

ROBERT J. WASSERMANN (SBN: 258538)  
JOHN P. BRISCOE (SBN: 273690)  
**MAYALL HURLEY P.C.**  
112 S. Church St.  
Lodi, California 95240  
Telephone 209.477.3833; Fax 209.473.4818  
*Attorneys for Plaintiff Ventre*

David R. Markham (SBN 071814)  
*dmarkham@markham-law.com*  
Lisa Brevard (SBN 323391)  
*lbrevard@markham-law.com*  
**THE MARKHAM LAW FIRM**  
888 Prospect St., Ste. 200  
La Jolla, California 92037  
Tel.: (619) 399-3995  
Fax: (619) 615-2067  
*Attorneys for Plaintiff Scott*  
(Additional Counsel on Next Page)

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF DEL NORTE**

KERRIE VENTRE, an individual, CYNTHIA  
SCOTT, an individual, on behalf of themselves  
and others similarly situated,

Plaintiffs,

v.

SUTTER COAST HOSPITAL, a corporation;  
and DOES 1-100, inclusive,

Defendants.

Case No.: CVUJ-2022-1146

**CLASS AND REPRESENTATIVE  
ACTION**

Assigned for all purposes to:  
Hon. Robert F. Cochran  
Dept. 3

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

Date: November 22, 2024  
Time: 9:00 a.m.

1 Isam C. Khoury (SBN 58759)

*ikhoury@cksllaw.com*

2 Michael D. Singer (SBN 115301)

*msinger@cksllaw.com*

3 Maggie K. Realin (SBN 263639)

*mrealin@cksllaw.com*

4 **COHELAN KHOURY & SINGER**

605 C Street, Suite 200

5 San Diego, CA 92101

Telephone: (619) 595-3001

6 Facsimile: (619) 595-3000

7 Walter L. Haines (SBN 071075)

*walter@uelglaw.com*

8 **UNITED EMPLOYEES LAW GROUP**

8605 Santa Monica Blvd., #63354

9 West Hollywood, CA 90069

Tel.: 888.474.7242; Fax: 562.256.1006

10 *Attorneys for Plaintiff Scott*

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## I. INTRODUCTION

Plaintiffs Kerrie Ventre and Cynthia Scott (“Plaintiffs”) seek preliminary approval,<sup>1</sup> under Rule 3.769(c) of the California Rules of Court, of a \$1,000,000 non-reversionary Settlement on behalf of approximately 766 current and former non-exempt employees who worked for Defendant Sutter Coast Hospital (“Defendant”) in California between June 6, 2018 and the earlier of October 10, 2024 or the date this Settlement is preliminarily approved by this Court (the “Class Period”).<sup>2</sup>

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 Gross Settlement Amount is \$1,000,000. Plaintiffs allege that they worked uncompensated overtime, including for time worked during meal periods, were not paid at the correct regular rate of pay, were not provided timely meal and rest breaks, nor paid premiums for non-complying breaks, and derivative claims. Plaintiffs also allege a cause of action for violations of Private Attorneys General Act (“PAGA”) and Business and Professions Code section 17200, *et seq.* (“UCL”).

This case resolved following mediation before an experienced wage and hour neutral, Michael D. Young, Esq. Plaintiffs argue that Defendant’s maximum potential liability for all their claims, excluding PAGA penalties,<sup>3</sup> is \$21,894,361. This assumes Plaintiffs would collect meal break premiums for every missed, late or short meal break, a rest break premium on 50% of shifts, that Plaintiffs and the class would be compensated for 30 minutes of off the clock work a week at an overtime rate, and compensated for underpayment at the regular rate of pay per the expert’s analysis. In applying discounts to account for substantial risks both on the merits and in obtaining and maintaining certification, as discussed further in Section V(A), *supra*, the \$1,000,000 Gross Settlement Amount represents nearly 18% of Defendant’s discounted realistic potential liability for all of Plaintiffs’ non-PAGA claims, and nearly 25% of Plaintiffs’ direct unpaid overtime, meal and rest break, and underpayment at the regular rate of pay claims. This is

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<sup>1</sup> This memorandum exceeds the 15-page limit set forth in CRC 3.1113, but because it seeks class certification as part of the settlement approval process (which has a 20-page limit), and because Plaintiffs needed additional space to sufficiently present this Settlement for the Court’s approval, concurrent with filing this motion, Plaintiffs submit a stipulation for leave to exceed the page limit.

<sup>2</sup> Defendant’s data reflected that, as of June 7, 2024, the putative class included approximately 766 current and former non-exempt employees who worked approximately 107,080 workweeks.

<sup>3</sup> The settlement of Plaintiffs’ PAGA penalties is discussed in section IV(A)(3), below.

1 an excellent result in light of the risks of continued litigation, and within the range of typical class action  
2 settlement recoveries.

3 Plaintiffs seek entry of an order: (1) preliminarily approving the proposed Settlement; (2)  
4 approving the form and content of the proposed Class Notice; (3) directing that Class Notice be given to  
5 Class Members; (4) provisionally certifying the Settlement Class and appointing Plaintiffs as Class  
6 Representatives and Plaintiffs' counsel as Class Counsel; (5) preliminarily approving Settlement  
7 administration services to be provided by the Settlement Administrator, and; (6) scheduling a Fairness  
8 Hearing.

## 9 II. FACTUAL AND PROCEDURAL BACKGROUND

10 Plaintiffs are/were employed as non-exempt employees at Sutter Coast Hospital in Crescent City,  
11 California; Plaintiff Ventre was a non-exempt RN from December 2021 to January 2022 and Plaintiff  
12 Scott is a current non-exempt RN employed since May 2014. Declarations of Cynthia Scott ("Scott  
13 Decl."), ¶3 and Kerrie Ventre ("Ventre Decl."), ¶2. Plaintiffs' duties include providing direct patient care  
14 to multiple patients and triaging patients, administering medications, charting, and communicating with  
15 doctors and patients' families to implement patient care, among other duties.

16 Plaintiffs filed class and representative action complaints against Defendant on June 6, 2022  
17 (*Ventre*) and June 22, 2022 (*Scott*) in Del Norte Superior Court. The parties attended a joint mediation  
18 with experienced mediator Michael D. Young on July 12, 2024. Following that mediation, for purposes  
19 of settlement, the Parties stipulated to filing a First Amended Complaint covering the claims in both  
20 actions; all claims released in the settlement are alleged in the FAC. Declaration of David Markham  
21 ("Markham Decl."), ¶3. Plaintiffs allege that Defendant failed to pay them and other employees for all  
22 hours worked, including overtime wages and all wages at the regular rate of pay, and failed to provide  
23 meal and rest breaks, or pay premiums for non-compliant breaks. Plaintiffs also asserted claims for  
24 violation of the UCL, claims for inaccurate wage statements, untimely paid wages at termination of  
25 employment, and claims for penalties under PAGA. *Id.*

26 Plaintiffs' investigation revealed that employees would experience shortened breaks, were unable to  
27 take breaks due to short-staffing, and the need to remain on-call on breaks. Plaintiffs also alleged that  
28

1 employees would be required to clock in and out as if they received a compliant meal period even if they  
2 worked and were on call during meal periods, resulting in unpaid overtime wages. *Id.*, ¶4. Plaintiffs’ expert  
3 reviewed a 20% class sample of employee timecards for meal break violations, which indicated  
4 approximately 64% of meal breaks were facially non-compliant. *Id.* Rest breaks are not recorded in the  
5 time records. *Id.*

### 6 **III. VIGOROUS PROSECUTION OF THIS ACTION**

#### 7 **A. Summary of Investigation and Discovery Conducted**

8 Plaintiffs served on Defendant requests for production of documents, interrogatories, and  
9 requests for admission. Markham Decl., ¶5; Declaration of John P. Briscoe (“Briscoe Decl.”), ¶5. The  
10 Parties also engaged in the *Belaire-West* notice process, whereby putative class members were given the  
11 opportunity to opt out of having their contact information provided to Plaintiffs’ counsel. Following  
12 that notice process, Plaintiffs’ counsel interviewed and obtained declarations from class members. In  
13 advance of mediation, Defendant produced its applicable policies and handbooks in effect during the  
14 class period, time and payroll records for over a 20% sample of class members, and a small sample of  
15 class member activity records from Sutter’s patient charting program, EPIC. *Id.* Plaintiffs’ expert reviewed  
16 the class data and prepared a damages model prior to mediation. *Id.*

17 In sum, the parties carefully investigated the claims and facts alleged in this action, and Plaintiffs  
18 have made a thorough study of the legal principles applicable to the claims asserted against Defendant.  
19 As a result of careful investigation of the claims in this action, including review of documents and data,  
20 the parties had a clear understanding of their respective claims and defenses. *Id.*, ¶6.

#### 21 **B. Settlement Reached after Arms-Length Negotiations with Assistance of 22 Experienced Mediator**

23 Plaintiffs retained counsel with extensive experience in prosecuting wage and hour class actions.  
24 Markham Decl., ¶¶27-34; Singer Decl., ¶¶3-14; Haines Decl., ¶3; Briscoe Decl., ¶¶16-21. Defendant was  
25 represented by seasoned attorneys at GBG LLP. On July 12, 2024, the parties mediated this case before  
26 Michael D. Young, Esq., a mediator with vast experience in wage and hour class actions. At the  
27 conclusion of the mediation session, the parties reached the settlement in principle, and executed a  
28 Memorandum of Understanding. After additional weeks of arms’-length negotiations, the parties finalized

1 the terms of the settlement agreement. Markham Decl., ¶7. The executed version of the Settlement  
2 Agreement is attached as **Exhibit 1** to Markham Declaration.<sup>4</sup>

3 **C. Summary of the Risks to Further Litigation, and to Obtaining and**  
4 **Maintaining Class Certification**

5 Although Plaintiffs are confident in their position, they recognize several risks to succeeding on  
6 the merits and obtaining certification. Markham Decl., ¶14. First, although Plaintiffs allege that in some  
7 instances class members worked during meal periods that were recorded as compliant, Plaintiffs faced  
8 obstacles to proving this claim *Id.*, ¶15. The expert’s review of the small sampling of EPIC patient charting  
9 records indicated that only a small percent of shifts showed work while the class member was clocked  
10 out of the timekeeping system, and notwithstanding, Defendant is likely to dispute the reliability of EPIC  
11 data for this purpose for a number of reasons, including Defendant’s contention that the records reflect  
12 automated entries rather than employee activity. Though Plaintiffs would have sought a larger sampling  
13 of records for comparison and taken PMQ depositions had litigation continued, the patient charting  
14 records are only available for a subset of class members (such as RNs) and are not available as a potential  
15 method of proof for many other class member employees. Further, Defendant will likely contend that  
16 where an employer provides a means to record work time, the employer is entitled to rely on those time  
17 records, and is not required to audit other available records to ascertain if any off-the-clock work is  
18 occurring. *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal.4th 1004, 1051 (2012) (“that employees are clocked out  
19 creates a presumption they are doing no work”); *Hertz v. Woodbury County*, 566 F.3d 775, 781-782 (8th Cir.  
20 2009) (no duty to audit other available records); *Jong v. Kaiser Found. Health Plan, Inc.*, 226 Cal.App.4th 391,  
21 398-399 (2014) (same). Here, Defendant’s timekeeping policy specifically forbids off-the-clock work.  
22 Markham Decl., ¶16.

23 Second, as additional defenses to Plaintiffs’ meal break claim, Defendant would point to its lawful  
24 meal period policies, and voluntary meal break waivers signed by class members. Plaintiffs would argue  
25 that under *Donohue v. AMN Servs., LLC*, 11 Cal.5th 58 (2021) when time records show meal break  
26 violations, the presumption arises employees were not provided meal breaks. *Id.* at 675-76. Here, the rate

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

of facial timecard violation is 64% for late, short and/or missed meal periods; however Defendant would argue that “late” meal periods for healthcare workers are not properly considered late unless taken after 10 hours into the shift, due to the effect of meal break waivers, diminishing reliability of the *Donohue* presumption as to late breaks. Markham Decl., ¶18; Wage Order 5 at § 11(D). Additionally, Sutter presented evidence that class members could (and did) request premium payments through the Kronos timekeeping system, and that it paid over \$800,000 in premium payments to class members. *Id.*, ¶19.

Further, Defendant would likely argue that in rebutting the presumption that meal breaks were not provided in cases where they were not recorded, evidence of individualized experiences would be necessary, preventing the findings of commonality and predominance necessary for certification. *Id.*

Similarly, as to Plaintiffs’ rest break claim, Defendant would assert that some Class Members might have been able to take uninterrupted rest (and meal) breaks, while some might not have been able to (on different occasions and for different reasons). This could create individualized issues defeating commonality and predominance, and manageability. Markham Decl., ¶20. Further, even if the rest break class were certified, damages and penalties calculations could present complicated issues, as Defendant’s employees did not have to clock out to take rest breaks, or otherwise record them. *Id.*

Additionally, regarding the regular rate of pay claim, Sutter presented evidence that it properly incorporated premium payments, such as callback and standby time, into the overtime rate of pay, and Plaintiffs’ expert’s valuation of this claim for instances of underpayment was low. *Id.*, ¶17.

Lastly, with respect to wage statement and untimely wages claims, they are derivative of Plaintiffs’ unpaid time, meal and rest break claims, so if Plaintiffs do not prevail on the underlying claims, their derivative claims would also fail. *See Gomez v. Lincare, Inc.*, 173 Cal.App.4th 508, 524-25 (2009). Also, Defendant will likely assert that wages that were not paid cannot form the basis of these derivative claims based on *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-37 (2018). Markham Decl., ¶21.

#### IV. SUMMARY OF SETTLEMENT TERMS

##### A. Settlement Relief

|                                              |                                                                                       |
|----------------------------------------------|---------------------------------------------------------------------------------------|
| Gross Settlement Amount:                     | \$1,000,000. Settlement Agreement, ¶11.                                               |
| Deductions from the Gross Settlement Amount: | • Attorneys’ fees not to exceed 33.33% of the Gross Settlement Amount (\$333,333.33); |

|                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|--------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                          | <ul style="list-style-type: none"> <li>• Out-of-pocket litigation costs not to exceed \$70,000;</li> <li>• Service Awards to Plaintiffs not to exceed \$10,000 each;</li> <li>• PAGA penalties of \$100,000 (of which 75% or \$75,000 will be paid to the LWDA and 25% or \$25,000 to Aggrieved Employees, who are Settlement Class Members employed at any time from through the date of Preliminary Approval or October 13, 2024, whichever occurs first);</li> <li>• Administration costs of approximately \$9,500</li> </ul> <p><i>Id.</i>, ¶¶2 (DD), (NN), 12-15</p> |
| Net Settlement Amount:                                                   | Approximately \$492,166.67. <i>See id.</i> , ¶¶2(Y), 11.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Definition of the Settlement Class:                                      | All current and former non-exempt employees of Sutter Coast Hospital (“SCH”) employed from June 6, 2018 through the date of preliminary approval of the Settlement or October 13, 2024, whichever is earlier. <i>Id.</i> , ¶2(B).                                                                                                                                                                                                                                                                                                                                         |
| Class Period:                                                            | From June 6, 2018 or October 13, 2024, whichever is earlier. <i>Id.</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| The number of Class Members and workweeks worked during the Class Period | 766 Settlement Class Members; 107,080 workweeks Markham Decl., ¶¶10, 27.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| The number of PAGA Employees and pay periods during the PAGA Period      | 560 PAGA Employees; 27,706 pay periods. <i>Id.</i> , ¶10.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| The average individual settlement payment                                | \$4.60 per workweek; or approximately \$642.52 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.*<sup>5</sup>

Class Members who do not opt out of the Settlement will release Defendant from all claims that

<sup>5</sup> 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.

1 relate to the causes of action asserted in this action – or those that could have been asserted in this action  
2 based on the facts alleged in Plaintiffs’ complaints and PAGA letters. *See id.*, ¶20.

3 Settlement checks will be valid and negotiable for 180 days. *Id.*, ¶48. After the expiration of the  
4 180-day period, the Settlement Administrator will void any uncashed checks, and, subject to the Court’s  
5 approval, the total amount of any uncashed settlement checks will be paid transmitted to the State  
6 Controller’s Unclaimed Property Fund to permit the affected class members to claim the funds in the  
7 future, pursuant to California Code of Civil Procedure section 384(b). *Id.*

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

### 13 **2. Attorneys’ Fees and Costs**

14 The parties agreed that, subject to approval by the Court, up to \$333,333.33 (33.33%) of the  
15 Gross Settlement Amount, may be allocated to attorneys’ fees, and up to \$70,000 may be allocated to  
16 reimburse Class Counsel for litigation costs and expenses. Settlement Agreement, ¶12. Courts in  
17 California wage and hour cases, where the common fund is under \$10 million, tend to award attorneys’  
18 fees in the 30% - 40% range. *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491-92 (E.D. Cal. 2010)  
19 (citing to five wage and hour class actions where courts approved fee awards ranging from 30 to 33%).  
20 The trial court has discretion to award attorneys’ fees based on either the lodestar/multiplier calculation or the  
21 percentage-of-recovery method. *Laffitte v. Robert Half International Inc.*, 1 Cal.5th 480, 503 (2016). Class  
22 Counsel intends to brief the fee application using both methodologies, as cross checks.<sup>6</sup> Any portion of  
23 the requested attorneys’ fees and costs that is not awarded to Class Counsel shall be part of the Net  
24 Settlement Amount distributed to Class Members as provided in the Settlement Agreement. *Id.*, ¶12.

### 25 **3. PAGA Payment to Labor Workforce Development Agency**

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26  
27 <sup>6</sup>50% of attorneys’ fees will be allocated to *Ventre* counsel and 50% to *Scott* counsel. Of *Scott* counsel’s share, 33.33% will be  
28 allocated to UELG and 66.67% of attorneys’ fees to MLF (with 25% of MLF’s share to be allocated to CKS). The clients have  
consented to this fee split agreement in writing. Markham Decl., ¶35.

1 The Parties agreed \$100,000 of the Gross Settlement Amount will be allocated for payment under  
2 PAGA. Of this amount, 75% (\$75,000) will be paid to the LWDA, and 25% (\$25,000) to Aggrieved  
3 Employees, who are those Class Members who worked for Defendant from June 6, 2021 until preliminary  
4 approval or October 13, 2024, whichever occurs first. *Id.*, ¶I(O). The PAGA penalties to be paid under  
5 this Settlement represent approximately 1.2% of the total potential PAGA penalties for Plaintiffs' direct  
6 claims, assuming class members suffered three types of violations in every single pay period (27,706 pay  
7 periods times \$100, multiplied by 3 penalties for unpaid time, meal breaks and rest breaks per pay period  
8 = \$8,311,300). Markham Decl., ¶10. The subsequent penalties should be calculated at \$100, not \$200 per  
9 pay period because under *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157 (2008), for a plaintiff to  
10 recover \$200 per subsequent violation an employer must have been cited first, which has not occurred in  
11 this action. *Id.* at 1207-09; *see also Hernandez v. Best Buy Stores, LP*, 2017 WL 2445438, 2 (S.D. Cal. June 6,  
12 2017) (holding, based on *Amaral*, that \$100 penalty per pay period is warranted because “no court,  
13 commissioner, or any other authority had held [that] Best Buy misclassified” the general managers.”);  
14 *Trang v. Turbine Engine Components Technologies Corp.*, 2012 WL 6618854, \*5 (C.D. Cal. Dec. 19, 2012)  
15 (“courts have held that employers are not subject to heightened penalties for subsequent violations unless  
16 and until a court or commissioner notifies the employer that it is in violation of the Labor Code”);  
17 *Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Services, Inc.*, 2009 WL 2448430 at \*9  
18 (S.D. Cal. Aug. 10, 2009) (finding that California law imposes the “subsequent violation penalty” only  
19 after an employer has been notified by “the court or commissioner” that its conduct violates the Labor  
20 Code).

21 This allocation of the PAGA penalties falls within the range of other approved PAGA  
22 settlements, as courts frequently approve PAGA awards between 0.2% to 2.2% of the total potential  
23 penalties. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018) (awarding PAGA penalties of  
24 0.2% of the maximum, or \$5 per pay period); *Ruch v. AM Retail Grp., Inc.*, 2016 WL 5462451, at \*2, 7  
25 (N.D. Cal. Sept. 28, 2016) (settlement allocating \$10,000 to PAGA penalties where potential value was  
26 over \$5.2 million, resulting in 0.2 percent PAGA recovery approved); *Van Kempen v. Matheson Tri-Gas, Inc.*,  
27 2017 WL 3670787, at \*10 (N.D. Cal. Aug. 25, 2017) (granting final approval of \$5,000 PAGA penalty  
28

1 from \$370,000 settlement, or 1.4 percent); *Slavkov v. Fast Water Heater Partners I, LP*, 2017 WL 3834873,  
2 at \*2 (N.D. Cal. July 25, 2017) (finding that “\$7,500 PAGA payment is reasonable when measured against  
3 the total overall settlement [of \$345,000] and the possible weaknesses in Plaintiffs' case,” or 2.2 percent);  
4 *see also Bravo v. Gale Triangle, Inc.*, 2017 WL 708766, at \*19 (C.D. Cal. Feb. 16, 2017) (\$10,000 as PAGA  
5 penalties found reasonable).

#### 6 **4. Settlement Administration Costs**

7 The parties selected Phoenix Settlement Administrators as the Settlement Administrator in this  
8 action. Settlement Agreement, ¶26. The parties obtained bids from three settlement administrators, and  
9 Phoenix was the most competitive bid. Markham Decl., ¶13. The costs of the Administrator, estimated  
10 at \$9,500, will be deducted from the Gross Settlement Amount. *Id.*, ¶2(MM-NN); Declaration of Michael  
11 Moore of Phoenix Settlement Administrators, ¶17.

#### 12 **5. Class Representatives’ Service Awards**

13 Defendant agreed, subject to Court approval, to pay up to \$10,000 each from the Gross  
14 Settlement Amount as service awards to Plaintiffs Scott and Ventre for their services as class  
15 representatives. Settlement Agreement ¶13. Any portion of the requested Class Representatives’ Service  
16 Awards not awarded to the Class Representatives shall be part of the Net Settlement Amount, and shall  
17 be distributed to Settlement Class Members as provided in this Agreement. *Id.*

#### 18 **B. Settlement Administration**

19 Within 30 calendar days after the preliminary approval, Defendant will provide Phoenix with a  
20 class list containing Class Members’ contact information and sufficient information to determine the total  
21 number of workweeks worked within the relevant time periods. Settlement Agreement, ¶28. Within 20  
22 calendar days thereafter, Phoenix will mail a Class Notice to each Class Member as provided in this  
23 Settlement. *Id.*, ¶29. Phoenix will determine the eligibility for, and the amounts of, any Settlement  
24 Payments under the terms of this Agreement, process and distribute Class Members’ payments, and  
25 process and mail tax payments to the appropriate state and federal taxing authorities. *Id.*, ¶31. Further,  
26 Class Members will also be able to contact the Settlement Administrator by telephone or e-mail, or access  
27  
28

1 the settlement website,<sup>7</sup> if they have any Settlement questions or need assistance. *See* Class Notice, **Ex. 1**  
2 to the Settlement Agreement. Also, any objections to or opt-outs from the Settlement must be delivered  
3 to the Settlement Administrator. Settlement Agreement, ¶¶33-34.

#### 4 **V. THE SETTLEMENT SATISFIES THE PRELIMINARY APPROVAL CRITERIA**

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

10 Preliminary approval is the first of three steps of the settlement approval process. Second is the  
11 dissemination of a settlement notice to all class members. Third is a final approval hearing, where the  
12 evidence concerning the fairness, adequacy, and reasonableness of the settlement may be presented, and  
13 class members may be heard regarding the Settlement. *See* Manual for Complex Litigation, Second, ¶30A4  
14 (1993). The court does not need to perform a final analysis of the settlement’s fairness to preliminarily  
15 approve a proposed settlement. Rather, a more detailed assessment is reserved for the final approval  
16 hearing, after class notice has been sent and class members have had the opportunity to object to or opt-  
17 out of the settlement. *See* Moore’s Federal Practice, 23.165[3] (3d ed. 2005). Generally, there is an initial  
18 presumption of fairness when a proposed settlement, which was negotiated at arms’-length by Class  
19 counsel, is presented for court approval. 4 Newberg on Class Actions (4th ed. 2002), ¶11.41, p. 90. In  
20 approving a settlement where the class has not yet been certified, the court must first determine that a  
21 class exists. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613, 619-20 (1997) (commonality must be shown  
22 at a preliminary approval stage, although not necessarily manageability). Then, the Court should examine  
23 the settlement as a whole to determine if it is fair, adequate and reasonable. *Id.*

#### 24 **A. Settlement Amount Calculations – *Kullar* analysis**

25 The settlement amount of \$1,000,000 derives primarily from Plaintiffs’ meal and rest break, off  
26 the clock and rate of pay claims. Markham Decl., ¶10. Defendant’s records indicate there are  
27

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

1 approximately 107,080 workweeks worked by all class members as of June 7, 2024. *Id.* The average hourly  
2 rate for class members is \$35.94. Defendant produced a class sample data of pay and time records for  
3 over 20% of class members during the class period, and EPIC activity reports for a small number  
4 (approximately 7) class members. *Id.* The analysis of this data, and Plaintiffs' investigation of the claims  
5 in this action, reveal Defendant's maximum potential exposure, and realistic discounted potential  
6 exposure, is as follows:

7 Off-the-Clock Claim: \$2,886,341.40. This is based on Plaintiffs' assumption that class members  
8 worked approximately 30 minutes of overtime off-the-clock (for time worked during meal periods) each  
9 week. *Id.* Thus, the total number of unpaid hours is 53,540 (107,080 workweeks x .5 hours per week).  
10 Plaintiffs multiplied the number of unpaid hours (53,540) by an average overtime rate of \$53.91, because  
11 class members' average shift length was 8 hours, so any additional work would be at an overtime rate,  
12 resulting in maximum unpaid overtime of **\$2,886,341.40.**

13 Plaintiffs would apply at least a 50% discount to each claim, including this off-the-clock claim, to  
14 account for risks both to obtaining certification and on the merits. Settlements are routinely approved as  
15 fair and reasonable when the maximum valuation is discounted by fifty percent, or more, to account for  
16 the class certification and merits risks. *See e.g., Milburn v. PetSmart, Inc.*, 2019 WL 5566313 \*4 (E.D. Cal.  
17 Oct. 29, 2019) (approving settlement as fair and reasonable where Plaintiff applied forty to fifty percent  
18 discount each for class certification and risks on the merits); *see also Galvan v. Superior Tank Co Inc.*, 2016  
19 WL 11502115 \*7 (C.D. Cal. July 19, 2016) (approving settlement as fair and reasonable where maximum  
20 valuation was discounted for the risk of non-certification, i.e. the rest period claim was discounted by  
21 85% for a risk of non-certification and by 65% on the merits); *Thomas v. Cognizant Technology Solutions U.S.*  
22 *Corp.*, 2013 WL 12371622 \*6 (C.D. Cal. June 24, 2013) (concluding that settlement between 4 and 5.5%  
23 of maximum liability was fair and reasonable, which included a forty percent discount applied to account  
24 for risks to class certification).

25 Courts have recognized that the risks of success on the merits coupled with certification risks  
26 often support a substantial discount to the maximum exposure valuation when balanced against the risks  
27 of not achieving a classwide recovery:

1 ...[T]here are several deficiencies in Plaintiffs’ case that could jeopardize their recovery at  
2 trial. In such circumstances, courts have approved settlements below the 10% threshold  
3 that reflect the plaintiffs’ judgment that “a deeply discounted recovery is better than the  
4 substantial likelihood of recovering nothing.” *Viceral v. Mistras Grp., Inc.*, No. 15-CV-  
5 02198-EMC, 2016 WL 5907869, at \*8 (N.D. Cal. Oct. 11, 2016). See, e.g., *id.* at \*7  
6 (approving settlement representing 8.1% of the full verdict value in recognition of the  
7 “daunting” risks plaintiffs faced in proving their case); *In re Uber FCR Litig.*, No. 14-CV-  
8 05200-EMC, 2017 WL 2806698, at \*7 (N.D. Cal. June 29, 2017) (approving a settlement  
worth less than 7.5% of the possible verdict where the class faced “substantial risks and  
obstacles” to prevailing at trial, as well as “the inevitable expense of litigating a large,  
complex case through trial”); *Balderas v. Massage Envy Franchising, LLC*, No. 12-CV-06327  
NC, 2014 WL 3610945, at \*5 (N.D. Cal. July 21, 2014) (approving a settlement  
representing 5% of the maximum recovery in light of “the strengths of plaintiff’s case and  
the risks and expense of continued litigation”).

9 *In re MyFord Touch Consumer Litigation*, 2019 WL 1411510 \*10 (N.D. Cal. Mar. 28, 2019).

10 Here, in applying a 50% discount first to account for certification risks and then for risks on the  
11 merits, the realistic discounted potential valuation for this claim is **\$721,585.35**.

12 Regular Rate of Pay Claim: Plaintiffs’ expert analyzed the sampling of time and pay records and  
13 calculated maximum exposure for this claim at **\$39,641** based on underpayment of the rate of pay for  
14 meal and rest break premium payments, for 4,417 extrapolated pay periods with an underpayment. *Id.*

15 In applying the same 50% discount each for certification and merits risks, the discounted realistic  
16 potential valuation for this claim is **\$9,910.25**.

17 Meal Break Claim: **\$7,235,539**. This is based on the number of facial timecard violations analyzed  
18 by Plaintiffs’ expert. Discovery and pre-mediation exchange of information in this action revealed that  
19 there were 64.1% non-compliant meal break recordings for all class members. Plaintiffs’ expert calculated  
20 that based on 403,649 extrapolated shifts, and after deducting \$684,942 paid in meal break premiums,  
21 Defendant’s maximum exposure for this claim is **\$7,235,539**.

22 In applying the 50% discount each for certification and merits risks, as further elaborated in  
23 section III(c) above, the discounted realistic potential valuation for this claim is **\$1,808,884.75**.

24 Rest Break Claim: **\$6,551,510**. This is based on a 50% violation rate, based on Plaintiffs’ allegation  
25 that rest breaks were at times missed and interrupted due to lack of coverage. *Id.*, ¶10. Plaintiffs’ expert  
26 calculated this exposure based on 385,087 extrapolated shifts, at a 50% violation rate, and after deducting  
27 \$46,646 paid in rest break premiums, Defendant’s maximum exposure for this claim is **\$6,551,510**.

28 In applying the 50% discount each for certification and merits risks, the discounted realistic

1 potential valuation for the rest break claim is **\$1,637,877.50**.

2 Wage statement penalties: **\$2,240,000**, based on the \$50 per pay period for the initial violation  
3 (560 pay periods x 50 = \$28,000) and \$100 for the subsequent violations (\$100 x 27,706 pay periods =  
4 \$2,770,600). Thus, the total penalties amount to \$2,798,600 (\$28,000 + \$2,770,600). However, this would  
5 exceed the \$4,000 cap per class member (\$4,997.50), thus the total maximum penalties are \$2,240,000  
6 (560 class members in the 1-year period \* \$4,000) *Id.*, ¶10.

7 Plaintiffs also discount this claim by at least 50% each to account for risks both at certification  
8 and on the merits, as this is purely a derivative claim. Thus, Plaintiffs calculate the discounted exposure  
9 at **\$560,000**.

10 Waiting time penalties: Plaintiffs calculated daily wages for 341 former employees at \$287.52 (8  
11 hours at \$35.94), times 30 days, to amount to **\$2,941,329.60**. Markham Decl., ¶10.

12 Applying the same 50% discount, as with Plaintiffs' wage claim, as a purely derivative claim,  
13 Plaintiffs calculate the discounted realistic potential exposure at **\$735,332.40**.

14 Thus, Defendant's potential maximum liability for Plaintiffs' direct claims is **\$16,713,031.40**, and  
15 an additional **\$5,181,329.60** for Plaintiffs' wage statement and waiting time penalties claims, possible only  
16 if Plaintiffs prevailed on their underlying claims, for a total of **\$21,894,361**. Thus, the Gross Settlement  
17 Amount of \$1,000,000 represents 6% Defendant's maximum potential liability for Plaintiffs' direct claims,  
18 and nearly 5% (4.6%) of Defendant's maximum liability for all of Plaintiffs' claims. *Id.* Applying the  
19 realistic discounted valuations as stated above, and in light of the risks a stated in section III(c), the  
20 discounted realistic potential exposure for Plaintiffs' direct claims is **\$4,178,257.85**, and an additional  
21 **\$1,295,332.40** for Plaintiffs' derivative claims, for a total of **\$5,473,590.25**. Thus, the Gross Settlement  
22 Amount represents **nearly 24%** (23.9%) of the potential realistic valuation for Plaintiffs' direct claims,  
23 and **18%** of the realistic potential liability for all of Plaintiffs' claims. *Id.* This is an excellent result and well  
24 within the range of settlements commonly approved by California state and district courts. *Id.* See also  
25 section IV(B)(2) below for a detailed explanation.

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

27 The court must determine whether the settlement is fair, adequate, and reasonable. See *Dunk v.*  
28

1 *Ford Motor Co.*, 48 Cal.App.4th at 1801, *citing Officers for Justice, supra*, 688 F.2d. at 625. The “fair, reasonable  
2 and adequate” test stems from Rule 23 of the Federal Rules of Civil Procedure. *Consumer Advocacy Group,*  
3 *Inc. v. Kintetsu Enters. of Am.*, 141 Cal.App.4th 46, 61 (2006). In the absence of California law, the court  
4 might follow the federal authority. However, California courts have never adopted Rule 23 as “a  
5 procedural strait jacket;” to the contrary, trial courts have been urged to be flexible in dealing with class  
6 actions. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 240 (2001), *citing Cartt v. Super. Ct.*, 50  
7 Cal.App.3d 960, 970, n.16 (1975). Generally, the opinions of counsel should be given considerable weight  
8 because of counsel’s familiarity with the litigation, and previous experience with cases such as this one.  
9 *Officers for Justice, supra*, 688 F.2d at 625. “We note that... settlement [is] the preferred means of dispute  
10 resolution...especially in complex class action litigation.” *7-Eleven Owners, supra*, 85 Cal.App.4th at 1151.

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

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

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

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

19 This Settlement is the result of extensive and hard-fought negotiations. Markham Decl., ¶7.  
20 Plaintiffs’ counsels’ law firms specialize in wage and hour class action litigation, and Defendant was  
21 represented by seasoned attorneys at GBG LLP. *Id.*, ¶6.

22 Class Counsel analyzed pre-mediation data and diligently investigated Class Members’ claims. Markham  
23 Decl., ¶¶4-6 section III(A), *supra*. Defendant produced policies and class data, including over a 20% class sample  
24 of time and pay records and a small sampling of EPIC data from Sutter’s patient charting program. Class Counsel  
25 reviewed Defendant’s timekeeping and meal and rest break policies, and engaged an expert to analyze the  
26 electronic data sample. *Id.* Plaintiffs’ counsel interviewed and obtained declarations from class members.

27 The vigorous litigation of this case gave both parties a clear view of the strengths and weaknesses  
28 of their respective positions. *See Adams v. Inter-Con Sec. Sys., Inc.*, 2007 WL 3225466, at \*3 (N.D. Cal. Oct.  
30, 2007) (preliminarily approving the settlement agreement after finding it was reached through extensive

1 negotiations and plaintiff's counsel's thorough investigation of the claims); *Kullar v. Footlocker*, 168  
2 Cal.App.4th 116, 129-130 (2008) (trial court should have sufficient information about the potential value  
3 of the case and litigation issues to independently review the reasonableness of the settlement.)

4 Based on their knowledge of this action, Plaintiffs determined that the Settlement would  
5 constitute the best outcome for the Class Members. Markham Decl., ¶¶8-9; Briscoe Decl., ¶12. Likewise,  
6 Defendant concluded that this action should be settled in the manner and upon the terms and conditions  
7 set forth in the Settlement Agreement in order to avoid the expense, inconvenience, and burden of further  
8 legal proceedings, and the uncertainties of trial and appeals. *Id.*

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

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

## 18 2. The Settlement has no "Obvious Deficiencies" and Falls within the Approval Range

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

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

25 Courts routinely approve class action settlements where the settlement amount is a lower  
26 percentage of the claimed amount of damages. *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 WL 3776765, at  
27 \*4 (N.D. Cal. June 17, 2015) (approving settlement representing 10% of potential value); *see also Thomas*

1 *v. Cognizant Tech. Sols. U.S. Corp.*, 2013 WL 12371622, at \*6 (C.D. Cal. June 24, 2013) (granting final  
2 approval in wage and hour action for settlement between 4.4% and 5% of maximum liability); *Villegas v.*  
3 *J.P Morgan Chase & Co.*, 2012 WL 5878390, at \*6 (N.D. Cal. Nov. 21, 2012); *In re MyFord Touch Consumer*  
4 *Litig.*, 2019 WL 1411510, at \*10 (N.D. Cal. Mar. 28, 2019) (6% of valuation); *Bellinghausen v. Tractor Supply*  
5 *Co.*, 303 F.R.D. 611, 623-24 (N.D. Cal. 2014) (settlement between 9% and 27% of total potential liability  
6 fair, adequate and reasonable given the uncertainty of continued litigation); *In re Mego Fin. Corp. Sec. Litig.*,  
7 213 F.3d 454, 459 (9th Cir. 2000) (16.67% of potential recovery adequate in light of plaintiff's risks).  
8 Simply put, "the fact that a proposed settlement may only amount to a fraction of the potential recovery  
9 does not mean that [it] should be disapproved." *7-Eleven Owners*, *supra*, 85 Cal.App.4th at 1150, citing  
10 *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998).

11 Here, the Settlement represents nearly 25% of Defendant's realistic potential liability for Plaintiffs'  
12 direct off-the-clock, regular rate, meal and rest break claims, and 18% of Defendant's realistic potential  
13 liability for all Plaintiffs' claims, without any risks, costs, and uncertainty of prolonged litigation. Markham  
14 Decl., ¶10. Without accounting for the length of each class member's employment with Defendant, a  
15 class member will recover on average **\$642.52** as a result of this settlement, or \$4.60 per workweek. *Id.*,  
16 ¶11. Based on the average hourly rate of \$35.94, this is equivalent to approximately **18 meal and rest**  
17 **break premiums per class member**. *Id.* This is an excellent result when considering that Plaintiffs could  
18 face difficulties to establish liability and prevail at certification and trial, and is well within (or exceeds)  
19 the range of approved settlement payments. *See e.g., Villegas v. J.P Morgan Chase & Co.*, 2012 WL 5878390,  
20 at \*2, 6 (N.D. Cal. Nov. 21, 2012) (approving settlement with approximately \$255 settlement payment  
21 per class member).

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

23 Class Members will receive a portion of the Gross Settlement Amount based on the number of  
24 workweeks they worked for Defendant during the class period. This formula is realistic because Class  
25 Members' individual recovery is proportionate to the amount of time the Class Members were employed  
26 with Defendant. Markham Decl., ¶12. Plaintiffs' primary claims include failure to provide meal and rest  
27 period premiums, failure to pay all wages owed due to time worked during meal periods and failure to  
28

1 compensate at the correct overtime rate based on the regular rate of pay. *Id.*

2 As discussed in section III(C), *supra*, considering the probability of lengthy litigation in the absence  
3 of a settlement, the risk that Plaintiffs and the Class Members might not have been able to succeed at  
4 trial, and the risk that a jury could award damages less than \$1,000,000 the settlement amount is  
5 reasonable. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 458; *Sandoval*, 2010 WL 2486346, at \*7.

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

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

17 Here, the service awards to Plaintiffs are based on the extent of Plaintiffs’ participation in this action  
18 and not conditioned upon Plaintiffs’ support of the settlement. *Cf. Radcliffe v. Experian Info. Solutions, Inc.*, 715 F.3d  
19 1157, 1165 (2013). Throughout this action, Plaintiffs assisted in investigation, participated in multiple call  
20 conferences with counsel, provided and reviewed documents and pleadings, and were on standby during  
21 mediation. *See* Scott Decl., ¶¶8-10; Ventre Decl., ¶¶7-9.

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

1 amounts of time and energy” to the action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862 at \*17 (\$25,000 for  
2 each class representative in wage and hour action). Thus, the proposed service awards are reasonable.

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

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

13 Here, before settling this action, the parties had a thorough understanding of their respective  
14 claims and defenses, and the parties had engaged in discovery, including Plaintiffs engaging an expert to  
15 prepare a pre-mediation damages model, and interviewing several class members. *See* section III(A), *supra*;  
16 Markham Decl., ¶¶8-10. Before mediation, Class Counsel had investigated class members’ claims,  
17 examined documents and data, and performed damage calculations. *Id.*, ¶9. At the time the parties  
18 engaged in mediation, they knew and understood their respective positions. *Id.*, ¶10. As a result of the  
19 work performed in this case, the real value of the class claims was well known, and Class Counsel  
20 determined that the Settlement with Defendant is fair, reasonable, adequate, and in the best interest of  
21 the Class. *Young v. Polo Retail, LLC*, 2007 WL 951821, at \*4 (N.D. Cal. Mar. 28, 2007).

22 **C. The Proposed Class Meets the Qualifications for Certification for Settlement**  
23 **Purposes.<sup>8</sup>**

24 To prevail on a motion for class certification, plaintiffs need to show that “the question is one of  
25 a common or general interest, of many persons, or...the parties are numerous, and it is impracticable to  
26 bring them all before the court.” Cal. Code of Civ. Proc. § 382. The party seeking certification needs to  
27 prove that the class is both ascertainable and that there is a well-defined community of interest among  
28

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<sup>8</sup> 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 class members. *See Sav-On Drug Stores, Inc. v. Super. Ct.*, 34 Cal.4th 319, 326 (2004). In *Sav-On Drug Store*,  
2 the court adopted a test for “community of interest,” which consists of the following prongs: (1) there  
3 are predominant common questions of law or fact; (2) class representatives have claims typical to those  
4 of the class; and (3) class representatives can adequately represent the interests of the class. *Id.*

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

7 A class is generally considered ascertainable when: (i) under the class definition the members are  
8 clearly identifiable, and (ii) the members can be located and notified through a reasonable expenditure of  
9 time and money. *See Reyes v. San Diego County Board of Supervisors*, 196 Cal.App.3d 1263, 1274-75 (1987);  
10 *Sevidal v. Target Corp.*, 189 Cal.App.4th 905, 919-20 (2010). Typically, class members are ascertainable  
11 when they can be easily identified by reference to official or business records. *Archer v. United Rentals, Inc.*,  
12 195 Cal.App.4th 807, 828 (2011); *Sevidal*, 189 Cal.App.4th at 919.

13 Here, the Class is composed of approximately 766 current and former non-exempt employees of  
14 Defendant in California, who can be identified and located from Defendant’s personnel and payroll  
15 records. In California, as few as ten (10) or twenty-eight (28) members satisfied numerosity. *Bowles v. Super.*  
16 *Ct.*, 44 Cal.2d 574 (1955); *Hebbard v. Colgrove*, 28 Cal.App.3d 1017, 1030 (1972). Defendant will provide  
17 the Settlement Administrator with a database with all Class Members’ names, contact information, and  
18 the number of relevant workweeks within 30 calendar days of preliminary approval, and further steps will  
19 be taken to locate the Class Members for whom the addresses are not current. Settlement Agreement,  
20 ¶¶28-30; *see also* section VI, *infra*. Numerosity is satisfied, and the class is ascertainable.

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

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

27 Here, there are common questions of law and fact that apply to Class Members across the board,  
28 because all Class Members were subject to Defendant’s timekeeping, method/rate of pay, meal and rest

1 break policies and practices, and Plaintiffs argue common practices, such as lack of relief coverage, were  
2 unlawful. Those common questions predominate over any individual inquiries, in that “determination of  
3 [their] truth or falsity will resolve an issue that is central to the validity of each one of the claims in one  
4 stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2551 (2011). Those questions include: (i) Whether  
5 or not Class Members were paid for all hours worked, including for time worked during meal periods; (ii)  
6 Whether or not Class Members were provided with off-duty, uninterrupted meal and rest breaks or paid  
7 premium payments for non-compliant breaks; (iii) whether Class Members were paid overtime wages and  
8 premiums at the correct rate of pay; (iv) Whether or not Class Members were provided with all wages  
9 due upon separation under Labor Code section 203; (v) Whether or not Class Members were provided  
10 with accurate wage statements as required by Labor Code section 226; (vi) Whether or not Defendant  
11 engaged in unfair business practices in violation of the UCL. *See also* Scott Decl., ¶¶5-6; Ventre Decl., ¶4,  
12 attesting that their claims 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. Plaintiffs’ claims arise from their  
17 employment with Defendant in California.

### 18 3. Plaintiffs’ 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, Plaintiffs’ claims arise from the same facts and legal theories as the Class Members’ claims.  
26 Plaintiffs are members of the class of non-exempt employees in California, and subject to the same  
27 policies and practices of Defendant with respect to timekeeping, meal and rest breaks, and rate of pay.

1 *See also* Scott Decl., ¶¶5-6; Ventre Decl., ¶4, attesting that their claims are typical of the claims of the  
2 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, Plaintiffs retained counsel with extensive experience in prosecuting wage and hour class  
8 actions. Markham Decl., ¶¶27-34; Singer Decl., ¶¶3-14; Haines Decl., ¶3; Briscoe Decl., ¶¶16-21. In  
9 addition, Plaintiffs have the same interests as the rest of the Settlement Class, because they have allegedly  
10 been injured in substantially the same manner. Scott Decl., ¶¶5-6; Ventre Decl., ¶4. Thus, the Court  
11 should certify Plaintiffs' class 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 20 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

Members of their estimated individual settlement payment(s), and inform Class Members of their right to object to or exclude themselves from the Settlement within 60 days after the Notice mailing. **Ex. 1.** Because this is a California-only class, and the mailing will occur only in California, 60 days to opt out from or object to the Settlement is sufficient. Markham Decl., ¶13. Further, because Class Members worked as employees in Sutter's California hospital, communicating with patients and/or hospital administration in English, English-only notice is sufficient. *Id.*

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

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

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

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

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

2 **VII. CONCLUSION**

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

4 Dated: October 30, 2024

Respectfully submitted,

5 THE MARKHAM LAW FIRM

6 /s/ Lisa Brevard

7 David Markham

8 Lisa Brevard

9 Attorneys for Plaintiff Scott