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11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF LOS ANGELES**

14 LYNDA BROWNING, on behalf of herself
15 and all others similarly situated,

16 Plaintiff,

17 v.

18 PASADENA HOSPITAL ASSOCIATION,
19 LTD, a California non-profit corporation; THE
20 HUNTINGTON MEDICAL FOUNDATION
21 dba HUNTINGTON HEALTH
22 PHYSICIANS, a California nonprofit
23 corporation, and DOES 1 – 100,

24 Defendants.

Case No.: 20STCV48262

Assigned for All Purposes to:
Hon. Elihu M. Berle
Dept. SSC-6

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

[Filed concurrently with Notice of Motion and
Motion; Declarations of Zachary M. Crosner,
Lynda Browning, and Sean Hartranft;
[Proposed] Order]

Date: May 8, 2023
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Dept. SSC-6

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1 **I. INTRODUCTION**

2 Plaintiff Lynda Browning respectfully requests that the Court preliminarily approve the
3 Joint Stipulation and Settlement Agreement of Class Action and PAGA Claims (“Agreement”)
4 entered into between Plaintiff and Defendant The Huntington Medical Foundation dba Huntington
5 Health Physicians (“HHP” or “Defendant”). The proposed settlement seeks to resolve claims in the
6 above captioned matter in exchange for a non-reversionary \$335,000 Gross Settlement Amount.
7 The settlement class is comprised of “all current and former non-exempt, hourly-paid employees of
8 Defendant employed in California at any time from December 18, 2016 to July 31, 2022.”

9 The Agreement and notice distribution plan are the products of adversarial, arm’s-length
10 negotiations by informed counsel and parties, facilitated by an experienced mediator. The settlement
11 is fair, reasonable, and adequate to all. Plaintiff has analyzed the strengths and vulnerabilities of the
12 claims with Defendant’s potential exposure and determined the \$335,000 proposed settlement is
13 well within the range of reasonableness and is in the Class Members’ best interests. The length and
14 risks of trial and perils of litigation that affect the values of the claims were all carefully weighed.
15 In addition, the defenses asserted by Defendant, the uncertainty of class certification, the difficulties
16 of complex litigation, the lengthy process of establishing specific damages and various possible
17 delays and appeals, were also considered by Plaintiff and counsel in negotiating the proposed
18 settlement. Further, the proposed settlement satisfies the criteria for preliminary approval under
19 California Rules of Court, Rule 3.769.

20 Accordingly, Plaintiff seeks: (1) preliminary approval of the settlement; (2) provisional
21 certification of the Class; (3) appointment of Plaintiff as Class Representative; (4) appointment of
22 Crosner Legal, PC as Class Counsel; (5) approval of the Parties’ proposed Notice of Class Action
23 Settlement (“Notice”) and method of notifying the Class Members; (6) a hearing date for Plaintiff’s
24 Motion for Final Approval of Class Action Settlement; and (7) entry of an Order Granting
25 Preliminary Approval of Class Action Settlement.

26 **II. BACKGROUND/LITIGATION HISTORY**

27 HHP owns and operates approximately seven primary care clinics in Southern California,
28 where it has been providing primary care services to patients for many years. Plaintiff Lynda

1 Browning was employed by HHP at its Pasadena location as an hourly, non-exempt registered nurse
2 for over thirty years until she resigned in May 2019. (Crosner Decl., ¶ 13; Exh. 4.)

3 On December 18, 2020, Plaintiff filed a class action complaint against Defendant. The
4 operative Complaint alleges claims for failure to pay wages, including overtime wages, meal and
5 rest break violations, inaccurate wage statements, waiting time penalties, failure to reimburse
6 expenses, and unfair competition. (Crosner Decl., ¶ 14.) Plaintiff also submitted the required notice
7 letter the LWDA under PAGA and timely exhausted her administrative remedies with the LWDA.
8 (Crosner Decl. ¶ 14; Exh. 4.) Plaintiff did not receive notice from the LWDA that it intended to
9 investigate the alleged violations outlined in her PAGA letter. (Crosner Decl., ¶ 14.) Plaintiff
10 consequently filed an amended complaint adding a claim for PAGA consistent with her notice
11 letter.¹ (Agreement, § 2.1.) (Crosner Decl., ¶ 14.)

12 In May 2022, the Parties participated in mediation with Steve Mehta, Esq., a respected wage
13 and hour class action mediator. The mediation lasted a full day and with the mediator's assistance
14 the Parties reached agreement on all major issues and ultimately prepared and executed a
15 Memorandum of Understanding. They then formally reduced the proposed settlement to the
16 Agreement now before the Court for approval. The Agreement meets the requirements in the LASC
17 Checklist for Preliminary Approval. As part of the Settlement, Plaintiff filed a First Amended
18 Complaint adding a PAGA cause of action, and the FAC is the Operative Complaint. Both the FAC
19 and the Agreement have been uploaded to the LWDA. (Crosner Decl., ¶ 15; Exhs. 5-6.)

20 **III. INVESTIGATION**

21 Prior to the mediation, Defendant provided Plaintiff with extensive informal discovery,
22 including Plaintiff's personnel, time, and payroll records, time and payroll records for a randomly
23 selected sampling of Class Members, wage statement exemplars, Defendant's employee handbooks,
24 including Defendant's policies and procedures regarding the payment of wages, the provision of
25 meal and rest breaks, timekeeping policies (including recording hours), issuance of wage statements,
26 and termination wages, expense reimbursement policies, as well as information regarding the
27 number of putative Class Members who are current and former employees, the number of Aggrieved

28 ¹ Plaintiff uploaded the FAC to the LWDA. (Crosner Decl., Exh. 5.)

1 Employees, the number of workweeks throughout the Class Period, and the number of pay periods
2 throughout the PAGA Period. From this information, Plaintiff was able to analyze Defendant's
3 liability for the claims asserted in this case and, with the assistance of Plaintiff's experts at Berger
4 Consulting Group, the potential exposure and damages. (Crosner Decl., ¶ 16.)

5 Based on this informal discovery, Plaintiff contends the Class Members were not paid all
6 wages due, not provided with legally compliant meal and rest periods, did not receive compliant
7 wage statements, did not receive required expense reimbursement, and did not receive all wages due
8 on separation of employment. In considering the reasonableness of the proposed settlement, Plaintiff
9 considered each of Defendant's counterarguments, which sharply contested Plaintiff's claims.
10 Plaintiff and counsel weighed the strength of Defendant's arguments, including the risks of
11 prevailing at class certification and on the merits, and determined that the proposed settlement is in
12 the best interests of the Class. Although remaining confident in the strength of her claims, these
13 factors led Plaintiff to discount the exposure analysis, as discussed below. (Crosner Decl., ¶ 17.)

14 **IV. TERMS OF THE PROPOSED SETTLEMENT**

15 **A. Deductions from the Settlement**

16 The Parties have agreed (subject to the Court's approval) to resolve this matter for the non-
17 reversionary total sum of \$335,000.00 ("Gross Settlement Amount" or "GSA") (Agreement, § 3.1.),
18 which includes: (a) reasonable attorney's fees of up to \$111,655.50 (33.33% of the GSA)² to
19 compensate Class Counsel for work already performed and all work remaining to be performed
20 (Agreement, § 3.2.2.); (b) actual litigation expenses as documented and not to exceed \$25,000.00³
21 (Agreement, § 3.2.2.); (c) an Enhancement Award to Plaintiff in an amount not to exceed \$10,000.00
22 (Agreement, § 3.2.1.); (d) Administration Costs to ILYM Group, Inc. (the proposed settlement
23 administrator) in an amount not to exceed \$11,000.00 (currently estimated at \$9,200) (Agreement,
24 § 3.2.3.); and (e) PAGA penalties to the LWDA of \$26,250.00 (which is 75% of the \$35,000.00
25

26 ² The percentage method, with or without a lodestar cross-check, may be used in common fund cases like this one.
27 *Laffitte v. Robert Half Internat., Inc.* (2016) 1 Cal.5th 480, 503. In support of their fee request at Final Approval, Class
28 Counsel will provide the Court with lodestar information to permit the Court to do a lodestar cross-check in connection
with Class Counsel's request for attorney's fees.

³ At Final Approval, Class Counsel will provide documentation regarding actual expenses incurred to support Class
Counsel's request for reimbursement of actual expenses.

1 PAGA Payment, with the remaining 25% or \$8,750.00 to Aggrieved Employees) (Agreement, §
2 3.2.5.). Employer-side payroll taxes (including FICA, FUTA, and SDI) will be paid by Defendant
3 separate and apart from the GSA. (Agreement, § 3.1.)

4 **B. Calculation of the Individual Settlement Payments to Class and Aggrieved**
5 **Employees**

6 After all Court-approved deductions from the GSA, it is estimated that at least \$142,344.50
7 (“Net Settlement Amount” or “NSA”), less all applicable employee-side taxes, will be distributed
8 to the estimated 305 Class Members, with an average individual settlement amount of around \$467.⁴
9 Additionally, it is estimated that the 25% PAGA Payment (\$8,750.00) will be distributed to the
10 estimated 169 Aggrieved Employees, resulting in an average payment of \$51.77⁵ per Aggrieved
11 Employees. (Crosner Decl., ¶ 19.) Under no circumstances will any portion of the Settlement revert
12 to Defendant. (Agreement, § 3.1.)

13 ILYM will calculate and issue Individual Class Payments to Participating Class Members
14 by “(a) dividing the Net Settlement Amount by the total number of Workweeks worked by all
15 Participating Class Members during the Class Period and (b) multiplying the result by each
16 Participating Class Member’s Workweeks.” (Agreement, § 3.2.4.) Additionally, ILYM will
17 calculate and issue payments to Aggrieved Employees based (a) dividing the amount of the
18 Aggrieved Employees’ 25% share of PAGA Penalties (\$8,750) by the total number of PAGA Period
19 Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the
20 result by each Aggrieved Employee’s PAGA Period Pay Periods.” (Agreement, § 3.2.5.1.)

21 Each Class Member’s settlement award will be apportioned as follows: twenty percent
22 (20%) wages and eighty percent penalties and interest. (Agreement, § 3.2.4.1.) ILYM will be
23 responsible for issuing Form W-2s for amounts deemed wages and Form 1099s for the portions
24 allocated to penalties and interest. (Agreement, §§ 3.2.4.1. and 3.2.5.2.)

25 **C. Uncashed Funds to Unclaimed Property Fund**
26
27

28 ⁴ \$142,344.50 estimated NSA/305 Class Members

⁵ \$8,750 (25% PAGA Payment) /169 Aggrieved Employees

1 Settlement checks must be cashed or deposited within 180 days after issuance. (Agreement,
2 § 4.4.1.) In the event a settlement check remains uncashed, such uncashed funds shall be transmitted
3 to the State Controller's Office Unclaimed Property Fund in the name of the Participating Class
4 Member and/or Aggrieved Employee. (Agreement, § 4.4.3.). Therefore, there will be no unpaid
5 residue or unclaimed or abandoned Class Member funds under California Code of Civil Procedure
6 section 384(a).

7 **D. Notice and Extended Response Deadline for Re-Mailed Notices**

8 Within forty-five (45) calendar days after entry of the Preliminary Approval Order,
9 Defendant will provide ILYM with the Class Data, which ILYM will maintain as private and
10 confidential. (Agreement, § 4.2.)

11 Prior to mailing, ILYM will perform a search for updated addresses in the National Change
12 of Address database, and will use the NCOA database and skip traces to attempt to find current
13 addresses for any Notice returned as undeliverable. (Agreement, § 7.4.2.) If ILYM is unable to
14 obtain a better address for a Class Member, it will be under no obligation to make further attempts
15 to locate or notice the Class Member. (Agreement, § 7.4.3.) Within fourteen days after receipt of
16 the Class Data, ILYM will mail the Notice to all Class Members via First-Class mail. (Agreement,
17 § 7.4.2.)

18 The contents of the Notice are consistent with the terms of the Agreement and California
19 Rule of Court 3.769. The Notice informs Class Members how and when to request exclusion from
20 or object to the settlement and of their estimated payment amount which they will automatically
21 receive a settlement payment if they do nothing. (Crosner Decl., ¶¶ 25-28; Exh. 2.)

22 **E. Responses to the Settlement and Deadlines**

23 Class Members will have forty-five (45) days from the initial mailing of the Notice to
24 respond to the settlement by submitting a challenge to the number of weeks or pay periods attributed
25 to them, objecting, or requesting exclusion. (Agreement, § 7.5.1.) Class Members can object to the
26 settlement in writing via mail or fax by submitting a document with their name, the words "Notice
27 of Objection" or "Formal Objection" and a description of the arguments supporting their objection,
28 or they may be heard at the Final Approval Hearing. (Agreement, § 7.7.)

1 Class Members can also request for exclusion from the settlement by mailing or faxing a
2 written request, including his or her name, address, phone number or email address, last four digits
3 of their Social Security Number or Employment Authorization number, and a statement
4 demonstrating his or her intent to opt out of the settlement. (Agreement, § 7.5.1.)

5 The Notice also informs the Class Members/Aggrieved Employees that they can dispute the
6 number of workweeks/pay periods used to calculate their settlement payments by contacting ILYM
7 before the Response Deadline and providing documentation to support their dispute. ILYM will
8 investigate the dispute, request additional information from Defendant, and make a final decision as
9 to the number of eligible work weeks/pay periods. (Agreement, § 7.6.)

10 **F. Funding and Distribution of the Settlement**

11 Defendant will fund the settlement within fourteen (14) calendar days after the Effective
12 Date, and ILYM will disburse all payments required under this Settlement within ten (10) calendar
13 days of receipt of the GSA. (Agreement, § 4.3-4.)

14 **G. Release of Claims**

15 Upon final approval, Participating Class Members shall forever release the Released Parties⁶
16 for the Released Claims for the Class Period, including all claims pleaded in the Operative
17 Complaint, and which could reasonably have been alleged, based on the Class Period facts,
18 allegations, and/or claims stated in the Operative Complaint, for work performed during the Class
19 Period, and as specifically detailed in Sections 5.2.1-6 of the Agreement. (Agreement, § 5.2).
20 Additionally, the Aggrieved Employees will the Released Parties from all claims for PAGA
21 penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts
22 stated in the Operative Complaint, and PAGA Notice, and as more specifically detailed in Section
23 5.3 of the Agreement.

24 **H. The Class Representative Service Award Is Justified Given the Risks and**
25 **Should be Preliminarily Approved**

26
27 ⁶ “Released Parties” means Defendant and any of its past, present and future direct or indirect parents,
28 subsidiaries, predecessors, successors and affiliates, as well as each of its past, present and future officers,
directors, employees, partners, members, shareholders and agents, attorneys, insurers, and reinsurers, as well
as Pasadena Hospital Association Ltd. d/b/a Huntington Health or Huntington Hospital (Agreement, § 1.41.)

1 The Agreement provides for a service payment not to exceed \$10,000.00 to Plaintiff.
2 (Agreement, § 3.2.1.) Courts routinely approve service payments, or incentive awards, to
3 compensate named plaintiffs for the services they provide and the risks they incur during class
4 litigation. *In re Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393 (“These
5 awards are discretionary...and are intended to compensate class representatives for work done on
6 behalf of the class, to make up for financial or reputational risk undertaken in bringing the action,
7 and, sometimes, to recognize their willingness to act as a private attorney general.”); *Bell v. Farmers*
8 *Ins. Exch.* (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class
9 representatives); Manual § 21.62 n. 971 (noting that service payments are warranted).

10 The requested service award is reasonable in light of the benefits Plaintiff conferred upon
11 the entire Class, resulting in a benefit to all Class Members and the State of California, the time
12 spent assisting counsel with the investigation and prosecution of these claims, commitment to
13 responding to discovery, and consenting to the proposed Agreement. Furthermore, by attaching her
14 name to this lawsuit, Plaintiff also took on the reputational risk that future employers would learn
15 of her participation in this case and would unfairly associate them with costly litigation, costing
16 them future employment opportunities. Any future employer could easily perform a simple Google
17 search – an unauthorized simple background check unknown to Plaintiff that can still provide a
18 plethora of information – and conclude that Plaintiff is not worth the risk of hiring given her prior
19 involvement in a lawsuit against a former employer. This is the kind of reputational risk, borne only
20 by Plaintiff, that the incentive award is meant to compensate. Furthermore, in pursuing this action
21 on behalf of the Class, Plaintiff risked a judgment against her for attorney’s fees and costs in the
22 event this matter should HHP prevail. For these reasons, at final approval, Plaintiff will request the
23 Court award her an enhancement payment in an amount that does not exceed \$10,000. (Crosner
24 Decl., ¶¶ 31-32; Declaration of Lynda Browning, ¶¶ 2-9.)

25 **IV. ARGUMENT**

26 In deciding whether to approve a proposed class action settlement under Code of Civil
27 Procedure section 382, the Court must find that a proposed settlement is “fair, adequate and
28 reasonable.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 [quoting *Officers for*

1 *Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625, cert. den. (1983) 459 U.S. 1217].
2 A proposed class action settlement is **presumed** fair under the following circumstances: (1) the
3 parties reached settlement after arms-length negotiations; (2) investigation and discovery were
4 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
5 litigation; and (4) the percentage of objectors is small. *Id.* at 1802. As the following shows, all of
6 these elements are present here and the Court should grant of preliminary approval.

7 **A. The Settlement was Reached as a Result of Arm’s Length Negotiations**

8 The proposed settlement was reached as a result of arm’s-length negotiations facilitated by
9 a respected mediator. Though cordial and professional, the settlement negotiations have been, at all
10 times, adversarial and non-collusive. Following mediation, counsel for the Parties conducted further
11 extensive and arm’s length negotiations on the settlement terms memorialized in the Agreement.
12 (Crosner Decl., ¶ 33.)

13 While Plaintiff believes in the merits of her case, she also recognizes the inherent risks of
14 litigation and understand the benefit of Class Members receiving significant settlement funds
15 immediately as opposed to risking continued litigation in achieving class certification, the merits of
16 the case before and after trial, the damages awarded and/or an appeal that can take several more
17 years to litigate. (Crosner Decl., ¶ 34.)

18 **B. The Settlement is the Result of Thorough Investigation and Discovery**

19 The Parties thoroughly investigated and evaluated the strengths and weaknesses of their
20 factual and legal arguments before reaching the proposed settlement, and engaged in sufficient
21 investigation, research and discovery to support the settlement. The proposed settlement was only
22 possible following significant analysis and evaluation of Defendant’s relevant policies and
23 procedures, as well as the data it produced for the putative Class. (Crosner Decl., ¶¶ 16, 35-36.) This
24 litigation has reached the stage where “the Parties certainly have a clear view of the strengths and
25 weaknesses of their cases” sufficient to support the Settlement. *Boyd v. Bechtel Corp.* (N.D. Cal.
26 1979) 485 F. Supp. 610, 617.

27 ///

28 ///

1 C. **Counsel for the Parties are Experienced in Similar Litigation**

2 Counsel for the Parties are particularly experienced in wage and hour employment law, class
3 actions and PAGA actions. Plaintiff's Counsel has prosecuted numerous cases on behalf of
4 employees for wage and hour violations and thus are experienced and qualified to evaluate the class
5 and PAGA claims, evaluate settlement versus trial on a fully informed basis, and to evaluate the
6 viability of the defenses. This experience informed Plaintiff's Counsel on the risks and uncertainties
7 of further litigation and guided their determination to endorse the proposed settlement.⁷ (Crosner
8 Decl. ¶¶ 6-12.)

9 D. **The Proposed Settlement is a Reasonable Compromise of Claims**

10 An understanding of the amount in controversy is an important factor into whether the
11 settlement "of the class members' claims is reasonable in light of the strengths and weaknesses of
12 the claims and the risks of the particular litigation." *Kullar v. Foot Locker Retail, Inc.* (2008) 168
13 Cal.App.4th 116, 129; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th
14 399, 409. The most important factor in this regard is "the strength of the case for plaintiffs on the
15 merits, balanced against the amount offered in settlement." *Kullar*, 168 Cal.App.4th at 129.

16 In weighing the strength of Plaintiff's case, *Kullar* instructs that the court is not to "decide
17 the merits of the case or to substitute its evaluation of the most appropriate settlement for that of the
18 attorneys." 168 Cal.App.4th at 133. Further, this analysis does not require an explicit statement of
19 the maximum amount the plaintiff class could recover if it prevailed on all its claims, provided there
20 is a record which allows "an understanding of the amount that is in controversy and the realistic
21 range of outcomes of the litigation." *Munoz*, 186 Cal. App. 4th at 409. Put differently, "as the court
22 does when it approves a settlement as in good faith under Code of Civil Procedure section 877.6,
23 the court must at least satisfy itself that the class settlement is within the 'ballpark' of
24 reasonableness." *Kullar*, 168 Cal. App. 4th at 133 citing *Tech-Bilt v. Woodward-Clyde & Associates*
25 (1985) 38 Cal. 3d 488, 499-500. As shown below, the Parties' investigation and discovery revealed
26 several reasons to discount claims and agree to this settlement.

27 _____
28 ⁷ The final factor mentioned in *Dunk* - the number of objectors - is not determinable until the Notice of Class Action Settlement has been provided to the Class and they have had an opportunity to respond. This information will be provided to the Court in conjunction with the Motion for Final Approval of Class Action Settlement.

1 **E. The Settlement is Fair and Reasonable Based on the Strengths of Plaintiff's**
2 **Case and the Risks and Costs of Further Litigation**

3 The proposed settlement was only possible following significant analysis and evaluation of
4 Defendant's relevant policies and procedures, as well as the data that Defendant produced for the
5 Class. This permitted Plaintiff's Counsel to engage in a comprehensive analysis of liability and
6 potential damages. The discovery conducted resulted in Plaintiff's central theories of liability, which
7 are based on Plaintiff's claims that Defendant failed to provide compliant meal and rest periods,
8 failed to pay all minimum and overtime wages, failed to provide accurate, itemized wage statements
9 and failed to pay all wages due on separation of employment As explained above, Defendant
10 maintains that the discovery produced demonstrates it likely would prevail on both class certification
11 and the merits. (Crosner Decl., ¶¶ 16, 35-36.)

12 Plaintiff believes this case is suitable for certification as she contends there are company-
13 wide policies that violate California law and uniformly affect the Class Members. Defendant's
14 counterarguments, however, raise uncertainties with respect to both class certification and success
15 on the merits. As the California Supreme Court emphasized in *Sav-On v. Superior Court* (2004) 34
16 Cal.4th 319, class certification is always a matter of the trial court's sound discretion, and decisions
17 following *Sav-On* have reached different conclusions with respect to certification of wage and hour
18 claims.⁸ While remaining confident in the strengths of her claims, all of these factors led Plaintiff
19 to discount the following maximum potential damage claims. (Crosner Decl., ¶ 37.)

20 **1. The Settlement Amount is Reasonable**

21 Defendant provided Plaintiff with class-wide data from which Plaintiff's Counsel
22 extrapolated a damage analysis in preparation of mediation. For purposes of the mediation, there
23 were a total of 305 Class Members who worked approximately 38,000 work weeks in the limitations
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25

26 ⁸ *E.g., Harris v. Superior Court*, 154 Cal.App.4th 164 (2007) (reversing decertification of class claiming
27 misclassification and ordering summary adjudication in favor of employees), *review granted*, 171 P.3d 545 (2007) (not
28 cited as precedent, but rather for illustrative purposes only); *Walsh v. IKON Solutions, Inc.*, 148 Cal.App.4th 1440
(2007) (affirming decertification of class claiming misclassification); *Aguilar v. Cintas Corp. No. 2*, 144 Cal.App.4th
121 (2006) (reversing denial of certification); *Dunbar v. Albertson's Inc.*, 141 Cal.App.4th 1422 (2006) (affirming
denial of certification).

1 period, and 169 aggrieved employees and 8,152 pay periods within the PAGA Period. (Crosner
2 Decl., ¶ 38.)

3 First, Plaintiff contends Defendant failed to provide legally compliant meal and rest breaks.
4 Specifically, as to meal breaks, Plaintiff contends her analysis of the time and payroll records
5 produced by HHP reveals at least 10% of all shifts contained a unique meal period violation (i.e.,
6 late, short, or missed), which Plaintiff claims violates Labor Code sections 512, 226.7, and the
7 applicable IWC Wage Orders, as well as *Brinker Restaurant Corp. v. Superior Court* (2012) 53
8 Cal.4th 1004 and *Augustus v. ABM Security Serv., Inc.* (2016) 2 Cal.5th 257 for failure to provide
9 all required meal periods and within the required time frames. Plaintiff further contends HHP's meal
10 period policies improperly restricted Class Member's activities on meal periods (for example, by
11 prohibiting certain activities such as naps) and therefore the Class Member's remained subject to
12 employer control during meal periods. (Crosner Decl., ¶ 38.)

13 Plaintiff also contends HHP failed to provide duty-free rest periods to Class Members by
14 similarly failing to relinquish control over how Class Members utilize their rest period time by
15 retaining control over the location where employees took rest periods, by requiring employees to
16 obtain supervisor permission before leaving the premises during their shifts, prohibiting employees
17 from taking naps or being inattentive during rest periods, and otherwise subjecting Class Members
18 to policies imposing employer control during their break time. (Crosner Decl., ¶ 39.)

19 Defendant denies Plaintiff's contentions, claiming it made meal and rest breaks available to
20 Class Members in compliance with California law. Defendant contends its meal and rest break
21 policies are lawful and that Class Members were frequently reminded they were required to take all
22 meal and rest breaks. Defendant also contends that time records demonstrate that Class Members
23 took duty-free, timely meal and rest breaks. Defendant also contends its meal and rest break policies
24 and practices comported with the flexibility the *Brinker* court held was integral to California's meal
25 and rest period requirements. Finally, Defendant argues that Plaintiff's meal and rest break claims
26 are not susceptible to common proof, as the claims would require individualized inquiry, including
27 whether there was an unlawful companywide policy, whether employees had the opportunity to take
28 meal and rest periods, whether they voluntarily chose to forego their meal and rest periods, and

1 whether Defendant ever prevented them from taking meal and rest periods. Accordingly, Defendant
2 contends these claims are vulnerable to a ruling that class treatment is not appropriate. (Crosner
3 Decl., ¶ 40.)

4 Without taking into consideration any of Defendant's defenses to certification or on the
5 merits, Plaintiff estimates HHP faces around **\$3,047,000** in damages for meal period violations
6 assuming a 100% violation rate and after accounting for meal period premiums paid. On the rest
7 period claims, Plaintiff estimates around **\$3,331,000** in damages, again assuming a 100% violation
8 rate. (Crosner Decl., ¶ 42.)

9 Plaintiff further contends Defendant failed to pay all wages due by HHP also failed to pay
10 all minimum and overtime wages by requiring employees to clock out for meal periods despite
11 retaining control over their actions during meal periods. Defendant contends it paid class members
12 all wages due as required under applicable law, and that no uncompensated time occurred during
13 meal periods since HHP fully relinquished control over employee activities during meal periods.
14 Without taking into consideration any of Defendant's defenses to certification or on the merits,
15 Plaintiff's expert calculated Defendant's maximum exposure for this claim **\$116,000** in damages
16 for unpaid wages based on a total of 6,149.6 uncompensated hours. (Crosner Decl., ¶ 43.)

17 On the inaccurate wage statement claims under Labor Code section 226, Plaintiff contends
18 HHP's wage statements violate Section 226 on their face by failing to correctly state the total hours
19 worked during each pay period. HMF listed overtime hours twice under "OT Base" and "Wgt OT"
20 but does not provide the total overtime hours worked during the pay period. As a result, the wage
21 statements also list the total hours worked twice, with one correct amount and another amount that
22 erroneously overstates the total hours worked. Courts have repeatedly held that such a practice
23 violates California Labor Code section 226(a). *E.g., McKenzie v. Fed. Express Corp.* (C.D. Cal.
24 2011) 765 F. Supp. 2d 1222, 1227-29. Plaintiff estimates HHP faces over **\$573,000** in wage
25 statement penalties under Labor Code 226. (Crosner Decl., ¶ 44.)

26 As a result of the above alleged violations, Plaintiff also alleges HHP failed to timely pay all
27 wages that were due and owing upon separation of employment. Thus, should the primary claims
28 fail, Plaintiff's claim for waiting time penalties would also fail. Defendant also contends it would

1 not be liable for waiting time penalties because a “good faith dispute” exists over the payment of
2 past wages. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201. Further, Defendant
3 contends Plaintiff would have to prove Defendant “willfully” failed to pay Class Members
4 appropriate wages due upon separation of employment. (Crosner Decl., ¶ 46.) Without taking into
5 consideration any of Defendant’s defenses to certification or on the merits, Plaintiff calculated
6 Defendant’s maximum exposure for waiting time penalties at about **\$689,000** based on 142 former
7 employees during the limitations period. (Crosner Decl., ¶ 45.)

8 For the expense reimbursement claims, Plaintiff argues HHP requires Class Members to use
9 their personal cell phones to communicate with supervisors and coworkers throughout their shifts
10 without reimbursement. In response, HHP contends there was no need to use a personal cell phone
11 in the performance of Class Member job duties, and if anyone did so it was purely for personal
12 convenience and not a job requirement. Without accounting for any potential defenses, Plaintiff
13 estimates she and the Class Members are entitled to over **\$367,000** in expense reimbursement.
14 (Crosner Decl., ¶ 46.)

15 As far as potential PAGA liability, the theoretical civil penalties likely are around \$4 million
16 should Plaintiff prevail on all claims and establish violations of the multiple Labor Code sections at
17 issue. (Crosner Decl., ¶ 47.) As with the class claims, Plaintiff discounted the potential PAGA
18 penalties based on Defendant’s various defenses on the merits and also accounted for the Court’s
19 wide discretion to reduce such penalties, or to decline to award penalties at all. Labor Code §
20 2699(e)(2); *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504 (trial court awarded penalties
21 of \$5 per pay period after a bench trial, which decision was upheld on appeal); *In re Taco Bell Wage*
22 *and Hour Actions* (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 (PAGA penalties denied
23 after trial). Accordingly, the Parties allocated \$35,000 to PAGA penalties. (Agreement, § 3.2.5.)

24 Plaintiff submits this amount is reasonable under the circumstances and in line with
25 comparable settlements in other wage and hour class actions in California. *E.g., Van Kempen v.*
26 *Matheson Tri-Gas, Inc.* (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final
27 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);
28 *Slavkov v. First Water Heater Partners I* (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303

1 (finding a \$7,500 PAGA payment reasonable when measured against the overall settlement of
2 \$345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total settlement).
3 Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement,
4 and will be able to weigh in as necessary. *Jennings v. Open Door Mktg. Inc.* (N.D. Cal. Oct. 3, 2018)
5 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6% where
6 "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has not
7 objected to the settlement.

8 Thus, Plaintiff and her counsel discounted the value of the class claims consistent with the
9 risks discussed above, and carefully weighed the likelihood of the class receiving substantially
10 greater benefit if the litigation continued. Plaintiff and counsel concluded – in light of these very
11 real and substantial risks – settlement on the proposed terms and without prolonged and costly
12 litigation was in the best interests of the class. The overall \$335,000 recovery represents a significant
13 percentage of Defendant's potential exposure. Given Defendant's multi-layered defenses and all
14 other potential risks of continued litigation, a total recovery for the class of \$335,000, which will
15 result in average award of at least \$467 per class member, plus additional sums under PAGA, is a
16 significant result well within the range of reasonableness considering all potential outcomes, and it
17 will provide direct monetary awards to all Class Members without further delay. [Crosner Decl., ¶
18 48.]

19 Importantly, the mere fact that a settlement does not provide the same recovery as might be
20 achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and adequate.
21 *Wershba*, 91 Cal.App.4th at 246, 250 ("Compromise is inherent and necessary in the settlement
22 process...even if the relief afforded by the proposed settlement is substantially narrower than it
23 would be if the suits were to be successfully litigated, this is no bar to a class settlement because the
24 public interest may indeed be served by a voluntary settlement in which each side gives ground in
25 the interest of avoiding litigation"); *7-Eleven Owners for Fair Franchising v. Southland Corp.*
26 (2000) 85 Cal.App.4th 1135, 1150 ("The fact that a proposed settlement may amount to only a
27 fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is
28 grossly inadequate and should be disapproved"); *White v. Experian Information Solutions, Inc.*

(C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even though it represented 99% discount off the maximum value of the claims); *Lane v. Facebook, Inc.* (9th Cir. 2012) 696 F.3d 811, 819 ("[T]he question whether a settlement is fundamentally fair . . . is different from the question whether the settlement is perfect in the estimation of the reviewing court"). Importantly as well, the proposed settlement is non-reversionary and will provide immediate benefits to the Class Members without a claims process. *White*, 803 F.Supp.2d at 1098; *c.f.*, Federal Judicial Center, Managing Class Action Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at **Error! Hyperlink reference not valid.** (reversionary provisions and/or cumbersome claims process may indicate lack of fairness). Plaintiff and her counsel submit the settlement is within the "range of reasonableness," and is fair and adequate for the Class.

F. Provisional Class Certification Should be Granted

A class action is appropriate when the class is ascertainable and there is "a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented." Code Civ. Proc. § 382. Class certification requirements under Section 382 follow Rule 23 of the Federal Rules of Civil Procedure, and require: numerosity, typicality of the class representatives' claims, adequacy of representation, predominance of common issues, and superiority. Fed.R.Civ.Pro. 23(b)(3); *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1019. While a court must certify a class for settlement purposes if a class has not already been certified, "it is well established that trial courts should use different standards to determine the propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases." *Glob. Minerals & Metals Corp. v. Superior Court* (2013) 113 Cal.App.4th 836, 859 *citing Dunk*, Cal.App.4th 1794, 1807, n.19; *Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 237-38.

1. The Proposed Class is Sufficiently Numerous and Ascertainable

First, the class is both sufficiently numerous, consisting of approximately 305 individuals, and ascertainable by reference to Defendant's personnel and payroll records. (Crosner Decl., ¶ 49.) "There is no set number required to maintain a class action, and the statutory test is whether a class

is so numerous that ‘it is impracticable to bring them all before the court.’” *Hebbard v. Colgrove* (1972) 28 Cal. App. 3d 1017, 1030 (noting that there is no set minimum to meet the numerosity prerequisite, but that a class of as few as 28 is acceptable); *Bowles v. Superior Court* (1995) 44 Cal. 2d 574 (upholding a class of ten members); *Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926, 932 (finding that “Class Members are ‘ascertainable’ where they may be readily identified without unreasonable expense or time by reference to official records.”). Thus, the ascertainability requirement is met.

2. The Typicality and Adequacy Requirements Are Met

The typicality requirement is met if the claims of the named representative are typical of those of the Class, though, “they need not be substantially identical.” *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46-47. Here, Plaintiff’s claims are typical of the Class Members’ claims because they arise from the same factual basis and are based on the same legal theories applicable to the Class Members. Plaintiff further contends Defendant’s policies applied to all Class Members and each Class Member is challenging the same policies and practices. As such, the typicality requirement is satisfied for purposes of settlement. (Browning Decl., ¶¶ 2-3; Crosner Decl. ¶ 50.)

Adequacy requires that the Plaintiff have no interests adverse to the interests of the proposed Class Members and be committed to vigorously prosecuting the case on behalf of the Class. *McGhee v. Bank of America* (1976) 70 Cal.App.3d 442, 450-51. Plaintiff has been and will continue to be committed to vigorously prosecuting this case, and she has no conflicts of interest with the Class. (Browning Decl., ¶¶ 3-7; Crosner Decl., ¶ 51.)

3. The Commonality Requirement is Met

Next, common questions of law and fact predominate – particularly for purposes of a settlement class – as the Class Members all were subject to the same meal and rest break policies and alleged “de facto” policies resulting in meal period violations, and similarly subject to the same improper time rounding policy. Since the focus of the claims against Defendant concerns the legality of common policies applied uniformly to the entire class, common issues predominate over individualized inquiries concerning liability. For instance, Defendant’s meal and rest break policy is company-wide policy applied equally and consistently to all class members, and this policy is

1 either compliant with California law or it is not. Regardless of that determination, it will decide
2 liability for all class members one way or another. Similarly, whether the wage statements
3 improperly tabulated employee hours worked is another question common to all class members.
4 [Crosner Decl., ¶ 52.]

5 By now it is well-settled a theory of recovery asserting the existence of a uniform policy
6 violating California law is sufficient to satisfy the requirements for class certification. *Jones v.*
7 *Farmers Ins. Exch.* (2013) 221 Cal.App.4th 986, 996 (“Claims alleging that a uniform policy
8 consistently applied to a group of employees is in violation of the wage and hour laws are of the
9 sort routinely, and properly, found suitable for class treatment”); *Williams v. Superior Court* (2013)
10 221 Cal.App.4th 1353 (“A company-wide practice can sustain a common question of fact or law
11 that supports commonality for class certification”). Lastly, a class action is superior to other means
12 for the fair and efficient adjudication of this controversy. [Crosner Decl., ¶ 53.]

13 **G. ILYM Should be Appointed as the Settlement Administrator**

14 The Parties agreed to use ILYM, Inc. as the Settlement Administrator in this matter.
15 (Agreement, § 7.1.) ILYM is highly qualified and experienced as a settlement administrator,
16 committed to the security of data (having experienced no data breaches at all), carries insurance for
17 the theft of money or data, and has no relationship with Counsel. (Declaration of Sean Hartranft, ¶¶
18 2-10; Exhs. A-C; Crosner Decl., ¶ 54.)

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1 **V. CONCLUSION**

2 Plaintiff respectfully submits that the proposed settlement is in the best interests of the Class
3 Members, as it is fair, adequate, and reasonable. Plaintiff accordingly requests the Court certify the
4 class for settlement purposes, appoint Plaintiff as Class Representatives, appoint Plaintiff's Counsel
5 as Class Counsel, appoint ILYM, Inc. as Settlement Administrator, approve the method of notice
6 and the Notice to be sent to the Class, preliminarily approve the Settlement Agreement, enter the
7 proposed order filed herewith, and set a Final Approval hearing date.

8
9 Dated: February 28, 2023

CROSNER LEGAL, P.C.

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11 Michael Crosner

12 Zachary Crosner

13 Nikki Trenner

14 Attorneys for Plaintiff LYNDIA BROWNING
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