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

NEVINE GIRGIS, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

LIFE GENERATIONS HEALTHCARE LLC;
GHC OF AUBURN, LLC d.b.a. SIENA
SKILLED NURSING AND
REHABILITATION CENTER; GHC OF
CANOGA PARK, LLC d.b.a. CANYON
OAKS NURSING AND REHABILITATION
CENTER; GHC OF CONTRA COSTA, LLC
d.b.a. BAYBERRY SKILLED NURSING
AND HEALTHCARE CENTER; GHC OF
DALY CITY 102, LLC d.b.a. ST. FRANCIS
HEIGHTS CONVALESCENT HOSPITAL;
GHC OF DALY CITY 239, LLC d.b.a. ST.
FRANCIS CONVALESCENT PAVILION;
GHC OF EL CAJON, LLC d.b.a. BRADLEY
COURT; GHC OF HENDERSON, LLC d.b.a.
HORIZON RIDGE SKILLED NURSING
AND REHABILITATION CENTER; GHC
OF KEARNY MESA, LLC d.b.a. KEARNY
MESA CONVALESCENT AND NURSING
HOME; GHC OF LA MESA, LLC d.b.a.
ARBOR HILLS NURSING CENTER; GHC
OF LAKESIDE, LLC d.b.a. LAKESIDE
SPECIAL CARE CENTER; GHC OF

Case No. 30-2022-01284746-CU-OE-CXC

*[Assigned for all purposes to the Hon.
William Claster, Dept. CX-101]*

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: May 10, 2024
Time: 9:00 a.m.
Dept.: CX-101

Reservation No.: 74269830

Complaint Filed: October 6, 2022
Trial Date: None Set

LAKEVIEW TERRACE, LLC d.b.a.
LAKEVIEW TERRACE SPECIAL CARE
CENTER; GHC OF LOMPOC, LLC d.b.a.
LOMPOC SKILLED NURSING AND
REHABILITATION CENTER; GHC OF
LOS GATOS, LLC d.b.a. PLUM TREE
CARE CENTER; GHC OF MODESTO, LLC
d.b.a. ENGLISH OAKS CONVALESCENT
AND REHABILITATION HOSPITAL; GHC
OF NATIONAL CITY I, LLC d.b.a.
FRIENDSHIP MANOR NURSING AND
REHABILITATION CENTER; GHC OF
NATIONAL CITY II, LLC d.b.a. CASTLE
MANOR NURSING AND
REHABILITATION CENTER; GHC OF
NEWPORT BEACH, LLC d.b.a. NEWPORT
NURSING AND REHABILITATION
CENTER; GHC OF PLEASANTON, LLC
d.b.a. PLEASANTON NURSING AND
REHABILITATION CENTER; GHC OF
SAC-RCFE, LLC d.b.a. GRAMERCY
COURT ASSISTED LIVING; GHC OF SAC-
SNF, LLC d.b.a. GRAMERCY COURT
SKILLED NURSING AND
REHABILITATION CENTER; GHC OF
SAN FRAN 180, LLC d.b.a. CITY VIEW
POST ACUTE; GHC OF SAN FRAN 68,
LLC d.b.a. LAWTON SKILLED NURSING
AND REHABILITATION CENTER; GHC
OF SAN JOSE, LLC d.b.a. VISTA MANOR
NURSING CENTER; GHC OF SAN
RAFAEL, LLC d.b.a. SMITH RANCH
SKILLED NURSING AND
REHABILITATION CENTER; GHC OF
SANTEE, LLC d.b.a. STANFORD COURT
SKILLED NURSING AND
REHABILITATION CENTER; GHC OF
SUNNYVALE, LLC d.b.a. CEDAR CREST
NURSING AND REHABILITATION
CENTER; GHC OF TEM-RCFE, LLC d.b.a.
TEMECULA MEMORY CARE; GHC OF
TEM-SNF, LLC d.b.a. TEMECULA
HEALTHCARE CENTER; GHC OF
UPLAND RCFE, LLC d.b.a. HERITAGE
COURT ASSISTED LIVING; GHC OF
UPLAND SNF, LLC d.b.a. HERITAGE
PARK NURSING CENTER; GHC OF
WALNUT CREEK, LLC d.b.a. WALNUT
CREEK SKILLED NURSING AND

1 REHABILITATION CENTER; GHC OF
2 SACRAMENTO, LLC; GHC OF NORTH-
3 MASTER, LLC; GHC of MASTER ANB-
4 FRESNO, LLC; GHC OF EL C-RCFE, LLC;
5 GHC of Fresno, LLC; GHC OF BLUE
6 OAKS, LLC; GHC OF ANBERRY, LLC;
7 GHC OF SAN JOSE NOTE, LLC; GHC OF
8 STRIVE, LLC; GHC OF TEMECULA, LLC;
9 GHC OF UPLAND DEMENTIA, LLC;
10 California Limited Liability Companies; and
11 DOES 1 through 100,

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Defendants.

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on May 10, 2024, at 9:00 a.m., or as soon thereafter as the matter may be heard in Department CX-101 of the above-entitled Court, located at 751 West Santa Ana Boulevard, Santa Ana, California 92701, Plaintiff Nevine Girgis (“Plaintiff”) will, and hereby does, move this Court for:

1. Preliminary approval of the proposed Stipulation of Settlement (“Settlement Agreement”) between Plaintiff and Defendant Life Generations Healthcare LLC (“Defendant”). The Settlement covers non-exempt employees who were employed by one of Defendant’s facilities in California (the “Facility Defendants”) which include:

- GHC of Auburn, LLC d.b.a. Siena Skilled Nursing and Rehabilitation Center;
- GHC of Canoga Park, LLC d.b.a. Canyon Oaks Nursing and Rehabilitation Center;
- GHC of Contra Costa, LLC d.b.a. Bayberry Skilled Nursing and Healthcare Center;
- GHC of Daly City 102, LLC d.b.a. St. Francis Heights Convalescent Hospital;
- GHC of Daly City 239, LLC d.b.a. St. Francis Convalescent Pavilion;
- GHC of El Cajon, LLC d.b.a. Bradley Court,
- GHC of Henderson, LLC d.b.a. Horizon Ridge Skilled Nursing And Rehabilitation Center;
- GHC of Kearny Mesa, LLC d.b.a. Kearny Mesa Convalescent And Nursing Home;
- GHC of La Mesa, LLC d.b.a. Arbor Hills Nursing Center;
- GHC of Lakeside, LLC d.b.a. Lakeside Special Care Center;
- GHC of Lakeview Terrace, LLC d.b.a. Lakeview Terrace Special Care Center;
- GHC of Lompoc, LLC d.b.a. Lompoc Skilled Nursing And Rehabilitation Center;
- GHC of Los Gatos, LLC d.b.a. Plum Tree Care Center;
- GHC of Modesto, LLC d.b.a. English Oaks Convalescent And Rehabilitation Hospital;

- GHC of National City I, LLC d.b.a. Friendship Manor Nursing And Rehabilitation Center;
- GHC of National City II, LLC d.b.a. Castle Manor Nursing And Rehabilitation Center;
- GHC of Newport Beach, LLC d.b.a. Newport Nursing And Rehabilitation Center;
- GHC of Pleasanton, LLC d.b.a. Pleasanton Nursing And Rehabilitation Center;
- GHC of SAC-RCFE, LLC d.b.a. Gramercy Court Assisted Living;
- GHC of SAC-SNF, LLC d.b.a. Gramercy Court Skilled Nursing And Rehabilitation Center;
- GHC of SAN FRAN 180, LLC d.b.a. City View Post Acute;
- GHC of SAN FRAN 68, LLC d.b.a. Lawton Skilled Nursing And Rehabilitation Center;
- GHC of San Jose, LLC d.b.a. Vista Manor Nursing Center;
- GHC of San Rafael, LLC d.b.a. Smith Ranch Skilled Nursing And Rehabilitation Center;
- GHC of Santee, LLC d.b.a. Stanford Court Skilled Nursing And Rehabilitation Center;
- GHC of Sunnyvale, LLC d.b.a. Cedar Crest Nursing And Rehabilitation Center;
- GHC of TEM-RCFE, LLC d.b.a. Temecula Memory Care;
- GHC of TEM-SNF, LLC d.b.a. Temecula Healthcare Center;
- GHC of Upland RCFE, LLC d.b.a. Heritage Court Assisted Living;
- GHC of Upland SNF, LLC d.b.a. Heritage Park Nursing Center;
- GHC of Walnut Creek, LLC d.b.a. Walnut Creek Skilled Nursing And Rehabilitation Center;
- GHC of Sacramento, LLC;

- GHC of North-Master, LLC;
- GHC of Master ANB-FRESNO, LLC;
- GHC of EL C-RCFE, LLC;
- GHC of Fresno, LLC d.b.a. Horizon Health & Subacute Center;
- GHC of Blue Oaks, LLC;
- GHC of Anberry, LLC d.b.a. Anberry Nursing and Rehabilitation Center;
- GHC of San Jose Note, LLC;
- GHC of Strive, LLC;
- GHC of Temecula, LLC;
- GHC of Upland Dementia, LLC; and
- Theragen, LLC.

2. Pursuant to Section 382 of the California Code of Civil Procedure, provisional certification, for settlement purposes only, of the proposed Settlement Class, defined as follows:

All current and former non-exempt employees who were employed by one of the Facility Defendants in California at any time from October 6, 2021 through August 5, 2023 (the “Relevant Time Period”).

3. Preliminary appointment of Plaintiff as Class Representative;
4. Preliminary appointment of Paul K. Haines, Sean M. Blakely, and Alexandra R. McIntosh of Haines Law Group, APC as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to award an Enhancement Payment to the Class Representative, attorneys’ fees and costs to Class Counsel, settlement administration costs, and a payment to the Labor & Workforce Development Agency (“LWDA”) for its share of civil penalties under the Private Attorneys General Act (“PAGA”);
6. Appointment of Apex Class Action LLC as the third-party Settlement Administrator for mailing notices; and
7. Approval of the proposed Notice Packet, and an order that it be disseminated to the proposed Settlement Class as provided in the Settlement Agreement.

1 This motion is based on this notice of motion; the attached memorandum of points and
2 authorities; the declaration of Paul K. Haines and the exhibits attached thereto; the declaration of
3 Sean M. Blakely; the declaration of Alexandra R. McIntosh; the declaration of Sean Hartranft of
4 Apex Class Action LLC and the exhibits attached thereto; the declaration of Plaintiff; the
5 Settlement Agreement; the pleadings and other papers filed in this action; and any further oral or
6 documentary evidence or argument presented at the time of hearing.

7
8 Dated: April 11, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

9
10 By:



Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff

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4 *Newberg on Class Actions*, § 11:24 (4th Ed. 2013)..... 20

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Nevine Girgis (“Plaintiff”) seeks preliminary approval of a class and representative action settlement (“Settlement”) with Defendant Life Generations Healthcare LLC¹ (“Defendant”) (collectively with Plaintiff, the “Parties”). In this action, Plaintiff’s primary allegations relate to Defendant’s alleged failure to pay all wages for all hours worked; failure to properly calculate the regular rate of pay for overtime purposes; failure to provide all required meal periods; failure to authorize and permit all required rest periods; and failure to reimburse for all necessary business expenditures. Based on these alleged wage and hour violations, Plaintiff also alleges derivative claims for Defendant’s alleged failure to timely pay all wages upon separation of employment, failure to issue accurate itemized wage statements, and for civil penalties under the Private Attorneys General Act (“PAGA”), Labor Code § 2698 *et seq.*²

Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary, common-fund class action settlement,³ in which Defendant has agreed to pay a Gross Settlement Amount of \$1,800,000.00 to the following Settlement Class, which is estimated to consist of 7,180 individuals:

All current and former non-exempt employees who were employed by one of the Facility Defendants in California at any time from October 6, 2021 through August 5, 2023 (the “Relevant Time Period”).

If the Settlement is approved, Defendant will pay a non-reversionary Gross Settlement Amount of \$1,800,000.00. After deducting administration costs, Plaintiff’s requested Class Representative Enhancement Payment, the amount designated as PAGA civil penalties, and

¹ In addition to Defendant Life Generations Healthcare, LLC, there are 43 affiliated entities named as Defendants in this action. These affiliated entities are referred to as the “Facility Defendants.”

² Plaintiff’s operative First Amended Class and Representative Action Complaint (“FAC”) pleads the following causes of action: (1) minimum wage violations; (2) failure to pay all overtime wages; (3) meal period violations; (4) rest period violations; (5) failure to reimburse employees for necessary business expenditures; (6) wage statement violations; (7) unfair competition; (8) waiting time penalties; and (9) civil penalties under the PAGA.

³ The Stipulation of Settlement (“Settlement”) is attached as Exhibit A to the Declaration of Paul K. Haines (“Haines Decl.”). The proposed Class Notice, Request for Exclusion Form, and Notice of Estimated Settlement Award are attached as Exhibits 1, 2, and 3, respectively, to the Settlement.

requested attorneys’ fees and costs, the Net Settlement Amount (“NSA”) of approximately \$1,032,500.00 will be distributed to all Participating Class Members who do not opt-out of the Settlement based on the proportionate number of workweeks worked by each Participating Class Member during the Relevant Time Period. Former employees who separated employment with the Facility Defendants during the Relevant Time Period will also be entitled to additional penalties.

Significantly, Class Members do not need to file a claim to reap the financial benefits of the Settlement, as all Class Members will automatically receive a Settlement Award unless they affirmatively opt-out. There are approximately 7,180 Class Members, and the average award to participating Class Members is projected to be approximately \$143.80.⁴

The proposed Settlement is within the range of possible approval in light of the significant legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation, and the tangible monetary benefits to be received by Plaintiff and the Settlement Class. For the reasons discussed herein, Plaintiff respectfully requests that this Court grant preliminary approval of the Settlement.

II. SUMMARY OF THE LITIGATION

A. FACTUAL AND PROCEDURAL BACKGROUND

With over 40 locations in California, Defendant owns and operates a network of nursing homes that provide short and long-term care, assisted living, rehabilitation, and other patient services. *See* Declaration of Paul K. Haines (“Haines Decl.”), ¶ 10. Plaintiff Girgis worked for Defendant in a non-exempt role working in patient care as a Licensed Vocational Charge Nurse. *See* Declaration of Nevine Girgis In Support of Approval of Class Action Settlement (“Girgis Decl.”), ¶ 2. Plaintiff was initially hired by Defendant in approximately December 2021 and worked for Defendant up until approximately October 2023. *Id.*

On October 6, 2022, Plaintiff filed this class action asserting causes of action for meal period violations, rest period violations, unpaid minimum and overtime wages, failure to

⁴ In addition to the \$143.80 average Settlement Award from the Net Settlement Amount, Class Members who worked during the Relevant Time period will also receive a portion of the \$18,750.00 PAGA Amount. Haines Decl., ¶ 15.

1 reimburse for necessary business expenditures, and wage statement penalties. Haines Decl., ¶ 11.
2 On October 12, 2022, Plaintiff served her notification letter to the Labor & Workforce
3 Development Agency (“LWDA”). *Id.*, **Exhibit B**. On December 22, 2022, Plaintiff filed a
4 separate representative action for civil penalties under the PAGA in the matter entitled *Nevine*
5 *Girgis v. Life Generations Healthcare LLC, et al.*, Orange County Superior Court, Case No. 30-
6 2022-01298476-CU-OE-CXC (“PAGA Action”). Haines Decl., ¶ 11. As part of the Settlement,
7 the Parties stipulated to the filing of a First Amended Class and Representative Action Complaint
8 (“FAC”) in this Action to add a Facility Defendant, add certain factual allegations, and add causes
9 of action for Defendant’s alleged failure to timely pay all final wages and for civil penalties under
10 the PAGA. *Id.* On December 14, 2023, the operative FAC was filed in this Action. *Id.* After the
11 filing of the FAC in this Action, the PAGA Action was dismissed in its entirety without prejudice
12 on February 9, 2024. *Id.*

13 **B. PLAINTIFF’S CLAIMS AND DEFENDANT’S DEFENSES**

14 **1. Arbitration Agreements**

15 As an initial matter, Defendant asserts that Plaintiff and nearly all Class Members signed
16 valid and enforceable arbitration agreements with class action waivers. Haines Decl., ¶ 16. Setting
17 aside any arguments as to the merits of Plaintiff’s claims, Defendant contends that absent
18 settlement, a class-wide recovery for Class Members was not possible and that only PAGA civil
19 penalties could potentially be recovered on behalf of a subset of Class Members. *Id.* As such,
20 Defendant contends that absent its agreement to not raise the arbitration agreements as an
21 affirmative defense, any recovery to Class Members would be limited to only the employee’s
22 potential 25% share of PAGA civil penalties. *Id.*

23 **2. Failure to Pay for All Hours Worked**

24 Plaintiff alleges that Defendant failed to compensate Plaintiff and other non-exempt
25 employees for all their hours actually worked, including but not limited to the time that the
26 employees were subject to the control and direction of Defendant; and/or the time that the
27 employees were suffered or permitted to work. Haines Decl., ¶ 17. Specifically, Plaintiff alleges
28 that Defendant required Plaintiff and other non-exempt employees to undergo COVID-19

1 temperature checks, nasal swap tests, for which they had to wait approximately 15 minutes for
2 the results, and other screenings at the beginning of the workday. *Id.* Plaintiff alleges that
3 Defendant required these temperature checks and screenings to be done prior to clocking in for
4 their work shifts, and therefore, Plaintiff alleges employees were not paid for time spent
5 undergoing the temperature checks and screenings. *Id.*

6 Defendant counters that their timekeeping policies/practices complied with California law
7 and that they compensated Class Members for all hours worked throughout the Relevant Time
8 Period. Haines Decl., ¶ 17. Defendant further contends that employees were required to accurately
9 record and confirm their hours worked and Defendant would pay employees for all recorded
10 hours. *Id.* Defendant also argues that it is unsettled as to whether an employer must compensate
11 employees for time spent undergoing COVID-related screenings. *Id.* Moreover, Defendant asserts
12 that any unpaid time could have only amounted to a few minutes per day, at most, and was thus
13 *de minimis*. *Id.* While Plaintiff points to *Troester v. Starbucks Corp.*, 5 Cal.5th 829 (2018), where
14 the California Supreme Court held California’s labor laws generally do not recognize a *de minimis*
15 defense, Defendant argues *Troester* should be limited to its facts. (“[W]e decide only whether the
16 *de minimis* rule is applicable to the facts of this case as described by the Ninth Circuit.” *Troester*,
17 5 Cal.5th at 829). Finally, Defendant asserts that Plaintiff would be unable to certify this claim
18 since individualized inquiries would be necessary as to whether employees were required to
19 undergo screenings off-the-clock, resulting in an unmanageable series of mini-trials. Haines
20 Decl., ¶ 17.

21 **3. Unpaid Overtime Wages Based on Miscalculation of the “Regular Rate”**

22 Plaintiff alleges that Defendant paid Plaintiff and Class Members non-discretionary
23 incentive pay but failed to include these payments in employees’ “regular rate” of pay when
24 calculating overtime compensation, and underpaid employees’ overtime wages as a result.
25 Haines Decl., ¶ 18. Specifically, Plaintiff contends that Defendant paid Class Members non-
26 discretionary incentive pay, including annual “President’s Bonus,” “Sign-On” bonuses, referral
27 bonuses, and other non-discretionary payments, but failed to include these payments when
28 calculating the regular rate of pay for overtime purposes. *Id.* Plaintiff further alleges that

Defendant failed to properly include incentive pay and all remuneration when calculating paid sick pay under pursuant to Labor Code §§ 245.5(e) and 246(l). *Id.*

However, Defendant contends that it properly included all forms of remuneration when calculating the regular rate of pay, and therefore, paid all overtime wages to Class Members. Haines Decl., ¶ 18. Defendant also argues that the incentive payments at issue were discretionary bonuses and therefore excludable from the “regular rate.” *Id.*; *see also* 29 C.F.R. § 778.208 (discretionary bonuses excludable from regular rate). Defendant further argues that Class Members received different types of bonuses and other remuneration throughout the Relevant Time Period, creating substantive differences among Class Members with respect to the incentives received, making class certification unlikely. Haines Decl., ¶ 18.

4. Meal Period Claims

Plaintiff alleges that due to understaffing and the need to continuously monitor their patients at all times, Defendant failed to provide timely, duty-free, and uninterrupted 30-minute meal periods commencing before the end of the fifth hour of work. Haines Decl., ¶ 19. Plaintiff further alleges that Class Members were not provided with second meal periods when they worked shifts in excess of 10.0 hours in a workday. *Id.*, at ¶ 20.

Defendant counters it has maintained compliant written meal period policies throughout the Relevant Time Period and has always provided compliant meal periods in line with those policies. Haines Decl., ¶ 19. Defendant further contends that under *Brinker*, it is only required to “provide” the opportunity to take meal periods, not “ensure” meal periods are taken, and that it has always done so. *Id.*; *see Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1038 (2012) (rejecting “ensure” standard and holding employers only have to “provide” employees the opportunity to take meal periods). Therefore, Defendant maintains that any short, missed, or late first meal periods were the result of lawful employee waiver or choice, thereby precluding liability. Haines Decl., ¶ 19. Defendant further argues that employees were required to sign daily attestations confirming employees were provided with compliant meal periods. *Id.* Defendant also points to the approximately 14,176 meal period premiums paid during the Relevant Time Period and argues that it paid a meal period premium when employees indicated they did not receive a

1 compliant meal period. *Id.* With respect to second meal periods, Defendant argues that employees
2 may waive second meal periods on shifts of more than 10.0 hours but less than 12.0 hours, under
3 Labor Code § 512(a), so that they do not need to stay at work for an extra unpaid 30 minutes, and
4 that employees regularly did so. *Id.*, at ¶ 20. Lastly, Defendant argues that individualized inquiries
5 will be required to determine why each meal period was taken late or short or missed by each
6 employee, and whether there was a valid waiver, thereby making class certification of this claim
7 unlikely. *Id.*, ¶¶ 19-20.

8 **5. Rest Period Claims**

9 Plaintiff alleges that Defendant failed to authorize and permit all legally compliant off-
10 duty rest periods. Haines Decl., ¶ 21. Specifically, Plaintiff alleges employees were often required
11 to work through their rest periods, as a result of the work demands imposed by Defendant and the
12 need to continuously monitor their patients at all times. *Id.*

13 Defendant counters that they have maintained compliant written rest period policies
14 throughout the Relevant Time Period and have always authorized and permitted employees a 10-
15 minute rest period for each four (4) hours worked, or major fraction thereof, as required under the
16 Wage Order, and that any failure to take rest periods was a result of employee choice, rather than
17 any Defendant's policy and/or practice. Haines Decl., ¶ 21. As with meal periods, Defendant
18 maintains that employees signed daily attestations indicating that employees received
19 uninterrupted off-duty rest periods. *Id.* Defendant also argues that Plaintiff's rest period claim is
20 not amenable to class treatment, since individual inquiries would be required to determine which
21 employees failed to take rest periods, how many rest periods they failed to take, and the reasons
22 why each employee failed to take rest period(s) on a particular shift. *Id.* These manageability
23 concerns are especially present with respect to rest period claims, Defendant argues, given that
24 rest periods are not recorded. *Id.*

25 **6. Failure to Reimburse Necessary Business Expenditures**

26 Plaintiff alleges that Defendants failed to reimburse Plaintiff and other non-exempt
27 employees for all reasonable and necessary work expenditures, including, but not limited to use
28 of the employee's personal cellular phones. Haines Decl., ¶ 22. Specifically, Plaintiff alleges

1 Defendant required Plaintiff and other non-exempt employees to use their personal cellular
2 phones to communicate with their supervisors, but failed to reimburse Plaintiff and other non-
3 exempt employees for use of their personal cellular phones. *Id.*

4 However, Defendant argues that Class Members were not required to use their personal
5 cellular phones in the discharge of their work duties. Haines Decl., ¶ 22. Defendant further
6 contends that this claim would require individual inquiries into whether Class Members actually
7 used their personal cellular phones for work purposes, how much expense they incurred, whether
8 they submitted a request for reimbursement, and the reasonableness of that expense, thus
9 precluding class certification. *Id.*; see also, e.g., *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42
10 Cal.4th 554, 568 (2007) (“In calculating the reimbursement amount due under section 2802, the
11 employer may consider not only the actual expenses that the employee incurred, but also whether
12 each of those expenses was ‘necessary,’ which in turn depends on the reasonableness of the
13 employee’s choices”).

14 **7. Claims Under Labor Code §§ 203, 226, and the PAGA**

15 As a result of these alleged wage and hour violations, Plaintiff asserts that Defendant
16 failed to comply with its final wage payment and wage statement obligations, in violation of
17 Labor Code §§ 203 and 226, respectively. Haines Decl., ¶¶ 23-24. Finally, Plaintiff seeks civil
18 penalties under the PAGA, based on the aforementioned claims. Haines Decl., ¶ 25.

19 Defendant asserts they have strong, good-faith defenses to Plaintiff’s underlying claims,
20 precluding imposition of waiting time penalties, which are only available for the “willful” failure
21 to pay wages. Haines Decl., ¶ 23; see 8 Cal. Code Regs. § 13520 (a “good faith dispute that any
22 wages are due will preclude imposition of waiting time penalties”); *Kao v. Joy Holiday*, 12
23 Cal.App.5th 947, 963 (2017) (holding “good faith dispute” precluded imposition of waiting time
24 penalties). Defendant further contends that any alleged wage statement violations could not be
25 shown to be “knowing and intentional,” particularly given its good-faith defenses; that Plaintiff
26 cannot show she or other employees “suffer[ed] injury” due to alleged wage statement violations,
27 as required by Lab. Code § 226(e); and that the wage statements always accurately reflected
28 amounts *paid* to employees. Haines Decl., ¶ 24; see *Maldonado v. Epsilon Plastics, Inc.*, 22

Cal.App.5th 1308, 1337 (2018) (“The purpose of section 226 is to ‘document the paid wages to ensure the employee is fully informed regarding the calculation of those wages’”).

Finally, Defendant contends that since Plaintiff’s PAGA claim is derivative of her underlying wage claims, Plaintiff’s PAGA claim would fail with those claims. Haines Decl., ¶ 25; *see Price v. Starbucks Corp.*, 192 Cal.App.4th 1136, 1147 (2011) (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail”). Defendant further maintains that given their good-faith defenses, the Court would substantially reduce any PAGA penalties awarded. Haines Decl., ¶ 25; Lab. Code § 2699(e)(2) (authorizing reduction in PAGA penalties in court’s discretion); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien, Inc.*, No. ED-CV-10-1487-RGK (OPx), 2011 WL 7563047 at *4 (C.D. Cal. 2011) (reducing PAGA penalties by over 82%); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA penalty of just \$5 per pay period where employer made “good faith attempts” to comply with the law).

C. DISCOVERY AND MEDIATION

In connection with mediation, Defendant provided Plaintiff with a 20% random sampling of timekeeping and payroll records for putative class members employed during the Relevant Time Period, as well as meal and rest period attestation records for the sampled employees. Haines Decl., ¶ 12. Defendant also produced relevant policy documents, including its written meal and rest period policies, timekeeping policies, and overtime policies; and a detailed Class List which included non-exempt employees’ hire date and termination date (if applicable). *Id.* Plaintiff hired a labor economist with a Ph.D in economics to assist Plaintiff in conducting a comprehensive analysis and extrapolation of the timekeeping and payroll data to calculate Defendant’s potential exposure for each of Plaintiff’s claims. *Id.* This discovery allowed the Parties to assess the merits and value of Plaintiff’s claims, the chances of certification of Plaintiff’s claims, and Defendant’s potential defenses. *Id.*

On June 28, 2023, the Parties attended a full-day mediation with Louis Marlin, Esq., an experienced wage and hour class action mediator. Haines Decl., ¶ 13. During mediation, the Parties vigorously debated their legal positions, the likelihood of certification of Plaintiff’s

claims, and the legal bases for the claims and defenses. *Id.* At mediation, the Parties extensively discussed the impact of the U.S. Supreme Court’s decision in *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639 (2022), where it overruled the California Supreme Court’s holding in *Iskanian v. CLS Transportation Los Angeles, LLC* which held that a representative PAGA claim could not be compelled to arbitration. Haines Decl., ¶ 13. The Parties further debated the likely outcome of the California Supreme Court’s decision in *Adolph v. Uber Technologies, Inc.*, 14 Cal.5th 1104 (2023). At the time of mediation (June 28, 2023), *Adolph* was fully briefed but not yet decided, and therefore, Plaintiff’s ability to recover PAGA civil penalties on behalf of other aggrieved employees remained uncertain, and there was a risk that Plaintiff would be prevented from recovering PAGA civil penalties for violations suffered by other aggrieved employees. Haines Decl., ¶ 13.

At the conclusion of mediation, the Parties did not reach a settlement. Haines Decl., ¶ 13. Following mediation, the Parties continued their negotiations through Mr. Marlin. *Id.* Mr. Marlin issued a mediator’s proposal for a class-wide settlement, which was ultimately accepted by the Parties. *Id.* During the months that followed, the Parties negotiated and finalized the long-form Settlement now before the Court. *Id.*

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

Under the Settlement, Defendant will pay a non-reversionary Gross Settlement Amount (“GSA”) of \$1,800,000.00. *See* Settlement, § 4. No Class Member will need to file a claim form as each Class Member will automatically receive a Settlement Award unless he or she affirmatively opts out. *Id.*, at § 5. The monetary terms of the Settlement are summarized below:

• Gross Settlement Amount (“GSA”):	\$1,800,000.00
• Minus Court-approved attorneys’ fees (one-third):	\$600,000.00
• Minus Court-approved, verified costs (up to):	\$40,000.00
• Minus Court-approved Enhancement Payment:	\$7,500.00
• Minus Amount designated as PAGA penalties:	\$75,000.00
• <u>Minus estimated settlement administration costs:</u>	<u>\$45,000.00</u>
Net Settlement Amount (“NSA”):	\$1,032,500.00
<u>PLUS 25% of PAGA penalties (“PAGA Amount”)</u>	<u>\$18,750.00</u>
TOTAL Amount Paid to Settlement Class:	\$1,051,250.00

1 **1. The Settlement Provides for Reasonable Monetary Payments**

2 After deducting administration costs, the requested Enhancement Payment to Plaintiff, the
3 amount set aside as PAGA civil penalties, and requested attorneys’ fees and costs, Defendant will
4 pay an NSA of at least \$1,032,500.00 to the Settlement Class. Haines Decl., ¶ 14; *see also*
5 Settlement, § 5(A). According to Defendant, there are approximately 7,180 Class Members.
6 Haines Decl., ¶ 15. Thus, the average Settlement Award from the NSA is estimated to be
7 approximately \$143.80. *Id.* Further, 25% of the amount set aside as PAGA civil penalties (i.e.,
8 \$18,750.00) shall be paid to all Class Members (regardless of whether they opt-out) who worked
9 for Defendant at any time during the Relevant Time Period. *Id.*

10 The Net Settlement Amount (“NSA”) shall be distributed to all participating Class
11 Members as follows: ninety percent (90%) of the NSA will be distributed to all participating Class
12 Members based on the proportionate number of pay periods each participating Class Member
13 worked during the Class Period, and ten percent (10%) of the NSA shall be designated as the
14 “Waiting Time Amount” and will be distributed in equal, pro-rata shares to each participating
15 Class Member who separated their employment with Defendant at any time during the Relevant
16 Time Period. *See* Settlement, §§ 5(B)(i)-(ii). In addition to the NSA, each Class Member who was
17 employed by Defendant at any time during the Relevant Time Period (including those who submit
18 a valid and timely Request for Exclusion from the class action settlement) shall receive a portion
19 of the Eighteen Thousand Seven Hundred Fifty Dollars and Zero Cents (\$18,750.00) of the Gross
20 Settlement Amount that has been designated as the “PAGA Amount” proportionate to the number
21 of pay periods that he or she worked during the Relevant Time Period. *Id.*, at § 5(B)(iii).
22 Defendant will pay employer-side payroll taxes on the wage portion of each payment in addition
23 to the GSA. *Id.*, § 4(D).

24 Class Members will have sixty (60) days from the mailing to opt-out or object, thereby
25 providing ample time to review the Settlement. Settlement, §§ 10(C)-(D). Class Members who
26 do not opt out will be bound by the Settlement and will release and discharge Defendant and the
27 Facility Defendants from any and all claims that were alleged in the operative FAC, or which
28 could have been alleged based on the facts in the FAC. *Id.*, § 2(A). In addition, all Class Members

(regardless of whether they opt out) who worked for Defendant during the Relevant Time Period will release all claims for PAGA civil penalties based on those alleged violations. *Id.*, § 2(B).

2. Enhancement Payment, Attorneys' Fees and Costs, and LWDA Payment

Plaintiff will apply for a Class Representative Enhancement Payment at final approval in the amount of \$7,500 for her services to the Settlement Class. Haines Decl., ¶ 29; *see also* Settlement, § 7. “[I]ncentive awards are fairly typical in class action cases...and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action.” *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94 (2010). As will be fully briefed at final approval, the requested Enhancement Payment is intended to recognize the substantial time and effort Plaintiff expended on behalf of the Settlement Class, including providing factual information and documents to counsel, identifying potential witnesses, attending meetings with counsel to discuss the claims and theories at issue in the litigation, and otherwise actively participating in the prosecution of her claims. Girgis Decl., ¶¶ 4-5. Plaintiff respectfully submits that this requested Enhancement Payment is well within the range of permissible approval. *See, e.g., Alvarado v. Nederend*, No. 1:08-cv-01099-OWW-DLB, 2011 WL 1883188 at *10 (E.D. Cal. May 17, 2011) (approving \$7,500 enhancement award to each of five named plaintiffs from \$505,058.60 settlement).

At final approval, Plaintiff’s counsel will request an attorneys’ fees award of one-third of the Gross Settlement Amount, and up to \$40,000 in verified costs. Haines Decl., ¶ 28; *see also* Settlement, § 6. Plaintiff submits the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent basis. Plaintiff’s counsel has expended significant time conducting pre-filing investigation; legal research; analyzing Plaintiff’s claims; analyzing employee timekeeping and payroll records and other data and documents; engaging in informal discovery; working with its expert to develop a comprehensive damages analysis and mediation brief; preparing for and attending mediation; negotiating the Settlement; preparing this Motion; and otherwise prosecuting this case. Haines Decl., ¶ 28. Counsel anticipates incurring additional fees in appearing at the hearing on this Motion, supervising the

1 Notice process, and preparing the Final Approval motion and appearing at the Final Approval
2 Hearing. *Id.*

3 It is appropriate to award attorneys' fees in class actions as a percentage of the "common
4 fund" created by a settlement. *See Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480 (2016) (holding
5 "the percentage of fund method survives in California class action cases"). Counsel's fee request
6 of one-third of the Gross Settlement Amount is well within the range of reasonableness, and is
7 typical for common fund settlements, and in fact was the percentage approved in *Laffitte*.

8 Additionally, the parties have agreed to designate \$75,000.00 of the GSA as PAGA civil
9 penalties, of which \$56,250.00 (75%) will be paid to the LWDA, with the remaining \$18,750.00
10 (25%) for distribution to the Settlement Class, as the PAGA requires such penalties to be allocated
11 per Labor Code § 2699(i). *See* Settlement, § 4(C)(5). Plaintiff submits this allocation to the
12 LWDA for PAGA civil penalties is appropriate. *See, e.g., Chu v. Wells Fargo Investments, LLC*
13 (N.D. Cal. 2011) Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (approving PAGA payment
14 of \$7,500 to LWDA out of \$6.9 million common-fund settlement); *Lazarin v. Pro Unlimited, Inc.*
15 (N.D. Cal. 2013) Case No. C11-03609 HRL, 2013 WL 3541217 (approving PAGA payment of
16 \$7,500 to LWDA out of \$1.25 million common-fund settlement).

17 **IV. ARGUMENT**

18 **A. PRELIMINARY APPROVAL IS WARRANTED**

19 Rule of Court 3.769 conditions settlement of a class action on court approval, which is
20 generally evaluated under the federal standards under Fed. R. Civ. Proc. Rule 23. *Reed v. United*
21 *Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012) (Rule of Court 3.769 requires court to
22 determine "the settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler*
23 *Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule 23(e) requires court to determine "whether a
24 proposed settlement is fundamentally fair, adequate, and reasonable"). Settlement is the preferred
25 means of dispute resolution, particularly in complex class action litigation. *In re Syncor ERISA*
26 *Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). The court's role in evaluating a settlement is limited
27 to ensuring the agreement, as a whole, is fair and within the range of reasonableness. *Hanlon*, 150
28 F.3d at 1027. There is an initial presumption of fairness when, as here, a settlement was negotiated

at arm's length by experienced class counsel, with the assistance of an experienced mediator. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

1. Standard for Preliminary Approval

To make a fairness determination, a court should consider several factors, including: “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, [and] the experience and views of counsel.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996). “The list of factors is not exclusive and the Court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245 (2001). As discussed below, the proposed Settlement is fair, adequate, and reasonable in light of these factors.

a. The Strength of Plaintiff’s Case

Although she steadfastly maintains her claims are meritorious, Plaintiff acknowledges there were substantial risks and uncertainty in proceeding with class certification and eventual trial on the merits. As described in section II.B., *supra*, Defendant presented multiple defenses to Plaintiff’s claims, both on the merits and with respect to class certification. While Plaintiff was prepared to litigate her claims through class certification and ultimately trial, success was far from certain.

b. Risk, Expense, Complexity, and Duration of Further Litigation

Although the Parties engaged in significant informal discovery in advance of mediation, the Parties still had substantial formal discovery to complete in formal litigation had the matter not settled, which would have required the expenditure of substantial time and resources by all Parties that would have very likely spanned several years. Haines Decl., ¶ 27. Furthermore, Defendant maintains that Plaintiff and Class Members signed valid and binding arbitration agreements during their employment with Defendant, precluding them from proceeding on a class-wide basis. *Id.* Even if Plaintiff were to overcome the arbitration agreements and certify the classes, the Parties would incur considerable attorneys’ fees and costs through a possible

1 decertification motion, trial, and possible appeal. *Id.* The Settlement avoids those risks and the
2 accompanying delay and expense, and thus, this factor supports preliminary approval. *Id.*

3 **c. Risk of Maintaining Class Action Status**

4 Due to the fact that Plaintiff and Class Members were subject to arbitration agreements
5 with class action waivers, it is likely that absent settlement, there would not be a certified class at
6 the time of trial. Indeed, Defendant only agreed to waive their right to assert the arbitration
7 agreements as a defense in connection with this Settlement. Thus, this factor supports preliminary
8 approval.

9 **d. Amount Offered in Settlement Given Realistic Value of Claims**

10 The Settlement provides a fair and reasonable monetary recovery for Class Members
11 concerning heavily disputed claims where the law is in a state of frequent change. Based on a
12 review of the data produced by Defendant, Plaintiff conducted the following exposure analyses
13 for each of Plaintiff's claims:

14 **Unpaid Wages:** \$290,162

15 Plaintiff alleges that Defendant failed to pay for all hours worked due to its policy/practice
16 of requiring employees to undergo off-the-clock COVID temperature checks/screenings. Haines
17 Decl., ¶ 17. Using a conservative 15-minutes per shift estimate, Plaintiff alleges that Defendant's
18 failure to pay for time spent undergoing COVID-19 checks has resulted in approximately 190,921
19 hours of unpaid wages. *Id.* Based on the average hourly rate of pay of approximately \$25.33,
20 Plaintiff calculates Defendant's maximum exposure for this claim at approximately \$4,836,029
21 (190,921 unpaid hours * \$25.33 average hourly rate). *Id.*

22 However, as noted above, Defendant argues that it compensated employees for all hours
23 worked throughout the Relevant Time Period. Haines Decl., ¶ 17. Additionally, Defendant argues
24 that it is unsettled law as to whether an employer must compensate employees for time spent
25 undergoing COVID-related screenings. *Id.* Based on these defenses, Plaintiff discounted the
26 maximum exposure by 80% to account for the risk of non-certification and potential inability to
27 proceed on a classwide basis due to the arbitration agreements, and an additional 70% to account
28 for Defendant's defenses on the merits, to arrive at an estimated exposure of approximately

1 \$290,162. *Id.*

2 Regular Rate Claims: \$12,878

3 Plaintiff alleges that Defendant failed to pay all overtime wages owed by not including
4 the value of all non-discretionary remuneration into the regular rate of pay. Haines Decl., ¶ 18.
5 Based on Plaintiff's expert's analysis and extrapolation of the payroll data produced, Plaintiff
6 estimates that Defendant underpaid overtime wages by approximately \$91,987 due to its regular
7 rate miscalculations. *Id.*

8 However, as stated above, Defendant contends that they properly included all forms of
9 remuneration when calculating the regular rate of pay, and therefore, paid all overtime wages to
10 Class Members. Haines Decl., ¶ 18. Defendant further argues that Class Members received
11 different types of incentive payments throughout the Relevant Time Period, creating substantive
12 differences among the Class Members with respect to the incentives received, making class
13 certification unlikely. *Id.* In light of these defenses, Plaintiff discounted the maximum amount
14 that the class could potentially recover by 80% for risk of non-certification and potential inability
15 to proceed on a classwide basis due to the arbitration agreements, and discounted an additional
16 30% for risk of being unsuccessful on the merits or failure to recover the full amount sought, to
17 arrive at an estimated total of approximately \$12,878. *Id.*

18 First Meal Period Violations: \$331,359

19 Based on Plaintiff's expert's review of Defendant's timekeeping records, there were
20 approximately 275,810 non-compliant first meal periods during the Relevant Time Period.
21 Haines Decl., ¶ 19. Additionally, Defendant's records reflect that they paid approximately 14,176
22 meal period premiums during the Class Period. *Id.* Therefore, treating each non-compliant meal
23 period in the timekeeping records as a violation, Plaintiff estimated total maximum damages for
24 first meal period violations at approximately \$6,627,189 (275,810 non-compliant first meal
25 periods * \$25.33 average meal period premium – [\$359,078 in meal premiums paid]). *Id.*

26 However, as noted above, Defendant argues that they maintained compliant written meal
27 period policies throughout the Relevant Time Period and under *Brinker* it is only required to
28 provide employees the opportunity to take meal periods, not ensure that they are taken. Haines

Decl., ¶ 19; *see Brinker, supra*, 53 Cal.4th at 1034 (rejecting “ensure” standard). Defendant further argues that employees signed daily attestations confirming employees were provided with compliant meal periods. Haines Decl., ¶ 19. Furthermore, Defendant argues that Plaintiff’s meal period claim is not suited for class treatment, as individual inquiries would be needed as to which employees took non-compliant meal periods or missed meal periods, how many meal periods were non-compliant or missed, and why a particular employee did not take compliant meal period on a particular shift. *Id.* Based on these defenses, Plaintiff discounted the maximum amount by 80% for risk of non-certification and potential inability to proceed on a classwide basis due to the arbitration agreements, and an additional 75% for risk of losing on the merits or failing to recover the full amount sought, to arrive at an estimated exposure of approximately \$331,359. *Id.*

Second Meal Period Violations: \$113,387

Plaintiff’s expert’s analysis and extrapolation of the timekeeping data showed that during the Class Period there were approximately 89,528 shifts worked in excess of 10.0 hours that did not reflect a compliant second meal period. Haines Decl., ¶ 20. Therefore, Plaintiff calculates Defendant’s maximum exposure for second meal period violations at approximately \$2,267,744 (89,528 non-compliant second meal periods * \$25.33 average meal period premium). *Id.*

However, Plaintiff’s theory of liability carried significant risks, based on Defendant’s arguments that they provided employees the opportunity for second meal periods and that Class Members voluntarily waived their second meal period on shifts in excess of 10.0 hours but less than 12.0 hours, as they are entitled to do under Labor Code § 512(a). Haines Decl., ¶ 20. Defendant further argues that Plaintiff’s second meal period exposure is grossly inflated as Plaintiff already seeks a meal period premium for first meal period violations on many shifts, and Plaintiff cannot recover more than one meal period premium for each workday. *Id.*; *see United Parcel Service, Inc. v. Superior Court*, 196 Cal.App.4th 57, 70 (2011) (“[E]mployees in this case may recover up to two additional hours of pay on a single work day for meal period and rest period violations – one for failure to provide a meal period and another for failure to provide a rest period.”). In addition, as with first meal periods, Defendant argues this claim would not be certified as requiring individualized inquiries into both the merits and damages. Haines Decl., ¶

20. In light of these risks, Plaintiff discounted the maximum amount that the class could potentially recover for second meal periods by 80% for a risk of non-certification and potential inability to proceed on a classwide basis due to the arbitration agreements, and an additional 75% for a risk of losing on the merits, or having exposure reduced due to Defendant's waiver argument, to arrive at an estimated exposure amount of approximately \$113,387. *Id.*

Rest Period Premium Wages: \$209,642

As indicated above, Defendant required Class Members to sign daily attestations confirming they were authorized and permitted to take compliant off-duty rest periods. Haines Decl., ¶ 21. Based on Plaintiff's review and extrapolation of the employee attestations, there were approximately 165,529 shifts in excess of 3.5 hours in which employees did not sign an attestation confirming that they were provided all rest periods during their shift. *Id.* Accordingly, Plaintiff calculates Defendant's potential exposure for rest period violations at approximately \$4,192,850 (165,529 rest period violations * \$25.33 average premium). *Id.*

However, Defendant argues that they always maintained and enforced lawful rest period policies and practices throughout the Relevant Time Period. Haines Decl., ¶ 21. Defendant also maintains that any failure to take rest periods was the result of employee choice, and that they are not required to police rest periods. *Id.* Finally, Defendant argues that Plaintiff's rest period claim is not amenable to class treatment as individualized inquiries would be required to determine which employees failed to take rest periods, and the reasons why each employee failed to take a rest period on a particular shift. *Id.* These manageability issues are particularly present with respect to rest periods, Defendant argues, as rest periods are not – and need not be – recorded. *Id.* In light of these defenses, Plaintiff assessed an 80% risk of non-certification and potential inability to proceed on a classwide basis due to the arbitration agreements, and discounted an additional 75% for risk of being unsuccessful on the merits or failure to recover the full amount sought, to arrive at a projected exposure of \$209,642. *Id.*

Failure to Reimburse Necessary Business Expenditures: \$85,500

Plaintiff alleges that Defendant required Class Members to use their personal cellular phones work-related purposes but did not reimburse Class Members for these expenses. Haines

Decl., ¶ 22. Plaintiff estimates that Class Members expended approximately \$5.00 per workweek during the Relevant Time Period in reasonable work-related expenses. *Id.* Therefore, Plaintiff calculated Defendant’s maximum exposure for this claim at approximately \$1,425,000 (\$5.00 per workweek * 285,000 workweeks in Relevant Time Period). *Id.*

However, Defendant argues that Class Members were not required to use their cellular phones in the discharge of their work duties. Haines Decl., ¶ 22. Defendant also argues that this claim would require individual inquiries into whether Class Members actually used their personal cellular phones for work purposes, how much expense they incurred, whether they submitted a request for reimbursement, and the reasonableness of that expense, thus precluding class certification. *Id.*; *see also*, e.g., *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007) (“In calculating the reimbursement amount due under section 2802, the employer may consider not only the actual expenses that the employee incurred, but also whether each of those expenses was ‘necessary,’ which in turn depends on the reasonableness of the employee’s choices”). In light of Defendant’s arguments and defenses, Plaintiff discounted the maximum amount that the class could potentially recover by 80% for a risk of non-certification and potential inability to proceed on a classwide basis due to the arbitration agreements, and an additional 70% for risk of losing on the merits or failure to recover the full amount, to arrive at a projected exposure of \$85,500. Haines Decl., ¶ 22.

Wage Statement Penalties: \$329,423

Plaintiff alleges that Defendant is liable for wage statement penalties. Haines Decl., ¶ 24. Those penalties are calculated as \$50 for each “initial” violation and \$100 for each “subsequent” violation, with a maximum of \$4,000 per employee. *See* Labor Code § 226(e). *Id.* Plaintiff’s expert’s analysis reflected that there were approximately 7,180 unique employees and approximately 150,000 pay periods worked during the liability period applicable to Plaintiff’s wage statement claim. *Id.* Plaintiff, therefore, calculated Defendant’s potential wage statement exposure at approximately \$14,641,000 ([7,180 “initial” violations * \$50] + [142,820 “subsequent” violations * \$100]). *Id.*; *see also* Labor Code § 226(e). However, given Defendant’s arguments that no violations occurred, that Class Members suffered no “injury,” that any

violations were not “knowing and intentional,” that the wage statements always accurately reflected hours worked and amounts paid to employees, Plaintiff discounted the maximum exposure by 85% for risk of non-certification and potential inability to proceed on a classwide basis due to the arbitration agreements, and by an additional 85% for risks on the merits, for an estimated realistic exposure of approximately \$329,423. Haines Decl., ¶ 24.

Waiting Time Penalties: \$635,377

Based on data produced by Defendant, there are approximately 2,613 Class Members who separated their employment from Defendant at any time after October 6, 2021, and are therefore eligible for waiting time penalties. Haines Decl., ¶ 23. Plaintiff estimated an average waiting time penalty of approximately \$6,079 (\$25.33/hr * 8 hrs * 30 days), and calculated Defendant’s maximum waiting time penalty exposure at approximately \$15,884,427 (2,613 former employees * \$6,079 average waiting time penalty). *Id.* However, Defendant asserts they have strong, good-faith defenses to Plaintiff’s underlying claims and thus, even if Plaintiff were able to recover on her underlying claims, she would not be able to recover waiting time penalties. *Id.* Moreover, Plaintiff would need to overcome Defendant’s defenses, both as to class certification and as to the merits, to her underlying claims. *Id.* Based on these defenses, Plaintiff discounted Defendant’s maximum exposure by 80% for risk of non-certification and potential inability to proceed on a classwide basis due to the arbitration agreements, and by an additional 80% for risk of being unsuccessful on the merits or failure to recover the full amount sought, to arrive at an estimated total of approximately \$635,377. *Id.*

PAGA Civil Penalties: \$225,000

Plaintiff estimated a maximum PAGA exposure of \$15,000,000 (150,000 pay periods during PAGA Period * \$100 “initial” violation rate). Haines Decl., ¶ 25; *Amaral, supra*, 163 Cal.App.4th at 1209 (finding “initial” violation rate applies until employer is notified that it is violating a Labor Code provision). However, these penalties derive from Plaintiff’s underlying claims, each of which Defendant vigorously disputes. Haines Decl., ¶ 25. The PAGA also grants trial courts discretion to reduce PAGA civil penalties (Lab. Code § 2699(e)(2)), and Defendant argued the Court would reduce penalties significantly given its good-faith defenses. *Id.* Thus,

Plaintiff discounted the maximum figure by 85% for risk of losing on the merits and/or not recovering a PAGA penalty for each and every pay period, and by an additional 90% for risk of the Court reducing penalties, for an estimated exposure of approximately \$225,000. *Id.*; *see also Fleming*, 2011 WL 7563047 at *4 (reducing PAGA civil penalties by over 82%); *Carrington*, 30 Cal.App.5th at 529 (affirming PAGA civil penalty of just \$5 per pay period).

Using these figures, Plaintiff estimated the realistic total recovery for the Settlement Class would be approximately \$2,232,728. Haines Decl., ¶ 26. Thus, the proposed \$1,800,000 GSA represents approximately 80.6% of Plaintiff’s reasonably forecasted recovery. *Id.* Preliminary approval is appropriate since the Settlement will provide significant monetary relief to the Settlement Class, which is consistent with what Plaintiff’s counsel believes could have been recovered had the case proceeded through trial.

e. The Experience and Views of Counsel.

“Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pac. Enter. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff is represented by competent counsel with extensive experience litigating wage and hour class actions from both the plaintiff and defense side and have been appointed class counsel in numerous cases with similar claims. Haines Decl., ¶¶ 3-8; *see also* Declaration of Sean M. Blakely (“Blakely Decl.”), ¶¶ 2-6.

2. The Preliminary Approval Standard Is Met

The Court can grant preliminary approval of the settlement and direct that notice be given if the proposed settlement: (1) falls within the range of possible approval; (2) appears to be the product of serious, informed, and non-collusive negotiations; and (3) has no obvious deficiencies. *See 4 Newberg on Class Actions*, § 11:24-25 (4th Ed. 2013).

a. The Settlement Is Within the Range of Possible Approval

The Settlement reflects approximately 80.6% of the estimated recovery the Settlement Class could realistically expect in light of the significant litigation risks, and will provide tangible, monetary compensation for hotly disputed wage claims. Indeed, the percentage of the liability exposure recovered in this case far exceeds percentages routinely approved by courts. *See, e.g.,*

Glass v. UBS Finan. Servs., Case No. C-06-4068 MMC, 2007 WL 221862, *4 (N.D. Cal. 2007) (approving settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about one-sixth of potential recovery); *Nat’l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 (“it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Settlement Class members at trial”). Plaintiff submits the Settlement is well within the range of possible approval, such that notice should be provided to the Settlement Class. The Court will have the opportunity to again assess the reasonableness of the Settlement after Class Members have had the opportunity to opt-out or object.

b. The Settlement Resulted from Serious, Informed Negotiations

The Settlement is a result of extensive informal discovery, a full-day mediation, and additional months of negotiations. Thus, it is entitled to a presumption of fairness. *Kullar*, 168 Cal.App.4th at 130. Plaintiff carefully vetted the claims at issue and with the help of her retained expert, conducted detailed data analyses to arrive at estimated potential damages. Haines Decl., ¶¶ 17-26. The Parties then worked collaboratively in the following months to finalize the Settlement. *Id.*, ¶ 13. This factor thus supports preliminary approval.

c. The Settlement Is Devoid of Obvious Deficiencies

The Settlement contains no obvious deficiencies. The Settlement will provide tangible monetary relief to Class Members. The amounts proposed for attorneys’ fees, costs, settlement administration costs, LWDA payment, and Enhancement Payment are all reasonable. Because the Settlement is devoid of obvious deficiencies, this factor supports preliminary approval.

B. THE COURT SHOULD CERTIFY THE PROPOSED CLASS

The Settlement Class satisfies the criteria for certification because: (1) it is sufficiently numerous; (2) common questions of law and fact predominate; (3) Plaintiff’s claims are typical; and (4) Plaintiff and her counsel will adequately represent them. Cal. Code Civ. Proc. § 382.

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1 **3. The Proposed Class Is Ascertainable and Numerous**

2 A class is “ascertainable” where members “may be readily identified without unreason-
3 able expense or time by reference to...[business] records.” *Sevidal v. Target*, 189 Cal.App.4th
4 905, 919 (2010). Here, the Settlement Class includes all current and former non-exempt
5 employees who were employed by one of the Facility Defendants in California during the
6 Relevant Time Period. The Settlement Class can therefore be identified from Defendant’s
7 personnel and employment records. Defendant represents that there are approximately 7,180
8 Class Members (*see* Haines Decl., ¶ 15), making it impracticable to bring them all before the
9 Court. Thus, numerosity is satisfied.

10 **2. Common Issues of Law and Fact Predominate for Settlement Purposes**

11 The focus on certification is what types of questions, “common or individual,” are likely
12 to arise. *Sav-On Drug Store, Inc. v. Sup. Ct.*, 34 Cal.4th 319, 327 (2004). Plaintiff’s claims are
13 predicated primarily on, among other things, Defendant’s alleged unlawful meal and rest period
14 policies/practices. These claims are commonly held proper for class certification. *See, e.g., Benton*
15 *v. Telecom Network Specialists, Inc.*, 220 Cal.App.4th 701 (2013) (certifying meal & rest period
16 claims).

17 **3. The Claims of the Named Plaintiff Are Typical**

18 Typicality is satisfied where a class representative’s claims are typical of those of the class.
19 *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1347 (1987). Plaintiff’s
20 claims are typical of the Settlement Class. Plaintiff worked in California for one of the Facility
21 Defendants during the Relevant Time Period, was subject to Defendant’s wage and hour
22 policies/practices, and was injured in the same manner as other Class Members. *See* Girgis Decl.,
23 ¶¶ 2-3. Typicality is thus satisfied.

24 **4. Plaintiff and Her Counsel Will Adequately Represent the Class**

25 The adequacy inquiry examines conflicts of interest between a named plaintiff and the
26 class he seeks to represent. *Capital People First v. State Dept. of Develop. Svcs.*, 155 Cal.App.4th
27 676, 697 (2007). Plaintiff and her counsel will adequately represent the Settlement Class as there
28 are no known conflicts between Plaintiff and Class Members, and Plaintiff’s counsel have

1 extensive relevant wage and hour class action experience. *See* Haines Decl., ¶¶ 3-8.

2 **C. THE COURT SHOULD ORDER DISTRIBUTION OF THE CLASS**
3 **NOTICE**

4 This Court should order distribution of the Notice by U.S. Mail, using last known mailing
5 addresses provided by Defendant. *See* Settlement, § 10. This is the “best notice practicable” under
6 the circumstances because it provides “individual notice to all members who can be identified
7 through reasonable effort.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Plaintiff
8 proposes the settlement be administered by Apex Class Action LLC (“Apex”), an experienced
9 settlement administrator. *See* Declaration of Sean Hartranft and exhibits. Class Members’
10 addresses will be ascertainable through Defendant’s records, which Defendant will provide to
11 Apex within fifteen (15) business days after entry of an order preliminarily approving this
12 Settlement. *See* Settlement, § 10(A). Within ten (10) business days of receipt of the Class
13 Members’ addresses, Apex will run the addresses through the National Change of Address
14 (“NCOA”) database (which provides updated addresses for any individual who has moved in the
15 previous four years and has notified the U.S. Postal Service of a forwarding address) and mail the
16 Class Notice to all Class Members. *See Id.*, at § 10(B). To the extent that any notices are returned
17 as undeliverable, Apex will perform a “skip trace” to track any Class Member’s current mailing
18 address. *Id.*, at § 10(F).

19 The proposed Notice satisfies Cal. Rule of Court 3.766(d) because it advises Class
20 Members of the basic contentions and denials of the parties, the key terms of the Settlement, the
21 60-day deadline to opt-out or object, the recovery formula, and advises they will be bound by the
22 Settlement if they do not opt-out. *See* Haines Decl., Exhs. 1-3 to Exh. A. The Notice also notifies
23 Class Members of the final fairness hearing and provides Class Counsel’s contact information.
24 *Id.* The Notice satisfies Rule 3.766 as the most reliable and cost-effective method of reaching
25 Class Members.

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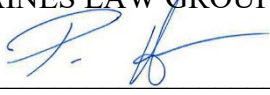
1 **V. CONCLUSION**

2 For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily
3 approve the proposed Settlement, provisionally certify the proposed Settlement Class, and enter
4 the Proposed Order submitted concurrently herewith.

5
6 Dated: April 11, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

7 By:



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