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similarly situated and Aggrieved Employees

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF BUTTE**

ROCHELL MINOR, for herself and all others
similarly situated and Aggrieved Employees,

Plaintiff,

vs.

NPH MEDICAL SERVICES, INC.;
VENSURE HR, INC., and DOES 1 to 100,

Defendants

Case No. 22CV00643

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF SETTLEMENT AND
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
THEODORE TANG; PROPOSED ORDER**

Date: June 19, 2024

Time: 9:00 a.m.

Dept: 1

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 19, 2024 at 9:00 a.m. or as soon thereafter as the matter may be heard in Department 1 of the Butte County Superior Court located at 1775 Concord Avenue, Chico, CA 95928, Plaintiff Rochell Minor will and hereby does move the court pursuant to Rule of Court 3.769(c) and seek an order for the following:

(1) preliminarily approving the Class Action and PAGA Settlement;

1 (2) provisionally certifying the following class for settlement purposes only: all individuals
2 who were employed by Defendant NPH in California as non-exempt hourly employees at any time
3 between March 30, 2018, and December 22, 2023;

4 (3) appointing Rochell Minor as the Class Representative and Frontier Law Center as Class
5 Counsel;

6 (4) finding on a preliminary basis that the settlement appears to be within the range of
7 reasonableness;

8 (5) approving the Notice of Proposed Class Action Settlement (“Notice Packet”) for the
9 Class Members and its concomitant distribution;

10 (6) appointing CPT Group as the Administrator; and

11 (7) setting the matter for a Final Approval hearing.

12 The Motion will be based on this notice, the Memorandum of Points and Authorities, the
13 declaration of Theodore Tang which contains the Settlement Agreement and the proposed Notice
14 Packet, pleadings on file, and arguments at the hearing.

15
16 Date: May 16, 2024

FRONTIER LAW CENTER

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19 Theodore Tang
20 Attorney for Plaintiff
21 Rochell Minor
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This is a wage and hour class and PAGA action. Plaintiff Rochell Minor (“Plaintiff”)
4 alleges that he worked as a non-exempt employee for Defendants NPH Medical Services (“NPH”)
5 and Vensure HR., Inc.¹ (“VHI” or collectively with NPH as “Defendants”) as a travelling Certified
6 Nursing Assistant in various medical facilities in NPH’s service area. Plaintiff alleges that
7 Defendants violated the Labor Code by the following: 1) failing to provide off-duty meal and rest
8 breaks; 2) failing to pay overtime; 3) failing to pay minimum wages for all hours worked; 4)
9 failing to provide accurate and complete wage statements; 5) failing to pay all wages due timely at
10 termination; and 6) failing to pay temporary service employees weekly.

11 Prior to the first mediation, the Parties engaged in the exchange of informal data and a
12 study of the legal principles applicable to the claims asserted. NPH produced Plaintiff’s punch
13 records, pay data, and personnel file; a sampling of payroll data and time records for the class, and
14 NPH’s Employee Handbook effective June 1, 2023.

15 The case did not settle during the mediation, so Plaintiff propounded formal discovery on
16 Defendants. Following that discovery, negotiations resumed, and the Parties reached a settlement
17 with the assistance of mediator Tripper Ortman.

18 The terms provide Defendants shall pay a gross amount of \$1,000,000. This is non-
19 reversionary, so the class members do not need to submit claim forms.

20 **II. BACKGROUND OF THE SETTLEMENT.**

21 **A. Procedural History and Summary of the Allegations**

22 On January 7, 2022, Plaintiff uploaded a PAGA letter to the LWDA website and sent the
23 letter by certified mail to NPH, alleging that NPH violated the Labor Code with regard to
24 minimum wages, overtime pay, meal breaks, rest breaks, weekly pay for Temporary Services
25 Employees, wage statement violations, and waiting time penalties. On March 30, 2022, Plaintiff
26 filed his complaint against NPH for the same violations indicated in the PAGA letter, as well as
27

28 _____
¹ VHI has denied, and continues to deny, that it was a joint employer of Plaintiff.

1 causes of action for violation of the Unfair Competition Law and PAGA. Thereafter, Plaintiff
2 filed a supplemental PAGA letter, adding VHI as an employer for the same violations. Plaintiff
3 filed an amendment to the complaint on September 7, 2022 substituting VHI in as DOE 1.

4 **B. The Parties Agree to Private Mediate**

5 After the initial pleadings were filed, the Parties began a dialogue about settlement and
6 agreed to go to mediation. The Parties selected mediator Tripper Ortman and agreed to delay
7 NPH's time to respond to the complaint to after mediation. In preparation for the mediation, NPH
8 informally provided Plaintiff with data regarding the total class members, total workweeks,
9 Aggrieved Employees, PAGA workweeks, and average rate of pay, as well as a sampling of class
10 pay and time records, copies of relevant policies in force during the Class Period, and information
11 regarding the number of employees with arbitration agreements. After the mediation session, but
12 prior to settlement, Plaintiff propounded formal discovery on VHI and received documents
13 relating to, *inter alia*, the relationship between NPH and VHI. The Parties then reached a
14 settlement.

15 **C. The Terms of the Settlement.**

16 **1. Settlement and Allocation of the Claims**

17 The Class consists of the following: "all persons who worked for NPH in California as an
18 hourly paid, non-exempt employee during the Class Period [March 30, 2018 to December 22,
19 2023]." Based upon Defendants' records, the number of Class Members is approximately 950.

20 The payments to each Class Member will depend on the number of workweeks worked by
21 during the Class Period. Additionally, \$40,000 is allocated to settle PAGA claims. In addition,
22 \$333,333 (1/3 of the gross settlement) is attributed to attorney fees, \$40,000 is attributed to costs,
23 \$15,000 for settlement administration, and \$10,000 is the requested class representative
24 enhancement.

25 This means that of the \$1,000,000 gross settlement, after the deductions above, the net
26 settlement amount is \$561,666.67.

1 **III. OVERVIEW OF THE APPROVAL PROCESS**

2 **A. Two-Step Approval Process**

3 A settlement of a class action lawsuit must be reviewed and approved by the Court. This is
4 done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after
5 notice has been distributed to the class members for their comment or objections. The Manual for
6 Complex Litigation (Third) § 30.41 states:

7
8 If the preliminary evaluation of the proposed settlement does not disclose grounds
9 to doubt its fairness or other obvious deficiencies, such as unduly preferential
10 treatment of class representatives or of segments of the class, or excessive
11 compensation for attorneys, and appears to fall within the range of possible
12 approval, the court should direct that notice ... be given to the class members of a
13 formal fairness hearing, at which arguments and evidence may be presented in
14 support of and in opposition to the settlement.

15 Thus, the preliminary approval by the trial court is simply a conditional finding that the
16 settlement appears to be within the range of acceptable settlements. As Professor Newberg
17 commented, “The strength of the findings made by a judge at a preliminary hearing or conference
18 concerning a tentative settlement proposal may vary. The court may find that the settlement
19 proposal contains some merit, is within the range of reasonableness required for a settlement offer,
20 or is presumptively valid subject only to any objections that may be raised at a final hearing.” 4
21 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002).

22 **B. Conditional Certification is Appropriate**

23 The parties also may, at the preliminary approval stage, request that the court provisionally
24 certify class—conditional upon final approval of the settlement. “Pre-certification settlements are
25 routinely approved if found to be fair and reasonable.” (*Wershba v. Apple Computer, Inc.* (2001)
26 91 Cal. App. 4th 224, 240; accord *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1803
27 (although the settlement was reached before any adversary certification, the court was satisfied
28 that it was fair, adequate and reasonable).

1 **IV. THE COURT SHOULD GRANT PRELIMINARY APPROVAL**

2 **A. The Settlement is Fair, Reasonable, and Adequate, and Not the Result of**
3 **Fraud or Collusion**

4 Courts presume the absence of fraud or collusion in the negotiation of settlement unless
5 evidence to the contrary is offered. (*Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447; *Mars*
6 *Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.* (7th Cir. 1987) 834 F.2d 677, 682.
7 Courts do not substitute their judgment for that of the proponents, particularly where a settlement
8 was reached with the participation of experienced counsel familiar with the litigation. (*Nat'l Rural*
9 *Telecomms. Coop. v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 528).

10 While the recommendations of counsel proposing the settlement are not conclusive, the
11 Court can take them into account, particularly where they were involved in discovery and
12 negotiations for some period of time, appear to be competent, have experience with this type of
13 litigation, and have exchanged evidence from the opposing party. *See Newberg on Class Actions*,
14 *supra*, at § 11.47; *Nat'l Rural Telecomms. Coop., supra*, 221 F.R.D. at p. 528 (quoting *In re Paine*
15 *Webber Ltd. P'ships Litig.* (S.D.N.Y. 1997) 171 F.R.D. 104, 125 ("So long as the integrity of the
16 arm's length negotiation process is preserved [] a strong initial presumption of fairness attaches to
17 the proposed settlement...[citations] and great weight is accorded to the recommendations of
18 counsel, who are most closely acquainted with the facts of the underlying litigation"))).

19 Here, both Plaintiffs' counsel and Defendants' counsel have a great deal of experience in
20 wage and hour class action litigation, as demonstrated in the attached declaration. Moreover,
21 Plaintiff's counsel investigated the allegations and consulted with an expert to formulate a
22 damages model. This information was incorporated into the arms-length negotiations.

23 The settlement for each Class Member is fair, reasonable, and adequate, given the inherent
24 risks of litigation, including the substantial risks relative to class certification, and the costs of
25 pursuing such litigation, discussed further below. Of course, class members may still opt out of the
26 settlement, and the class members will be apprised of their right to attend the fairness hearing and
27 submit objections to the proposed settlement.

1 **B. The Proposed Settlement Meets the *Kullar* Factors.**

2 As explained in *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 130, 133,
3 a class action settlement should be approved when the plaintiff has conducted discovery and the
4 settlement is reasonable in light of the strengths and weaknesses of the claims.

5 **1. Strengths and Weaknesses of the Claims.**

6 Although Plaintiff's counsel believes the claims are meritorious, they are experienced and
7 realistic, and understand the possibility of non-certification on one or more of the theories alleged.
8 Plaintiffs' counsel further recognizes that the outcome of a trial, any appeal that could follow, are
9 inherently uncertain. These risks are compounded by the Supreme Court's holding in *Duran v.*
10 *U.S. Bank Nat'l Ass'n* (2014) 59 Cal.4th 1 (use of statistical evidence regarding certification).

11 **a. Meal and Rest Break Claims**

12 Employers must allow their employees to take 30-minute meal periods after every five
13 hours of work. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1037-1038.
14 Such meal periods must be unfettered — *i.e.*, when taking such meal periods, the employee must
15 be relieved of all duty during the entire 30-minute meal period. IWC Wage Order No. 5 § 11(A)
16 (emphasis added). Indeed, this has been well settled since being affirmed by the California
17 Supreme Court in *Brinker*, supra, 53 Cal. 4th at 1040-41 n. 19 ("The employer that refuses to
18 relinquish control over employees during an owed meal period violates the duty to provide the
19 meal period and owes compensation"). Similarly, employees' rest break must be taken off-duty
20 and unfettered by the employer; Labor Code section 226.7 provides for an additional hour of pay
21 at the regular rate for each meal period missed and/or day in which a rest break was denied.

22 Plaintiff alleges that NPH (or its clients) required class members to frequently either 1)
23 take late meal and rest breaks, 2) forgo such breaks entirely, 3) have their break interrupted to be
24 called back on duty without being given a replacement break, or 4) requiring class members to
25 carry radios or other communication devices during their breaks and remain vigilant for calls,
26 without On Duty Meal Period Agreements ("ODMPAs"). Plaintiff further alleges that the Class
27 Members were required to remain on premises during rest breaks. In all the above situations,
28 Plaintiff alleges that NPH required class members to record that full and compliant breaks were

1 nevertheless taken. Plaintiff's expert found that, according to time records, 10.2% of first meal
2 breaks and 92.1% of second meal breaks (for shifts over 10 hours) were either missed, late, or
3 short (hereafter collectively referred to as "Deficient"). Because Plaintiff alleges that Rest Breaks
4 were required to be taken on site, Plaintiff assumes a 100% violation rate. Based on these figures,
5 Plaintiff estimates the maximum theoretical liability to be \$730,772. For Meal Break Claims and
6 \$2,667,830 for Rest Break Claims.

7 Defendants deny any liability or wrongdoing of any kind. As a preliminary matter, VHI
8 denies that it employed Plaintiff or any class member for wage hour purposes. As such, VHI
9 contends that it is not liable for any of the alleged wage hour violations. Moreover, it is the client
10 medical centers, and not Defendants, who ultimately decide how many people will be working on
11 each shift at each location, as well as when Class Members take their breaks and how.
12 Unsurprisingly then, Defendants point out there is no written policy indicating that Class Members
13 cannot leave the site or turn off their radios during Meal Periods or other breaks. Second, NPH
14 staffs class members at a variety of different locations, on a variety of different shifts, for a variety
15 of different roles, all of which vary on staffing levels, making class certification difficult. Third,
16 the overwhelming majority of meal period violations identified by Plaintiff's expert were for
17 missed second meal breaks for shifts lasting more than 10 hours. Defendants contend these
18 individuals had valid meal period waivers for these meal breaks. If this is true, then of the
19 approximately 60,000 defective meal periods identified for the whole class period (using the
20 extrapolated data), over 56,000 would in fact not be in violation.

21 The facts above comprised risks for certification, since there could be a possibility that
22 only individual questions would predominate, and no method of proof would show a uniform lack
23 of breaks at all locations. And, even if certified, the majority of the dollar value of the claim would
24 be dismissed if the Second Meal Waivers were in fact signed by the class and upheld as valid.
25 Plaintiff therefore believes the Risk-Adjusted Value (RAV) to be 50%, or \$365,386 for Meal
26 Periods and 30% (to track the recorded Meal Period violations) for Rest Breaks, or \$800,348.97.

27 **b. Off-the-Clock Work**

28 Plaintiff alleges that NPH instructed class members to fill out paper time cards to record

1 their time, and in so doing to round off that time. In addition, Plaintiff alleges that time spent on
2 on-compliant meal breaks should have been paid time. Assuming an average of 5 minutes of off
3 the clock work per shift, this would yield \$327,443 in maximum theoretical liability.

4 Yet, there was no written policy indicating that class members had to perform off the clock
5 work. To the extent that a manager verbally required a class member to remain late until a relief
6 arrived, NPH contend class members were instructed to report this extra time so they could get
7 paid for it. NPH's written policies also instructed the class members to record their time
8 accurately. Ultimately, individual issues would be abundant, as to each individual class member's
9 reasons for not reporting time actually worked, and the same issues that Plaintiff faces in proving
10 non-complaint meal periods apply equally to claims that those breaks constituted unpaid time.
11 Ultimately, due to these risks, Plaintiff evaluates the RAV of this claim at 50% or \$163,721.34

12 **c. Wage Statement Violations**

13 The wage statement violations are derivative of the unpaid time and meal and rest break
14 violations. Because of the theoretical number of violations involved, the maximum theoretical
15 value of this claim is \$1,418,339.

16 However, because this claim is purely derivative, defeating liability on the underlying
17 claim also defeats liability on the Wage Statement claim. Even if the underlying claim prevails,
18 Defendants could counter that any alleged omission of information from the wage statements was
19 not knowing and intentional, which could negate wage statement penalties. (*Harris v. Vector*
20 *Mktg. Corp.* (N.D. Cal. 2009) 656 F. Supp. 2d 1128, 1145-46 (summary adjudication warranted on
21 Section 226(e) claim where dispute existed as to whether plaintiff was independent contractor, and
22 record lacked evidence that conduct was knowing or willful). As such, Plaintiff estimates that the
23 RAV on this claim is only 25% of its maximum value, or \$354,584.83.

24 **d. Waiting Time Penalties**

25 Similarly, the waiting time penalties are derivative from the off the clock and missed break
26 allegations, which are theoretically recoverable consistent with *Naranjo v. Spectrum Sec. Servs.,*
27 *Inc.* (2022) 13 Cal.5th 93. Based on the data regarding the number of Class Members who are no
28 longer employed by Defendant, and those employee's rates of pay at the time of termination,

1 Plaintiff estimates the maximum liability to be \$2,919,468.

2 On the other hand, Defendants can defeat these claims if they defeat the underlying
3 predicate claims. In addition, much like the wage statement claims, Defendants will likely argue
4 that the failure to pay was not willful, and that it disputes that any wages were due. Given this
5 double risk of losing on liability, Plaintiff evaluates the RAV of this claim to be 75% or
6 \$729,867.04.

7 **e. PAGA Penalties.**

8 The PAGA claims in this case are based on all of the claims above, plus a claim under
9 Labor Code section 201.3 that the Aggrieved Employees were Temporary Services Employees
10 (“TSEs”) as defined under that section. Despite meeting the definition of a TSE, Defendants paid
11 the Aggrieved Employees bi-weekly.² Because violations for Labor Code section 201.3 weekly
12 pay only occur every other week in the PAGA period (i.e. on the weeks that are not pay weeks),
13 there is only one violation every other week for each Aggrieved Employee, for a maximum PAGA
14 penalty of \$708,923. The Maximum PAGA Penalties for the other violations are as follows:

- 15 • **Meal Periods:** \$253,750
- 16 • **Rest Breaks:** \$1,799,422
- 17 • **Regular Rate Violations:** \$15,121
- 18 • **Off-the-Clock Work:** \$1,800,408
- 19 • **Waiting Time:** \$26,900

20 The total maximum theoretical PAGA Penalty amount is therefore \$6,188,017.

21 The trial court has the discretion to reduce PAGA penalties if, based on the facts and
22 circumstances of the case, to do otherwise would result in an award that is unjust, arbitrary and
23 oppressive, or confiscatory. (Lab. Code, § 2699(e)(2); see also *Delgado v. New Albertson's, Inc.*,
24 2010 WL 11507599 at *7 (C.D. Cal. March 15, 2010) (explaining that court's discretion to reduce
25 penalties under PAGA protects defendants from unconstitutionally excessive penalties).

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27
28 ² The Labor Code Section 201.3 claim was not included as a Class Claim because it does not
provide a private right of action on its own. Civil penalties for violating this section are, however,
recoverable under PAGA.

1 PAGA penalties could potentially be reduced based on the above. The following are some
2 examples of PAGA awards which were awarded after an actual trial - in the matter of *Magadia v.*
3 *Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F.Supp.3d 1058, while the trial court imposed substantial
4 PAGA penalties, it still represented reductions of 67% and 80% of the potential PAGA penalties.

5 Likewise, in the matter of *Parr v. Golden State Overnight*, Judge Carville of the Alameda
6 Superior Court assessed PAGA penalties upon the defendant of approximately 7% of the total
7 maximum penalties—again, this was only after plaintiff had prevailed at trial. (*Parr v. Golden*
8 *State Overnight Delivery Service, Inc.*, No. RG12-618103, 2014 WL 1199453 (July 10, 2014).)

9 Here, each Defendants vehemently deny they willfully violated any of the Labor Code
10 provisions, but particularly the requirements under Labor Code section 201.3. Defendant NPH
11 contends that it hired VHI to handle its payroll responsibilities and requirements, and that VHI had
12 a duty to be aware of and account for the legal requirement to pay the Aggrieved Employees
13 weekly. VHI counters that it was not in fact the Aggrieved Employees' employer at all, and that
14 even if they were a joint employer, the requirements of Labor Code Section 201.3 have many
15 exceptions, and that it was NPH's responsibility to determine which employees needed to be paid
16 weekly and which needed to be paid bi-weekly.³ Further supporting this, Defendants changed the
17 pay roll policy to pay on a weekly basis almost immediately after receiving Plaintiff's PAGA
18 notice, suggesting they truly were unaware of the requirement. Ultimately, the amount of damages
19 may also be reduced if Defendants are able to prove that some of the Aggrieved Employees fit
20 under one of the exceptions, such as assignment to one client for longer than 90 days.

21 Plaintiff believes the RAV of the TSE claim is 50% (due to the strong evidence of
22 violations offset by the plausible argument that the violation was unintentional) for an amount of
23 \$354,431.58. The other PAGA claims have been assigned an RAV value based on the same
24 percentage as the claim for the underlying violations:

- 25 • **Meal Break Claims:** \$126,875

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27
28 ³ For example, Labor Code section 201.3 Subd. (b)(6) states that a TSE is not required to be paid weekly if they are assigned to work for a client for over 90 consecutive days. Plaintiff has not investigated whether or not VHI knew the lengths of each employee's assignment.

- **Rest Break Claims:** \$134,956
- **Regular Rate Claims:** \$15,121
- **Off-the-Clock Claims:** \$900,204
- **Waiting Time Penalty Claims:** \$6,725
- **Wage Statement Claims:** \$395,872

Thus, the total RAV for all PAGA claims is \$1,934,184.58

2.Maximum Damages and Penalties at Issue.

Based on the data provided, Plaintiffs' counsel's expert estimated maximum total damages and penalties (including PAGA) to be approximately \$14,251,869 based on the number of class members, shifts, and workweeks involved. As stated above however, this theoretical maximum based on the pleadings and the number of class members does not reflect the maximum amount that Plaintiff could reasonably expect to achieve at trial. That number, the RAV, is \$1,813,646.48 for the class claims and \$1,934,216.54 for the PAGA claims, for a total of **\$3,747,863.02** before attorney fees and costs. Thus, the settlement of \$1,000,000 is about 26.7% of the maximum liability amount Plaintiff could reasonably achieve at trial. This number also does not account for general risks of litigation (such as the time-value of money, degradation of witness memory over time, inability to find witnesses, etc.)

Numerous courts have held that gross settlements approximating between only 8 and 25% of the defendant's potential exposure are fair and reasonable. (*See, e.g., In re Mego Fin. Corp. Secs. Litig.* (9th Cir. 2000) 213 F.3d 454, 459 holding that class action settlement recovering 16% of potential exposure was fair and reasonable; "It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair.")

Rather, the fairness and the adequacy of the settlement should be assessed relative to risks of pursuing the litigation to judgment"; *Bellinghausen v. Tractor Supply Co.*, (N.D. Cal. Mar. 20, 2015) No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (holding that class action settlement recovering between 8.5% and 25% of the defendant's potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, (C.D. Cal. 2014) U.S. Dist. Ct. Case No. 8:12-cv-02161 (court granted

1 preliminary approval of wage and hour class settlement which obtained 9.1% of projected
2 damages, given the risks of continued litigation.)

3 **C. An Analysis of the Terms of the Settlement**

4 **1. Estimate of Class Members' Recovery**

5 The amount allocated to each Class Member is based on the number of workweeks worked
6 during the Class Period. Based on the Net Settlement Amount of \$601,666.67 the average
7 payment for the class members is \$633.33, an excellent result.⁴

8 **2. Cy Pres Recipient**

9 Any individual settlement payments that remain uncashed within 180 days of the mailing
10 of settlement payment checks by the settlement administrator will be paid to the *cy pres* recipient
11 Legal Aid at Work pursuant to Code of Civil Procedure section 384.

12 **3. Scope of the Release**

13 The scope of the release, as listed below, is identified in the Settlement at section 5, as well
14 as in the Notice Packet that will be sent to Class Members and is limited to the claims in the
15 complaint:

16 5.1 Plaintiff's Release. Plaintiff and his respective former and present spouses,
17 representatives, agents, attorneys, heirs, administrators, successors and assigns
18 generally, release and discharge Released Parties from all claims, transactions or
19 occurrences that occurred during the Class Period, including, but not limited to: (a)
20 all claims that were, or reasonably could have been, alleged, based on the facts
21 contained, in the Operative Complaint and (b) all PAGA claims that were, or
22 reasonably could have been, alleged based on facts contained in the Operative
23 Complaint, and Plaintiff's PAGA Notice, as well as ("Plaintiff's Release.")
24 Plaintiff's Release does not extend to any claims or actions to enforce this
25 Agreement, or to any claims for vested benefits, unemployment benefits, disability
26 benefits, social security benefits, workers' compensation benefits that arose at any
27 time, or based on occurrences outside the Class Period. Plaintiff acknowledges that
28 Plaintiff may discover facts or law different from, or in addition to, the facts or law
that Plaintiff now knows or believes to be true but agrees, nonetheless, that
Plaintiff's Release shall be and remain effective in all respects, notwithstanding
such different or additional facts or Plaintiff's discovery of them.

⁴ Calculated by dividing the Net Settlement Amount by the number of class members. Actual average recovery will vary based on each Class Members workweek's worked, as well as the number of Class Members who opt out.

1 **5.1.1 Plaintiff's Waiver of Rights Under Civil Code Section 1542. For purposes**
2 **of Plaintiff's Release, Plaintiff expressly waives and relinquishes the**
3 **provisions, rights, and benefits, if any, of section 1542 of the Civil Code, which**
4 **reads:**

5 **A general release does not extend to claims that the creditor or releasing party**
6 **does not know or suspect to exist in his or her favor at the time of executing**
7 **the release, and that if known by him or her would have materially affected his**
8 **or her settlement with the debtor or Released Party.**

9 **5.2 Release by Participating Class Members:**

10 All Participating Class Members, on behalf of themselves and their respective
11 former and present representatives, agents, attorneys, heirs, administrators,
12 successors and assigns, release Released Parties from (i) all claims that were
13 alleged, or reasonably could have been alleged under the Labor Code and IWC
14 Wage Orders, based on the Class Period facts stated in the Operative Complaint
15 including e.g., any and all claims involving (a) Meal Period Violations, (b) Rest
16 Period Violations, (c) Failure to Pay Overtime Wages, (d) Failure to Pay Minimum
17 Wage, (e) Waiting Time Penalties, (f) Wage Statement Penalties, and (g) Violations
18 of the Unfair Competition Law. Except as set forth in Section 5.3 of this
19 Agreement, Participating Class Members do not release any other claims, including
20 claims for vested benefits, wrongful termination, violation of the Fair Employment
21 and Housing Act, unemployment insurance, disability, social security, workers'
22 compensation or claims based on facts occurring outside the Class Period.

23 **5.3 Release by Non-Participating Class Members Who Are Aggrieved Employees:**

24 All Non-Participating Class Members who are Aggrieved Employees are deemed
25 to release, on behalf of themselves and their respective former and present
26 representatives, agents, attorneys, heirs, administrators, successors and assigns, the
27 Released Parties from all claims for PAGA penalties that were alleged, or
28 reasonably could have been alleged, based on the PAGA Period facts stated in the
Operative Complaint and the PAGA Notice, including, e.g., any and all claims for
PAGA Penalties for (a) Meal Period Violations, (b) Rest Period Violations, (c)
Failure to Pay Overtime Wages, (d) Failure to Pay Minimum Wages, (e) Failure to
Pay Wages Promptly During Employment and/or Upon Termination, and (f)
Failure to Provide Accurate Wage Statements.

4. **Notice to Class Members**

Within 21 days of preliminary approval, Defendants will transmit to the Settlement
Administrator the following: each Class Members Member's full name; last known mailing
address; social security number; the number of Class Period Workweeks and PAGA Pay Periods.
(See Settlement, at §§ 1.9, 4.2.)

1 Within 14 days after receiving the Class List and Data, the Settlement Administrator shall
2 mail Notice Packets to all Class Members via regular First-Class U.S. Mail, using the most
3 current, known mailing addresses. (See Settlement, at § 8.4.2.) With respect to any returned
4 envelopes, the Settlement Administrator shall re-mail to the forwarding address affixed thereto. If
5 no forwarding address is provided, the Settlement Administrator shall promptly attempt to
6 determine a correct address by use of skip-tracing, or other search using the name, address and/or
7 social security number of the respective Class Member, and shall then perform a re-mailing, if
8 another mailing address is identified by the Settlement Administrator.

9 Class Members will be provided 60 days to opt out, challenge the number of workweeks,
10 or object to the settlement. (See Settlement, at §7.5.) Further, Class Members will be notified of
11 the time, date, and place of the final approval hearing and of their right to appear at the fairness
12 hearing.

13 **5. Tax Treatment of Settlement Amounts**

14 The Settlement provides that 25% of each Individual Settlement Payment shall be
15 allocated as payment for alleged unpaid wages, and 75% shall be allocated as alleged penalties
16 and interest. The Settlement Administrator will issue distribute appropriate IRS tax forms.

17 **6. Proposed Payment to Class Representative**

18 Plaintiff requests an individual enhancement payment of \$10,000, which will be discussed
19 in detail in the motion for final approval.

20 **7. Attorneys' Fees and Costs**

21 The attorney fees and costs will be discussed in detail in the motion for final approval.

22 **8. Class Administration Costs**

23 Similarly, reimbursement of the settlement administrator's costs will be discussed in the
24 final approval motion.

25 **V. THE PROPOSED CLASS MEETS ALL CERTIFICATION REQUIREMENTS**

26 **A. The Class is Ascertainable and Sufficiently Numerous.**

27 The Class that Plaintiff seeks to conditionally certify is ascertainable. "Class members are
28 ascertainable where they may be readily identified without unreasonable expense or time by

1 reference to official records.” (*Lee v. Dynamex, Inc.* (2008) 166 Cal. App. 4th 1325, 1334.)

2 Defendants determined that there are 950 class members. (See Settlement, sections 4.1, 8.)

3 Furthermore, the Class is sufficiently numerous. Courts generally find that numerosity is
4 satisfied if the class includes forty or more members. (*See Villalpando v. Excel Direct Inc.* (N.D.
5 Cal. 2014) 303 F.R.D. 588, 605-606.)

6 **B. There Are Common Questions of Law and the Claims Are Typical**

7 The commonality requirement is met when there are questions of law and fact common to
8 the class. (*Hanlon v. Chrysler Corp.* (1998) 150 F.3d 1011, 1019 (“The existence of shared legal
9 issues with divergent legal factual predicates is sufficient, as is a common core of salient facts
10 couple with disparate legal remedies within the class”). Commonality requires only that some
11 common legal or factual questions exist; the plaintiff need not show that all issues in the litigation
12 are identical. (*See Richmond v. Dart Industries, Inc.* (1981) 29 Cal. 3d 462, 473 (1981) Where the
13 employer’s conduct is uniformly directed at a class of employees, as it is here, the class-wide
14 impact of the policies satisfies the commonality requirement. (*See Stephens v. Montgomery Ward*
15 *& Co.* (1987) 193 Cal. App. 3d 411, 421.)

16 The claims outlined above were arguably common to all class members, and Plaintiff was
17 subjected to the violations, satisfying the typicality requirement.

18 **C. Plaintiff and Plaintiff’s Counsel Adequately Represent the Class**

19 The adequacy requirement is also met. “Adequacy of representation depends on whether
20 the plaintiff’s attorney is qualified to conduct the proposed litigation and the plaintiff’s interests
21 are not antagonistic to the interests of the class.” (*McGhee v. Bank of Am.* (1976) 60 Cal.App.3d
22 442, 450.) Correspondingly, Plaintiff does not have any interests adverse to the class.

23 As detailed in the attached declaration, Plaintiff’s counsel are experienced and well-
24 qualified class action attorneys who have settled a variety wage and hour matters. The work done
25 to prepare for the mediation was fastidious and methodical, which yielded the successful result.

26 **VI. LWDA HAS BEEN PROVIDED WITH NOTICE OF THIS MOTION**

27 The settlement will be uploaded the LWDA website on the same day the motion is filed.
28

1 **VII. CONCLUSION AND ACTION REQUESTED**

2 Plaintiff submits that the proposed settlement is fair, adequate, and reasonable. It will
3 result in both substantial monetary benefits to Class Members and the PAGA portion of the
4 settlement will also benefit the State of California.

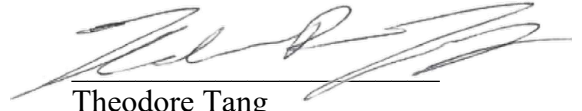
5 The settlement was reached after informed, extensive, and arms' length negotiations
6 conducted by counsel for respective parties who are experienced in wage and hour class action
7 litigation, who were able to research the issues and develop a convincing damages model.

8 Out of the gross settlement of \$1,000,000, after the deductions for attorney fees, costs,
9 settlement administration, the PAGA allocation, and Plaintiff's enhancement payment, a net
10 settlement amount of \$601,666.67 will be provided for the class members; a definite benefit.

11 Plaintiff respectfully requests the Court to grant the motion for preliminary approval,
12 approve and authorize mailing of the Notice Packet, set a date for the final approval hearing.

13
14
15 Date: May 16, 2024

FRONTIER LAW CENTER

16
17
18 

Theodore Tang
Attorney for Plaintiff
Rochell Minor