant will provide
15 the Settlement Administrator with a database with all Class Members’ names, contact information, and
16 the number of relevant workweeks within 14 calendar days of preliminary approval, and further steps will
17 be taken to locate the Class Members for whom the addresses are not current. Settlement Agreement,
18 ¶¶28-30; *see also* section VI, *infra*. Numerosity is satisfied, and the class is ascertainable.

19 2. Common Issues of Law and Fact Predominate over any Individual Issues

20 “As a general rule if the defendant’s liability can be determined by facts common to all members of
21 the class, a class will be certified even if the members must individually prove their damages.” *Brinker*,
22 *supra*, 53 Cal.4th at 1022. The court only determines whether or not “the theory of recovery advanced by
23 the proponents of certification is, as an analytical matter, likely to prove amenable to class treatment.”
24 *Sav-On Drug Stores, supra*, 34 Cal.4th at 327.

25 Here, there are common questions of law and fact that apply to Class Members across the board,
26 because all Class Members were subject to Defendant’s classification as salaried exempt employees which
27 Plaintiff argues was unlawful, method/rate of pay, meal and rest break and expense reimbursement
28

1 policies and practices. Those common questions predominate over any individual inquiries, in that
2 “determination of [their] truth or falsity will resolve an issue that is central to the validity of each one of
3 the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2551 (2011). Those questions
4 include: (i) Whether or not Class Members were misclassified as salaried-exempt employees; (ii) Whether
5 or not Class Members were provided with off-duty, uninterrupted meal and rest breaks; (iii) whether Class
6 Members were not paid overtime wages for hours worked over 40 in a week and 8 in a day; (iv) Whether
7 or not Class Members used their personal cell phones for work purposes during the COVID-19 pandemic
8 without reimbursement; (v) Whether or not Class Members were provided with all wages due upon
9 separation under Labor Code section 203; (vi) Whether or not Class Members were provided with
10 accurate wage statements as required by Labor Code section 226; (vii) Whether or not Defendant engaged
11 in unfair business practices in violation of the UCL. *See also* Townsend Decl., ¶5, attesting that her claims
12 are common to the claims of the absent Class Members.

13 Because several issues are common to all Class Members, a class action is superior to numerous
14 individual actions, and the maintenance of this action as a class action will save judicial resources, and
15 help avoid inconsistent judgments. *See Savon Drugs, supra*, 34 Cal.4th at 326. Class Members’ interests are
16 relatively small, so they are unlikely to prosecute separate actions. Plaintiff’s claims arise from her
17 employment with Defendant in California.

18 3. Plaintiff’s Claims are Typical of the Claims of Class Members

19 Typicality does not mean that the interests of representative plaintiffs must be identical to those of
20 the absent class members. *Classen v. Weller*, 145 Cal.App.3d 27, 46 (1983); *Staton v. Boeing Co.*, 327 F.3d
21 938, 957 (9th Cir. 2003). They only need to be “reasonably co-extensive with those of absent class
22 members.” *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014). Further, the representative plaintiff must be
23 a member of the class she seeks to represent. *La Sala v. American Sav. & Loan Assn.*, 5 Cal.3d 864, 875
24 (1971).

25 Here, Plaintiff’s claims arise from the same facts and legal theories as the Class Members’ claims.
26 Plaintiff is a member of the class of salaried-exempt Recruiter employees in California, and subject to the
27 same policies and practices of Defendant with respect to classification, pay, meal and rest breaks, and
28

1 expense reimbursement. *See also* Townsend Decl., ¶5, attesting that her claims are typical of the claims of
2 the absent Class Members. Thus, typicality is met.

3 4. Plaintiff and Class Counsel will Adequately Protect the Interests of the Class

4 The adequacy of representation involves two conditions: the named plaintiff must be represented
5 by counsel qualified to prosecute class actions of this type; and the named plaintiff's interests cannot be
6 antagonistic to those of the class. *See McGhee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976).

7 Here, Plaintiff retained counsel with extensive experience in prosecuting wage and hour class and
8 representative actions. Markham Decl., ¶¶26-33; Singer Decl., ¶¶3-14; Haines Decl., ¶3. In addition,
9 Plaintiff has the same interests as the rest of the Settlement Class, because she has allegedly been injured
10 in substantially the same manner. Townsend Decl., ¶5. Thus, the Court should certify Plaintiff's class
11 claims for the purposes of this Settlement.

12 **VI. THE PROPOSED NOTICE TO THE CLASS SHOULD BE APPROVED**

13 **A. Proposed Notice Plan**

14 Within 14 calendar days following receipt of Class Data from Defendant, the Settlement
15 Administrator will send Class Notice to Class Members via first class mail. Settlement Agreement, ¶29.
16 Before mailing the Notice, the Settlement Administrator will run a check of the Class Members' addresses
17 against those contained in the USPS's National Change of Address database, and take any other
18 appropriate steps to validate the correctness of the addresses provided by the Defendant. *Id.* If the Notice
19 is returned with the forwarding address, the Settlement Administrator will use the forwarding addresses
20 to locate the missing Class Members, and re-mail the Notice to the correct address. *Id.*, ¶30. If a Notice
21 is returned as non-deliverable with no forwarding address, the Settlement Administrator shall conduct an
22 advanced skip trace to locate the most current address of the person to whom the Notice was addressed,
23 and shall resend the Notice to any updated address within five (5) calendar days. *Id.* Any responses from
24 the Class Member (*i.e.*, a dispute regarding calculation of workweeks, a Request for Exclusion, or an
25 objection) are due to the Administrator by the Notice Response Deadline, unless extended 15 calendar
26 days due to remailing. *Id.*, ¶¶2(KK), 30.

27 The Class Notice will summarize the terms of the Settlement Agreement, advise the Class
28

1 Members of their estimated individual settlement payment(s), and inform Class Members of their right
2 to object to or exclude themselves from the Settlement within 60 days after the Notice mailing. **Ex. 1.**
3 Because this is a California-only class, and the mailing will occur only in California, 60 days to opt out
4 from or object to the Settlement is sufficient. Markham Decl., ¶13. Further, because Class Members
5 worked as employees in Maxim's California locations, communicating with supervisors, colleagues,
6 teachers and administrators in English, English-only notice is sufficient. *Id.*

7 **B. The Proposed Notice to the Class is Fair and Adequate**

8 The parties agreed on the language of the proposed class notice. *Id.* If the Court concludes after
9 a preliminary evaluation of the settlement that the relief offered and notice provided are fair and adequate,
10 the Court should order that the class notice be provided. Manual for Complex Litig., Second, § 21.632 at
11 321. The threshold requirement regarding the sufficiency of class notice is whether the means proposed
12 for distributing the notice are reasonably calculated to apprise the class of the pendency of the action, the
13 proposed settlement, and the right to opt out of or object to the settlement. *Eisen v. Carlisle & Jacquelin*,
14 417 U.S. 156, 173 (1974); *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950); *see also* Cal.
15 Rules of Court, Rule 3.766.

16 Here, the Notice is more than sufficient, because it gives Class Members, in an easy to understand
17 and clear language: (1) basic information about this action and the Settlement; (2) an estimate of the weeks
18 Class Members worked during the Class Period, and an explanation how Class Members can dispute this
19 calculation; (3) an explanation how the payout from the Settlement will be calculated for each Class
20 Member, and an estimate of a Class Member's Settlement Payment(s); (4) an explanation how Class
21 Members can exercise their right to opt-out from, or object to, the Settlement; (5) an explanation that
22 any claims against the Defendant that could have been litigated in this Action will be released if the Class
23 Member does not opt out; (6) name of Class Counsel and information regarding attorneys' fees and costs;
24 (7) the date of the Fairness Hearing and an explanation of eligibility to appear at the Fairness Hearing;
25 and (8) the telephone and e-mail number, as well as website address, where Class Members can obtain
26 additional information. *See* Ex. 1 (proposed Class Notice).

27 Thus, the Notice plan proposed by the Settlement is fair and adequate, and complies with the
28

1 California Rules of Court, Rules 3.766 and 3.769(f).

2 **VII. CONCLUSION**

3 For the foregoing reasons, Plaintiff's unopposed motion should, respectfully, be granted.

4 Dated: April 16, 2025

Respectfully submitted,

5 THE MARKHAM LAW FIRM

6
7 /s/ Lisa Brevard

David Markham

8 Lisa Brevard

9 Attorneys for Plaintiff Townsend