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David P. Myers (SBN 206137)
dmyers@myerslawgroup.com
Jason Hatcher (SBN 285481)
jhatcher@myerslawgroup.com
Andriana N. Bravo (SBN 349191)
abravo@myerslawgroup.com
THE MYERS LAW GROUP, A.P.C.
9327 Fairway View Place, Ste. 100
Rancho Cucamonga, CA 91730
Telephone: (909) 919-2027
Facsimile: (888) 375-2102

Attorneys for Plaintiff TOY SANCHEZ, on behalf
of herself and all others similarly situated

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO**

TOY SANCHEZ, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

AIR METHODS CORPORATION, a
Delaware Corporation; and DOES 1 through
100, inclusive

Defendants.

Case No. CIVSB2208677

CLASS ACTION

Assigned to: Hon. Jessica Morgan

**NOTICE OF MOTION AND MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: December 12, 2024

Time: 8:30 a.m.

Dept.: S26

Complaint Filed: May 17, 2022

FAC Filed: September 1, 2022

**NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES**

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on December 12, 2024, at 8:30 a.m. in Department S26 of
3 the above referenced court, Judge Jessica Morgan presiding at San Bernardino Superior Court, 247
4 West Third Street, San Bernardino, CA 92415-0210, or as soon thereafter as the matter can be
5 heard, Plaintiff Toy Sanchez ("Plaintiff") will move for an order granting preliminary approval of
6 class action and Private Attorneys General Act ("PAGA") settlement, including conditional class
7 certification for settlement purposes. Good cause exists for the granting of the Motion in that the
8 proposed class action settlement is fair, reasonable, and adequate.

9 The Motion will be based on this Notice of Motion and Motion, Memorandum of Points
10 and Authorities, declarations of Plaintiff and Jason Hatcher, and on such oral and documentary
11 evidence as may be presented before and at the hearing on the Motion.

12
13
14 DATED: August 21, 2024

THE MYERS LAW GROUP, A.P.C.

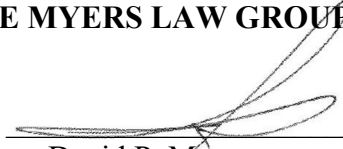
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16 By: 
17 David P. Myers,
18 Jason Hatcher,
19 Andriana N. Bravo
20 Attorneys for Plaintiff, on behalf of
21 herself and all others similarly
22 situated
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1 **I. INTRODUCTION**

2 Plaintiff Toy Sanchez (“Plaintiff”) seeks preliminary approval of a \$550,000.00 Class and
3 PAGA action settlement, as well as conditional class certification for settlement purposes, as
4 outlined in the Joint Stipulation of Class Action Settlement and Release (“Settlement” or
5 Settlement Agreement”). (Decl. Hatcher, Ex. 1).¹ The proposed settlement will dispose of this
6 action as to Defendant Air Methods Corporation (“Defendant”).

7 The Settlement covers approximately 359 current and former non-exempt office-based
8 employees of Defendant at its Patient Business Service (“PBS”) facility in San Bernardino,
9 California, during the Class Period for Defendant. (“Ex. 1 at ¶¶ 5, 36).

10 All terms of the Settlement are contained within the Settlement Agreement, which, if
11 approved as requested, provides **the average Billing Department class member a payment of**
12 **approximately \$959.95 and the average Non-Billing Department class member a payment of**
13 **approximately \$789.80.** (Decl. Hatcher at ¶¶ 11, 10).

14 The Court should grant preliminarily approval as this settlement as fair, reasonable, and
15 adequate. (Decl. Hatcher ¶13), (Decl. Sanchez ¶13, 19).

16 **II. CASE HISTORY AND OVERVIEW**

17 **A. Factual Background**

18 Defendant provides helicopter-based air medical transport services and is the employer of
19 Plaintiff and the proposed Settlement Class during the Class Period.

20 Plaintiff filed a class action complaint on May 17, 2022. On or about September 1, 2022,
21 Plaintiff filed a First Amended Complaint (“FAC”). The FAC alleges violations of the California
22 Labor Code and Business and Professions Code, on behalf of Plaintiff and all others similarly
23 situated, for the following claims: (1) failure to pay all overtime wages; (2) failure to provide rest
24 periods; (3) failure to pay meal and rest period premiums at the regular rate of pay; (4) failure to
25 provide accurate wage statements; (5) unfair competition; and (6) Private Attorneys General Act
26 (PAGA). On November 15, 2022, Defendant filed an answer to Plaintiff’s FAC.

27
28 ¹ This Motion incorporates by reference the definitions in the Settlement Agreement. All defined terms in the
Settlement Agreement and stated herein shall have the same meaning as set forth in the Settlement Agreement.

On May 16, 2023, Plaintiff and Defendant (the “Parties”) participated in private mediation with Mariam Zadeh, a well-respected wage and hour class action mediator. Prior to mediation, and prior to a settlement in principle, Defendant provided Plaintiff with data to assist in evaluating the case for mediation, including the total number of Class Members (former and current Class Members), total number of aggrieved employees, and the total number of workweeks. (Decl. Hatcher at ¶¶ 6 and 7). This mediation resulted in continuous post-mediation, non-collusive, arms length negotiations that resulted in this Settlement. (Id. at ¶¶ 6 and 7).

Plaintiff and Plaintiff’s Counsel (“Class Counsel”) have concluded, after taking into account sharply disputed factual and legal issues involved in this litigation, the risks of further litigation, and the substantial benefits received and to be received pursuant to the compromise and settlement of the litigation, that settlement on the terms hereinafter set forth is in the best interest of the class members.

Defendant and Defense Counsel have concluded, after taking into account the sharply disputed factual and legal issues involved in the litigation, the risks attending further defense, the substantial expense and burden of protracted litigation, and their desire to put the controversy to rest, that settlement on the terms hereinafter set forth is in the best interest of Defendant.

III. SUMMARY OF THE PROPOSED SETTLEMENT

A. Terms of the Settlement

1. The Settlement Class

The class is defined as:

All current and former hourly non-exempt office-based employees of Defendant at its Patient Business Service (“PBS”) facility in San Bernardino, California at any time from May 17, 2018, through January 31, 2024 (“Class” or “Settlement Class”).

(Ex. 1 at ¶ 5). The Class Period extends from May 17, 2018, through January 31, 2024, with a Settlement Class of approximately 359 Class Members. (Id. ¶¶ 5, 36).

2. The Settlement Allocations

Under the terms of the Settlement, Defendant has agreed to pay a *non-reversionary* sum of Five-Hundred and Fifty Thousand Dollars and Zero Cents (\$550,000.00), or Gross Settlement Amount (“GSA”). (Ex. 1 at ¶¶ 20, 50). The GSA includes all Settlement Shares to the Participating

Class Members, Settlement Administration Costs, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, and the PAGA Payment to the LWDA and the aggrieved employees. (Ex. 1 at ¶¶ 53.1, 53.2, 53.3, 53.4, 53.5, 53.6). A full breakdown of the allocations of the GSA is as follows:

Gross Settlement Amount	\$550,000.00
Class Counsel Fees	\$183,333.33
Class Counsel Expenses	\$15,000.00
PAGA Allocation LWDA	\$15,000.00
PAGA Allocation Aggrieved Employees	\$5,000.00
Settlement Administration Costs	\$7,500.00
Plaintiff Service Award	\$10,000.00
Net Class Settlement Amount	\$314,166.67

The GSA is exclusive of employer-side payroll taxes, which Defendant will pay separately. (Ex. 1 at ¶ 18). The total number of Workweeks for the Class Members for the Class Period is estimated at 40,506, should this amount increase by 3% or more the GSA will be increased by the same percentage without offset. (Ex. 1 at ¶ 50).

3. Settlement Shares to Participating Settlement Class Members

Each Participating Class Member who does not timely opt-out of the Settlement (a “PCM”), will receive a *pro rata* Individual Settlement Share of the Net Settlement Amount (“NSA”). (Ex. 1 at ¶ 51). The Settlement allocates 20% of the Settlement Share as wages subject to employee wage withholdings and reported on IRS Form W-2; and the remaining 80% as interest and penalties reported on IRS Form 1099. (Ex. 1 at ¶¶ 51.5).

The NSA will be split into two (2) funds: *Fund 1* is allocated to Workweeks worked by PCMs in the Billing Department and *Fund 2* allocated to Workweeks worked by PCMs not in the Billing Department. *Fund 1* represents fifty-five percent (55%) of the NSA and *Fund 2* represents forty-five percent (45%) of the NSA. (Ex. 1 at ¶ 51.1).²

a. Billing Department Settlement Share (Fund 1)

All Participating Class Members with Workweeks in the Billing Department will have a proportionate share derived from Fund 1 by dividing Fund 1 by the total number of Workweeks

² Although the payroll policies and practices were common and uniform, the NSA was split into two funds because the Billing Department Class Members received bonuses and thus the allocation accounts for differences in damages based on the regular rate claim.

1 worked in the Billing Department by Participating Class Members and then multiplying that
2 Workweek value by the individual Participating Class Member's total Workweeks in the Billing
3 Department. (Ex. 1 at ¶ 51.3).

4 **b. Non-Billing Department Settlement Share (Fund 2)**

5 All Participating Class Members with Workweeks in the Non-Billing Department will have
6 a proportionate share derived from Fund 2 by dividing Fund 2 by the total number Workweeks
7 worked in Department other than the Billing Department by Participating Class Members and then
8 multiplying that Workweek value by the individual Participating Class Member's total Workweeks
9 worked in Departments other than the Billing Department. (Ex. 1 at ¶ 51.4).

10 **4. PAGA Allocation**

11 The Settlement allocates \$20,000 to the PAGA Payment. (Ex. 1 at ¶ 26). The PAGA
12 Payment results in 75% (or \$15,000) paid to the LWDA. (Id.). The remaining 25% (or \$5,000)
13 will be paid to the PAGA Employees. (Id.). The Individual PAGA Payment for the PAGA
14 Employees will be calculated on a pro rata basis based on each individual PAGA Employees'
15 percentage of workweeks for all PAGA Employees for the PAGA Period. (Id. at ¶¶ 52, 53.6).

16 **B. Proposed Notice to the Class**

17 In accordance with the Settlement Agreement, all Class Members and PAGA Employees
18 will be mailed a Class Notice Packet that includes, but is not limited to, information regarding the
19 nature of the litigation; a summary of the terms of the Settlement Agreement; the definitions of the
20 Class; the estimated cost for administration of the settlement; information regarding payments
21 from the GSA; the individual Class Members' total number of Workweeks; the estimated
22 Individual Class Payment and Individual PAGA Payment; the formulas for calculating Individual
23 Class Payment and Individual PAGA Payment; the dates of the Class Period and PAGA Period;
24 instructions for requesting exclusion from or objecting to the settlement, deadlines for the same;
25 the date, time and location of the Final Approval/Fairness Hearing; and the claims to be released
26 by Participating Class Members and PAGA Employees. (Ex. 1 at Ex. A).

27 **C. Proposed Release of Claims**

28 The Settlement provides the following narrowly tailored releases.

1 **1. Released Parties**

2 Under the Settlement terms, the Released Parties means Defendant Air Methods
3 Corporation, and all its past, present or future parent, subsidiary, affiliate, predecessor or successor,
4 and all agents, employees, owners, shareholders, insurers, reinsurers, assigns, officers, directors
5 and attorneys. (Ex. 1 at ¶ 33).

6 **2. Released Class Claims**

7 Under the Settlement, the PCM will release the Released Class Claims as follows:

8 any and all claims, debts, liabilities, demands, obligations, guarantees, costs,
9 expenses, attorneys' fees, damages, restitution and other equitable relief, liquidated
10 damages or penalties; actions or causes of action reasonably arising out of the
11 allegations and claims asserted in the Second Amended Complaint, excluding the
12 PAGA cause of action, including without limitation to, any and all claims for
13 alleged unpaid wages, including overtime and double time wages, for the alleged
14 failure to provide rest periods, alleged unpaid meal and rest period premiums,
15 itemized wage statement penalties, waiting time penalties, arising under the
16 California Labor Code (excluding PAGA) and/or Business & Professions Code,
(including Section 17200 et seq.); and any other benefit claimed on account of the
allegations asserted in the Second Amended Complaint; including alleged
violations for California Labor Code sections 201, 202, 203, 218, 226, 226.7, 510,
512, 1194, 1194.2 and 1197. This release shall apply to all claims arising at any
point during the Class Period.

17 (Ex. 1 at ¶ 14).

18 **3. Release PAGA Claims**

19 Under the Settlement, the PAGA Employees will release the PAGA Released Claims as
20 follows:

21 any and all claims for civil penalties under the California Labor Code Private
22 Attorneys General Act of 2004, Labor Code §§ 2698, et seq., that were asserted in
23 Plaintiff Sanchez's May 17, 2022 LWDA letter reporting violations of California
24 Labor Code §§ 200, 201, 202 et seq., 203, 218, 218.5, 226, 226.7, 510, 1194,
1194.2, and 1197, California Business and Professions Code § 17200, et seq., and
IWC Wage Order No. 4-2001 for the PAGA Employees for the PAGA Period.

25 (Ex. 1 at ¶ 28).

26 **4. Plaintiff's Individual Release**

27 Under the Settlement, Plaintiff, and only Plaintiff, is executing a General Release of claims
28 that includes a Civil Code §1542 release. (Ex. 1 at ¶ 75).

1 **D. Second Amended Complaint**

2 Under the Settlement, the Parties have stipulated to the filing of a Second Amended
3 Complaint (“SAC”) for Settlement purposes. (Ex. 1 at ¶ 57).

4 **IV. LEGAL ARGUMENT**

5 California courts favor settlement, particularly in class actions and other complex actions
6 where substantial resources may be conserved by avoiding the time, costs, and rigors of protracted
7 formal litigation. *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal.App.4th 1135,
8 1151 (2000). Where a class action settlement is determined to be within the “range of
9 reasonableness,” the court should grant preliminary approval. *Hernandez v. Vitamin Shoppe*
10 *Indus., Inc.*, 174 Cal.App.4th 1441, 1446 (2009).

11 **A. The Court Should Grant Preliminary Approval of the Settlement**

12 **1. The Proposed Settlement is Fair, Reasonable, and Adequate**

13 All factors favor preliminary approval of the Settlement. *See Munoz v. BCI Coca-Cola*
14 *Bottling Co. of Los Angeles*, 186 Cal.App.4th 399, 407 (2010) (citing *Kullar v. Footlocker Retail,*
15 *Inc.*, 168 Cal.App.4th 116, 130 (2008)). Courts recognize that the strength of the plaintiffs’ case
16 on the merits balanced against the amount offered in the settlement as the most important factor to
17 such determination. *Id.*

18 The proponent of the settlement bears the burden of showing that the proposed settlement
19 is fair and reasonable. California courts generally recognize a presumption of fairness where (1)
20 the settlement is reached through arm’s length bargaining; (2) investigation and discovery are
21 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
22 litigation; and (4) the percentage of objectors is small. *Dunk v. Ford Motor Co.* (1996) 48
23 Cal.App.4th 1794, 1802.

24 **a. The Settlement is the Product of Arm’s-Length Negotiations**

25 The proposed Settlement here is fair, reasonable and adequate. (Decl. Hatcher at ¶¶ 6 and
26 13). Plaintiff and Class Counsel engaged in private mediation, on May 16, 2023, with well-known
27 and respected mediator Mariam Zadeh Prior to the mediation. Plaintiff possessed sufficient
28 information and documentation to make an informed decision, and conduct a comprehensive

1 review and analysis of the facts, potential damages, and legal issues raised by the Action to reach
2 the Settlement. (Id. at ¶¶ 6, 7, 9). The matter did not resolve at the mediation, although after
3 continuous post-mediation negotiations, the parties were able to reach a settlement memorialized
4 in the Settlement Agreement. (Id. at ¶6). The settlement negotiations in this matter were at arm's
5 length and non-collusive at all times. (Id. at ¶6).

6 In reaching the proposed Settlement, Plaintiff and Class Counsel's negotiation efforts took
7 into consideration relevant factors such as the size of the class, the information and documents
8 obtained through informal and formal discovery, the experiences of Plaintiff, Defendant's
9 projected liability, the expense of continued litigation, the uncertainty inherent in litigating
10 complex matters, such as obtaining and maintaining class certification, Defendant's policies
11 including its timekeeping and compensation practices, and the potential appeals. (Decl. Hatcher at
12 ¶¶ 6, 7, 9). Based on Class Counsel's experience handling similar claims, they are of the opinion
13 that the proposed settlement represents a favorable resolution for the Settlement Class as it
14 provides for concrete compensation to the absent class members for Defendant's alleged violations
15 without the further expense and uncertainty of further litigation. (Id. at ¶¶ 6, 9, 13). Moreover, the
16 proposed settlement resolves any potential penalties against Defendant for its allegedly unlawful
17 conduct and also compensates Plaintiff and the Class Members fairly for their claims. (Id. at ¶¶ 6,
18 7, 9, 13). Accordingly, there can be no doubt that the proposed Settlement before the Court is the
19 product of thorough arm's length and non-collusive negotiations between the Parties, who
20 participated in a full-day of mediation with well-respected mediator Zadeh and continued their
21 post mediation negotiations, and based thereon the Court should presume the fairness of the
22 proposed settlement.

23 **b. Sufficient Investigation and Discovery Has Been Conducted**

24 Prior to attending the mediation with Mariam Zadeh, Plaintiff conducted a comprehensive
25 investigation into the facts and legal issues raised by these action. Plaintiff's investigation included
26 requesting documents relating to Defendant's compensation policies and practices, inclusive of
27 the payment of wages and/or compensation, including bonuses; meal and rest break policies;
28 timekeeping policies and practices; wage statement exemplars and policies; Employee Handbooks;

1 employment agreements; payroll and timekeeping data for putative class members, to permit
2 Plaintiff to prepare a damages model. (Decl. Hatcher at ¶¶ 6, 7). At the time of mediation, and
3 prior to reaching the Settlement, Plaintiff was equipped with sufficient knowledge of the facts and
4 legal claims at issue, and the evidence in support or in contention thereof, so as to make a proper
5 evaluation of the merits of the claims in the action, the defenses raised by Defendant against said
6 claims, and Defendant's scope of projected liability. (Decl. Hatcher at ¶¶ 6, 7).

7 Given the foregoing, the Settlement for each participating Class Member is fair, reasonable,
8 and adequate, given the inherent risk of litigation and Defendant prevailing on the merits, the risk
9 relative to class certification, the costs of litigation, and Defendant's affirmative defenses. (Decl.
10 Hatcher at ¶¶ 6, 7, 9, 13). Should any Class Member dispute the fairness, reasonableness, or
11 adequacy of the settlement, they will be afforded an opportunity to do so up to and at the time of
12 the Final Approval/Fairness Hearing. (Decl. Hatcher at Ex. A).

13 **c. Class Counsel is Experienced in Similar Litigation**

14 To date, Class Counsel has handled numerous class actions and complex cases, the majority
15 of which they served as Class Counsel. (Decl. Hatcher at ¶¶ 4, 16, 17, 18). This experience and
16 success in similar wage and hour class action litigations supports the views that the proposed
17 Settlement is fair, reasonable and adequate. Class Counsel relied on their extensive experience
18 when negotiating the proposed settlement. (Decl. Hatcher at ¶¶ 6, 13, 9, 4, 16, 17, 18). As
19 discussed above, Class Counsel's settlement negotiations were conducted with consideration given
20 to the class size, the information and documentation obtained through informal and formal
21 discovery, the common experience of Plaintiff and other putative class members, Defendant's
22 general denial of any wrongdoing, and the uncertainty, risk, expense and delay associated with
23 litigating the action through trial, including the risks of obtaining and maintaining class
24 certification through trial and the risk for potential appeals. (Id. at ¶¶ 6, 13, 9, 4, 16, 17, 18). Class
25 Counsel also considered the just nature of the proposed *non-reversionary* settlement, which
26 requires Defendant to remit any unclaimed funds to the California State Controller's Office,
27 Unclaimed Property Division in the name of the Class Member. (Ex. 1 at ¶ 73.4). Therefore,
28 Defendant is required to pay the entire Gross Settlement Amount.

1 Based on the foregoing, the proposed settlement should be presumed fair since it was
2 reached as the result of arm's length negotiations, sufficient investigation and discovery was
3 conducted, and Class Counsel is highly experienced in similar wage and hour class litigation.
4 Moreover, the Court will possess the necessary information as to the percentage of exclusions and
5 objectors at the time of the Final Approval/Fairness Hearing.

6 **2. Benefits of the Settlement and the Risks of Continued Litigation**

7 This proposed settlement is fair and reasonable and comparable to similar class action
8 settlements involving these types of claims. Based on Class Counsel's review and analysis of the
9 information and documentation obtained in this action, Class Counsel anticipates that if these
10 matters were certified as a class action, proceeded to trial, and resulted in verdicts for Plaintiff and
11 the Class Members, Defendant's reasonable exposure for the claims at-issue is approximately
12 \$2,208,869.53, which is approximately 33.75% of Defendant's maximum exposure at an assumed
13 100% violation rate.

14 However, for the reasons described below, the Court might ultimately determine the claims
15 are not suitable for class certification or could be subject to decertification after certification is
16 granted. (Decl. Hatcher ¶9). Under the proposed Settlement, Class Members will avoid the risks
17 of continued litigation (including the possibility that class certification will be denied and no relief
18 will be available to the class members) and receive a pro rata share of the NSA, under Fund 1 or
19 Fund 2, in exchange for a narrowly tailored release of claims. (Ex. 1 at ¶14). Additionally, all
20 unclaimed funds will be remitted to the California State Controller's Office, Unclaimed Property
21 Division in the name of the Class Member. (Ex. 1 at ¶ 73.4); see also Code Civ. Proc. § 384.

22 Class Counsel are of the opinion that the proposed settlement is fair, reasonable and
23 adequate in light the following: Plaintiff contends that Defendant engaged in a systematic course
24 of illegal employment practices and policies, which were applied across the Class Members,
25 Defendant failed to provide legally compliant duty free rest periods and meal periods, pay overtime
26 wages based on the correct regular rate of pay, failed to pay all penalties, failed to pay premiums
27 at the regular rate of pay, failed to furnish accurate itemized wage statements, and failed to pay all
28 wages due upon separation of employment. Defendant denies Plaintiffs' claims and has asserted

1 various defenses thereof; Settlement Class Members will receive compensation for Defendant's
2 alleged violations without further delay; the release of claims is carefully crafted to only resolve
3 the claims that were or could have been asserted based on the facts alleged or ascertained; the
4 uncertainty of the outcome, risk and expense of litigation in complex class actions; and that no
5 amount of the GSA will revert back to Defendant, among other things. (Decl. Hatcher ¶¶ 9, 5, Ex.
6 1). The Settlement accounts for the strengths and risks of each of the claims, as described below.

7 **Underpaid Overtime Wage Claims.** Plaintiff contends that Defendant failed to include
8 non-discretionary bonuses, spot bonuses called "BRAVO Bonus", and insurance premium
9 payments when calculating the regular rate of pay for overtime that resulted in an artificially
10 reduced overtime payment, in violation of Labor Code §§ 510 and 1194, and Industrial Welfare
11 Commission ("IWC") Wage Order No. 4-2001. Defendant argues that it properly calculated the
12 regular rate for overtime by paying a "co-efficient overtime" payment that represents overtime for
13 general bonuses and that term life insurance premium payments are excluded from the regular rate
14 of pay regardless of the fact that the same is taxable income. Defendant further argues that only
15 the Billing Department received bonuses and approximately one-third (33%) of the Class signed
16 arbitration agreements. Plaintiff estimated that Defendant's maximum exposure for unpaid wage
17 claims, with interest, was approximately \$15,308.74. Although Plaintiff believes that the liability
18 is significantly strong here on the BRAVO Bonus theory, the damages exposure is not significant.
19 Given the above, Defendant's reasonable unpaid overtime claim is estimated at approximately
20 \$10,205.83.

21 **Non-Compliant Meal Periods.** Plaintiff contends that Defendant failed to pay meal period
22 premiums at the correct regular rate of pay, if at all, for late and/or short meal periods as required
23 by Labor Code §§ 226.7, 512 and 1194, and IWC Wage Order No. 4-2001. Based on the data
24 provided by Defendant, Plaintiff estimates Defendant's exposure here at \$371,648.42, including
25 interest. Plaintiff believes this is a stronger claim with significant liability given Defendant's
26 timekeeping and payroll records. However, Defendant maintains that it implemented and practiced
27 a compliant meal period policy and practice of paying meal period premiums. Defendant further
28 contends that approximately one-third (1/3) of the Class are subject to arbitration agreements.

1 Given the above, Defendant's reasonable meal period violation exposure is estimated at
2 approximately \$247,765.61.

3 **On-Duty/Captive Rest Periods.** Plaintiff contends that Defendant did not authorize
4 compliant rest periods by not allowing the Class to leave the premises during rest periods and
5 instructing the Class Members that they were "*on the clock*" if an accident happens, in violation
6 of Labor Code §§ 226.7 and 512, and IWC Wage Order No. 4-2001. State law prohibits such
7 controlled and non-duty free, on-call rest periods. During required rest periods, employers must
8 relieve their employees of all duties and relinquish any control over how employees spend their
9 break time. *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260. At a 100%
10 violation rate, Plaintiff estimates Defendant's rest period claim exposure to be \$3,573,919.25,
11 including interest. Defendant contends that its rest period policy and practice were compliant—
12 that its "HR Standalone: Employee Handbook Addendum – CA" does not mandate that employees
13 remain on premises during rest periods or that employees are "on the clock" or "on duty" during
14 rest periods. To this Defendant contends that such a claim will fail class certification because
15 individual issues will predominate. Moreover, Defendant further contends that approximately one-
16 third (1/3) of the Class are subject to arbitration agreements. Given the above, Defendant's
17 reasonable rest period violation exposure is estimated at approximately \$1,191,306.42.

18 **Wage Statement Violations.** Plaintiff contends that there is a derivative wage statement
19 violation and stand alone wage statement violation, in violation of Labor Code § 226. The
20 derivative violations derive from the alleged overtime, meal period and rest period violations. The
21 stand alone claim comes from the failure to accurately list the total hours worked on the wage
22 statement because Defendant included non-hours worked on the wage statements. At a 100%
23 violation rate, Plaintiff estimates that Defendant's exposure is approximately \$1,364,600 for this
24 claim. Defendant denies liability here because it reasonably and in good faith believed that it had
25 complied with the meal and rest period requirements. Further, Defendant contends that there is no
26 Labor Code §226(a)(2) violation because the employee could accurately determine from the wage
27 statement the total hours worked and that the "Total Hours" description does not reference hours
28 worked. Moreover, Defendant further contends that approximately one-third (1/3) of the Class are

1 subject to arbitration agreements. Given the above, Defendant's reasonable rest period violation
2 exposure is estimated at approximately \$454,866.67.

3 **Waiting Time Penalties.** Plaintiff alleges derivative waiting time penalty claims, in
4 violation of Labor Code §§ 201 and 203. While Plaintiff is confident she can establish the existence
5 of unpaid overtime wages as well as unpaid/underpaid meal and rest period violations, Plaintiff
6 still needs to overcome the "willful" prong to obtain waiting time penalties. Notwithstanding the
7 other underlying contentions by Defendant. At a 100% violation rate, Plaintiff estimates that
8 Defendant's exposure is approximately \$1,218,900.00 for this claim. Given the issues identified
9 herein and above, Defendant's reasonable waiting time penalty exposure is estimated at
10 approximately \$304,725.00.

11 Accordingly, Plaintiff estimates that Defendant's total reasonable exposure is
12 \$2,208,869.52. Here, the GSA represents an approximate 24.89% discount against the same. The
13 proposed settlement thus provides Class Members with the opportunity to obtain relief in a prompt
14 and efficient matter, rather than through a further lengthy litigation process with the potential for
15 appeals and/or potential for not prevailing on these claims at trial or that these claims would not
16 be certified or would later be decertified. As such, the proposed settlement is reasonable in light
17 of all known facts and circumstances, including the strengths and weakness of the claims and the
18 risks associated with this particular litigation.

19 **3. The Proposed Notice is Appropriate and Adequate**

20 Courts enjoy broad discretion in fashioning an appropriate notice program. *Cartt v.*
21 *Superior Court*, 50 Cal.App.3d 960, 973-974 (1975). Rule 3.766 of the California Rules of Court
22 outlines the notice requirements for class actions. While there is no statutory or due process
23 requirement that all class members receive actual notice, any "notice given should have reasonable
24 chance of reaching a substantial percentage of the class members." *Id.* at 974. Notice mailed to the
25 class members at their most recent known address is typically presumed adequate. *Phillips*
26 *Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985). The Settlement's Notice and procedure for
27 mailing satisfy these requirements. (Ex. 1 at ¶¶ 56, 59, 59.1, 59.2, 59.3, 61, 64, 64.1); (Ex. 1, Ex.
28 A).

1 **B. Allocated Representative Service Award is Fair and Reasonable**

2 Courts routinely approve service awards in order to compensate class representatives for
3 their effort and the risks they incur during class action litigation for the benefit of other class
4 members. *Cellphone Termination Fee Cases*, 186 Cal.App.4th 1380, 1393-94 (2010); *Clark v.*
5 *American Residential Services, LLC*, 175 Cal.App.4th 785, 806 (2009). Simply put, such payments
6 acknowledge that without class representatives, there can be no class action. *Clark*, 175
7 Cal.App.4th at 804. In determining service payments, the court may consider, among other things,
8 the risk to the class representative in commencing the suit, financial and otherwise; the notoriety
9 and personal difficulties encountered by the class representative; the amount of time and effort
10 spent by the class representative; and the personal benefit (or lack thereof) enjoyed by the class
11 representative as a result of the litigation. *Munoz*, 186 Cal.App.4th at 412.

12 By being the named representative in the Action, Plaintiff put her name forward on the
13 public record at the risk of future or potential employers choosing not to hire her based on the fact
14 that she took the lead in this Action. Plaintiff also ran the risk of being liable for Defendant's
15 attorneys' fees and costs in this litigation. Plaintiff spent significant time litigating this Action,
16 reviewing documents, providing documents and information to Class Counsel, discussing her
17 experience with Class Counsel, reviewing settlement documents, attending/participating in private
18 mediation and providing consistent support to Class Counsel. (Decl. Hatcher ¶¶ 8, 14); (Decl.
19 Sanchez at ¶¶ 7, 8, 14, 16). Moreover, Plaintiff has executed a full and general release of any and
20 all claims to the furthest extent permitted by law in exchange for the service payment. (Ex. 1 at
21 ¶75); (Decl. Sanchez at ¶ 16). Accordingly, Plaintiff has risked and surrendered more than any
22 Class Member. Therefore, a \$10,000 Service Award to Plaintiff is reasonable given the work and
23 the risks that she took and bore for the benefit of other members of the Class. (Decl. Hatcher at ¶¶
24 8, 14).

25 **C. Allocated Attorney's Fees and Costs are Fair and Reasonable**

26 Class Counsel will seek attorneys' fees of one-third of the Gross Settlement Amount as
27 attorneys' fees. The California Supreme Court has endorsed attorneys' fees awards in class action
28 litigation which represent a percentage of the common fund created in contingency fee litigation

1 such as this matter. *Laffitte v. Robert Half Internat. Inc.*, 1 Cal. 5th 480, 503 (2016) (affirming trial
2 court decision awarding class counsel with attorneys' fees of one-third of the common fund). The
3 allocation of one-third of the common fund, subject to a later lodestar cross-check at the time of
4 final approval, is fair and reasonable and in line with other employment cases where Class Counsel
5 worked on a contingency fee basis and created a substantial, non-reversionary settlement fund for
6 class members. As part of the final approval process, Class Counsel will file a Motion for
7 Attorney's Fees that includes a lodestar cross-check.

8 Class Counsel will also seek reimbursement of their actual litigation costs up to a maximum
9 of \$15,000.00 from the GSA for actual litigation costs incurred. (Ex. 1 at ¶7). The out-of-pocket
10 costs allocation for the litigation of the Actions is fair, reasonable and adequate. Class Counsel
11 will provide the final exact cost reimbursement as part of the final approval process that will be
12 supported by documentation of costs incurred. Moreover, any difference of the maximum amount
13 of cost reimbursement and the actual amount sought/awarded will be added to the NSA to be
14 distributed to the Settlement Class Members. (Ex. 1 at ¶¶ 7, 53.2).

15 **D. Conditional Certification of the Class is Appropriate for Settlement Purposes**

16 Pursuant to California Rules of Court, Rule 3.769(d), the Court is permitted at the
17 preliminary approval stage to make an order approving certification of a provisional settlement
18 class. The Parties stipulated to class certification for settlement purposes. (Ex. 1 at ¶ 54). The
19 standard of scrutiny applied by a court to determine the propriety of certifying a settlement class
20 is a lesser standard than that applied to a litigation class since the case management concerns
21 inherent in determining if a litigation class should be certified need not be addressed with respect
22 to a settlement class where trial is not anticipated. *Dunk*, 48 Cal.App.4th at 1807 n. 19; *see also*
23 *Officers for Justice*, 688 F.2d at 633. The Court should provisionally certify the Settlement Class.

24 **1. The Proposed Classes are Ascertainable and Numerous**

25 The Class is tailored to ensure the members are readily ascertainable. The class definition
26 is sufficiently specific to enable potential class members, and the Court, to readily determine the
27 parameters of the class. *See, Clothesrigger, Inc. V. GTE Corp.*, 191 Cal.App.3d 605, 617 (1987).
28 Further, the Class is identifiable from Defendant's payroll and personnel records. *Rose v. City of*

1 *Hayward*, Cal.App.3d 926, 932 (1981) (finding “[c]lass members are ‘ascertainable’ where they
2 may be readily identified without unreasonable expense or time by reference to official records.”);

3 The Class is defined as:

4 All current and former hourly non-exempt office-based employees of Defendant at
5 its Patient Business Service (“PBS”) facility in San Bernardino, California at any
6 time from May 17, 2018, through January 31, 2024. (Ex. 1 at ¶ 5).

7 Thus the Class is ascertainable. Further, the Class represents approximately 359
8 individuals. (Ex. 1 at ¶ 36). Numerosity is met as the individual joinder of all class members would
9 be impracticable. Code Civ. Proc. §382; *Richmond v. Dart Indus., Inc.*, 29 Cal.3d 462, 470 (1981);
10 *Rose*, 126 Cal.App.3d at 934 (presumption of impracticable joinder for class of 30 to 40
11 individuals).

12 **2. Common Issues of Law or Fact Predominate**

13 Whether a class action is the appropriate mechanism depends largely upon “whether the
14 common questions are sufficiently pervasive to permit adjudication in a class action rather than
15 multiplicity of suits.” *Richmond*, 29 Cal.3d at 477-478. The primary purpose of this inquiry is to
16 ascertain whether the proposed class is sufficiently cohesive to warrant adjudication by
17 representation. *See e.g., Lazar v. Hertz Corp.*, 143 Cal.App.3d 128, 138-139 (1983); *Hogya v.*
18 *Superior Court*, 75 Cal.App.3d 122, 142 (1977). Plaintiff’s complaints alleged numerous Labor
19 Code violations based on common questions of law and fact for the claims at-issue. (Ex. 1 at
20 Exhibit B Proposed SAC at ¶ 32); See (First Amended Complaint at ¶ 32). Accordingly, common
21 questions of law and fact exist among the Class because this Action focuses on the Defendant’s
22 allegedly systematic course of illegal employment and payroll practices and policies, which were
23 applied across the Class Members. *See Id.* Moreover, the common questions among the Class
24 predominate over individual issues thus warranting class certification.

25 **3. Plaintiff’s Claims Are Typical of the Class Members’ Claims**

26 Typicality simply means that the representative(s) claims be similar to those of class
27 members. The interests of the class representatives need not be identical to those of other class
28 members; the class representatives must simply be similarly situated. *B.W.I. Custom Kitchen v.*
Owens- Illinois, Inc., 191 Cal.App.3d 1341, 1347 (1987); *Classen v. Weller*, 145 Cal.App.3d 27,

46 (1983). Here, the Class Representative/Plaintiff is a former non-exempt office-based employee of Defendant at its Patient Business Service (“PBS”) facility in San Bernardino, California. (Decl. Sanchez at ¶2). Plaintiff worked pursuant to Defendant’s corporate policies and pay practices applicable to Defendant’s office-based employees at its PBS facility in San Bernardino, California. Like other Class Members, Plaintiff was paid pursuant to Defendant’s policy and pay practices including working under Defendant’s alleged practice of failing to pay all overtime time wages due to the failure to include non-discretionary bonus and insurance payments in the calculation of the regular rate of pay for overtime payments, failing to provide non-captive/off-duty rest periods, paying meal and rest period premium payments at the correct regular rate of pay, failing to provide accurate wage statements, and failing to provide all earned wages at the time of separation. (Decl. Sanchez ¶¶ 2-5); (Ex. 1 at Exhibit B Proposed SAC at ¶ 32). As each Class Member would be required to demonstrate the same elements in order to recover on their claims against Defendant, their interests are sufficiently aligned with Plaintiff’s interests. *Medraza v. Honda of North Hollywood*, 166 Cal.App.4th 89, 99 (2008).

4. The Class is Adequately Represented

A class representative is an adequate representative of the class so long as his or her interests are not antagonistic or in conflict with the objectives that he purports to represent. *Richmond*, 29 Cal.3d at 470. Additionally, Class Counsel “must be qualified, experienced and generally able to conduct the proposed litigation.” *Miller v. Woods*, 148 Cal.App.3d 862, 875 (1983). Here, Plaintiff’s interests are not antagonistic to the interest of the Class since Plaintiff alleges that she and the Class Members were subject to the same unlawful policies and practices. Consequently, Plaintiff seeks the same or similar relief sought by the Class. *Amchem*, 521 U.S. at 625-626. Moreover, Plaintiff has prosecuted this case on behalf of the Class and has spent time meeting and corresponding with Class Counsel and providing documentation to Class Counsel. (Decl. Hatcher ¶14); (Decl. Sanchez ¶¶ 7, 8, 14). As such, there is no doubt that Plaintiff is an adequate representative.

Class Counsel is very experienced litigating wage and hour class actions. (Decl. Hatcher at ¶¶ 4, 16, 17, 18). Class Counsel thoroughly investigated Plaintiff’s claims, the underlying case

1 law and potential defenses, and reviewed the substantial information and documents exchanged in
2 discovery prior to attending mediation. (Decl. Hatcher ¶¶ 6, 7, 9). Accordingly, Class Counsel was
3 sufficiently informed prior to engaging in settlement negotiations. Furthermore, the settlement
4 negotiations between the Parties were non-collusive, at arm's length and conducted with the
5 assistance of a well-known and experienced wage and hour mediator – Mariam Zadeh (Decl.
6 Hatcher ¶¶ 6, 7, 9). As such, Class Counsel has and will adequately represent the Class.

7 **5. The Class Action Procedure is Superior**

8 Courts have repeatedly held that class Actions are a superior device to resolve wage and
9 hour class Actions. *Moore v. Ulta Salon, Cosmetics & Fragrance, Inc.* (C.D. Cal. 2015) 311 F.R.D.
10 590; *Ortega v. J.B. Hunt Transp., Inc.* (C.D. Cal. 2009) 258 F.R.D. 361. Class treatment is clearly
11 superior to any other method of resolving wage and hour employment Action, and in fact
12 encouraged. *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 340; *Jaimez v.*
13 *Daiohs USA, Inc.* (2010) 181 Cal.App.4th 1286, 1308. This is no difference here as Plaintiff's
14 claims are based on common policies and uniform class-wide practices, these claims can be most
15 efficiently litigated and resolved on a class-wide basis. The alternative would be the unrealistic
16 filing of hundreds of individual claims, and even hundreds of individual arbitrations, posing the
17 serious disadvantages pointed out by the court in the *Sav-On* opinion.

18 **V. THE COURT SHOULD APPROVE THE PAGA SETTLEMENT**

19 **A. The Court Should Approve the PAGA Settlement**

20 Pursuant to Labor Code § 2699(1)(2), a settlement of a civil action brought under the PAGA
21 statute must be submitted to the LWDA and must be approved by the court, “ensuring that any
22 negotiated resolution is fair to those affected.” *Williams v. Superior Court*, 3 Cal. 5th 531, 549
23 (2017). This settlement meets that threshold. Contemporaneously to the filing of this Motion, Class
24 Counsel shall submit the proposed settlement to the LWDA and file notice of the same with the
25 court by the deadline to file the reply in support of this motion. The proposed settlement allocates
26 \$20,000 for civil penalties pursuant to PAGA, with seventy-five percent (75%) of the allocation
27 to be paid to the LWDA. (Ex. 1 at ¶ 26). The proposed allocation of \$20,000 to PAGA is an
28 exceptional outcome in light of all known facts and circumstances as well as the fact that civil

1 penalties under PAGA are discretionary.

2 “Relief under PAGA is designed primarily to benefit the general public, not the party
3 bringing the action.” *Kim v. Reins Int’l Cal., Inc.*, 9 Cal. 5th 73, 81 (2020). As a result, in wage
4 and hour class action cases that settle, which are the overwhelming majority of such cases, very
5 little of the total settlement is paid to PAGA penalties in order to maximize payments to class
6 members. *See Smith v. Am. Greetings Corp.*, 2016 U.S. Dist. LEXIS 66247 (N.D. Cal. May 19,
7 2016) (granting final approval of class action settlement allocating \$37,500 of \$4 million
8 settlement to PAGA); *Willner v. Manpower Inc.*, 2015 U.S. Dist. LEXIS 80697 (N.D. Cal. June
9 20, 2015) (granting final approval of a class settlement allocating \$65,655 of \$8.75 million
10 settlement to PAGA); *Chu v. Wells Fargo Investments, LLC*, 2011 U.S. Dist. LEXIS 15821 (N.D.
11 Cal. Feb. 15, 2011) (approving \$10,000 PAGA allocation in \$6.9 million settlement). The \$15,000
12 payment to the LWDA is thus more than adequate “to supplement” funding the agency’s
13 “enforcement of labor laws” and “education of employers and employees about their rights and
14 responsibilities under” the Labor Code. Cal. Lab. Code § 2699(i); (Ex. 1 at ¶ 26).

15 Furthermore, if a higher amount is allocated to PAGA, the burden to pay civil penalties
16 would effectively shift to the Class Members since a higher allocation would reduce the amount
17 that the Class Members would ultimately receive under the proposed Settlement. Although this
18 burden shifting may achieve the enforcement objective of the statute, it would do so at the expense
19 of the employees that the statute was designed to protect. Thus, the Settlement strikes a balance
20 between the interest of all the parties, including the LWDA and general public, by penalizing the
21 employer and providing relief to the Settlement Class Members.

22 **B. PAGA Settlement is Procedurally Correct**

23 Contemporaneously to the filing of this Motion, Class Counsel shall submit the proposed
24 settlement to the LWDA pursuant to Labor Code §2699(1)(2). The Class Notice effectively informs
25 the Class that even if the Class Member opts-out of the Class settlement, they will not be opted-
26 out of the PAGA settlement and still be bound by the PAGA Release.

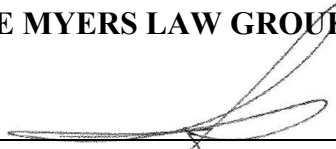
27 **VI. CONCLUSION**

28 Accordingly, Plaintiff respectfully requests that this Court Grant preliminary approval of

1 the Settlement, conditionally certify the settlement class, appoint The Myers Law Group, A.P.C.
2 as class counsel, appoint Plaintiff Toy Sanchez as class representative, order notice of conditional
3 certification and preliminary approval of the class action settlement to the class. The proposed
4 order and proposed notice are filed concurrently herewith.

5
6 DATED: August 21, 2024

THE MYERS LAW GROUP, A.P.C.

7
8 By: 
9 David P. Myers,
10 Jason Hatcher,
11 Andriana N. Bravo,
12 Attorneys for Plaintiff, on behalf of
13 herself and all others similarly situated
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