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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

CAROL CANO, individually, and on behalf of
all others similarly situated,

Plaintiff,

v.

360 HEALTH PLAN, INC. DBA 360 CLINIC, a
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 30-2022-01257308-CU-OE-CXC

**CLASS AND REPRESENTATIVE
ACTION**

[Assigned for all purposes to: Hon. Randall J.
Sherman, Dept. CX-105]

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

[Filed with: Declarations of Justin F.
Marquez and Plaintiff; and Proposed Order]

PRELIMINARY APPROVAL HEARING

Date: November 8, 2024

Time: 10:00 a.m.

Dept: CX-105

Court Reservation #: 74340007

Complaint filed: April 28, 2022

Trial date: Not set

1 **TO THE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that on November 1, 2024 at 10:00 a.m., in Department CX-105
3 of the Orange County Superior Court, located at 751 W. Santa Ana Boulevard, Santa Ana,
4 California 92701, pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769
5 *et seq.*, Plaintiff Carol Cano will move the Court for an Order granting preliminary approval of the
6 proposed class action settlement between Plaintiff and Defendant 360 Health Plan, Inc. dba 360
7 Clinic (“Defendant”). Plaintiff further moves the Court for an Order:

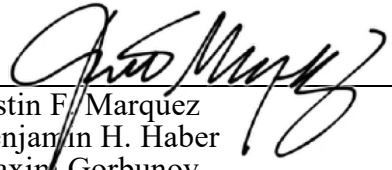
- 8 1. Granting preliminary approval of the Class Action and PAGA Settlement Agreement
9 and Class Notice;
10 2. Certifying a Class for settlement purposes;
11 3. Approving the Notice and the plan for distribution of the Notice;
12 4. Appointing Plaintiff Carol Cano as Class Representative for settlement purposes;
13 5. Appointing Plaintiff’s Counsel, Justin F. Marquez, Benjamin H. Haber, and Maxim
14 Gorbunov of Wilshire Law Firm, PLC, as Class Counsel for settlement purposes;
15 6. Appointing Apex Class Action, LLC as the Settlement Administrator; and
16 7. Scheduling a final approval hearing.

17 The motion will be based upon this notice, the attached memorandum of points and
18 authorities, the Declaration of Justin F. Marquez and Plaintiff, filed concurrently herewith, the
19 records and files in this action, and any other further evidence or argument that the Court may
20 properly receive at or before the hearing.

21 Respectfully submitted,

22 Dated: July 16, 2024

WILSHIRE LAW FIRM

23
24 By: 

Justin F. Marquez
Benjamin H. Haber
Maxim Gorbunov

25
26 *Attorneys for Plaintiff*
27
28

TABLE OF CONTENTS

TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES.....	iv
MEMORANDUM OF POINTS AND AUTHORITIES.....	1
I. INTRODUCTION.....	1
II. SUMMARY OF THE LITIGATION AND SETTLEMENT.....	1
A. Plaintiff’s Claims	1
B. Discovery and Investigation.....	2
C. Key Terms of the Proposed Settlement.....	3
III. DISCUSSION	7
A. The Settlement Is Fair, Reasonable, Adequate, and the Product of Investigation, Litigation, and Negotiation	8
1. The Settlement Is the Product of Discovery, Investigation, and Informed and Non-Collusive Arm’s-Length Negotiations.....	8
2. The Settlement Is Fair and Reasonable in Light of the Parties’ Respective Legal Positions.....	9
3. Class Counsel Has Extensive Experience in Class Action Litigation.....	10
B. The Proposed Class Notice of Settlement Should Be Approved	10
C. The Proposed Attorneys’ Fees and Costs Are Reasonable	10
1. Class Counsel Request an Award of Fees Based on the “Common Fund” Method	11
2. The Requested Fee Award Is in Line with Typical Cases	12
3. This Matter Involves A “Fee-Shifting” Provision of the Labor Code	12
4. The Experience, Reputation and Ability of Class Counsel Support the Requested Fee Award	13
D. The PAGA Allocation is Reasonable.....	13
E. The Service Award to Named Plaintiff Is Reasonable.....	14
IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED	16

1	A. Legal Standard	16
2	B. Plaintiff Maintains That the Criteria for Class Certification Are Satisfied for	
3	Settlement Purposes.	17
4	1. The Classes Are Ascertainable and Numerous	17
5	2. There are Many Common Issues of Law and Fact Which Predominate.....	17
6	3. Plaintiff’s Claims Are Typical of the Claims of the Class.....	18
7	4. Plaintiff and Her Counsel Meet the Adequacy Requirement.....	18
8	5. A Class Action is Superior to a Multiplicity of Litigation.....	19
9	V. THE PROPOSED NOTICE IS CONSTITUTIONALLY SOUND.....	19
10	A. The Proposed Notice Plan Satisfies Due Process	19
11	B. The Notice is Accurate and Informative	19
12	VI. CONCLUSION	20

TABLE OF AUTHORITIES

STATE CASES

Bowles v. Super. Ct., (1955)

44 Cal.2d 574.....17

Cartt v. Super Ct., (1975)

50 Cal.App.3d 96019

Chavez v. Netflix, Inc., (2008)

162 Cal.App.4th 4312

City and County of San Francisco v. Sweet, (1995)

12 Cal.4th 105.....11

Classen v. Weller, (1983)

145 Cal.App.3d 2718

Clothesrigger, Inc. v. GTE Corp., (1987)

191 Cal.App.3d 60517

Collins v. Rocha, (1972)

7 Cal.3d 232.....17

D’Amico v. Bd. of Medical Examiners, (1974)

11 Cal.3d 1.....11

Daar v. Yellow Cab Co., (1967)

67 Cal. 2d 695.....16

Dunk v. Ford Motor Co., (1996)

48 Cal.App.4th 17947

Gentry v. Super. Ct., (2007)

42 Cal.4th 443.....14

Kullar v. Foot Locker Retail, Inc., (2008)

168 Cal.App.4th 1167

Laffitte v. Robert Half Int’l Inc., (2016)

1 Cal.5th 480.....11

1	<i>Linder v. Thrifty Oil Co.</i> , (2000)	
2	23 Cal.4th 429.....	16
3	<i>Mallick v. Super. Ct.</i> , (1979)	
4	89 Cal.App.3d 434	7
5	<i>McGhee v. Bank of America</i> , (1976)	
6	60 Cal.App.3d 442	18
7	<i>Miller v. Woods</i> , (1983)	
8	148 Cal. App. 3d 862	18
9	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> , (2010)	
10	186 Cal.App.4th 399	8, 14
11	<i>Quinn v. State of California</i> , (1995)	
12	15 Cal.3d 162.....	11
13	<i>Richmond v. Dart Indus., Inc.</i> , (1981)	
14	29 Cal. 3d 462.....	16
15	<i>Rose v. City of Hayward</i> , (1981)	
16	126 Cal.App.3d 926	17
17	<i>Serrano v. Priest</i> , (1977)	
18	20 Cal.3d 25.....	11
19	<i>Stamburgh v. Super. Ct.</i> , (1976)	
20	62 Cal.App.3d 231	8
21	<i>Wershba v. Apple Computers, Inc.</i> , (2001)	
22	91 Cal.App.4th 224	9
23	<i>Wilner v. Sunset Life Ins. Co.</i> , (2000)	
24	78 Cal.App.4th 952	17

FEDERAL CASES

26	<i>Frank v. Eastman Kodak Co.</i> ,	
27	(W.D.N.Y. 2005) 228 F.R.D. 174	15

///

1	<i>Garcia v. Gordon Trucking, Inc.</i>	
2	(E.D. Cal. Oct. 31, 2012) No. 1:10-CV-0324 AWI SKO, 2012 WL 5364575.....	14
3	<i>Hopson v. Hanesbrands Inc.</i>	
4	(N.D. Cal. Apr. 3, 2009)No. CV-08-0844 EDL, 2009 WL 928133.....	13
5	<i>Jack v. Hartford Fire Ins. Co.</i>	
6	(S.D. Cal. Oct. 13, 2011) 2011 WL 4899942	13
7	<i>Leyva v. Medline Ind.,</i>	
8	(9th Cir. 2013) 716 F.3d 510.....	19
9	<i>McKenzie v. Fed. Express Corp.</i>	
10	(C.D. Cal. Jan. 23, 2012) 2012 WL 12882124.....	13
11	<i>Moreno v. Pretium Packaging, L.L.C.</i>	
12	(C.D. Cal. Aug. 6, 2021) 2021 WL 3673845	15
13	<i>Priddy v. Edelman,</i>	
14	(6th Cir. 1989) 883 F.2d 438.....	8
15	<i>Rodriguez v. W. Publ'g Corp.,</i>	
16	(9th Cir. 2009) 563 F.3d 948.....	14
17	<i>Van Vranken v. Atlantic Richfield Company,</i>	
18	(N.D. Cal. 1995) 901 F.Supp. 294.....	12
19	<i>Vincent v. Hughes Air West, Inc.,</i>	
20	(9th Cir. 1977) 557 F.2d 759.....	11
21	<i>Zubia v. Shamrock Foods Co.</i>	
22	(C.D. Cal. Dec. 21, 2017) No. CV1603128ABAGRX, 2017 WL 10541431.....	14
23	<u>STATE STATUTES</u>	
24	Code of Civil Procedure § 382.....	16, 17
25	Labor Code § 1194	12
26	Labor Code § 90.5	14
27	<u>RULES</u>	
28	California Rules of Court, Rule 3.766.....	19

1	California Rules of Court, Rule 3.769(f).....	10
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2 **TREATISES**

3	Conte & Newberg, <i>Newberg on Class Actions</i> (3rd Ed.)	8, 12, 20
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4 **OTHER AUTHORITIES**

5	Eisenberg & Miller, <i>Incentive Awards to Class Action Plaintiffs: An Empirical Study</i> , (2006)	53
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6	UCLA L.Rev. 1303	15
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Carol Cano (“Plaintiff”) seeks preliminary approval of a proposed \$350,000.00 non-reversionary, wage and hour class action settlement with Defendant 360 Health Plan, Inc. (“Defendant”). The Settlement will provide substantial monetary payments to approximately 240 class members. And, as set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law. The Settlement was reached after extensive investigation, discovery, and negotiations. The negotiations were at arms-length and were facilitated by an experienced class action mediator, David Phillips, Esq., over the course of a full day of mediation. After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses, the Parties reached a settlement. Accordingly, Plaintiff requests that the Court preliminarily approve the proposed Settlement, certify the proposed settlement class, approve the proposed notice, and set a final approval hearing.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiff’s Claims

This is a wage and hour class action and PAGA representative action. Plaintiff and putative class members worked in California as hourly-paid or non-exempt employees for Defendant during the class period. Defendant is a healthcare company that provides, among other things, COVID-19 testing and vaccine centers in Orange County and the surrounding area. (Declaration of Justin F. Marquez in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement [“Marquez Decl.”], ¶ 2.)

Plaintiff alleges that Defendant’s payroll, timekeeping, and wage and hour practices resulted in Labor Code violations. Plaintiff alleges that Defendant failed to pay for all hours worked. Plaintiff further alleges that Defendant failed to provide employees with legally compliant meal and rest periods, and Defendant failed to reimburse business expenses. Based on these allegations, Plaintiff asserts related claims for failure to provide accurate wage statements, failure to pay all final wages at termination, unfair business practices, and civil penalties under PAGA. (*Id.* at ¶ 3.)

On April 28, 2022, Plaintiff filed a putative wage-and-hour class action complaint against Defendant for: (1) failure to pay minimum and straight time wages (Labor Code §§ 204, 1194, 1194.2, and 1197); (2) failure to pay overtime wages (Labor Code §§ 1194 and 1198); (3) failure to provide meal periods (Labor Code §§ 226.7 and 512); (4) failure to authorize and permit rest periods (Labor Code §§ 226.7 and 512); (5) failure to timely pay final wages at termination (Labor Code §§ 201-203); (6) failure to provide accurate itemized wage statements (Labor Code § 226); (7) failure to indemnify employees for expenditures (Labor Code § 2802); and (8) unfair business practices (Business and Professions Code 17200 et seq.). On or about May 9, 2022, Plaintiff sent a notice to Defendant and the California Labor & Workforce Development Agency (“LWDA”) alleging similar wage and hour violations pursuant to the Private Attorneys General Act “PAGA” (Labor Code §§ 2698, *et seq.*) On July 14, 2022, Plaintiff filed a separate action alleging civil penalties under PAGA against Defendant. On December 11, 2023, the Parties filed a Joint Stipulation to Consolidate Actions for Purposes of Settlement Only, and on December 14, 2023, the Court approved the Stipulation, consolidating the Class and PAGA actions, with the Class Action as the lead case. (Marquez Decl., ¶ 4.)

B. Discovery and Investigation

Following the filing of the Complaint, the parties exchanged documents and information before mediating this action. Defendant produced a sample of time and pay records for class members. Defendant also provided documents of its wage and hour policies and practices during the class period, and information regarding the total number of current and former employees in its informal discovery responses. (*Id.* at ¶ 5.)

After reviewing documents regarding Defendant’s wage and hour policies and practices, analyzing Defendant’s timekeeping and payroll records, and interviewing Class Members, Class Counsel was able to evaluate the probability of class certification, success on the merits, and Defendant’s maximum monetary exposure for all claims. (*Id.* at ¶ 6.) Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Class Counsel reviewed these records and prepared a damage analysis prior to mediation. (*Id.*)

Settlement Negotiations

1 On January 30, 2023, the parties participated in private mediation with experienced class
2 action mediator David Phillips, Esq. (*Id.* at ¶ 7.) The settlement negotiations were at arm's
3 length and, although conducted in a professional manner, were adversarial. The Parties went
4 into the mediation willing to explore the potential for a settlement of the dispute, but each side
5 was also prepared to litigate their position through trial and appeal if a settlement had not been
6 reached. (*Id.*) After extensive negotiations and discussions regarding the strengths and
7 weaknesses of Plaintiff's claims and Defendant's defenses, the Parties reached a settlement the
8 material terms of which are encompassed within the Settlement. (*Id.* at ¶ 8, Ex. 1 [Class Action
9 and PAGA Settlement Agreement and Class Notice].)

10 Class Counsel has conducted a thorough investigation into the facts of this case. Based
11 on the foregoing discovery and their own independent investigation and evaluation, Class
12 Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best
13 interests of the Settlement Class Members in light of all known facts and circumstances, the risk
14 of significant delay, the defenses that could be asserted by Defendant both to certification and
15 on the merits, trial risk, and appellate risk. (*Id.* at ¶ 16.)

16 Indeed, the \$350,000.00 Settlement represents **71% of the realistic maximum recovery**
17 **of \$492,934.22.** (*Id.* at ¶ 25.) Although Class Counsel estimated that Defendant's maximum
18 potential liability for all claims was approximately \$2.7 million, when the risk of prevailing at
19 certification and trial are factored into the equation, Class Counsel believes that Defendant's
20 realistic exposure was \$492,934.22, meaning the Settlement achieves a significant recovery.
21 (*Id.* at ¶¶ 16-29.) Considering the risk and uncertainty of prevailing at class certification and at
22 trial, this is an excellent result for the Class. (*Id.* at ¶ 25.) Indeed, because of the proposed
23 Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an
24 unfavorable judgment.

25 C. Key Terms of the Proposed Settlement

26 The Parties used the Los Angeles Superior Court's Form Class Action and PAGA
27 Settlement Agreement and Class Notice. A document showing edits the parties made to the
28 template in redline is attached to the Declaration of Justin F. Marquez as Exhibit 2. The

Settlement's key terms include:

1. Class Definition: For settlement purposes only, the Parties agree to the certification of a class pursuant to California Code of Civil Procedure § 382 defined as: "all persons employed by 360 HEALTH in California and classified as an hourly paid or non-exempt employee who worked for 360 HEALTH during the Class Period." (Settlement, § 1.6.)

2. Class Period: "means the period from July 15, 2020 to June 30, 2022." (Settlement, § 1.13.)

3. Participating Class Members: "means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement." (Settlement, § 1.35.)

4. Aggrieved Employees: "means a person employed by 360 HEALTH in California and classified as an hourly paid or non-exempt employee who worked for 360 HEALTH during the PAGA Period." (Settlement, § 1.5.)

5. PAGA Period: "means the period from July 14, 2021 to June 30, 2022." (Settlement, § 1.31.)

6. Gross Settlement Amount: "means \$350,000.00 which is the total amount 360 HEALTH agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator's Expenses." (Settlement, § 1.22.)

7. Uncashed Checks: If a settlement check is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace search and, if another address is identified, shall mail the check to the newly identified address. Any settlement checks remaining uncashed after one hundred and eighty (180) days shall be transmitted to the Cy Pres Recipient, Legal Aid at Work thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). (Settlement, § 4.4.3.)

8. Release by Participating Class Members: "All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys,

1 heirs, administrators, successors, and assigns, release Released Parties from any and all claims
2 asserted or that could have been asserted based on the facts pled in the operative complaints,
3 including but not limited to, state wage and hour claims for any and all violations of California's
4 Labor Code and Unfair Competition Law based on Defendant's failure to pay for all hours
5 worked (including minimum, straight time, and overtime wages), failure to provide meal periods,
6 failure to authorize and permit rest periods, failure to timely pay final wages at termination,
7 failure to furnish accurate itemized wage statements, and failure to indemnify employees for
8 expenditures based on the alleged Labor Code violations, and all damages, interest, penalties,
9 attorneys' fees, costs, and other amounts recoverable under said causes of action under California
10 law, to the extent permissible, including, but not limited to, the California Labor Code and the
11 applicable Wage Orders. Except as set forth in Section 5.3 of this Agreement, Participating Class
12 Members do not release any other claims, including claims for vested benefits, wrongful
13 termination, violation of the Fair Employment and Housing Act, unemployment insurance,
14 disability, social security, workers' compensation, or claims based on facts occurring outside the
15 Class Period." (Settlement, § 5.2.) This Release will be deemed effective on the date when
16 Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes
17 owed on the Wage Portion of the Individual Class Payments. (Settlement, § 5.)\

18 9. Release by Aggrieved Employees: "All Aggrieved Employees, on behalf of
19 themselves and their respective former and present representatives, agents, attorneys, heirs,
20 administrators, successors, and assigns, are deemed to release the Released Parties from any and
21 all claims asserted in the operative complaints for civil penalties under PAGA based on the
22 alleged Labor Code violations, and all damages, interest, penalties, attorneys' fees, costs, and
23 other amounts recoverable under said causes of action under California law, to the extent
24 permissible, including, but not limited to, the California Labor Code and the applicable Wage
25 Orders." (Settlement, § 5.3.)

26 10. Released Parties: means "360 HEALTH and each of its former and present directors,
27 officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns,
28 subsidiaries, affiliates." (Settlement, § 1.41.)

1 11. No Reversion: “None of the Gross Settlement Amount will revert to 360 HEALTH.”
2 (Settlement, § 3.1.)

3 12. PAGA Allocation: The settlement includes \$10,000.00 allocated to Plaintiff’s
4 claims under PAGA, with 75% of which (\$7,500.00) being paid to the LWDA and 25% (\$2,500.00)
5 being paid to the Aggrieved Employees. (Settlement, § 3.2.4.) Class Counsel submitted the
6 proposed settlement to the LWDA before filing this Motion for Preliminary Approval. (Marquez
7 Decl., ¶ 10.)

8 13. Net Settlement Amount: “means the Gross Settlement Amount, less the following
9 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
10 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
11 Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be
12 paid to Participating Class Members as Individual Class Payments.” (Settlement, § 1.28.)

13 14. Distribution Formula: “An Individual Class Payment calculated by (a) dividing the
14 Net Settlement Amount by the total number of Workweeks worked by all Participating Class
15 Members during the Class Period and (b) multiplying the result by each Participating Class
16 Member’s Workweeks.” (Settlement, § 3.2.4.) As to PAGA: “The Administrator will calculate
17 each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees’ 25%
18 share of PAGA Penalties (\$2,500.00) by the total number of PAGA Period Pay Periods worked by
19 all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each
20 Aggrieved Employee’s PAGA Period Pay Periods.” (Settlement, § 3.2.5.1.)

21 15. Tax Allocation: Any settlement money paid to Settlement Class Members will be
22 allocated as 33% wages, 67% to penalties and interest. (Settlement, § 3.2.4.1.)

23 16. Class Representative Service Award: Subject to Court approval, Plaintiff shall be
24 paid an enhancement award not to exceed \$10,000.00. (Settlement, § 3.2.1.) This amount is for
25 Plaintiff’s time and effort in bringing and presenting the action, and in exchange for a general
26 release of all claims, known or unknown, pursuant to Civil Code Section 1542. (Settlement, § 5.1.)
27 If the Court approves a lesser enhancement, then the unapproved portion or portions shall revert
28 into the Net Settlement Amount to be distributed between the participating Settlement Class

Members on a pro-rata basis. (Settlement, § 3.2.1.)

17. Attorneys' Fees and Costs: The Settlement provides that Defendant will not oppose a fee application of up to 33 1/3% (\$116,666.67) of the Gross Settlement Amount, plus out-of-pocket costs not to exceed \$20,000.00. (Settlement, § 3.2.2.)

18. Notice of Proposed Class Action Settlement: The Notice sets forth in plain terms, a statement of the case, the terms of the Settlement Agreement, the approximate amount of attorneys' fees, costs, and service award being sought, and an explanation of how the settlement allocations are calculated. (Settlement, Ex. 1, Class Notice.) Class Members will be notified by first-class mail of the settlement. (Settlement, § 7.4.) Apex Class Action, LLC, the proposed Settlement Administrator, will undertake its best efforts to ensure that the notice is provided to the current addresses of class members, including conducting a national change of address search and re-mailing the notice to updated addresses. (*Id.*; Marquez Decl., ¶ 11, Ex. 3 [Settlement Administrator Bid].)

III. DISCUSSION

To prevent fraud, collusion, or unfairness to the class, the settlement of a class action requires court approval. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-01.) This Court has wide discretion to determine whether the proposed settlement is fair. (*Mallick v. Super. Ct.* (1979) 89 Cal.App.3d 434, 438.) Fairness is presumed when: (1) the settlement is reached through arm's-length bargaining; (2) investigation is sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*Dunk*, 48 Cal.App.4th at p. 1800.)

In considering whether a settlement is reasonable, the trial court should consider relevant factors, which may include the strength of plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement. (*Kullar v. Foot Locker Retail, Inc.*, (2008) 168 Cal.App.4th 116, 128.) In order to approve a class action settlement, the court must satisfy itself

1 that the class settlement is within the “ballpark” of reasonableness. (*Id.* at p. 133.) The record
2 need not contain an explicit statement of the maximum theoretical recovery. (*Munoz v. BCI Coca-*
3 *Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-9 [holding that *Kullar* does not
4 require “an explicit statement of the maximum amount the plaintiff class could recover if it
5 prevailed on all its claims”, but instead, only an “understanding of the amount that is in controversy
6 and the realistic range of outcomes of the litigation.”].)

7 As discussed below, Class Counsel has provided information exceeding the threshold
8 required to provide this Court with materials and information necessary to determine that the
9 proposed settlement is fair, adequate, and reasonable.

10 **A. The Settlement Is Fair, Reasonable, Adequate, and the Product of**
11 **Investigation, Litigation, and Negotiation**

12 **1. The Settlement Is the Product of Discovery, Investigation, and Informed**
13 **and Non-Collusive Arm’s-Length Negotiations**

14 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless
15 evidence to the contrary is offered; thus, there is a presumption here that the negotiations were
16 conducted in good faith. (Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 11.51.)
17 Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh v. Super.*
18 *Ct.* (1976) 62 Cal.App.3d 231, 236; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447 [“The
19 fact that a plaintiff might have received more if the case had been fully litigated is no reason not
20 to approve the settlement.”].)

21 The Settlement was reached following extensive negotiations following one day of
22 mediation with experienced employment mediator, David Phillips, Esq. (Marquez Decl. ¶ 7.) The
23 settlement negotiations were at arm’s length and, although conducted in a professional manner,
24 were adversarial. (*Id.*) The parties went into the mediation willing to explore the potential for a
25 settlement of the dispute, but each side was also prepared to litigate their or its position through
26 trial and appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and
27 discussions regarding the strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses,
28 the Parties reached an agreement. (Marquez Decl. ¶ 8.)

1 Prior to reaching this settlement, Class Counsel conducted informal discovery concerning
2 the claims set forth in the Litigation, such as a sample of class member timekeeping and payroll
3 records, Defendant’s policies and procedures concerning the payment of wages, the provision of
4 meal and rest breaks, issuance of wage statements, and providing all wages at separation, as well
5 as information regarding the number of putative class members and the mix of current versus
6 former employees, the wage rates in effect, and the amount of meal and rest period premium wages
7 paid to class members. (*Id.* at ¶¶ 5-6.) In conjunction with their extensive factual investigation,
8 Class Counsel investigated the applicable law regarding the claims and defenses asserted in the
9 litigation. (*Id.*) Thus, Plaintiff and her counsel were able to act intelligently and effectively in
10 negotiating the proposed Settlement. (*Id.*)

11 Class Counsel also has considerable experience and has demonstrated competence with
12 litigating wage and hour class actions. (*Id.* at ¶¶ 40-52.) Again, this supports the position that the
13 terms of the Settlement are premised on objective evidence that has been considered and weighed
14 in light of the risks, expenses, and time consumption to both sides of continued litigation of this
15 action.

16 **2. The Settlement Is Fair and Reasonable in Light of the Parties’** 17 **Respective Legal Positions**

18 A settlement is not judged against what might plaintiff recover had he prevailed at trial, nor
19 does the settlement have to provide 100% of the damages sought to be fair and reasonable.
20 (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250 [“Compromise is inherent
21 and necessary in the settlement process . . . even if the relief afforded by the proposed settlement
22 is substantially narrower than it would be if the suits were to be successfully litigated, this is no
23 bar to a class settlement because the public interest may indeed be served by a voluntary settlement
24 in which each side gives ground in the interest of avoiding litigation.”].)

25 This settlement avoids the risks and the accompanying expense of further litigation.
26 (Marquez Decl., ¶ 27.) While Plaintiff is confident in the merits of her claims, a legitimate
27 controversy exists as to each cause of action. (*Id.* at ¶ 26.) Plaintiff also recognizes that proving
28 the amount of wages due to each class member would be an expensive, time-consuming, and

1 uncertain proposition. (*Id.*)

2 The proposed settlement of \$350,000.00 therefore represents a substantial recovery when
3 compared to Plaintiff's reasonably forecasted recovery. (*Id.* at ¶¶ 16-29.) Because of the proposed
4 Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an
5 unfavorable judgment. When considering the risks of litigation, the uncertainties involved in
6 achieving class certification, the burdens of proof necessary to establish liability, the probability
7 of appeal of a favorable judgment, it is clear that the settlement amount of \$350,000.00 is within
8 the "ballpark" of reasonableness, and preliminary settlement approval is appropriate. (*Id.*) ***Indeed,***
9 ***each Settlement Class Member is eligible to receive an average net benefit of approximately***
10 ***\$743.05.*** (*Id.* at ¶ 28.)

11 3. Class Counsel Has Extensive Experience in Class Action Litigation

12 The settlement negotiations were conducted by highly capable and experienced counsel.
13 Class Counsel have a strong record of vigorous and effective advocacy for their clients and are
14 experienced in handling complex wage and hour class action litigation. (Marquez Decl., ¶¶ 40-
15 52.) Although Plaintiff and her counsel were prepared to litigate the claims alleged in the litigation,
16 they support the proposed Settlement as being in the best interests of the class.

17 B. The Proposed Class Notice of Settlement Should Be Approved

18 The proposed Notice, in the form attached to the Settlement Agreement, should be approved
19 for dissemination to the class. The Notice informs the class of the terms of the settlement and of
20 their rights to be excluded from the settlement. And if there are class members who wish to object
21 to this proposed class action settlement, they will have the opportunity to file their objections and
22 be heard at the Final Approval Hearing. Accordingly, the proposed Notice meets all the
23 requirements of Rule 3.769(f) of the California Rules of Court.

24 C. The Proposed Attorneys' Fees and Costs Are Reasonable

25 Under the Settlement, subject to the Court's approval, Defendant agrees to pay Class
26 Counsel reasonable attorneys' fees in amount of \$116,666.67, which is 33 1/3% of the gross
27 Settlement Amount, and up to \$20,000.00 in costs. These amounts are disclosed to all class
28 members in the proposed Notice and are reasonable.

1 **1. Class Counsel Request an Award of Fees Based on the “Common Fund”**
2 **Method**

3 California courts have long awarded attorneys’ fees as a percentage of the benefit created
4 by counsel in creating a common fund. The California Supreme Court held that “when a number
5 of persons is entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs
6 for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs
7 may be awarded attorneys’ fees out of the fund.” (*Serrano v. Priest* (1977) 20 Cal.3d 25, 34,
8 quoting *D’Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1.)

9 Class Counsel seeks an award of attorneys’ fees on the “percentage of recovery/ common
10 fund” theory. The purpose of this approach is to “spread litigation costs proportionally among all
11 the beneficiaries so that the active beneficiary does not bear the entire burden alone.” (*Vincent v.*
12 *Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of California* (1995)
13 15 Cal.3d 162, the California Supreme Court stated: “[O]ne who expends attorneys’ fees in
14 winning a suit which creates a fund from which others derive benefits may require those passive
15 beneficiaries to bear a fair share of the litigation costs.” (*Id.* at p. 167.) Similarly, in *City and*
16 *County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized
17 that the common fund doctrine has been applied “consistently in California when an action brought
18 by one party creates a fund in which other persons are entitled to share.” (*Id.* at p. 110.)

19 The California Supreme Court affirmed in *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th
20 480 that, “when class action litigation establishes a monetary fund for the benefit of the class
21 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the
22 court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
23 fund created.” (*Id.* at p. 503.) The court explained: “The recognized advantages of the percentage
24 method—including relative ease of calculation, alignment of incentives between counsel and the
25 class, a better approximation of market conditions in a contingency case, and the encouragement
26 it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—
27 convince us the percentage method is a valuable tool that should not be denied our trial courts.”
28 (*Id.* [internal citations omitted].)

2. The Requested Fee Award Is in Line with Typical Cases

According to a leading treatise on class actions, “No general rule can be articulated on what is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented.” (*See* Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 14.03.) Attorneys’ fees that are fifty percent of the fund are typically considered the upper limit, with thirty to forty percent commonly awarded in cases where the settlement is relatively small. (*Id.*; see also *Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F. Supp. 294 [stating that most cases where 30-50 percent was awarded involved “smaller” settlement funds of under \$10 million].)

Here, Plaintiff requests attorneys’ fees equal to 33 1/3% of the Settlement Amount, which is in line with the prevailing guidelines established in California case law and academic literature and is consistent with awards in California. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 [“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”].) Accordingly, Plaintiff respectfully requests that the Court approve the attorneys’ fees as negotiated by the parties and requested herein.

3. This Matter Involves A “Fee-Shifting” Provision of the Labor Code

Labor Code § 1194 (a) provides for the recovery of “minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Under this section, Plaintiff would be permitted to recover her actual attorneys’ fees, even if those fees were larger than the total class recovery at the conclusion of this case. This settlement is beneficial in that it limits the risk of continued expenses and consumption of time, energy, and resources facing Defendant while at the same time rewarding Class Counsel for their decision to assume risk by taking on this matter. In fact, prosecution of this action involved significant financial risk for Class Counsel. (Marquez Decl., ¶¶ 38-39.) Class Counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.*) Once counsel undertook this litigation on behalf of the

1 Class, Class Counsel committed to pursue it to its conclusion, placing its fiduciary duty to the Class
2 ahead of all other concerns.

3 **4. The Experience, Reputation and Ability of Class Counsel Support the**
4 **Requested Fee Award**

5 As demonstrated by their past experience in pursuing class actions on behalf of consumers
6 and employees, Class Counsel possess considerable expertise in litigating class actions. (Marquez
7 Decl., ¶¶ 40-52.) Class Counsel has been involved as lead counsel or co-counsel in several class
8 actions that resulted in millions in recovery. (*Id.*) Because it is reasonable to compensate class
9 counsel commensurate with their skill, reputation and experience, Class Counsel's requested fee
10 award is supported here.

11 Class Counsel's experience in wage and hour class actions was integral in evaluating the
12 strengths and weaknesses of the case against Defendant and the reasonableness of the settlement.
13 Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning
14 the rapidly evolving substantive law (state and federal), as well as the procedural law of class
15 action litigation. Based on these and other factors, Class Counsel has frequently received fee
16 awards of this percentage from the gross recovery for the class. Therefore, the requested fee award
17 is reasonable and fair.

18 **D. The PAGA Allocation is Reasonable**

19 Where settlements negotiate a good faith amount for PAGA penalties and "there is no
20 indication that this amount was the result of self-interest at the expense of other" class members,
21 such amounts are generally considered reasonable. (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr.
22 3, 2009) No. CV-08-0844 EDL, 2009 WL 928133 at *1, 9.) Courts have approved amounts for
23 PAGA penalties in the range of zero to two percent of the total maximum amount of the
24 Settlement. (*Id.* [approving a PAGA payment of 0.3%, or \$1,500]; see also *Jack v. Hartford Fire*
25 *Ins. Co.* (S.D. Cal. Oct. 13, 2011) 2011 WL 4899942 at *6 [approving a PAGA payment of
26 0.25%]; *McKenzie v. Fed. Express Corp.* (C.D. Cal. Jan. 23, 2012) 2012 WL 12882124 at *5
27 [acknowledging that courts approve PAGA claim settlements in the range of zero to two percent
28 of the total settlement].) Here, the amount to be paid to the LWDA is larger than many other

1 PAGA settlement amounts approved by the courts where seemingly nominal amounts were
2 allocated for such claims. (See, e.g. *Zubia v. Shamrock Foods Co.* (C.D. Cal. Dec. 21, 2017) No.
3 CV1603128ABAGRX, 2017 WL 10541431, at *14 [approving a PAGA settlement of 0.1%];
4 *Hopson, supra*, (N.D. Cal. Aug. 8, 2008) 2008 WL 3385452, at *1 [approving a PAGA
5 settlement of 0.3% or \$1,500]; *Garcia v. Gordon Trucking, Inc.* (E.D. Cal. Oct. 31, 2012) No.
6 1:10-CV-0324 AWI SKO, 2012 WL 5364575, at *3 [approving a PAGA settlement of 0.27%].)
7 Here, the Parties negotiated a good faith amount of \$10,000.00, 75% percent of which
8 (\$7,500.00) will be paid to the LWDA, with 25% (\$2,500.00) to be distributed to the Aggrieved
9 Employees. (Settlement, §1.34.) The \$10,000.00 settlement amount equates to approximately
10 2.8% of the Gross Settlement Amount, which far exceeds amounts that are routinely approved.
11 The parties negotiated to allocate 2.8% of the Settlement to PAGA penalties in good faith and
12 this amount is reasonable considering that the maximum PAGA penalties were estimated at
13 \$111,900.00 (which assumed \$100 per pay period). (Marquez Decl. ¶ 22.)

14 **E. The Service Award to Named Plaintiff Is Reasonable**

15 Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to
16 compensate them for the expense or risk they have incurred in conferring a benefit on other
17 members of the class.” (*Munoz, supra*, 86 Cal.App.4th at p. 412.) Courts routinely grant approval
18 of class action settlement agreements containing enhancements for the class representatives, which
19 are necessary to provide incentive to represent the class, and are appropriate given the benefit the
20 class representatives help to bring about for the class. (See *Rodriguez v. W. Publ'g Corp.* (9th Cir.
21 2009) 563 F.3d 948, 958-59.)

22 Service awards are particularly important to plaintiffs in wage and hour cases because they
23 promote the important public policies underlying the wage and hour laws. This strong policy is
24 codified in California Labor Code § 90.5, which provides, “it is the policy of this state to vigorously
25 enforce minimum labor standards in order to ensure employees are not required or permitted to
26 work under substandard unlawful conditions”). Nonetheless, the California Supreme Court
27 has noted that “retaliation against employees for asserting statutory rights under the Labor Code is
28 widespread,” despite anti-retaliation statutes designed to protect employees. (*Gentry v. Super. Ct.*

1 (2007) 42 Cal.4th 443, 460-61.) In this context, class representatives should be rewarded for
2 assuming the risk of retaliation for the sake of class members. (*See Frank v. Eastman Kodak Co.*
3 (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

4 Under the settlement agreement, subject to the Court’s approval, Defendant agreed to pay
5 a Service Award in the amount of \$10,000.00 to Plaintiff. This amount is also in exchange for
6 Plaintiff’s general release of all claims against Defendant. Courts routinely approve a \$10,000
7 enhancement award for plaintiffs represented by Class Counsel. (*See, e.g., Moreno v. Pretium*
8 *Packaging, L.L.C.* (C.D. Cal. Aug. 6, 2021) 2021 WL 3673845, *3 [“The Court concludes a
9 \$10,000 incentive award is appropriate.”]; *Suarez, supra*, 2024 WL 150721 at p. *4 [“The court
10 approves awards of \$10,000 for each class representative.”].) Class Counsel represent that Plaintiff
11 devoted a great deal of time and work assisting counsel in the case, communicated with counsel
12 very frequently for litigation and to prepare for mediation, and was frequently in contact with Class
13 Counsel during the mediation. (Marquez Decl., ¶¶ 30-34; *See generally* Declaration of Plaintiff
14 Carol Cano in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement.)
15 This amount is reasonable particularly in light of the substantial benefits Plaintiff generated for all
16 class members. (*Id.*) Indeed, in *Karl Adams, III, et al. v. MarketStar Corporation, et al.*, No. 2:14-
17 cv-02509-TLN-DB, Class Counsel Justin F. Marquez helped negotiate a \$2.5 million class action
18 settlement for 339 class members, and the court approved a \$25,000 class representative incentive
19 award for each named plaintiff. (Marquez Decl., ¶ 34.)

20 When compared with the amounts awarded in typical class action cases, the amount
21 requested here is particularly reasonable. Indeed, a **2006** study examining the average incentive
22 award given to class action plaintiffs from **1993 to 2002** found that the “average award per class
23 representative was \$15,992 and the median award per class representative was \$4,357.” (Eisenberg
24 & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study* (2006) 53 UCLA L.Rev.
25 1303, 1308.) That same study found that named plaintiffs in employment discrimination class
26 actions received an average award of \$69,850 and a median award of \$31,081, while named
27 plaintiffs in other employment class actions received an average award of \$12,121 and a median
28 award of \$13,059. (*Id.* at p. 1334.) The authors of the study found that higher awards in

1 employment cases reflected the “courts’ wish to make representative plaintiffs whole by
2 compensating them for the high costs of their service to the class, including risks of stigmatization
3 or retaliation on the job.” (*Id.* at p. 1308.)

4 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED**

5 **A. Legal Standard**

6 The proposed Settlement Class is well suited for class certification. All of the claims derive
7 from a core set of alleged violations of California’s wage and hour laws and regulations. For the
8 reasons set forth more fully below, for purposes of settlement only, the Class satisfies the
9 prerequisites for certification under Code of Civil Procedure § 382. Section 382 provides: “when
10 the question is one of a common or general interest, of many persons, or when the parties are
11 numerous, and it is impracticable to bring them all before the court, one or more may sue or defend
12 for the benefit of all.” (Code Civ. Proc., § 382.) There are two requirements to section 382: “(1)
13 There must be an ascertainable class; and (2) there must be a well-defined community of interest
14 in the questions of law and fact involved affecting the parties to be represented.” (*Daar v. Yellow*
15 *Cab Co.* (1967) 67 Cal. 2d 695, 704 [citations omitted].) To clarify these requirements, the
16 California Supreme Court has looked to Federal Rule of Civil Procedure 23 to explain that the
17 community-of-interest requirement itself embodies three factors: “(1) predominant questions of
18 law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class
19 representatives who can adequately represent the class.” (*Richmond v. Dart Indus., Inc.* (1981) 29
20 Cal. 3d 462, 470.)

21 California law and policy favor the fullest and most flexible use of the class action device.
22 (*Id.* at pp. 469-73.) Indeed, “Courts long have acknowledged the importance of class actions as a
23 means to prevent a failure of justice in our judicial system” particularly where the rights of
24 consumers are at issue. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 434.) Any doubt as to
25 the appropriateness of class treatment should be resolved in favor of certification. (*Richmond,*
26 *supra*, 29 Cal.3d at pp. 473-75.)

27 ///

28 ///

1 **B. Plaintiff Maintains That the Criteria for Class Certification Are Satisfied for**
2 **Settlement Purposes.**

3 **1. The Classes Are Ascertainable and Numerous**

4 The proposed class that Plaintiff seeks to represent is easily ascertainable and includes
5 approximately 240 employees of Defendant.

6 Plaintiff maintains that there is an easily ascertainable class, defined by objective and
7 precise criteria. Because class members are identified using specific criteria in the regular business
8 records of Defendant, i.e., job position, the class is ascertainable. (*Wilner v. Sunset Life Ins. Co.*
9 (2000) 78 Cal.App.4th 952, 959-60 [class membership defined by ownership of product that is the
10 subject of the lawsuit is sufficient to make the class ascertainable].)

11 “The requirement of Code of Civil Procedure section 382 that there be ‘many’ parties to a
12 class action suit is indefinite and has been construed liberally.” (*Rose v. City of Hayward* (1981)
13 126 Cal.App.3d 926, 934.) “Where a question is of common interest to ‘many’ persons, an action
14 may be maintained as a class action even where the parties are numerous and it is in fact practicable
15 to join them all.” (*Id.*) “No set number is required as a matter of law for the maintenance of a
16 class action.” (*Id.*) “Thus, our Supreme Court has upheld a class representing the 10 beneficiaries
17 of a trust in an action for removal of the trustees.” (*Id.*, citing *Bowles v. Super. Ct.* (1955) 44 Cal.2d
18 574; see also, *Collins v. Rocha* (1972) 7 Cal.3d 232 [upholding a 35 member class.]) Therefore,
19 Plaintiff contends that numerosity is plainly satisfied.

20 **2. There are Many Common Issues of Law and Fact Which Predominate**

21 The Court should grant conditional class certification for settlement purposes here on the
22 grounds that questions of law and fact common to all class and subclass predominate over any
23 individual questions. This inquiry tests whether proposed classes are sufficiently cohesive to
24 warrant adjudication by representation. (*See, e.g., Clothesrigger, Inc. v. GTE Corp.* (1987) 191
25 Cal.App.3d 605.)

26 Here, the employment practices at issue are: whether Defendant had legally compliant
27 policies and practices to provide employees with meal periods; whether Defendant had legally
28 compliant policies and practices authorizing and permitting its employees to take rest periods;

1 whether Defendant had legally compliant policies and practices for all hours worked, including
2 overtime wages; whether Defendant reimbursed employees for business expenses; whether final
3 payment of wages was untimely and excluded unpaid wages, including meal period premium
4 wages, and rest period premium wages; and whether the wage statements were consequently non-
5 compliant. Plaintiff contends that the factual and legal issues are the same for all of the identified
6 class members, including Plaintiff. Further, all class members suffered from, and seek redress for,
7 the same alleged injuries.

8 **3. Plaintiff's Claims Are Typical of the Claims of the Class**

9 The typicality requirement does not focus on the individual characteristics or circumstances
10 of the representative plaintiff compared to those of the remainder of the class, but rather upon the
11 typicality of the proposed representative's claims as they relate to the defendant's conduct and
12 activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 ["[t]he only requirements are that
13 common questions of law and fact predominate and that the class representative be similarly
14 situated" vis-à-vis the class.].) A representative plaintiff's claims are typical of the class if they
15 arise from the same event, practice or course of conduct, and if the claims rest on the same legal
16 theories. (*Id.*) That is precisely the case here. Plaintiff is a former employee of Defendant; as
17 such, she alleges that she was subject to the same policies and practices as other similarly situated
18 employees.

19 **4. Plaintiff and Her Counsel Meet the Adequacy Requirement**

20 The adequacy of representation requirements is met by fulfilling two conditions: first, a
21 named plaintiff must be represented by counsel qualified to conduct the pending litigation; second,
22 a named plaintiff's interests cannot be antagonistic to those of the class. (*McGhee v. Bank of*
23 *America* (1976) 60 Cal.App.3d 442, 451.)

24 All of these requirements are met here for settlement purposes. Plaintiff retained counsel
25 with extensive experience in prosecuting complex class actions, including similar class actions that
26 previously settled. (Marquez Decl., ¶¶ 40-52.) Class Counsel unquestionably is "qualified,
27 experienced and generally able to conduct the proposed litigation." (*Miller v. Woods* (1983) 148
28 Cal.App.3d 862, 875.) In addition, Plaintiff has no conflicts, and Plaintiff has, with counsel,

1 litigated this case and diligently reviewed the settlement terms, showing her dedication. Plaintiff's
2 willingness to serve as a representative demonstrates her serious commitment to bringing about
3 the best results possible for the class. (*McGhee, supra*, 60 Cal.App.3d at p. 451.)

4 **5. A Class Action is Superior to a Multiplicity of Litigation**

5 Finally, in making its class certification decision, the Court must determine that a class
6 action would be superior to alternative means for the fair and efficient adjudication of the litigation.
7 By consolidating many potential individual actions into a single proceeding, this Court's use of the
8 class action device enables it to manage this litigation in a manner that serves the economics of
9 time, effort and expense for the litigants and the judicial system. Absent class treatment, similarly-
10 situated employees with small but nevertheless meritorious claims for damages would, as a
11 practical matter, have no means of redress because of the time, effort and expense required to
12 prosecute individual actions. (*Gentry v. Super. Ct.* (2007) 42 Cal. 4th 443, 457-62; *Leyva v.*
13 *Medline Ind.* (9th Cir. 2013) 716 F.3d 510, 515.) Moreover, in the context of settlement, the
14 superiority concerns are essentially non-existent.

15 **V. THE PROPOSED NOTICE IS CONSTITUTIONALLY SOUND**

16 **A. The Proposed Notice Plan Satisfies Due Process**

17 Notice requirements are set forth in the California Rules of Court. (Cal. Rules of Court,
18 Rule 3.766 (e), (f).) California law vests the Court with broad discretion in fashioning an
19 appropriate notice program. (*Cartt v. Super Ct.* (1975) 50 Cal.App.3d 960, 973-74.) There is no
20 statutory or due process requirement that all class members receive actual notice, but in this matter,
21 the class members will receive direct mailed notice. As the Court of Appeals has explained, "[t]he
22 notice given should have a reasonable chance of reaching a substantial percentage of the Class
23 Members" (*Id.* at p. 974.) In this case, notice of the proposed settlement will be provided
24 by direct mailing, the best possible form of notice.

25 **B. The Notice is Accurate and Informative**

26 The proposed Notice should be approved. It will be disseminated through direct U.S. first
27 class mail to the last known address for each Class Member. It informs the Class Members of the
28 terms of the settlement and their right to be excluded from the Settlement. And if there are Class

Members who wish to object to this proposed class action settlement, they will have the opportunity to file their objections and be heard at the Final Approval Hearing.

The Notice also fulfills the requirement of neutrality in class notices. (Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 8.39.) It summarizes the proceedings to date and the terms and conditions of the settlement agreement, in an informative and coherent manner. It makes clear that the settlement agreement does not constitute an admission of liability by the Defendant, who denies all liability, and it recognizes that this Court has not ruled on the merits of the action. It also states that the final settlement approval decision has yet to be made. The Notice thus complies with the standards of fairness, completeness, and neutrality required of a combined settlement-certification class notice.

VI. CONCLUSION

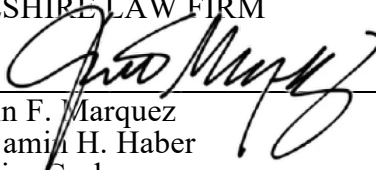
For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the proposed settlement and set a Final Approval Hearing in April 2025.

Respectfully submitted,

Dated: July 16, 2024

WILSHIRE LAW FIRM

By: _____


Justin F. Marquez
Benjamin H. Haber
Maxim Gorbunov

Attorneys for Plaintiff

PROOF OF SERVICE

Cano v. 360 Health Plan, Inc. dba 360 Clinic, et al.
30-2022-01257308-CU-OE-CXC

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I, Rebecca Padilla, state that I am employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 3055 Wilshire Blvd., 12th Floor, Los Angeles, California 90010. My electronic service address is rpadilla@wilshirelawfirm.com.

On July 16, 2024, I served the foregoing **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES**, on the interested parties by placing a true copy thereof, enclosed in a sealed envelope by following one of the methods of service as follows:

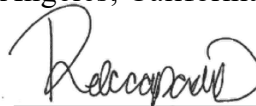
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Attorneys for Defendant

(X) **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known email address or e-mail of record in this action.

I declare under the penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on July 16, 2024, at Los Angeles, California.



Rebecca Padilla