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

DARWIN COLINAYO and EDELMIRA
MALDONADO, on behalf of themselves and
all others similarly situated,

Plaintiff,

v.

MCKESSON MEDICAL-SURGICAL INC., a
Virginia Corporation, and DOES 1-50,
inclusive,

Defendants.

Case No. S-CV-0049039

Hon. Trisha Hirashima
Dept.: 42

**PLAINTIFFS' MEMORANDUM IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT,
APPROVAL OF NOTICE TO CLASS
MEMBERS, APPROVAL OF
SETTLEMENT ADMINISTRATOR,
AND SETTING HEARING FOR FINAL
APPROVAL OF SETTLEMENT**

Date: October 29, 2024
Time: 8:30 a.m.

Complaint Filed: September 2, 2022
FAC Filed: August 29, 2024
Trial Date: None Set

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Darwin Colinayo (“Colinayo”) and Edelmira Maldonado (“Maldonado,” and
4 collectively, “Plaintiffs”) seek preliminary approval of a non-reversionary \$3,500,000.00 Class Action
5 and PAGA Settlement Agreement (“Settlement”) entered into with Defendant McKesson Medical-
6 Surgical Inc. (“Defendant”) (collectively with Plaintiffs, the “Parties”). The Settlement was reached
7 after an all-day mediation session with an experienced wage and hour mediator. The Settlement satisfies
8 all of the criteria for preliminary approval under California law, and provides substantial relief to the
9 class members while taking into consideration the risks and expenses of further litigation. It was the
10 result of non-collusive, arm’s length, contentious, and informed negotiations between the Parties, who
11 were represented by experienced wage and hour class action counsel.

12 Plaintiffs request an order preliminarily approving the Settlement as fair, adequate, and
13 reasonable; appointing Plaintiffs as the Class Representatives; appointing Plaintiffs’ counsel as Class
14 Counsel; provisionally certifying the Class; approving the Parties’ proposed Notice of Class Action and
15 PAGA Settlement (the “Class Notice”); appointing Apex Class Action LLC (“Apex”) as the Settlement
16 Administrator; and setting a schedule for proceedings with respect to final approval of the Settlement.

17 **II. BACKGROUND**

18 **A. THE COMPLAINT AND PROCEDURAL HISTORY**

19 On June 28, 2022, Colinayo filed a putative class action complaint in Placer County Superior
20 Court, which Defendant removed to the United States District Court, Eastern District of California on
21 September 14, 2022, titled *Darwin Colinayo v. McKesson Medical-Surgical Inc.*, Case No. 2:22-cv-
22 01616-DJC-KJN, asserting causes of action against Defendant for: (1) failure to pay minimum wages;
23 (2) failure to pay overtime owed; (3) failure to provide lawful meal periods; (4) failure to authorize and
24 permit rest periods; (5) failure to timely pay wages during employment; (6) failure to timely pay wages
25 owed upon separation from employment; (7) failure to reimburse necessary expenses; (8) knowing and
26 intentional failure to comply with itemized wage statement provisions; and (9) unfair competition (the
27 “Colinayo Class Action”). (Colinayo Decl. ¶ 3). On September 2, 2022, Colinayo filed a separate,
28 parallel action for civil penalties under the California Private Attorneys General Act (“PAGA”) in the

Superior Court of California, County of Placer (Case No. S-CV-0049039) (the “Colinayo PAGA Action”). (Colinayo Decl. ¶ 4).

On July 22, 2022, Maldonado filed a putative class action against Defendant in the Superior Court of California, County of San Bernardino, which Defendant removed to the United States District Court, Central District of California on November 23, 2022, asserting causes of action against Defendant for: (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to pay wages; (4) failure to timely pay wages at termination/separation; (5) failure to timely pay vacation wages at termination; (6) failure to provide accurate wage statements; (7) failure to reimburse business expenses; and (8) unfair competition, which was amended on October 21, 2022 to include a PAGA cause of action (the “Maldonado Action”).(Maldonado Decl. ¶¶ 3-4).

Prior to filing the Colinayo PAGA Action, on June 28, 2022, Colinayo submitted a letter to the California Labor and Workforce Development Agency (“LWDA”), which attached a draft copy of the Colinayo PAGA Action Complaint and alleged the same claims and allegations. (Colinayo Decl. ¶ #2.) On July 24, 2024, Colinayo submitted a supplemental letter to the LWDA incorporating the claims of the Colinayo PAGA Action Complaint into the PAGA Notice itself for ease of reference. (Id. ¶ #5.) Similarly, on July 22, 2022, Maldonado submitted a letter to the LWDA alleging the same claims and allegations. (Maldonado Decl. ¶ #2.)

The Parties engaged in extensive investigation and substantial discovery, including written discovery and Plaintiffs’ depositions. (Declaration of James R. Hawkins (“Hawkins Decl.”) ¶ 19.) After completing the formal discovery, the Parties agreed to mediation for the purpose of exploring whether a settlement could be reached of Plaintiffs’ and the putative class’s claims. (Hawkins Decl., ¶¶ 17, 19.) To that end, the Parties exchanged extensive informal discovery for the purpose of mediation, including time and pay records for Plaintiffs and for a representative sample of the Putative Class, and relevant policy documents. (Id.) The Parties participated in a full-day of arm’s-length negotiations aided by experienced employment law mediator Steven J. Serratore on February 7, 2024. (Id.) Though the Parties did not reach an agreement at mediation, a Mediator’s Proposal was issued that same day, which was ultimately accepted by the Parties and memorialized in a Memorandum of Understanding (“MOU”), executed on April 8, 2024. (Id.) The Parties negotiated the terms of the long-form settlement agreement

1 and thereafter, the Parties executed the Settlement. The Parties have stipulated to the filing of a First
2 Amended Complaint, effectively consolidating the claims and allegations contained in the Colinayo
3 Class Action, the Colinayo PAGA Action, and the Maldonado Action (collectively the “Actions”) into
4 a single operative complaint for the purpose of effectuating the Settlement in one forum. The First
5 Amended Complaint was filed on August 29, 2024.

6 **B. VALUATION OF PLAINTIFFS’ CLAIMS**

7 Plaintiffs’ claims include that Defendant (1) failed to pay minimum wages; (2) failed to pay
8 overtime owed; (3) failed to provide lawful meal periods; (4) failed to authorize and permit rest periods;
9 (5) failed to timely pay wages during employment; (6) failed to timely pay wages owed upon separation
10 from employment; (7) failed to reimburse necessary expenses; (8) knowingly and intentionally failed to
11 comply with itemized wage statement provisions; (9) failed to timely pay vacation wages at termination;
12 (10) unfair competition; and (11) penalties pursuant to PAGA. (Hawkins Decl. ¶ 5.)

13 Defendant asserted strong defenses to Plaintiffs’ claims including that it provided additional paid
14 time for employees to complete COVID screenings, that rest periods are not recorded making
15 certification more difficult, that it promulgated lawful policies, that it lawfully paid all overtime and that
16 its incentives were properly factored into the regular rate of pay or did not need to be factored into the
17 regular rate of pay, and that it properly paid for all hours worked. Defendant also contended that to the
18 extent any employee used his or her cellular phone, it was a matter of preference and not Defendant’s
19 requirement because Class Members were provided with all necessary equipment and Defendant
20 provided alternative means for employees to complete the COVID health screenings. Further,
21 Defendant contended that Plaintiffs’ penalty claims are not meritorious because Defendant had a good
22 faith belief that its conduct was lawful, and that Plaintiffs would fail on their underlying claims.
23 (Hawkins Decl. ¶¶ 5-11.) Plaintiffs estimated Defendant’s maximum liability to be approximately
24 \$28,050,208.00 exclusive of PAGA, and \$43,421,008.00 inclusive of PAGA based on a class size of
25 1,387 individuals who worked approximately 604,331 shifts during the Class Period. In light of the
26 foregoing challenges, however, Plaintiffs calculated Defendant’s realistic, risk-adjusted exposure at
27 approximately \$19,394,778.75, inclusive of PAGA. Each risk-adjusted claim is separately valued as
28 follows: Unpaid wages due to off-the-clock work (including COVID screenings): \$806,725.25;

Underpaid overtime due to improperly calculating the regular rate of pay: \$100,780.00; Underpaid meal and rest period premiums and sick pay due to improperly calculating the regular rate of pay: \$39,991.50; Rest period premiums: \$5,855,608.50; Meal period premiums: \$2,687,509.00; Wage statement penalties: \$1,743,650.00; Waiting time penalties: \$1,537,518.00; Unreimbursed business expenses: \$446,596.50; and PAGA penalties (\$100 per pay period): \$6,616,400.00. (See, Hawkins Decl. ¶ 12.) Thus, the Settlement will provide approximately 18% of Defendant’s realistic maximum exposure in immediate relief to the Class Members. (Id. ¶ 15.)

III. SUMMARY OF THE PROPOSED SETTLEMENT

The non-reversionary Gross Settlement Amount (“GSA”) of \$3,500,000.00, includes (1) the fees and expenses of the Settlement Administrator, estimated to be up to \$15,378.00; (2) Class Representative Service Awards of up to \$10,000.00 each to Colinayo and Maldonado; (3) Class Counsel’s fees of up to 35% of the GSA (i.e., \$1,225,000.00); (4) litigation expenses and costs incurred by Class Counsel of no more than \$50,000.00; and (5) deductions for the PAGA Fund Settlement Amount in the amount of \$131,250.00.¹ (See, Settlement, Section 3.)

After all Court-approved deductions from the GSA, the Net Settlement Amount (“NSA”) of approximately \$2,058,372.00 will be distributed on a pro rata basis to the Class Members based on the number of workweeks each Participating Class Member worked during the Class Period. In addition, each Aggrieved Employee’s share of the remaining PAGA Fund (25% or \$43,750.00) will be distributed based on the number of individual Aggrieved Employee’s total PAGA Pay Periods worked during the PAGA Period. (Settlement, Section 3.2.) If the Settlement is finally approved with the requested allocations, the average individual class settlement payment per Class Member will be approximately \$1,484.05² on a net basis and \$2,523.43³ per Class Member on a gross basis. This amount compares very favorably to other class action settlements.⁴

¹ This figure represents 75% of the PAGA Fund of \$175,000.00, which will be paid to the LWDA. The remaining 25%, or \$43,750.00, will be paid pro rata to the Aggrieved Employees.

² \$2,058,372.00 Net Settlement Amount / 1,387 Class Members = \$1,484.05

³ \$3,500,000.00 Gross Settlement Amount / 1,387 Class Members = \$2,523.43

⁴ See, *Salguero v. Deliv, Inc.*, Case No. 19STCV32534 (Los Angeles County Superior Court, 2021) (\$635,000.00 class action and PAGA settlement for 3,021 class members with average payment on a gross basis of \$210.20); *Sanderson v. A*

1 Class Members will be provided with notice of the Settlement, its terms, their individual
2 settlement amount, and their right to opt out, object, appear at the fairness hearing or challenge their
3 number of pay periods worked as set out in the Class Notice. (Settlement, Section 7.4.). Class
4 Participants shall have 180 days to cash their checks. Any funds associated with checks remaining
5 uncashed after 180 days will be sent to the State of California's Unclaimed Property Fund. (See, Ex. 1,
6 Settlement, Sections 4.4.1 and 4.4.3.)

7 All Individual Settlement Payments will be allocated as follows: (i) ten percent (10%) will be
8 allocated as wages for which IRS Forms W-2 will be issued and all applicable withholdings shall be
9 made; and (ii) ninety percent (90%) will be allocated as non-wages, for which IRS Forms 1099-MISC
10 will be issued. The portion of all Individual Settlement Payments derived from the PAGA Settlement
11 Amount will be allocated entirely as penalties, for which IRS Forms 1099-MISC will be issued. (Id.,
12 Section 3.2.4.1.)

13 In exchange for the GSA, Class Members will release the Released Parties from, respectively,
14 the Released Class Claims and Released PAGA Claim. The "Released Parties" are:

15 Defendant and all of its present and former parent companies, direct and indirect
16 subsidiaries, members, joint ventures, owners, principals, agents, divisions, and their
17 respective related or affiliated companies, shareholders, officers, directors, employees,
agents, attorneys, insurers, successors and assigns, and any individual or entity which could
be liable for any of the Released Claims, and Defendant's counsel of record in the Action.

18 (Settlement, Section 1.41.) The "Released Class Claims" are:

19 All claims alleged, or reasonably could be alleged, in the Actions and ascertained in the
20 course of the Action, including without limitation, California Labor Code sections 201,
21 202, 203, 204, 210, 216, 218.5, 218.6, 221, 222, 223, 224, 226, 226.3, 226.7, 227.3, 245,
22 245.5, 246, 246.5, 246.6, 247, 248, 249, 510, 512, 516, 558, 1174, 1182.12, 1194, 1194.2,
23 1195, 1197, 1197.1, 1198, 2800, 2802, California Industrial Commission Wage Orders,
24 and Business and Professions Code sections 17200, et seq., and including all claims for or
related to alleged failure to provide meal periods, failure to provide rest periods, failure to
pay overtime wages, failure to pay minimum wage, failure to pay all wages due to
discharged and quitting employees, failure to maintain required records, failure to furnish
accurate itemized wage statements, failure to indemnify employees for necessary

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26
27 *Bright Future*, Case No. 34-2019-00252816-CU-OE-GDS (Sacramento County Superior Court, 2020) (\$105,000.00 class
28 action and PAGA settlement for 471 class members with an average payment on a gross basis of \$222.93); *Ortegon-
Ramirez v. Cedar Fair, L.P.*, Case No. 1-13-CV-254098 (Santa Clara County Superior Court, 2015) (\$4,750,000.00 class
action and PAGA settlement for 31,425 class members with an average payment on a gross basis of \$151.15).

expenditures incurred in discharge of duties, failure to pay vested vacation pay, failure to provide and/or pay for accrued sick leave time, failure to produce employee records, and unfair and unlawful business practices, including, but not limited to, claims for injunctive relief, liquidated damages, penalties, interest, fees, costs, and all other claims and allegations made or which could have been made in the Actions based on the facts and allegations pled in the Actions during the Class Period.

(Settlement, Section 5.2.) The “Released PAGA Claims” are:

All claims for PAGA penalties alleged, or reasonably could be alleged, in the Actions and the PAGA Notices and ascertained in the course of the Actions, including civil penalties pursuant to PAGA for or related to claims for failure to provide meal periods, failure to provide rest periods, failure to pay overtime wages, failure to pay minimum wage, failure to pay all wages due to discharged and quitting employees, failure to maintain required records, failure to furnish accurate itemized wage statements, failure to indemnify employees for necessary expenditures incurred in discharge of duties, failure to pay vested vacation pay, failure to provide and/or pay for accrued sick leave time, and failure to produce employee records, as well as all other claims and allegations alleged in the Actions, throughout the PAGA Period.

(Id. section 5.3).

Subject to Court approval, the Parties agree to engage Apex Class Action LLC as the Settlement Administrator. (Ex. 1, Settlement, Section 7.1.)

Within twenty-one (21) calendar days following entry of the Preliminary Approval Order, Defendant will provide the Class Data, including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods in a readable MS Excel spreadsheet. (“Class Data”). The Class Data will be used for settlement notification and settlement administration only and shall not be used for any other purpose. The Settlement Administrator shall provide reasonable and appropriate safeguards for any personally identifiable information (“PII”) that it receives from Defendant and promptly provide Defendant with notice if PII is subject to unauthorized access, use, disclosure, modification, or destruction. (Ex. 1, Settlement, Section 4.2.) Prior to mailing, the Settlement Administrator will update Class Member addresses using the National Change of Address database. Any Class Notice returned to the Settlement Administrator as non-deliverable on or before the Response Deadline will be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a Class Member Address Search, and will then perform a single re-mailing. Those Class Members who receive a re-mailed Notice Packet will have an additional fourteen (14) calendar days after the Response Deadline to submit a Request for Exclusion or an Objection to the Settlement.

(Ex. 1, Settlement, Section 7.4.). The Response Deadline is forty-five (45) days after mailing. (Id., Section 7.4.4.)

Using best efforts to perform as soon as possible, and no later than thirty-five (35) days after the Court grants Preliminary Approval, the Settlement Administrator shall mail the Court-approved Class Notice to all Class Members via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class Data. (Ex. 1, Settlement, Section 7.4.2.)

All Class Members will be mailed a Class Notice containing (i) information regarding the claims; (ii) a summary of the Settlement’s principal terms; (iii) the Class definition; (iv) the total number of Workweeks and PAGA Pay Periods (if applicable) each Class Member worked for Defendant during the Class Period and PAGA Period; (v) each Class Member's estimated Individual Class Payment and/or Individual PAGA Payment and the formula for calculating these payments; (vi) the dates which comprise the Class Period and PAGA Period; (vii) instructions on how to submit Requests for Exclusion or Objections; (viii) the Response Deadline; and (ix) the claims to be released. (Ex. 1, Settlement, Sections 1.11, 7.4.; see Ex. 2, “Class Notice”) Notice of final judgment shall be posted on the Settlement Administrator's website. Cal. Rules of Court, Rule 3.771(b). The Class Notice will provide the web address for Class Members to access the final judgment. (Hawkins Decl., Ex. 2)

IV. PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS UNDER THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY CERTIFICATION IS APPROPRIATE

California Rule of Court 3.769(d) provides that the Court may make an order approving certification of a provisional settlement class at the preliminary approval stage. It is well-established that trial courts should use a “lesser standard of scrutiny” for determining the propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor Co.* 9 (“*Dunk*”), 48 Cal.App.4th 1794, 1807 n.19 (1996). The reasons include that no trial is anticipated in a settlement, so the case management issues inherent in determining if the class should be certified need not be confronted; and the trial court’s fairness review of the settlement protects the interests of the absent class members. *Id.*; see also *Officers for Justice v. Civil Serv. Comm’n*, 690 F.2d 615, 633 (1979) (“Th[e] relationship between the certification determination and the merits of the case is further attenuated within the context of the settlement evaluation process [C]ertification issues raised by class action litigation that is

resolved short of a decision on the merits must be viewed in a different light.”); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1987). As discussed below, for the purposes of this settlement only, the Parties ask this Court to provisionally certify the Class under Cal. Civ. Proc. Code § 382.

A. NUMEROSITY AND ASCERTAINABILITY.

Numerosity is met if a proposed class is so large that joinder of all members would be impracticable. *See*, Cal. Code Civ. Proc. § 382. Ascertainability is met if the class members can be identified and given notice of the litigation without unreasonable time or expense. *See Medrazo v. Honda of N. Hollywood*, 166 Cal. App. 4th 89, 101 (2008); *see also, Sevidal v. Target Corp.*, 189 Cal.App.4th 905 (2010). The Class consists of approximately 1,387 individuals who have been identified through Defendant’s records. (Hawkins Decl. ¶ 15) Thus, the class is ascertainable, and large enough that joinder would be impractical.

B. WELL-DEFINED COMMUNITY OF INTEREST.

The community of interest requirement has three elements: “(1) predominant questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.” *Linder v. Thrifty Oil Co.*, 23 Cal.App.4th 429, 435 (2000).

1. Commonality

To justify certification, the class proponent must show that questions of law or fact common to the class predominate over the questions affecting the individual members. *See Arenas v. El Torito Rests., Inc.*, 183 Cal.App.4th 723, 732 (2010) (citing *Washington Mut. Bank v. Superior Court*, 24 Cal. 4th 906, 913 (2001)). Plaintiffs were hourly paid, non-exempt employees who worked in distribution centers for Defendant during the relevant time period. They attest that they believe that they were subject to the same common policies as the other Class Members. (Colinayo Decl. ¶ 5; Maldonado Decl. ¶ 5.) Indeed, Plaintiffs contend that the Class was subject to common Covid-19, meal period, rest period, overtime, minimum wage, final pay, wage statement, reimbursement, sick leave violations, and vacation pay violations, just as they were. Defendant produced evidence which Plaintiffs contend supports a finding of certain common policies, handbooks, and practices. (Hawkins Decl., ¶ 5.) While Defendant reserves its rights to object that commonality exists in this Action if the litigation were to continue, the Parties agree for the purposes of this Settlement only that Plaintiffs’ allegations meet the commonality

requirement. (Hawkins Decl., ¶ 5.)

2. Typicality

Typicality “focuses on whether there exists a relationship between the Plaintiffs’ claims and the claims alleged on behalf of the class.” 4 *Newberg on Class Actions* (“*Newberg*”) § 3:13 (2002). As indicated above, Plaintiffs are members of the Class they seek to represent. Plaintiffs were hourly paid, non-exempt employees who worked in distribution centers for Defendant during the relevant time period. They attest that they believe that they were subject to the same common policies and practices as the other Class Members. (Colinayo Decl. ¶ 4; Maldonado Decl. ¶ 4) The Parties agree for settlement purposes only that Plaintiffs’ claims regarding Defendant’s meal period, rest period, overtime, minimum wage, final pay, wage statement, reimbursement, sick leave, and vacation pay policies and practices that are at the core of the lawsuit are typical of the Class. (Declaration of Christina M. Lucio (“*Lucio Decl.*” ¶ 8.)

3. Adequacy of Representation

The proposed class representative must establish that he or she will adequately represent the proposed class. *See, Barboza v. West Coast Digital GSM, Inc.*, 179 Cal.App.4th 540, 546 (2009). Specifically, Plaintiffs contend they are adequate to represent the Class because they were employed by Defendant during the Class Period, experienced the same wage and hour practices as the rest of the Class, understood their duties as class representatives, have been willing to undergo the risk of litigation, and have no conflicts of interest with the other Class Members. (*See, Colinayo Decl.; Maldonado Decl.*)

Adequacy may be established by the fact that counsel are experienced practitioners. *See Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001). Here, Plaintiffs allege, and Defendant does not dispute for purposes of this Settlement only, that Plaintiffs and the Class are represented by counsel with extensive experience in wage-and-hour litigation, including class actions. (*Lucio Decl. ¶¶11-18; Hawkins Decl., ¶¶ 28-37.*)

4. Superiority

Plaintiffs assert that certification of the Class for settlement purposes is superior here because there will be a global resolution of all claims at once, which fosters judicial economy. Class certification is also vastly superior to litigation of numerous individual claims because most of the claims are too

1 small to practically litigate outside of the class context. (Hawkins Decl. ¶ 38.)

2 **V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT, WHICH**
3 **IS FAIR, ADEQUATE, AND REASONABLE**

4 **A. CLASS ACTION SETTLEMENTS ARE SUBJECT TO JUDICIAL REVIEW AND APPROVAL**
5 **UNDER THE CALIFORNIA RULES OF COURT.**

6 The law favors settlement. *Bush v. Superior Court*, 10 Cal.App.4th 1374, 1382 (1992). This is
7 particularly true in class actions where substantial resources can be conserved by avoiding the time, cost,
8 and rigors of litigation. However, a class action may not be settled without the Court’s approval. Cal. R.
9 Ct. 3.769(a). The California Rules of Court set forth the procedures for court approval of a class action
10 settlement: (1) the Court preliminarily approves the settlement; (2) class members receive notice as
11 directed by the Court; and (3) the Court conducts a final approval hearing to inquire into the fairness of
the proposed settlement. *See* Cal. R. Ct. 3.769(c), (e)-(g).

12 The decision to approve or reject a proposed settlement lies within the Court’s sound discretion.
13 *See, Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 234-35 (2001). Nevertheless, in considering
14 a potential settlement for approval, a court is not to turn the approval hearing “into a trial or rehearsal
15 for trial on the merits. . . . [or] to reach any ultimate conclusions on the contested issues of fact and law
16 which underlie the merits of the dispute.” *Officers for Justice*, 690 F.2d at 625.

17 The Court’s ultimate duty is to determine whether the settlement is fair, adequate, and
18 reasonable. *See, Dunk*, 48 Cal. App. 4th at 1801 (setting forth the “fair, adequate, and reasonable”
19 standard) (citing *Officers for Justice*, at 625; *Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal.App.4th 734,
20 742 43 (2009) (a trial court must approve a class action settlement agreement, but only after determining
21 that it is ““fair, adequate and reasonable,”” considering factors such as the ““risk, expense, [and]
22 complexity”” of continued litigation) (citations omitted). The Court enjoys broad discretion in making
23 its fairness determination, and should consider factors including, but not limited to:

24 [T]he strength of plaintiffs’ case, the risk, expense, complexity and likely duration of
25 further litigation, the risk of maintaining class action status through trial, the amount
26 offered in settlement, the extent of discovery completed and the stage of the
proceedings, the experience and views of counsel . . . and the reaction of the class
members to the proposed settlement.

27 *Dunk*, 48 Cal.App.4th at 1801.

28 The above factors are not exclusive, “. . . and the court is free to engage in a balancing and

weighing of factors depending on the circumstances of each case.” *Wershba*, 91 Cal.App.4th at 245. However, in doing so, the Court must give “[due] regard to what is otherwise a private consensual agreement between the parties.” *Id.* The inquiry must be limited “to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties.” *Id.* (citation and internal quotation marks omitted).

At the preliminary approval stage, the Court need only determine that the settlement falls within the “range of possible judicial approval,” so that notice to the class and the scheduling of the fairness hearing are worthwhile. *See Newberg* at § 11:25. Indeed, the Court should grant preliminary approval if there are no “grounds to doubt its fairness or other obvious deficiencies . . . and [the settlement] appears to fall within the range of possible approval.” *Manual For Complex Litigation* (Third) § 30.41 (1995); *see Dunk*, 48 Cal.App.4th at 1802. A “presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are 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 1802 (citing *Newberg* § 11:41). As shown below, the Settlement falls well within the range of approval because there are no grounds to doubt its fairness.

B. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE NEGOTIATIONS AND REFLECTS A FAIR COMPROMISE OF CLAIMS AND RISK FACTORS.

The Settlement was the product of extensive arm’s-length, intensive negotiations through an all-day mediation with Steven J. Serratore serving as the neutral, followed by additional negotiations aided by the neutral culminating in a mediator’s proposal, which was accepted by the Parties. The Parties thereafter entered into a memorandum of understanding and in the coming months negotiated, prepared and executed the long-form Class Action and PAGA Settlement Agreement which they ask the Court to now approve. Though cordial and professional, the settlement negotiation was adversarial and non-collusive in nature. The Settlement reached is the product of substantial effort by the parties and their counsel. (Lucio Decl. ¶ 5; Hawkins Decl. ¶ 17).

Although Plaintiffs and Class Counsel believed that there was a strong possibility of certifying the claims, they recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or on the damages awarded,

1 and/or on an appeal that can take several more years to litigate. (Lucio Decl., ¶ 6, Hawkins Decl., ¶ 17.).
2 The resulting Settlement was based on calculations, risk assessment, and non-collusive negotiation; it
3 takes the risks identified above and others into account in arriving at the settlement amount of
4 \$3,500,000.00. (See, Hawkins Decl., ¶¶ 5-14.)

5 **C. THE EXTENT OF THE PRE-LITIGATION DISCOVERY AND INVESTIGATION WAS MORE**
6 **THAN SUFFICIENT TO PERMIT PRELIMINARY APPROVAL OF THE SETTLEMENT.**

7 The Parties thoroughly investigated and evaluated the factual and legal strengths and weaknesses
8 of this case before reaching the Settlement. (See Hawkins Decl., ¶¶ 5-14.) As described above, the
9 Settlement was only reached after an all-day mediation, extensive informal discovery, investigation,
10 research, thorough calculations and risk evaluation, substantial exchanges of documents, a thorough
11 evaluation of a sampling of time and payroll records, and other information relating to the size and scope
12 of the Class, as well as data permitting Plaintiffs to fully understand the nature and scope of the
13 allegations. Plaintiffs' investigation was sufficient to satisfy the criteria for court approval set forth in
14 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008)
15 168 Cal.App.4th 116, 129-130. (Hawkins Decl. ¶ 17.)

16 **D. THE RISKS INHERENT IN CONTINUED LITIGATION ARE GREAT.**

17 To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court also
18 should consider “[t]he strength of Plaintiffs’ case, the risk, expense, complexity and likely duration of
19 further litigation, [and] the risk of maintaining class action status.” See *Dunk*, 48 Cal.App.4th at 1801.
20 As described above, Defendant has strong defenses to Plaintiffs’ claims, which create a real possibility
21 that the claims might not be certified and/or might fail on the merits. (See, Hawkins Decl., ¶¶ 6-11.)
22 Proceeding with litigation would impose a significant risk of no recovery as well as ongoing, substantial
23 additional expenditures of time and resources. (Id., ¶ 20.) If settlement were not achieved, continued
24 litigation of the claims would take a substantial amount time and possibly confer no benefit on Class
25 Members. By contrast, the Settlement will yield a prompt, certain, and substantial recovery for the Class,
26 which also benefits the Parties and the Court. In considering these risks, the choice was overwhelmingly
27 in favor of settlement. (Id.)

28 **E. CLASS COUNSEL IS EXPERIENCED IN WAGE-AND-HOUR LITIGATION.**

1 The view of the attorneys conducting the litigation is entitled to significant weight in deciding
2 whether to approve the settlement. *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980),
3 *aff'd*, 661 F.2d 939 (9th Cir. 1981); *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008)
4 (court must take into account “the experience and view of counsel”).

5 Class Counsel is experienced in wage-and-hour class actions. (Lucio Decl. ¶¶11-18; Hawkins
6 Decl., ¶¶ 28-37.) The Parties’ counsel agree that this Settlement is fair and reasonable in light of the
7 nature of the claims, realistic risk adjusted value of damages, complexities of the case, the state of the
8 law, and uncertainties of class certification and litigation. (See, generally, Lucio Decl.; Hawkins Decl.)
9 Class Counsel find this Settlement is fair, adequate, and reasonable and in the best interests of Class
10 Members, and should be preliminarily approved. (Id.)

11 **F. THE SETTLEMENT IS WITHIN THE RANGE OF REASONABLENESS**

12 In order to determine whether a class settlement is fair, adequate, and reasonable, courts must be
13 provided with “basic information about the nature and magnitude of the claims in question and the basis
14 for concluding that the consideration being paid for the release of those claims represents a reasonable
15 compromise.” *Kullar, supra*, 168 Cal.App.4th at 133. A settlement is not judged against what might
16 have been recovered had a plaintiff prevailed at trial, nor does the settlement have to provide 100% of
17 the damages sought to be fair and reasonable. *Wershba, supra*, 91 Cal.App.4th at pp. 246, 250. Here,
18 the proposed \$3,500,000.00 Settlement is an excellent result and achieves a substantial benefit to Class
19 Members. Plaintiffs’ counsel reached the proposed Settlement only after carefully considering the case’s
20 strengths, weaknesses, expense, and complexity. (Hawkins Decl., ¶ 19; Lucio Decl., ¶ 9.)

21 In light of the claims and defenses, the Parties faced uncertainty that had to be taken into
22 consideration when weighing potential settlement of the claims. Where both sides face significant
23 uncertainty, the attendant risks favor settlement. *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d
24 1011, 1026. Even if “the relief afforded by the proposed settlement is substantially narrower than it
25 would be if the suits were to be successfully litigated,” that is no bar to settlement because “the public
26 interest may indeed be served by a voluntary settlement in which each side gives ground in the interest
27 of avoiding litigation.” *Id.* at p. 250 (quoting *Air Line Stewards, Local 550 v. American Airlines, Inc.*
28 (7th Cir. 1972) 455 F.2d 101, 109).

1 As set forth in the accompanying declaration of James R. Hawkins, Class Counsel has satisfied
2 the so-called “Kullar standard” by providing the Court with a detailed evaluation of the settlement value
3 of the claims that were alleged in this lawsuit. (See, Hawkins Decl., ¶ 12.)

4 **G. THE CLASS NOTICE PLAN CONFORMS TO ALL APPLICABLE STATUTES AND RULES**

5 The Court has wide discretion in approving the means of providing notice, so long as the class
6 representative “provide(s) meaningful notice in a form that should have a reasonable chance of reaching
7 a substantial percentage of class members.” *Archibald v. Cinerama Hotels*, 15 Cal. 3d 853, 861 (1976).
8 Here, the Parties’ notice plan is that notice of the Settlement will be disseminated directly to the Class
9 Members by first class mail by the Settlement Administrator within 35 days after the Preliminary
10 Approval date. (See Settlement, Section 7.4.2.)

11 The contents of the Class Notice are in compliance with Cal. R. Ct. 3.766(d), because the Notice
12 includes (1) a detailed explanation of the case, including the basic contentions or denials of the Parties,
13 and the basic terms of the Settlement; (2) a statement that the Court will exclude the member from the
14 Class if the member requests by a specified date; (3) a procedure for the member to follow in requesting
15 exclusion from the Class; (4) an explanation that members of the Class can participate in the Settlement
16 by doing nothing; (5) a statement that the Judgment, whether favorable or not, will bind all members
17 who do not request exclusion; and (6) a statement that any member who does not request exclusion may,
18 if the member so desires, object to the Settlement either in writing or by court appearance. (See Hawkins
19 Decl., Ex. 2.) In addition, the manner of giving notice is in compliance with Cal. R. Ct. 3.766(e) because
20 the Notice (1) is likely to reach a majority of the Class Members; (2) contains the type of relief requested
21 by the Class; (3) details the Individual Settlement Payments for Class Members; (4) is the most cost
22 efficient way of providing notice to the Class; and (5) has no prejudice to the Class because if a Class
23 Member does not receive the notice he/she will still receive his/her Individual Settlement Payment. (Id.)

24 **H. THE ATTORNEYS’ FEES UNDER THE SETTLEMENT ARE FAIR**

25 Class Counsel is requesting 35% of the GSA in attorneys’ fees, totaling \$1,225,000.00. (See,
26 Hawkins Decl. ¶ 13.) Fees of up to 35% of the common fund are reasonable for a trial court to award as
27 attorney fees in class action and PAGA settlements, and the Los Angeles County Superior Court has
28 approved similar fee awards. See *Lopez v. Waldorf Astoria Mgmt. LLC*, No. 20STCV17212 (Los

Angeles County Superior Court, 2023) (Approving 35% of the gross settlement amount in a class action and PAGA settlement); *Salguero v. Deliv, Inc.*, No. 20STCV17212 (Los Angeles County Superior Court, 2021) (Same); *Minnear v. Burke Williams*, No. 20STCV02154 (Los Angeles County Superior Court, 2023) (Same). There are two primary methods of determining a reasonable attorney fee in class action litigation, the percentage method and the lodestar method. *Laffitte v. Robert Half International, Inc.* 1 Cal.5th 480, 489 (2016). Attorneys' fees of 35% of the common fund are reasonable and should be preliminarily approved here, however, given the extensive and excellent work invested by Class Counsel in the litigation of this matter, only a small multiplier will be required under the lodestar cross check, further justifying the fee award.

I. THE CLASS REPRESENTATIVES' SERVICE AWARD IS FAIR AND APPROPRIATE

The Settlement provides for Class Representative Service Awards of \$10,000 each to Colinayo and Maldonado. (Hawkins Decl., ¶¶ 23-24.) The proposed awards are reasonable given the time and effort that Plaintiffs devoted to this case, including making themselves available for an all-day mediation session and having their depositions taken. (Id.; Colinayo Decl. ¶ 8; Maldonado Decl. ¶ 8) At no time did the Plaintiffs have a guarantee of any personal benefit as a result of this case. (Id.) They assumed significant risk in bringing this action, including potential liability for Defendant's costs. (Id.) The proposed award is similar to service awards typically in employment class actions. *See, e.g. Sanchez v. Brink's, Inc.*, No. 21STCV11887 (Los Angeles County Superior Court, 2023) (approving \$10,000 service award to each class representative on \$2.6 million gross settlement); *Stevenson v. Payless Water Heaters & Plumbing*, No. 21STCV42057 (Los Angeles County Superior Court, 2023) (approving \$10,000 service award to class representative on \$510,000 gross settlement).

VI. THE COURT SHOULD APPOINT APEX CLASS ACTION LLC AS SETTLEMENT ADMINISTRATOR

The parties propose that the Court appoint Apex Class Action LLC to serve as the Settlement Administrator. (See, Settlement, Section 1.2.) Apex Class Action LLC is experienced in administering class action settlements, and has estimated its fees for this settlement to not exceed \$15,378. (Id. Section 3.2.3.) If the actual settlement administration expenses are less than \$15,378, the difference will be added to the NSA and distributed to the Class.

1 **VII. THE COURT SHOULD SCHEDULE A FINAL APPROVAL HEARING**

2 The last step in the approval process is the final approval hearing, wherein Plaintiffs will offer
3 arguments in support of the Settlement, and Class Members or their counsel may be heard in support of
4 or in opposition to the Settlement. The Parties propose that the Court schedule a hearing for final
5 approval of the Settlement, including Plaintiffs' request for attorneys' fees, costs, and the service award,
6 at the earliest available date at least 150 days after preliminary approval.

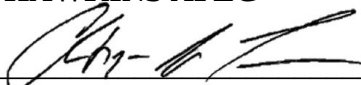
7 **VIII. CONCLUSION**

8 For all of the foregoing reasons, Plaintiffs respectfully request that the Court grant their motion
9 for preliminary approval of the Class Action and PAGA Settlement.

10
11 Respectfully submitted,

12 **JAMES HAWKINS APLC**

13 Dated: September 10, 2024

14 By: _____
15 James R. Hawkins, Esq.
Christina Lucio, Esq.
Nicholas Schieffelin, Esq.

16 **MOORIDIAN LAW, APC**

17
18 Dated: September 10, 2024

19 By: /s/ Haik Hacopian, Esq._____
Zorik Mooradian, Esq.
Haik Hacopian, Esq.

20 *Attorneys for Plaintiffs and the Putative Class*
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